

ANNEXURE B

EMAIL BUNDLES 1, 2 ,3 & 4 DISCUSSING THE NES



Kirstyn Lindsay <kirstyn@planningsouth.nz>

LUC-2017-561: 5 Clark Street, Dunedin

Kirstyn Lindsay <kirstyn@planningsouth.nz>

Mon, Nov 20, 2017 at 10:45 PM

To: Campbell Thomson <Campbell.Thomson@dcc.govt.nz>

Hi Campbell,

Further to my email below, I have re-refreshed my memory regarding the Contaminated Land Management Guidelines no. 5 and I am also confused as to how a DSI would be undertaken for this site, (if one is deemed to be necessary)? The site is sealed so it would be difficult to undertake soil sampling to test for contaminants. Furthermore, if we play it forward and were able to test the soil and it was found to be contaminated, I imagine any conditions would either require remediation of soils on site, removal and disposal of any contaminated soils or capping/sealing of the site (which is already complied with).

I will give you a ring in the morning to discuss.

On Nov 20, 2017 7:17 PM, "Kirstyn Lindsay" <kirstyn@planningsouth.nz> wrote:

Hi Campbell

We may have had a misunderstanding as I don't believe I said that the NES didn't apply. I said that the site was sealed and, as such, there would be no risk to human health from contaminants in soil. I said that if you believed the NES applied, the NES component of the application could be processed as a discretionary activity (as there is no DSI) and you could impose conditions restricting the disturbance of soil to permitted activity limits. This appears to be consistent with your concerns (outlined above) which focus on the development stage with the potential for workers to disturb soil by running pipes and ducts etc rather than people living on the site. I note that soil disturbance is a permitted activity on a HAIL site providing the volume of the disturbance of the soil of the piece of land is no more than 25m² per 500m² of site area (and all other permitted activity conditions are met). People living on the site will not be in contact with exposed soil.

Notwithstanding the above points, Council does need to be certain that the NES applies, I refer you to the *Users' Guide: NES for Assessing and Managing Contaminants in Soil to Protect Human Health: page 20*

"Example of change in land use that is not covered by the NES: Change from an orchard to a dairy farm; change from a commercial printing plant to a retail outlet where all soil surfaces are sealed and remain sealed." (My emphasis)

In this case, the site is sealed and will remain sealed. There is no exposed soil on the site nor will there be in the future.

Furthermore, the piece of land is currently used for residential purposes and there is no other use currently occurring on the site. This has been the situation for quite some time. It could be argued that the change of use of the piece of land has already occurred.

Engaging a SQEP will be a huge expense for my client and, as such, I would like to be very certain that it is necessary before asking this. Please reconsider the need for a SQEP, in light of the points above.

Kind regards, Kirstyn

Kirstyn Lindsay
Resource Management Consultant
Southern Planning Solutions Limited
kirstyn@planningsouth.nz
027 308 8950

On Mon, Nov 20, 2017 at 5:52 PM, Campbell Thomson <Campbell.Thomson@dcc.govt.nz> wrote:

Hi Kirstyn, good to see you are building up a healthy portfolio of work

Further to our discussion this morning I confirm that Phil asked me to look at this application with a mind to the possible need for public notification. For reasons discussed I think there is a reasonable argument that this may not be necessary despite the fact the proposal intensifies residential activity on a site zoned Industrial in both District Plans. There are some similarities but also some significant differences to the situation with the consented residential activity at 28 MacLaggan Street in a former Hotel. One issue that needs to be established is the status of the proposed new residential units in terms of the NES. While the building at 5 Clark Street included residential activity from the time it was constructed, it has not been used exclusively for residential use throughout its history. Council records indicate that it was built for and has been used for a combination of industrial activity and residential activity for a long period of time. The industrial activity includes activities that either are, or potentially are HAIL activities.

