

Form 7

Notice of appeal to Environment Court against decision on proposed policy statement or plan or change or variation

Clause 14(1) of Schedule 1, Resource Management Act 1991

To the Registrar
Environment Court
Christchurch

I, Russell V Lund & H C Trustees Ltd, appeal against a decision of Dunedin City Council on the following plan:

Dunedin City District Plan 2018, Industrial Zones, Decision 3.11.10.1.

I made a submission on that plan.

I am not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.

I received notice of the decision on 7 November 2018.

The decision was made by Dunedin City Council.

The part of the decision that I am appealing is:

- Industrial Zones, Decision 3.11.10.1 to refuse to zone 61 North Taieri Road to Industrial (as per submission 1017).
- This matter relates to the planning maps (and any required amendments to the Dunedin City District Plan 2018 to achieve the outcome sought by the submission).

The reasons for the appeal are as follows:

- The subject site has a long history associated with industrial activities, contains existing industrial building and Council has granted a resource consent for the continued use of the site for an industrial activity (storage and distribution of goods, and associated offices and staff amenities).
- Retaining the zoning of General Residential 1 does not reflect the past, current or likely future use of the site and the existing resources on the site.
- The requested zoning is Industrial, which would provide for the enhanced use of both the land and building resource.
- The key matters raised at the hearing were noise and traffic:
 - In terms of noise, Rule 9.3.6 measures noise in terms of the 'zoning of the receiving property', rather than based on the zoning of the subject property. Therefore the zoning of the subject property is immaterial in terms of noise anticipated by the District Plan.
 - In terms of traffic, expert evidence was provided at the hearing, which stated: *"We have not been able to identify any particular causes for concern in respect of the efficient or safety of the road, and the current level of infrastructure provision for all types of road users meets (or exceeds) the requirements of current standards"*.

- The concluding statement associated with the decision (Industrial Zones, Decision of the Hearings Panel, 7 November 2018, para 428) state: “...we are of the opinion that, long term, residential use of the land is the most effective and efficient option for this site given its location surrounded by Residential activities and the potential adverse effects associated with industrial activities on these surrounding residential sites”.

With regards to this statement, the following is noted:

- The activity on the adjacent site on the north, along the entire boundary, is industrial not residential activity.
- The adjacent site to the east (for over half the boundary) is Rural Residential 1, with the existing dwelling some 75m from the shared boundary. While the remainder of the land on the eastern boundary is not developed (i.e. has no existing residential activity).

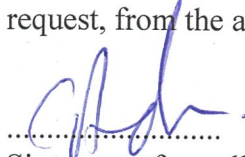
I seek the following relief:

- The zoning of the site is amended to Industrial.
- Alternatively, zoning of the site is amended so that the front of the site (along with the existing industrial buildings) is zoned Industrial, and the rear of the site is zoned Residential.

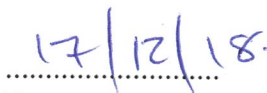
I attach the following documents* to this notice:

- a) a copy of my submission ~~or further submission (with a copy of the submission opposed or supported by my further submission):~~
- b) a copy of the relevant part of the decision:
- ~~c) any other documents necessary for an adequate understanding of the appeal:~~
- d) a list of names and addresses of persons to be served with a copy of this notice.

*These documents constitute part of this form and, as such, must be attached to both copies of the notice lodged with the Environment Court. The appellant does not need to attach a copy of a regional or district plan or policy statement. In addition, the appellant does not need to attach copies of the submission and decision to the copies of the notice served on other persons if the copy served lists these documents and states that copies may be obtained, on request, from the appellant.



Signature of appellant
(or person authorised to sign
on behalf of appellant)



Date

Address for service of appellant:

Telephone: 027 252 0141

Fax/email: conrad_a@xtra.co.nz

Contact person: Conrad Anderson, planning consultant

Note to appellant

You may appeal only if—

- you referred in your submission or further submission to the provision or matter that is the subject of your appeal; and
- in the case of a decision relating to a proposed policy statement or plan (as opposed to a variation or change), your appeal does not seek withdrawal of the proposed policy statement or plan as a whole.

Your right to appeal may be limited by the trade competition provisions in Part 11A of the Resource Management Act 1991.

The Environment Court, when hearing an appeal relating to a matter included in a document under section 55(2B), may consider only the question of law raised.

You must lodge the original and 1 copy of this notice with the Environment Court within 30 working days of being served with notice of the decision to be appealed. The notice must be signed by you or on your behalf. You must pay the filing fee required by regulation 35 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003.

