

BEFORE THE DUNEDIN CITY COUNCIL

LUC-2017-561

IN THE MATTER

of the Resource management Act 1991

AND

IN THE MATTER

**A resource consent by McNay Somes
Partnership for Residential Activity at 5 Clark
Street, Dunedin.**

PLANNING EVIDENCE – CONRAD ANDERSON

(on behalf of the submitter, T&J Family Trust)

DATE: 19 APRIL 2018

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1 Introduction

- 1.1 My name is Conrad Anderson. I am a Director of Anderson and Co (Otago) Limited and since mid 2012 I have been a resource management planner with Anderson and Co (Otago) Limited.
- 1.2 I have completed the required academic papers for the Masters of Planning at the University of Otago, and I am anticipating completing my thesis in 2018.
- 1.3 I am an associate member of the New Zealand Planning Institute.
- 1.4 I confirm that I have read and agree to comply with, the Code of Conduct for Expert Witnesses, as set out in the Environment Court's Consolidated Practice Note. I can confirm that this evidence is within my area of expertise.
- 1.5 I have read the application, the s42A report, and the evidence of Ms Lindsay.
- 1.6 I have visited the Submitters site, from which I have viewed the subject site.
- 1.7 I will address the following matters:
 - Background
 - Industrial Setting
 - Consented Environment
 - Permitted Activities
 - Proposal
 - Assessment of Effects
 - Objectives and Policies
 - Precedent
 - Conditions of Consent
 - Conclusion

2 Background: 5 and 9 Clark St

- 2.1 9 Clark Street is owned by the Submitter, and like the subject site it is zoned industrial.
- 2.2 9 Clark Street is an historic building, built as a residential dwelling. It has been use for residential purposes since its construction. It contains a single residential unit, over 2 levels, comprising 3 bedrooms.
- 2.3 5 Clark Street (the site that is associated with the resource consent application) was constructed for a mix of uses; including non-residential activity on the ground floor and

within approximately half of the first level, along with residential activity on the balance of the first level.

- 2.4 Given their differing background and physical structures associated with 5 and 9 Clark Street, it is considered there is limited benefit in comparing the properties.

3 Industrial Setting

- 3.1 Notwithstanding the Residential zone to the south and the Central Activity zone across Clark Street, the site backs onto an industrially zoned resource to the west.