When constructed in the 1920s, the building at 5 Clark Street was a funeral home (Hugh Gourley Ltd) with a chapel and viewing rooms, together with a polishing and furnishing room on the first floor connected by stairs to a workshop and garage in the basement. The accommodation within the building was at that time limited to a single residential unit on the first floor, with the adjacent dwelling at 9 Clark Street also being associated with the Gourley family. The layout and scale of the building and facilities shown on the building plans suggest that at the very least coffins were manufactured or fitted out on site, and it is likely that the embalming of bodies may also have taken place on site, with areas for formal display of bodies upstairs clearly identified. These activities are potentially a HAIL activity in terms of bulk storage of chemicals and hazardous substances including formaldehyde, lead, mercury and biological materials – HAIL Category A2. By the early 1980's the basement area is shown as fitted out for aluminium joinery manufacture and timber joinery manufacture. This former use is a HAIL activity - HAIL Category D5. The existing site plan show the basement area fitted out as offices and a storage area.

While you expressed a view that the NES does not apply if there is no soil disturbance, this is not necessarily the case, as consent under the NES would be triggered because of the change of use. In the absence of any site investigations by a suitably qualified person it is unknown if there is any likelihood of the presence of contaminants within the building and in the underlying soil. It is possible that soil contaminants could be exposed as a result of installation of pipes and ducting required for services. Evidence is therefore required from a suitably qualified person to confirm the extent of any HAIL activities and the likelihood of any potential risks of soil contamination affecting human health.

I will follow up with the other matters we discussed such as parking. Grant indicated the shortfall of parking would be one car park based on the Residential 4 standard being applied and there being only one unit greater than 150m² in area.

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Kirstyn Lindsay <kirstyn@planningsouth.nz>

5 Clark Street**Campbell Thomson** <Campbell.Thomson@dcc.govt.nz>

Thu, Nov 30, 2017 at 2:58 PM

To: Kirstyn Lindsay <kirstyn@planningsouth.nz>, Melissa Shipman <Melissa.Shipman@dcc.govt.nz>

Cc: Alan Worthington <Alan.Worthington@dcc.govt.nz>

Still reviewing whether it is essential further information be provided prior to the issue of a consent or whether both the NES and noise issues can be resolved through conditions of consent. Either way I am not anticipating that a full PSI (or DSI) will be necessary for the NES matter. I remain of the view at present that input from suitably qualified persons is required on both matters, but the question is whether it is appropriate and necessary for it to be as an assessment to inform the decision on the application, or as an assessment to verify compliance with conditions. A legal opinion may be necessary to resolve this.

The situation with this site is not unlike Russell Lund's development at 21-27 Fryatt Street (LUC-2017-178) where there was some existing residential/commercial residential activity and further development of this nature was proposed, or the flat established at 206 Hanover/2A Grange St (LUC-2016-249). In both these cases reports from SQPs were provided prior to consent being granted. However, I am aware of other consents where a different approach was taken, and I asked at the team meeting this morning to be informed of any other examples of consents that may provide some comparison. I expect you would appreciate the Council needs to take a consistent approach where the circumstances are the same. This situation is not helped by the apparent fact that there is no consistent approach among Councils as to how apply the NES, and there is some conflict between the MfE user guide and the regulation itself.

From: Kirstyn Lindsay [mailto:kirstyn@planningsouth.nz]**Sent:** Thursday, 30 November 2017 2:02 p.m.**To:** Campbell Thomson; Melissa Shipman**Cc:** Alan Worthington**Subject:** Re: 5 Clark Street

Hi Campbell and Melissa,

As per email below, could you please advise where we are at with this consent?

Kind regards, Kirstyn

Kirstyn Lindsay

Resource Management Consultant

Southern Planning Solutions Limited

kirstyn@planningsouth.nz

027 308 8950

On Tue, Nov 28, 2017 at 11:10 AM, Kirstyn Lindsay <kirstyn@planningsouth.nz> wrote:

Hi Campbell and Melissa

We are keen to keep this one moving.

Following the email exchange last week, could you please clarify if the application is still on-hold for further information and, if yes, provide more detail around what information Council requires so that we can look at providing this.

Kind regards, Kirstyn

Kirstyn Lindsay

Resource Management Consultant

Southern Planning Solutions Limited

kirstyn@planningsouth.nz

027 308 8950



Kirstyn Lindsay <kirstyn@planningsouth.nz>

LUC-2017-561 - 5 Clark St - Letter**Campbell Thomson** <Campbell.Thomson@dcc.govt.nz>

Fri, Nov 24, 2017 at 2:03 PM

To: Kirstyn Lindsay <kirstyn@planningsouth.nz>

Cc: Melissa Shipman <Melissa.Shipman@dcc.govt.nz>, Alan Worthington <Alan.Worthington@dcc.govt.nz>

Thank you for your advice. It is clear I will need to seek further advice on both the NES and noise issues.