You must serve a copy of this notice on the local authority that made the decision and on the Minister of Conservation (if the appeal is on a regional coastal plan), within 30 working days of being served with a notice of the decision.

You must also serve a copy of this notice on every person who made a submission to which the appeal relates within 5 working days after the notice is lodged with the Environment Court.

Within 10 working days after lodging this notice, you must give written notice to the Registrar of the Environment Court of the name, address, and date of service for each person served with this notice.

However, you may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (*see* form 38).

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (*see* form 38).

**How to obtain copies of documents relating to appeal*

The copy of this notice served on you does not attach a copy of the appellant's submission and (*or or*) the decision (*or part of the decision*) appealed. These documents may be obtained, on request, from the appellant.

*Delete if these documents are attached to copies of the notice of appeal served on other persons.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

Schedule 1 form 7 heading: amended, on 1 November 2010, by regulation 19(1) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2010 (SR 2010/279).

Schedule 1 form 7: amended, on 3 March 2015, by regulation 5(1) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2014 (LI 2014/386).

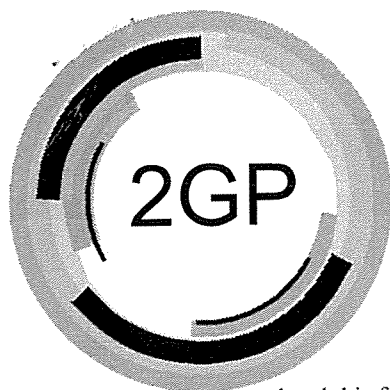
Schedule 1 form 7: amended, on 3 March 2015, by regulation 5(2) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2014 (LI 2014/386).

Schedule 1 form 7: amended, on 1 November 2010, by regulation 19(1) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2010 (SR 2010/279).

Schedule 1 form 7: amended, on 1 June 2006, by regulation 10(4) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2006 (SR 2006/99).

List of names and addresses of persons to be served with a copy of this notice:

Name	Submission #	Contact details	Method used, on 17/12/18
Dunedin City Council		2GP Appeal Dunedin City Council PO Box 5045 Dunedin 9054 2gpappeals@dcc.govt.nz	Email
Lynda Baskett	FS2199	24 North Taieri Road Abbotsford Dunedin 9018 New Zealand l.hallberg@xtra.co.nz	Email
Gary Baskett	FS2047	24 North Taieri Road Abbotsford Dunedin 9018 New Zealand gb1_nz@yahoo.com	Email
David and Denise Pearson	FS2073	15 Surat Bay Road RD 1 Owaka 9585 New Zealand dcdcpearson@xtra.co.nz	Email
Paula Cotter and Tim Cotter	FS2258	55A Alexander Street Abbotsford Dunedin 9018 New Zealand	Post
Abbotsford Primary School	FS2009	c/-Philip Marsh 4B Gladstone Road North Mosgiel Dunedin 9024 New Zealand pjmarsh@xtra.co.nz	Email
Richard and Rachel Pearson	FS2109	15 Surat Bay Road RD 1 Owaka 9585 New Zealand dcdcpearson@xtra.co.nz	Email



THE PROPOSED
SECOND
GENERATION
DISTRICT PLAN

2705/FS201115RL

SUBMISSION FORM

This is a submission on the Proposed Second Generation Dunedin City District Plan (2GP) for Dunedin pursuant to Clause 6 of Schedule 1 of the Resource Management Act 1991

Once you have completed this form, include any supporting documentation and return to the Dunedin City Council.

MAKE YOUR SUBMISSION:

Online: www.2gp.dunedin.govt.nz

Email: planning@dcc.govt.nz

Post to: Submission on 2GP
Dunedin City Council
PO Box 5045
Moray Place
Dunedin 9058

Deliver to: DCC Customer Services Agency
Ground floor
Civic Centre
50 The Octagon
Dunedin

Please note that all submissions are public information. Your name, contact details and submission will be available to the public and the media. The DCC will only use your information for the purposes of this plan review process.

All submissions must be received before 5pm on Tuesday, 24 November 2015.

SUBMITTER DETAILS *Fields indicated by an asterisks (*) are mandatory.*

Full name of submitter or agent* Russell V Lund & H C Trustees Ltd

Organisation (if submission on behalf of an organisation)

Address for service for submitter or agent* *Please provide an address where you would like correspondence sent to*

Email address russell@lundsouth.co.nz

Postal address* PO Box 5912, Moray Place Dunedin

Phone number* 027 484 6688

Mobile number -

TRADE COMPETITION *Fields indicated by an asterisks (*) are mandatory.*

Please note: If you are a person who could gain an advantage in trade competition through your submission, your right to make a submission may be limited by clause 6(4), Schedule 1 of the Resource Management Act 1991.