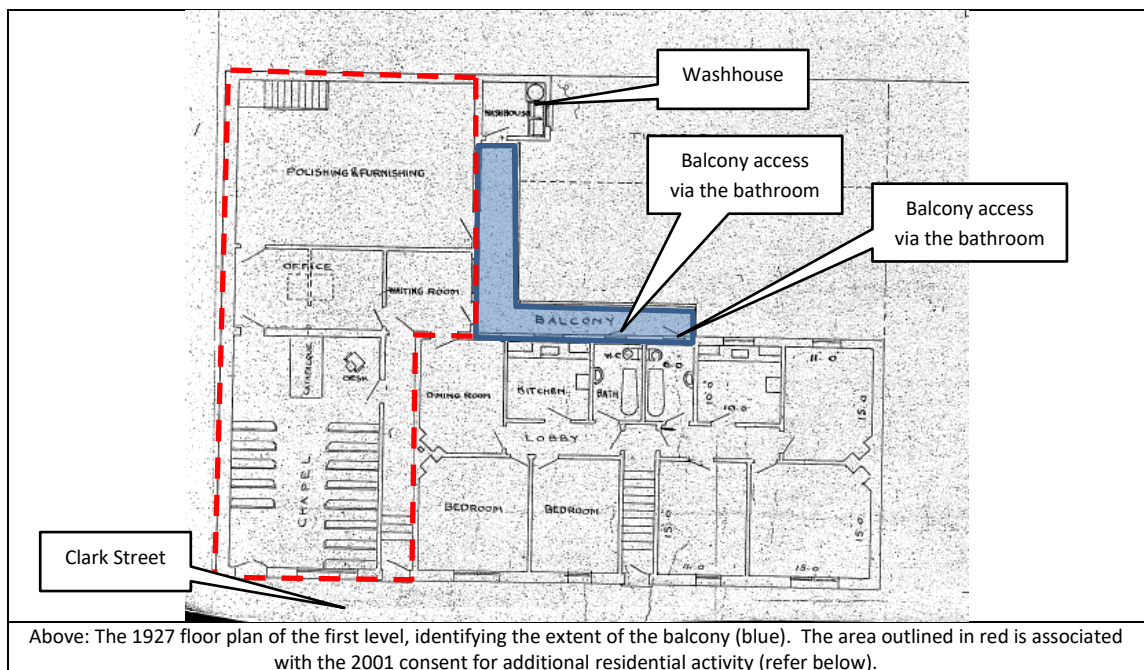


- 3.2 Within the Industrial Zone, there is no requirement to build to the side yard, hence any future development of 61 Maclaggan Street (green outline above) could result in an open relationship between the rear of the subject site and 61 Maclaggan Street.
- 3.3 The District Plan identifies that industrial activities can give rise to adverse effects beyond the site (see explanation associated with Issue 10.1.3) and that these effects can create a nuisance when industrial activity is not compatible with the surrounding land uses (see explanation associated with Issue 10.1.2).
- 3.4 In terms of the above, one of the key matters is not residential activity per se, but **under what situations can residential activity be compatible with permitted activities**. (For completeness, the other key matters are the effects of a non-complying activity to the neighbouring property and the potential precedent associated with utilising the ground floor industrial zoned space for residential activity).
- 3.5 In terms of the Submitters property, if the property was to be redeveloped (which is likely to happen if the building was extensively damaged by fire), it could, as of right, be redeveloped for industrial purposes. Therefore, it is considered appropriate that any decision associated with 5 Clark Street recognises this possibility.

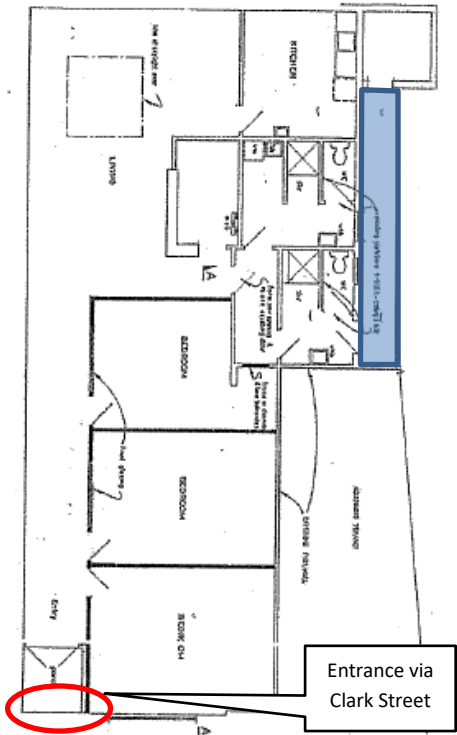
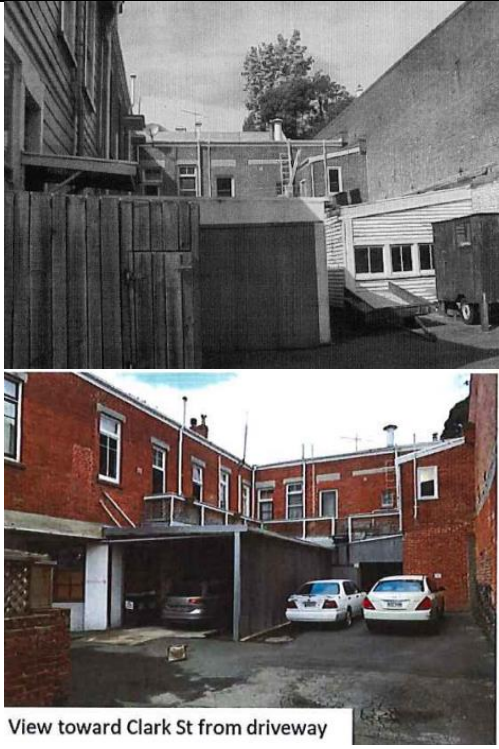
4 Consented Environment