From: Kirstyn Lindsay [mailto:kirstyn@planningsouth.nz]**Sent:** Friday, 24 November 2017 1:58 p.m.**To:** Campbell Thomson**Cc:** Melissa Shipman; Alan Worthington**Subject:** Re: LUC-2017-561 - 5 Clark St - Letter

Thanks Campbell,

I guess the point is that Council has asked for a NES risk assessment without outlining what the issues are, what information is to be included in the assessment, or whether an assessment is even warranted. The information obviously will not be of DSI or PSI standard as the application is being processed under Regulation 11. My concern is that my client could go to a huge amount of expense to provide an assessment which does not address the perceived issues, over-addresses the perceived issues or is not required at all.

I accept your identification of the previous uses on the site, however, the issue still comes back to the risk from soil. I don't believe Council's control extends beyond exposure to soil. You refer to similar applications where the same issues have arisen. Could you please let me know what those issues were and what conditions were imposed on change of use sites which are already fully sealed?

With regards to noise, any acoustic design would be based on the existing noise environment and will not address any future use of 61 McLaggan Street. Before I go back to my client with regard to noise, I would like to know, in lieu of a noise assessment, if Council would accept a condition which required:

"any kitchen, dining area, living room, study or bedroom in the ground floor apartment shall be acoustically insulated from noise from the external environment. The Airborne Sound Insulation provided to insulate these rooms shall achieve a minimum performance standard of $D_{2m,nT,w} + C_{tr} > 30$. Compliance with this performance standard shall be achieved by ensuring that the rooms identified above are designed and constructed in accordance with either:

a) A construction specification approved as an acceptable solution in the New Zealand Building Code for the provision of Airborne Sound Insulation that is specifically designed to protect against noise from the external environment and that will achieve compliance with the minimum performance standard; or

b) An acoustic design certificate signed by a suitably qualified engineer stating that the design as proposed will achieve compliance with the minimum performance standard.

Regards, Kirstyn

Kirstyn Lindsay

Resource Management Consultant

Southern Planning Solutions Limited

kirstyn@planningsouth.nz

027 308 8950

On Fri, Nov 24, 2017 at 1:29 PM, Campbell Thomson <Campbell.Thomson@dcc.govt.nz> wrote:

(1 – 3) – the further information sought in regard to the NES is exactly the same as for other application I referred to below, and to my knowledge other prior applications where the same issues have arisen. The advice from Paul may assist in determining both the scope of any risk assessment that is warranted in this case, or even whether the assessment is in fact necessary. All I know about the HAIL activity at this point is what I found in ECM. Perhaps you may wish to request a HAIL search to see if there is more information in archives that Chris Scott may be able to access or in other records to clarify the situation.

(4) – evidence on noise was a recommendation from John when we discussed the application. As noted below I sought direction from Phil and John to decide if I was on the right track with the assessment of the application and the process issues.

I have asked Grant to confirm his advice on parking. As you aware he has applied the Residential 4 standard as a guide for assessment purposes. Having visited the site (not on the premises) and being familiar with the area I cannot see that a car park shortfall of one car park would constitute a more than minor effect.

From: Kirstyn Lindsay [mailto:kirstyn@planningsouth.nz]
Sent: Friday, 24 November 2017 12:53 p.m.
To: Campbell Thomson; Melissa Shipman
Cc: Alan Worthington
Subject: Re: LUC-2017-561 - 5 Clark St - Letter

Dear Campbell,

Thank you for your letter. I will seek instruction from my client.

I am very disappointed that these matters have been raised so late in the processing period and were only raised when I chased this application up earlier this week to find out who was processing it.

Before I go back to my client, I would like to clarify a couple of things.

1) Council appears to accept that the NES component of the application can be processed as a discretionary activity without a DSI or PSI and yet are still requesting a risk assessment? Council has a good understanding of the history of the site. Please detail the information Council requires to be included in this risk assessment. We do not want to engage someone to prepare a risk assessment without a specific brief which will ensure Council's information requirements are fulfilled.