Please tick one of the following*

I could ☐ could not ☒ gain an advantage in trade competition through this submission.

~~If you could gain an advantage in trade competition through this submission, please tick one of the following*~~

~~I am ☐ am not ☐ directly affected by an effect of the subject matter of the submission that:~~

~~(a) adversely affects the environment; and~~

~~(b) does not relate to trade competition or the effects of trade competition~~

HEARINGS *Fields indicated by an asterisks (*) are mandatory.*

Please tick one each of the following*

I would like ☒ would not ☐ like to be heard in support of my submission

If others submitters make a similar submission, I will ☒ will not ☐ consider presenting a joint case with them at a hearing.

The zoning as sought would better reflect the on-going situation at 61 North Taieri Road which includes the on-going use of the existing physical resource for storage and associated vehicle movements. The Introduction to the Industrial Zones states:

“Industrial activities make an important contribution to the economic well-being of Dunedin.....the Second Generation Plan (2GP) provisions propose to protect the existing clusters of industrial zoning...”

Para 97 of the 2004 Environment Court Decision made it very clear that industrial uses of the site would continue into the future. It states :

“ It is apparent to us that in the background to zoning of this site Residential 1, the City Council assumed the continuation of the activity on the site as a brickworks or as an existing industrial use, and sought to manage future expansion through a resource consent process rather than to change the activity.

On that basis, we say that there exists now with the proposed district plan a logical point to re-zone the site (specifically, the lower half of the site upon which the existing industrial buildings are situated) back to industrial use. This will reflect the actual use of the site, the wishes of the Environment Court in respect of decision C39/2004, and the Councils own expectations of the use of the site as outlined in para 97 of the Environment Court decision.

The Industrial zone is more appropriate and accords with Council’s functions as specified in S31 RMA and the tests required by S32 RMA.

HAZARD 2 OVERLAY

The Hazard 2 – land instability overlay on the site is inappropriate. It infers that there is an issue with land stability within part of the site, but imposes no restrictions other than the yearly clearance of vegetation. That outcome can be achieved without the hazard overlay implying the need for caution in respect to finance and insurance.

We strongly reject the idea that the site lies within a land instability area.

We have perused the report linked in the 2GP website “ Active Landslides in the Dunedin Area” produced the Otago Regional Council in September 2015, and which we assume is the basis for the hazard 2 overlay on the site.

We found the report’s logic somewhat flawed. In its introduction on page ii, it states that development on landslide areas “*may be a contributing factor to increased rates of landslide*” but then in next line confirms that, “*equally, development commonly results in improved drainage via stormwater systems, so the reverse may apply*”.

Having made the concession that development is often or commonly a good thing in terms of decreased risk, in the next paragraph the report then contradicts itself by saying “*It should be understood that development increases the exposure to the potential hazard and therefore increases the risk.*”

The report then has further lapses of logic in its defence of the proposed requirements to build on category b land (minimal recent activity), which is the category that the West Abbotsford landslip area is defined as, in page ii. This category is defined as “historic movement, but ongoing monitoring suggests little or no current movement, in the last 50 years. Despite this, and despite the acknowledgement that development commonly decreases risk, the report suggests that development be undertaken only after “robust” geotechnical evaluation. We say that nothing more than a standard geotech report is needed should the site be developed.

However all of the above is of no relevance to 61 North Taieri Rd as the fact is that the site is not within either the “recently active” area of West Abbotsford, or the “other landslide areas”, or even the “buffer/ landslide aware areas “. The site is not even on the area map photograph of the West Abbotsford area, (Figure 23). It is not affected by the West or East Abbotsford landslips at all.

Our calculations are that the site is no closer than 450-500m to the closest outermost “buffer area” and approx 700m from the alleged recently active West Abbotsford slip.

If the report commissioned or relied upon by DCC to specifically establish and report on land instability does not consider that the site is even close to being affected, then there is no basis for Council to play King Canute and ignoring its own expert technical advice.

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**SECOND
GENERATION
DISTRICT PLAN**

**Industrial Zones
Decision of the Hearings Panel**

**Proposed Second Generation Dunedin City
District Plan (2GP)**

7 November 2018

- increase in traffic movements (including potentially heavy truck movements).