4.1 The consented environment includes residential activity on the first level. The residential activity features the following:

- All residential activity is accessed via Clark Street. The plans from 1927 and 2001 show no alternative access ways (refer below).
- The only outdoor space provide for the residential activity is a balcony that links to the washhouse. Refer 1927 plan below.



Additional plan / photos on the following page:

 Entrance via Clark Street	 View toward Clark St from driveway
Above: The floor plan associated with the 2001 resource consent application to increase residential activity on the first level. The entrance from Clark Street is circled. The plan shows part of the balcony (in blue), which does not provide an alternative access to the proposed residential unit. Note: the remainder of the balcony and the other residential units are not shown.	Above: Photos of the rear of the site. The top photo is from the 2001 resource consent application, while the bottom photo is from the e3 Scientific report that accompanies the current application. The photos indicated the minimal nature of the existing balcony.

- 4.2 The existing balcony is essentially a functional element that allows the residential activity on the first level to access the shared laundry. The balcony is shared by three residential units, and two of these residential units can only access the balcony via their bathrooms (refer plan above).
- 4.3 Due to the above, the existing balcony is not likely to be regarded as outdoor amenity space.

5 Permitted Activities

- 5.1 The permitted uses of the site include Industrial Activity and Service Activity.
- 5.2 At paragraph 8 of the evidence of Ms Lindsay, it states *“The area on the ground floor is currently vacant space used for storage”*.
- 5.3 The storage of goods is a Service Activity.
- 5.4 However, I note within other parts of the application and Ms Lindsay's evidence, it refers to the ground floor being vacant. We have no evidence of the efforts undertaken by the Applicant, who agreed to purchase the property a year ago (date of agreement 21 April

2017, date of settlement 12 May 2017¹) to attract a permitted activity to the ground floor. If the ground floor is currently vacant, that may be a result of a lack of marketing, rather than the lack of interest or the lack of ability to secure a tenant suitable to the Applicant.

5.5 In summary, the ground floor is not 'already lost'² to Permitted Activities.

6 Proposal

- 6.1 The core components of the proposal include;
- 6.2 Amending the existing residential activity on the first level to include one additional bedroom.
- 6.3 Amending the existing residential activity on the first level to require all people entering and exiting the site to do so by the proposed rear steps and deck.
- 6.4 Amending the existing residential activity on the first level by providing an enlarged balcony that faces the industrial zone and to the adjoining side boundary.
- 6.5 To introduce additional residential activity (7 bedrooms) on the ground floor. In keeping with the Residential Tenancies Amendment Act 2010, a flat with 6 or more bedrooms is deemed a boarding house, which results in the ability of tenants to end their tenancy with 48 hours' notice.
- 6.6 Based on the above, the key outcomes of the proposal include:
- To expand and re-orientate the existing residential activity on the first floor to face the industrial zone.
 - To remove the ground floor area from industrial use and replace it with residential activity.
 - Resulting in residential activity increasing from 7 bedrooms to 15 bedrooms, an increase of 114%, with almost half the bedrooms operating as a boarding house.

7 Assessment of Effects

- 7.1 The effects are considered under the following headings: orientation of residential activity and increased residential activity.

Orientation of Residential Activity:

- 7.2 The proposal will result in the reorientation of all residential activity to the rear of the building. **In terms of access and outdoor areas associated with all the units, this contrasted significantly with the consented activity.**
- 7.3 The reorientation increases the likelihood for reserve sensitivity matters because the rear of the site is adjacent to a large industrially zoned site, and:

¹ Source DCC website.