2) The NES controls exposure to contaminants in soil. My position remains that there is no exposed soil on the site and therefore no risk to human health from contaminants in soil. I reiterate we are happy to accept conditions limiting soil disturbance on the site and that the site shall remain sealed. Is it Council's position that they can control matters beyond contaminants in soil ie materials inside the building such as wall linings etc? Please outline the extent of Council's jurisdiction as this will influence the extent of the risk assessment.

3) In your email you mention that Council has sent the application to Paul Helveldt. This seems either very premature or exceptionally tardy given that Council has only today asked for a NES risk assessment from my client. It may have been better practice to ask Paul if a risk assessment for this site was necessary and what the risk assessment should cover before asking my client to prepare one. I expect it would be beneficial for Council to understand Paul's concerns, especially his view regarding the applicability of the NES to a change of use on fully capped and sealed sites before requesting a risk assessment. I expect that Council will review its position in light of Paul's findings and we will wait for advice from Council as to the information requirements we need to provide, if any.

4) In our initial discussion on Monday, noise was not raised as an issue. I assume you have been on site and were able to access the courtyard area. As you acknowledge, the industrial site at 61 McLaggan Street is vacant and not emitting any noise. In light of this, I wonder what value a noise assessment will offer? I will discuss with my client and suggest that in lieu of a noise assessment

I assume that any parking effects are now deemed acceptable.

On Nov 24, 2017 10:02 AM, "Campbell Thomson" <Campbell.Thomson@dcc.govt.nz> wrote:

Kirstyn

Further to our discussion I called a meeting with John and Phil to discuss the issues with this application. On the plus side for your client they were both comfortable that there is a case for dealing with this proposal on a non-notified basis despite the industrial zoning, however, they did agree with me that further information is required and accordingly I attach a Sec92 letter. This addresses two issues – noise as well as the NES matter. In regard to the latter I note that I have forwarded the application to Paul Heveldt for comment, as we are currently consulting with him about a similar situation involving the redevelopment of an existing building previously used for HAIL activity. I will advise you immediately if there is any change to our current position.

In the meantime I have reallocated the application to Melissa Shipman for further work on the application. While I had started the report I think you'll agree it is best for efficiency that I hand the file over to a planner from this point on. The only reason I became involved in the first place was an initial assessment that it may need to be added to the portfolio of applications to be publicly notified. I have briefed Melissa about the circumstances of the application and will forward all technical comments from departments, plus Paul's advice to Melissa. I will also review the apportionment of my processing time between billable and non-billable to ensure that your client is not paying more for planner tasks undertaken to date by me than they would have expected at the charge rate of planner undertaking the same work.

From: Campbell Thomson
Sent: Friday, 24 November 2017 9:34 a.m.
To: Campbell Thomson
Subject: Scan To Me

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Kirstyn Lindsay <kirstyn@planningsouth.nz>

Update for LUC-2017-561 - 5 Clark Street?

Campbell Thomson <Campbell.Thomson@dcc.govt.nz>

Fri, Dec 8, 2017 at 3:52 PM

To: Kirstyn Lindsay <kirstyn@planningsouth.nz>

Cc: Melissa Shipman <Melissa.Shipman@dcc.govt.nz>, Alan Worthington <Alan.Worthington@dcc.govt.nz>

Kirstyn

While I am still awaiting clarification on the NES matter, I have set out below some further comments that may give you some guidance in the interim about precisely what evidence we are seeking for the purpose of the required assessments for noise and the NES matter. Hopefully, this will assist you in advising your client.

Noise

An assessment is required to establish that an appropriate level of acoustic insulation can be achieved for the proposed residential unit and modified unit above. The standard you refer to in your email as a basis for a possible condition is set out in Rule 9.5.2(x) of the District Plan and applies to residential activity in the Central Activity Zone, however, it provides a rational basis for addressing reverse sensitivity issues. As you know it was incorporated in the Plan as a response to conflict over noise disturbance between new residential apartments and established permitted activities in the CBD. However, I do not consider it sufficient to simply kick the noise issue to touch by making compliance with this standard a condition of consent. Evidence is required in advance of consent being granted for several reasons:

