2GP Plan Change PHS2 – Acoustic Insulation

Plan Change 2.2.9

December 4 2024

Submission in opposition by Russell Lund

Introduction

We are the developer who in recent years has done the most to actively promote and fulfil plan change 2.4.3 in relation to the active reuse of heritage buildings and building a vibrant attractive and enjoyable CBD and waterfront . We expect some respect and consideration of our views from Council and staff when they seek to impose needless and significant costs in this matter. Instead, our detailed responses have been summarily dismissed and given no weight.

We ask Council to confirm if they have funded "Save Dunedin Live Music" in any form in relation to this plan change. If there has been, the Council's whole plan change is compromised as there is more than an appearance of partisanship.

In this vein, at Para 501 Council admit that the purpose of the plan change and the "Otepoti Live Music Action Plan" is " *as a broader response to support live music in Dunedin" .*

It is obvious Council are not impartial adjudicators on this matter, which is clear from their dismissal of our initial submission and the often-risible logic employed to justify their position. They are determined to "save" Live Music and because of this partisan position they must step aside and have the Environment Court rule on the matter and pay our legal costs in the same way they have supported the "Save Dunedin Live Music Campaign" with the expense of the "Live Music Action Plan'" and no doubt other expenses.

At para 20 Council notes" *overall, Save Dunedin Live Music wanted the changes to go further and developers wanted the changes to be removed"*. It appears Council gives equal weight to both views. Council should not.

It is obvious that the group causing the problem don't care about efficient or practical solutions- or if a solution is even necessary because there is no cost to them. This is farcical. They expect others to pay for mitigation so they can indulge in their activities, often at venues where no effort has been made to be responsible neighbours or operators.

Summary :

The heart of the matter is that a group causing a public nuisance via sound levels exceeding plan limits want Council to impose costs on others to allow them to continue unchecked, and with the parties causing the problem to contribute precisely nothing.

We reject that position and say

1. **The whole plan change is a massive overreaction to one or two troublesome apartment owners**

2. **Live music does not need to be "saved" because the number of music venues has grown recently, not reduced.**

3. **The noise generating music venues must provide the noise attenuation, not "the receiving environment".**

4. **Harbourside edge zoning to be exempt because of the extremely unique nature of the zone- which has no music venues.**

5. **Council themselves acknowledge the plan change is virtually useless and of no benefit because the hundreds of existing apartments are not affected, meaning owners can complain :**

6. **The plan change is completely without logic as it discriminates in favour of one type of noise nuisance (music) while ignoring other types of noise experienced on a far more regular basis in the Harbourside edge zone and elsewhere.**

<u>Detailed Submission</u>

1. **Plan Change is needless**

Para 499- 500 2 details noise complaints upheld between April 2021-April 2023, prompting the "Save Dunedin Live Music" campaign. There were exactly 2 complaints upheld, ie, one per year.

We understand these complaints were from one absentee apartment owner who visits Dunedin very infrequently. 2 complaints do not represent a systemic issue. The whole premise of the "Save Dunedin Live Music" campaign allegedly as a result of this is a gross overreaction and an expensive solution – that will achieve nothing - in search of a problem.

2. **New CBD Music venues**

The concern and anxiety around the lack of venues prompting the "Save Dunedin live music" campaign is misplaced. There are 2 venues opened recently since the "Save Dunedin live music " campaign was announced, which undercuts the campaign's credibility. They are Eric's Music venue and the Moons bar. We do not know details of the Eric's venue but the Moons venue has been an outstanding success.

3. **Music venues to insulate, not apartments**

Para 503 – Common sense and equity dictate that if venues wish to perform and at times profit from live music then as responsible venues generating the noise THEY are the ones needing to mitigate the effects they create.

Para 549 – The report acknowledges that " *insulation requirements to the music venues themselves has the potential to be more effective and efficient than requiring acoustic insulation of the receiving requirement".*

Therefore the Councils case collapses in their own report.

At Para 550 the report tries to limit the damage saying *": plan already manages noise emissions from music venues by application of noise limits".*

Then at 551 some real disingenuousness from the authors : " *live music that complies with noise limits.....should not be subject to requirements for acoustic insulation. This is because noise emissions are at a level that anticipated in the relevant zone".*

The extremely obvious riposte to this is that if the noise is within specified limits there can be no complaint and there would be no need for this 'Save Dunedin live music" campaign. What the report – or "Save Dunedin Live Music" does not acknowledge anywhere is that the inescapable reality is that noise from many bands and concerts is far, far in excess of 60dB, approaching 120dB, and the proposed 5dB increase will do virtually nothing. Council have failed in the extremely basic first step of defining the problem by actually measuring the noise at various performances before charging into inequitable solutions and making other people pay for them. When live music bands are measured it will then be clear that this plan change is going to achieve nothing.

Para 551 - There is further disingenuousness from Council at Para 551 where they suggest that "*noise should be measured at the boundary of the receiving property, not at the venue itself".*

This would fly in the face of previous Council actions and enforcement around sound as noise limits in other residential areas are most definitely measured at the boundary of the noise generating source. Council has an obligation to be transparent and consistent and this changing parameters to suit a particular favoured position does not meet that standard.