² Refer para 42 of the evidence of Ms Lindsay

- Every resident (and visitor to the site) will be required to use the rear of the site to access the building, and
- The provision of outdoor areas will encourage the residents (and visitors) to linger on the proposed deck which directly faces the industrial zone.

The effects of permitted industrial activity from the adjacent site cannot be avoided by the open nature of the access ways and outdoor amenity.

7.4 In terms of the Submitters property, when compared to the consented environment, the reorientation will result in:

- Increased outdoor residential activity (access/decks) at the rear of the building.
- Residential activity having the ability to look into the Submitters building and to overlook the Submitters rear yard.

These matters are highly unlikely to result from a permitted activity, as this would require the conversion of the existing residential activity into a permitted activity, along with the construction of the proposed decks.

7.5 In summary, the reorientation of the existing residential activity via the proposed access and deck areas will:

- Increase the likelihood of reverse sensitivity matters.
- Are unlikely to be constructed by a permitted activity, meaning the proposal will result in reduced privacy to the neighbouring property along with increased outdoor residential activity on the boundary with the Submitter. The proposed condition of consent (number 9) does not mitigate the loss of privacy to the rear yard of the Submitter nor effects of associated the residential use of the proposed decks.

Increased Residential Activity

7.6 The proposal seeks to increase residential activity on the site to 15 bedrooms on a 525m² site, resulting in a density of 1 bedroom per 28.5m² of site.

7.7 When considered in isolation the increased density will have no meaningful effect on services, however it may, if granting consent raises the potential of setting a precedent. That matter is discussed later.

7.8 An outcome of the proposed density within the existing building results in:

- One residual unit with no lounge.
- One residential unit with no lounge nor dining area.

7.9 The proposed unit with no living area is the ground floor boarding house (7 bedrooms). The proposal anticipates providing an outdoor area facing towards the industrial zone and the Submitter.

7.10 The lack of communal internal living, the limited level of natural sunlight (to the ground floor, due to the limited window areas), along with the proposed decks will encourage residential activity external to the building.

- 7.11 As a boarding house, the proposed ground floor activity may operate differently to the existing residential activity, as the tenants have the ability to give 48 hours notice to end any tenancy agreement.
- 7.12 Overall, the effects on the environment are assessed as being more than minor, particularly in regards to the increased potential for reverse sensitivity matters and the reduced privacy that is unlikely to result from a permitted activity.

8 Objectives and Policies

- 8.1 The key Objective/Policy within the operative District Plan is the Section 10 (Industrial) Objective 10.2.3 and Policy 10.3.2.

- Objective 10.2.3 reads: *Ensure non-industrial activities in industrial areas do not limit the operation of industrial activities.*
- Policy 10.3.2 reads: *Exclude activities not part of or associated with industrial activities from the Industrial 1 zone.*

- 8.2 With regards to the above, within the application, Ms Lindsay states that “residential activity is already lawfully established on the subject site and this proposal will not change the nature of that use.”

- 8.3 As outlined above, **the application will change the nature of the residential activity**, by intensification and reorientation of that activity towards the industrial neighbour. These changes are assessed as increasing the potential for reverse sensitivity matters, resulting in the proposal being contrary to what the Objective and Policy are seeking to achieve.

- 8.4 In terms of the proposed District Plan, the key Objectives/Policies include the following:

- Objective 9.2.2: Land use, development and subdivision activities maintain or enhance people's health and safety, and Policy 9.2.2.1: Require activities to be designed and operated to avoid adverse effects from noise on the health of people or, where avoidance is not possible, ensure any adverse effects would be insignificant.

In terms of the above, the application states that the “*proposal is well insulated against the noise environment and the outdoor amenity space is more protected from noise effects than could be reasonably be expected at this location*”

It is noted no details of insulation and glazing is provided, nor any expert acoustic evidence. In addition, the proposed outdoor amenity space will be continuously used and faces the industrial zone.