1. We need to have sufficient information from a suitably qualified person about the construction of the building on the subject site and the surrounding environment (such as the acoustic properties of the wall of the adjacent building at 61 Maclaggan Street) to know the noise standard is capable of being met (without substantial change to the building at 5 Clark Street). We do not want to end up imposing a condition that either cannot be met, or becomes the subject of an objection on the grounds the costs of compliance make it impractical or unreasonable;
2. The reverse sensitivity effects that are relevant concern not only the activity that currently takes place, but the effects that are to be expected as a result of future activities in the immediate vicinity permitted by the District Plan rules or authorised by consent. In this case, the adjacent site at 61 Maclaggan St is a source of little noise at present by virtue of being currently vacant, but it must be anticipated that some form of activity permitted in the Industrial 1 Zone will be re-established within the building;
3. The information above will provide a basis for a determination about effects on neighbours. Melissa has expressed concern to me about whether the adjacent owners are adversely affected parties, given the increase in intensity of residential activity. Without evidence to demonstrate that there are no reverse sensitivity effects or that they will be less than minor, my initial assessment that there may be no adversely affected parties may be unsound.

Having regard to note 2 above, I would expect that in addition to consideration of the noise of existing activities, an acoustic engineer should be able to make a determination of the likelihood of the interior spaces of the building being affected by noise at the maximum level anticipated for permitted activities. Clark Street sits on the border of two Noise Areas. The site being on the west side of the street is within an area where the L10

maximum is 55dBA daytime/40dBA Night-time (this applies to both the land zoned Industrial 1 and Residential 4). Across the street the L10 standard is 60dBA daytime and night-time. Rule 21.5.1 provides further direction to how these standards are to be applied with situations where a site is on the boundary of two Noise Areas.

NES

As I indicated in a previous email I am not anticipating that a full PSI (or DSI) will be necessary for the assessment of the NES matters as a discretionary activity. I am expecting something of a less comprehensive nature by way of a report from a suitably qualified person with reference to an on-site inspection, sufficient to provide an informed opinion as to whether there are actually or likely to be risks to human health. In my Sec92 letter, I described this as an assessment of the risks from a suitably-qualified person confirming that the intended use of the ground floor area for residential activity can safely occupy the site. Assuming this opinion is sufficient to confirm the risks are low or non-existent, we can then determine whether or not there is any need for conditions concerning management of soil contaminants.

Further, I note that my initial assessment was based upon the former presence of one known HAIL activity on site (aluminium joinery manufacture) and another probable HAIL activity – chemicals storage and use associated with a funeral home operation – that existed prior to the joinery activity. Having examined other applications with similarities to the circumstances of the application, it is apparent that soil contamination associated with HAIL activity on adjoining sites, such as 61 MacLaggan Street should not be discounted. As noted previously, the situation with this site is not unlike Russell Lund's development at 21-27 Fryatt Street (LUC-2017-178) where there was some existing residential/commercial residential activity and further development of this nature was proposed, or the flat established at 206 Hanover/2A Grange St (LUC-2016-249). In both these cases reports from SQPs were provided prior to consent being granted, which were essentially PSI assessment reports. I note that the PSI for the latter focussed as much on the evidence of soil contamination likely to arising from Castle Street Panelbeaters on the adjacent site, than the risks from former industrial activity on the subject site itself. Further, risks to workers constructing the flat were part of the risks to human health considered.

I still consider the proposal is a change of use, and as no Preliminary Site Investigation (PSI) or Detailed Site Investigation (DSI) Report has been submitted with the application, we must process the application as a discretionary activity (under Regulation 11). However, as indicated in my last email I have referred this matter to legal counsel for further clarification.

From: Kirstyn Lindsay [mailto:kirstyn@planningsouth.nz]

Sent: Thursday, 7 December 2017 1:55 p.m.

To: Campbell Thomson; Melissa Shipman

Cc: Alan Worthington

Subject: Update for LUC-2017-561 - 5 Clark Street?

Hi Campbell and Melissa,

Tomorrow, it will be two weeks since this application was placed on hold for further information. I believe we are required to provide the information before 14 December 2017; being 5 working days time.

As per my previous advice, we cannot provide additional information without knowing what information Council requires.

If, as it has been alluded too, there is no additional information required then there was nothing preventing the decision being issued on the 27th of November 2017.

My client is keen to keep this application moving, so again I request that this issue be clarified as a matter of priority.

Kind regards

4/9/2018

Southern Planning Solutions Mail - Update for LUC-2017-561 - 5 Clark Street?

Kirstyn Lindsay

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