The Council response ignores the fact that venues like the Musicians Club and Moons have taken steps to minimize noise, and in the case of the Musicians club spent a considerable amount of money on sound attenuation . The Councils response which only benefits venues like the Crown Hotel who gave done nothing to mitigate. In effect Council are supporting the deadbeats of the live music scene and ignoring the successful efforts of responsible operators.

There are not a large number of entertainment venues and if Council wishes to have a vibrant music scene it could very easily assist with grants to those venues for sound attenuation. It could easily be set up along the lines of the heritage fund.

The prize for the most risible and partisan position in the document resides at Para 553 where it actually states" (The option to require music venues to insulate) *this option was rejected as it would impose unreasonable requirements on music venues that comply with noise limits* – but of course as stated very few or none do, and Council can claim vagueness because they failed to test them. Council also changed the rules about where noise is measured – at the receiving boundary. Even if they did comply why is it unreasonable to make the noise generators provide a measure of extra insulation? Why not change the limits applicable to music venues? Council agree that insulating venues would be a far more "*effective and efficient"*: Council have no compunction about heaping costs and impositions on nearby residents and developers but through strange and partisan logic they refuse to impose any requirements on the source of the alleged problem.

4. **Harbourside Edge North Heritage Buildings to be exempt**

At Para 505 and 506 there is discussion of the wider objectives this plan change purports to promote:, to wit "" *economically and socially vibrant city centres*". *2.4.2 " active use of built heritage" … " preservation of heritage buildings…. Contributes to achieving objective 2.4 … promoting elements of the city that contribute to residents and visitors aesthetic appreciation for the city… 2.4.3…active use of heritage buildings seeks a vibrant attractive and enjoyable CBD.*

We are not in the CBD but are in the Harbourside edge zone on the waterfront and own 3 of the 4 buildings there. There are specific and unique circumstances around the harbourside zone. To follow the exemption precedent already set by Council in this plan change (see below) Council must provide our buildings with an exemption.

We have already confirmed that we have no desire to incorporate live music venues in our buildings and the Customhouse Grill, operating for nearly 20 years does also not have live music.

The proposed change does not promote the economical and active use of built heritage or preservation. It discourages it by heaping yet more conditions and cost onto building owners, for almost zero benefit in this case.

All around the city are examples of empty and earthquake prone heritage buildings that cannot be economically re-used. This plan change will make it worse.

There is a reason another part of this plan variation seeks to protect a further 146 heritage buildings. It is because it is already not economical to repurpose heritage buildings – if it was these protections would not be needed. In any event these new listings in the plan will not offer protection – owners will simply allow demolition by neglect or use the well-established precedents in the High Court to have demolition approved.

Council have already set a precedent for an exemption in this plan change. We note that on page 84 of the plan change in relation to heritage listings Council agreed to an exemption for a heritage listing at the First Church of Christ Scientist & Reading Room in York Place because of the specific circumstances around the building. Council noted the specific circumstances were that it was " *unlikely that the building would be needed for its church use much longer….conversion..to…alternative uses would be difficult"* so Council have removed it from the register therefore permitting the complete demolition of a significant heritage structure, despite noting " *although building meets criteria for scheduling, active re-use unlikely to be achievable… which is a key element of 2.4.2".*

In the same manner we seek an exemption – not for complete demolition but relief from very difficult provisions that would irrevocably compromise the completion and our landmark waterfront development based on the following . The benchmark set by Council is merely to demonstrate "difficulty" and we can prove a more deleterious effect than simply "difficult"

Thus the heritage buildings and our adjacent site at 5 Willis St in the North Harbourside edge zone must be exempt from the proposed additional insulation. They must NOT be subject to yet another wasteful "Resource Consent Application" as proposed at Para 561 "costing months and many thousands of dollars where the answer in our experience depends on the particular mindset of the Heritage Advisor Council employs at the time, and not the alleged Council policy 2.4.2 of encouraging adaptive re-use of heritage buildings.

We note the following relevant facts in support of our requests.

a. We own three of the four heritage listed buildings in the Zone. (The other is the Harbourside Grill owned by the Port Otago / ORC).

b. We are not planning any entertainment / live music venues in our buildings, and there are no other buildings on the Northern side of the harbourside edge zone except the Harbourside Grill which is an upmarket restaurant. We are untroubled by noise from the Warehouse precinct, industrial noise and the nightly shunting and train activity. See also f).

c. Two of the three buildings have already been fully or significantly redeveloped, and have received building consents for the existing sound attenuation pertaining to windows, rooves, external walls and ventilation systems to the existing standard - and the work has been completed to that standard.

d. The new standard would require different solutions on the partially completed Loan & Mercantile Building that would irrevocably compromise the carefully designed facades and interiors by our internationally recognised Australian architects, Circa Morris Nunn Chua. We note the extensive façade alterations were approved in record time (one week) by Heritage NZ, in 2021. The latest stage of the building – the Suzanne Lund community loft apartments has been featured in Home magazine in August, has attracted international attention, has the specific and close interest of the Minister for Housing and is being entered into the International Section of the Australian Institute of Architects awards.