3.11.9.1 Decision and reasons

407. We reject the submission from the *Warhurst Family Trust* (OS1014.1) to rezone 92 Dukes Road Industrial and confirm the zoning is to remain Rural Taieri Plains.
408. In balancing the points made by the submitters, whilst we acknowledge the mixed character of much of the area, taking account of the amount of unused industrial land in the vicinity and the potential effects that rezoning may have on the amenity of neighbours, we are not persuaded that rezoning is appropriate at this location. We therefore agree with the reasons given by the further submitters and the Reporting Officer in his revised recommendations, as outlined above.

3.11.10 61 North Taieri Road, Abbotsford

409. *Russell V Lund and H C Trustees Limited* (OS1017.1) requested that the property at 61 North Taieri Road, Abbotsford, be rezoned from General Residential 1 to Industrial. This was opposed by six further submissions.
410. The site at 61 North Taieri Road is zoned Residential 1 in the operative District Plan, and General Residential 1 in the 2GP. Together with the site at 63 North Taieri Road, it has a long history of being used for industrial purposes with almost one hundred years of brickmaking taking place on the site. The industrial activity is near residential activities and has a history of complaints, particularly about truck movements at night affecting the ability of neighbours to sleep. Existing Use Certificate EXI-2015-3 dated 29 March 2016 confirms Council's acceptance that the following uses of the site have been lawfully established:
- storage within existing buildings and yard areas
 - ancillary staff and office facilities
 - vehicle movements associated with the items being stored (excluding truck movements between 9:30pm and 6:30am the following day, and Sundays and Public Holidays).
411. The Reporting Officer recommended that the submission by *Russell V Lund and H C Trustees Limited* (OS1017.1) be rejected and the 6 further submissions in opposition to this submission be accepted. He stated: "that irrespective of the zoning of 61 North Taieri Road, noise provisions of the 2GP would apply as they are based on the zoning of the receiving environment. He said that the DCC's Water and Waste Group had reported that there is water and wastewater capacity available for the requested rezoning. However, the DCC's Transportation Group reported that it has wide-ranging concerns about the impact of heavy vehicles through residential areas to access the site.
412. The Reporting Officer also stated that "the existing activity has existing use rights, and the introduction of a new industrial activity as a permitted activity with no controls on traffic movements would, in my opinion, be better managed through case-by-case resource consents which will enable local residents to take part in the process and contribute to the controls that may be appropriate to be put in place" (s42A Report, Section 5.52, p. 124-125).
413. These submissions were also referred to Mr Hovell, 2GP Mediator, for potential mediation, although no agreement had been reached prior to the hearing.
414. Evidence in support of the submission by *Russell V Lund and H C Trustees Limited* (OS1017.1) was provided at the Industrial hearing by Mr Don Anderson, Mr Lund and Mr Andy Carr.
415. Mr Don Anderson, planning witness presented evidence which included an overview of the history of the site and reference to, and copies of, Environment Court decisions,

B E Guthrie v Dunedin City Council (C174/2001) and Dunedin Ratepayers and Householders Association Incorporated, and Dunedin City Council v Brickworks 2000 Limited (C39/2004). Mr Anderson said that zoning an existing industrial complex General Residential 1 is unrealistic and an industrial zone is a more effective and efficient method, as requested by Mr Lund.