- Objective 19.2.1: The industrial zones enable and protects the ability of industrial and port activities to establish and operate by only providing for a very limited range

of specified non-industrial or non-port activities to establish and operate. And supporting policies, including 19.2.1.3 (Avoid the establishment of non-industrial or non-port activities, other than those expressly provided for in the industrial zones, unless they would have significant positive effects on the successful operation of surrounding industrial or port activities), and 19.2.1.9 (Avoid residential activity due to its high potential for reverse sensitivity to industrial or port activities, unless it would have significant positive effects on the successful operation of surrounding industrial or port activities).

In terms of Policy 19.2.1.3, Ms Lindsay's evidence dismisses this as the "proposal does not seek to introduce a new activity" (para 89 of evidence). Extrapolating that argument results in a nonsense situation as the Policy would only be applicable to new activities to the **whole** zone. The application seeks to establish residential activity, which is not provided for in the industrial zone, and the application fails to show how the proposal will have significant positive effects on the successful operation of surrounding industrial or port activities. The proposal is assessed as being contrary to 19.2.1.3.

In terms of Policy 19.2.1.9, Ms Lindsay at paragraph 91 of her evidence states that the "**proposal will merely increase the scale of the existing activity**". As discussed above, in addition to increasing the number of bedrooms by 114%, the proposal seeks the reorientation of the existing activity to face the industrial zone.

The Committee does have the choice to avoid further residential activity, which is to predominately be on the ground level of an industrial building.

- 8.5 Overall, the operative District Plan has a limited number of objectives and policies of relevance, however, it provides a clear expectation that activities within the Industrial zone should not limit industrial activity. While, the proposed District Plan has a greater number of relevant objectives and policies, which continues to focus on protecting industrial activities from reverse sensitivity matters, AND seeks justification for non-industrial activities by way of ensuring they positively assist the surrounding industrial activities.
- 8.6 Overall, the application is assessed as being contrary to overall policy direction of the operative and proposed district plans.

9 Precedent

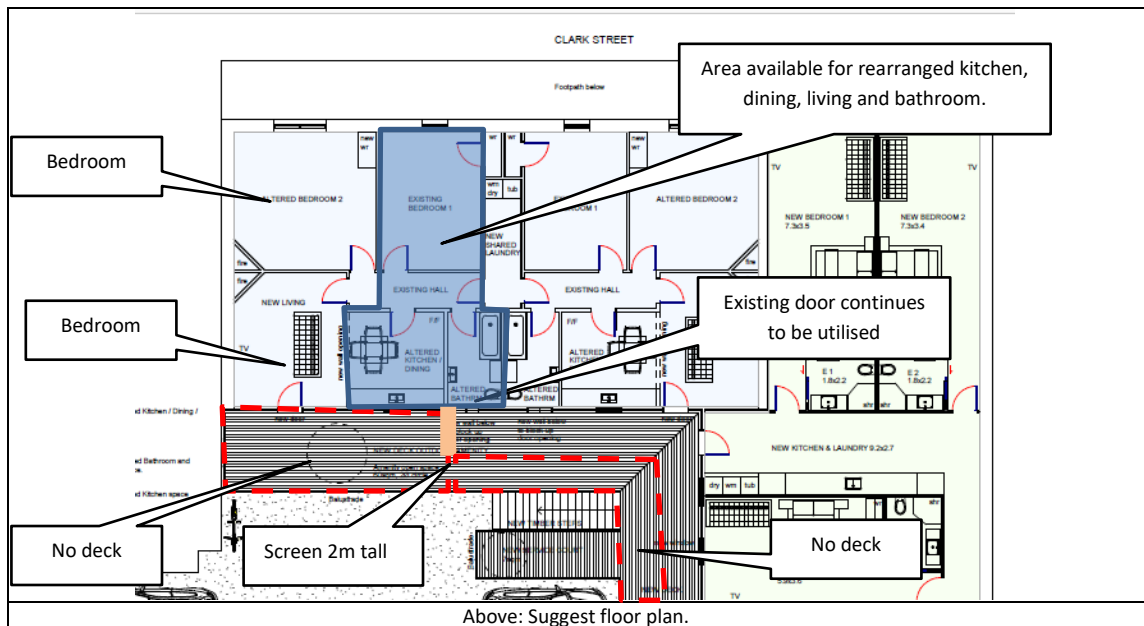
- 9.1 The use of ground floor industrial space for residential activity needs to be carefully considered.
- 9.2 The ground floor could find a purpose as an industrial use, which includes Service Activity.
- 9.3 Historical established residential activity in the Industrial zone is not unusual. For example, 36 Broughton Street, South Dunedin is a residential dwelling in the industrial zone.