e. If we were forced to implement the higher standard for the third undeveloped building, (The Wharf Hotel), it would become uneconomic to redevelop under any circumstances and if necessary we would go to the High Court seeking demolition. We can confirm there is a well-worn path in the High Court with many precedents where if a claimant can show it is uneconomic to redevelop the Court will allow demolition, even for a Category 1 building, let alone a mere DCC "Townscape Heritage" listing in the 2 GP which is the case for the Wharf Hotel.

f. We have built 47 apartments in the Thomas Gregg Building and Loan & Mercantile Building and we have – almost every night – pervasive low frequency train and shunting activity in the railyard 20 -30 metres away. That has not deterred us from developing Dunedin's most unique and expensive heritage boutique apartments, and receiving a Customer satisfaction rating of 9.3 on Booking .com, our most popular booking channel.

g. In summary, given the distance from the Warehouse Precinct, the proximity to industrial activity, the lack of any present or future entertainment venues nearby and not least the nightly train noise - the sites at 5 Willis St, 25 Fryatt St, 21 & 23 Fryatt St and 31-33 Thomas Burns St are to be exempt from the proposed changes.

We made all these points in our initial submission and the risible logic Council employed to dismiss these very relevant points at para 559 was *" would not achieve relevant objectives for management of conflict between activities"*

This deaf and blind response ignores

a) We do not want live music in our buildings which are the only place they could take place in the North Harbourside edge zone

b) There is already noise from trains, shunting, and industrial noise exceeding noise limits that we experience but apparently these don't count to Council staff.
c) We have successfully dealt with this noise without impractical and very marginally effective solutions as evidenced by our 9.3 rating on Booking.com.

5. Plan Change useless because existing apartments unaffected.

At Para 531 lies another critical Council concession as to the almost complete lack of utility of this plan change. It states : *noted that acoustic insulation.... only apply to new activity... not to lawfully established residential activity... this provision cannot be overridden.... may mean that some conflict between activities needs to be managed by alternative methods outside the plan"*

What is the point of legislating for a miniscule number of new apartments when ALL of the existing ones will receive no benefit, and complaints can continue. It is frankly mule like thinking to pretend the problem has been fixed by imposing ineffective new solution on a miniscule number of new builds. It is not as if there is a wave of new apartments being built and none are likely at scale for many years, as noted above and below.

Any reasonable - thinking – person would agree that if "*alternative solutions outside the plan"* need to be found for existing apartments as Council states at para 531, then just use those "*alternative solutions"* for the extremely small number of new ones as well.

This is the giant flaw in the whole proposal.

Without a no complaints covenant provision in the plan or venues being made to provide sound attenuation , Council cannot stop the complaints. Council put up a number of vague objections for no complaints covenants at para 555 but they are very lightweight and easily set aside: "*not best practice*" , " *may not end up adequately managing issues'* . Council cannot escape the irrefutable fact that they are used in Auckland. It seems that Council are most concerned that the noise officers might have to still do some work and this is seen as an imposition: " *any complaints... about noise.... would still need to be investigated in the usual manner"*. We say- so what?

It is remarkable that Council and its Consultants say that they need "*alternative methods*" for the hundreds of existing apartments and stay silent on what those methods might be. It must be very obvious to Council that if the "alternative methods' are needed to resolve existing residential problems built to lower sound attenuation standards they will be also suitable to resolve new build developments built to higher standards, and therefore the whole plan change is unnecessary.

Council displays a deafening silence on this central issue. It does not bode well for Council to simply ignore this crucial point - that we raised in our initial submission and simply hope that no-one will notice.

Regarding the supply of new CBD apartments Council also needs to face reality: Despite the lofty goals in the district plan for the CBD virtually all significant CBD apartment development has stopped in Dunedin at present. Therefore the planned changes will have negligible or no effect for many years and by then there will be at least one other another long term plan in motion, superseding the current one and this proposed change.

In terms of heritage buildings, developers who have done apartment conversions like Ted Daniels and Jon Leung have now given up larger projects as it has simply become too difficult.

We note that even Kainga Ora who routinely spend in excess of a million dollars developing one bedroom apartments in CBD apartment developments across the country have not proceeded with the large scale development on the Princes St bus depot site and were instead spending $30 million in a fringe CBD Stafford St location instead. This has now been cancelled also.

Also cancelled are the following large scale CBD apartments

- Filleul St Development
- Fairmaid and Chance 5 level building Moray Place
- No 1 King St
- Albell Chambers Stuart St
- King Edward old Polytechnic Building.

These developments have all failed because they are uneconomic.

Council and their consultants seek to justify this ineffectual measure by noting that other centres – Wellington, Christchurch and Queenstown have similar measures. However those centres have much higher level of new apartments planned and under construction, unlike the Dunedin CBD which is moribund with a static if not declining population and almost no new apartment development.

Private developers In Dunedin cannot hope to achieve anywhere near $1M level that Kainga Ora spend for a 45m2 CBD apartment. Even at mid $600's - the minimum level needed- meets market resistance. In conclusion, significant apartment development in the CBD is dead, and with it ought to be the proposed change.

Russell Lund

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