416. Mr Anderson in Attachment B of his evidence also proposed a new Rule 19.6.13 specifically for 61 North Taieri Road which restricts buildings additions to existing buildings to a cumulative increase in size of 25%, and only allows heavy vehicles to enter or leave the site only between 7am and 9pm.
417. Mr Lund tabled and spoke to his evidence which provided a critique of *Mr Pearson's* further submission (FS2073.8) and also described the site and its history, having been used as an industrial site since the 1800's, including as the former McSkimmings brickworks.
418. Mr Lund and Mr Anderson also acknowledged existing use rights for storage and truck movements but wanted other industrial use to be possible without the need for resource consents. The existing use certificate and planning assessment was also tabled as part of the submitter's evidence.
419. A Traffic Assessment by Mr Andy Carr, (Director/Traffic Engineer, Carriageway Consulting), dated 30 July 2015 was also tabled and discussed by Mr Lund and Mr Anderson. On page 11 under the summary and conclusions of this traffic evidence, it states that:
- "Having reviewed the prevailing characteristics of North Taieri Road, including the horizontal and vertical alignment, traffic flows and road safety record, we are of the opinion that the road is suitable for the levels and mix of traffic that it presently carries, including up to 16 truck movements per day associated with the activities at 61 North Taieri Road. We have not been able to identify any particular causes for concern in respect of the efficiency or safety of the road, and the current level of infrastructure provision for all types of road users meets (or exceeds) the requirement of current standards. We also note that the accident record over the past ten years is very good."*
420. Oral evidence was provided by *Mr Pearson* (FS2073.8) describing concerns about noise and safety concerns regarding truck movements.
421. At the submitters' request we agreed that a meeting should be held after the hearing between the Reporting Officer, Mr Lund and all other further submitters to discuss a way forward and for any outcome to be reported back to the Panel.
422. In regard to this, Reporting Officer, as part of his revised recommendations (p.5) stated:
- "Submitters and further submitters are seeking to mediate, with the intention of reaching agreement on the scale and intensity of any future industrial development on the site, through a schedule. Issue of whether scheduling is within scope of the original submission. In addition, the 2GP does not currently provide for scheduling, so if supported will need to carefully consider how this is undertaken."*
423. A meeting was held on 17 November 2016 at the Abbotsford Primary School between the submitter (*Mr Lund*) and further submitters, and with Mr Rawson also in attendance. No agreement was reached on a way forward at this meeting.
424. Also, the on 3 April 2017 we sent a Minute to Mr Lund to ascertain whether the submitter would like to have another meeting with further submitters to try and reach agreement. Mr Lund has not replied to this minute from the Panel.

3.11.10.1 Decision and reasons

425. We have decided to reject the submission by *Russell V Lund and H C Trustees Limited* (OS1017.1) to rezone 61 North Taieri Road, Abbotsford, from General Residential 1 to Industrial and accept the six further submissions in opposition to this submission.

426. This is a property that has had a considerable history of conflict and complaints. Without us needing to address those in detail what is clear is that we feel we must be cautious in accepting any submission to change the zoning to Industrial which would potentially result in expansion or intensification of industrial activity on the site, with increased potential for additional adverse effects on surrounding residential activities and the Abbotsford Primary School as outlined in further submitters' evidence.
427. Having considered all of the evidence and statements, on balance, we consider General Residential 1 zoning is the most efficient and effective zoning of the site for the reasons outlined above in the s42A Report. We acknowledge the existing industrial activity has some existing use rights and will be able to operate into the future based on those existing use rights. We are of the opinion that any expansion beyond the scope of the existing use rights is better managed through case-by-case resource consents which will potentially enable local residents to take part in the process and contribute to the consideration of appropriate controls to mitigate adverse effects of an expanded industrial activity on the site.
428. Also, we are of the opinion that, long term, residential use of the land is the most effective and efficient option for this site given its location surrounded by Residential activities and the potential adverse effects associated with industrial activities on these surrounding residential sites.

4.0 Other amendments

429. This section outlines our decisions on small matters that were not traversed at the hearing and were relatively uncontested. For these matters our decisions were made entirely on the evidence presented in the submission and the s42A Report, with our reasons, unless otherwise indicated, being the same as those summarised by the Reporting Officer.
430. Other amendments to the Industrial chapter of the 2GP have been made in response to submissions where the submitter did not provide specific evidence at the hearing or in their evidence agreed with the Reporting Officer who had recommended a change be made. These are discussed below.

4.1.1 Definition of Industry

431. *Port Otago Limited* (OS737.1) and *Chalmers Properties Limited* (OS749.5) sought to amend the definition of industry to be the same as that in the Operative District Plan because they considered the definition in the 2GP was unclear, complex and created uncertainty. *The Oil Companies* (OS634.46) sought retention of the definition of Industry.
432. *Waste Management (NZ) Limited* (OS796.30) also sought to amend the definition of industrial activities to explicitly provide for "waste management facilities" and to separately define these facilities.
433. In response, the Reporting Officer recommended additions to the definition of industry to include waste management facilities, maintenance services, vehicle testing stations and wholesale (s42A Report, Section 5.1, pp. 16-17).
434. Ms Karen Blair, in planning evidence for *the Oil Companies* (OS634.46), said she did not agree with the recommendation of the Reporting Officer to add the term "wholesale" to the definition of industry. Ms Blair also questioned the scope for this amendment, and did not agree that scope came from submitters OS737.1 or OS749.5 as claimed by the Reporting Officer.
435. The reasons for *the Oil Companies* opposition were that if "wholesale" activities are to be included as "Industrial Activities" then that would effectively also allow for retail ancillary to wholesale activities. The subsequent expansion of retail activities could