- 9.4 Apart from historic residential activity (such as 9 Clark Street, 36 Broughton Street), I am unaware of any consented residential activity on the ground floor of an industrially zoned site.
- 9.5 The proximity to zone boundaries is not unusual.
- 9.6 If the proposal is granted, then potentially, sites with similar features may seek consent for residential activity on the ground level. For example, the owners of 61 Maclaggan Street could argue that the building is vacant, unable to be tenanted and the R4 zone on the southern boundary along with the residential activity to the east, result in the limiting ability to utilise the site for industrial purposes.
- 9.7 The higher economic use of ground floor space for residential activity will encourage others to contemplate seeking a resource consent. The outcome may reduce the supply of industrial land, and ultimately impact the affordability of industrial land.
- 9.8 If the presence of residential activity on the first floor is considered to be the differentiating factor, then the risk is that others may use a two-step process i.e. initially, seek consent for residential activity on the first level of an industrially zoned building, then seek a second consent for residential activity on the ground floor.
- 9.9 Within the evidence of Ms Lindsay (para 99), the “*finite life left in the operative plan*” is part of the justification that the proposal will not threaten to the integrity of the District Plan. This raises two points:
- While the final timing of the proposed District Plan becoming operative is not publically known, I would suggest there is a significant risk that similar applications can be prepared and lodged with Council prior to the proposed District Plan becoming operative.
 - The mere fact Ms Lindsay has included this statement indicates that there is some concern regarding plan integrity matters.

10 Conditions of Consent

- 10.1 However, if the Committee is of the mind to grant consent, then, it is respectfully requested the following is considered:
- 10.2 Proposed Condition 5 seeks insulation to minimise the potential for reverse sensitivity. Due to the potential for the future redevelopment of 9 Clark Street (i.e. following a fire), such a condition assists as mitigation. If such a condition is to be utilised, then it is suggested this relates to both the north and west exterior walls of 5 Clark Street (due to the location of the industrial zoning) and that a minimum standard of insulation is required (refer proposed condition 8).
- 10.3 Proposed Condition 9 seeks screening from the proposed deck area to the dwelling of 9 Clarke Street. Effects such as privacy to the yard of 9 Clark Street and the residential utilisation of the deck have already been discussed. A suggested solution is to shorten the

deck and reduce the deck width (to match the existing situation), which results in a slight rearrangement of the northern most residential unit on the first level. See below:



- 10.4 In terms of the ground floor, to reduce the external use of the decks, it is suggested that the number of bedrooms is limited to a maximum of 5, which would allow for additional space associated with a living area, and potentially additional parking.

11 Conclusion

- 11.1 The proposal is a non-complying activity.
- 11.2 The proposals seek to alter the existing consented activity, by reorientation towards the industrial neighbour.
- 11.3 The effects of the proposal include reverse sensitivity, and effects to the neighbour at 9 Clark Street. Due to the proposed access and orientation of the outdoor space, the reverse sensitivity matters cannot be fully mitigated. No mitigation to the yard of 9 Clark Street is provided for.
- 11.4 The proposal is contrary to overall policy direction to seeking to protect the permitted uses of the industrial zone, while the objectives and policies of the proposed District Plan also seek to confirmation of the positive benefit to the permitted activities.
- 11.5 The proposal is likely to set an undesirable precedent in terms of the use of usable ground floor space within the industrial zone.
- 11.6 For the above reason, I conclude that consent should be declined.

Conrad Anderson