

TO: Hearings Committee

FROM: Melissa Shipman, Planner

DATE: 5 April 2018

SUBJECT: **RESOURCE CONSENT APPLICATION
LUC-2017-561
5 CLARK STREET
MCNAY SOMES PARTNERSHIP**

INTRODUCTION

- [1] This report has been prepared on the basis of information available on 5 April 2018. The purpose of the report is to provide a framework for the Committee's consideration of the application and the Committee is not bound by any comments made within the report. The Committee is required to make a thorough assessment of the application using the statutory framework of the Resource Management Act 1991 (the Act) before reaching a decision.

SUMMARY OF RECOMMENDATION

- [2] For the reasons set out in paragraphs 155 – 160 of this report, I consider that likely adverse effects of the proposed activity can be adequately mitigated and will be no more than minor.
- [3] The proposal is considered to be inconsistent with relevant objectives and policies of both the Dunedin City District Plan and the Proposed 2GP but contrary to those for the Industrial Zone in the 2GP.
- [4] The proposal is considered to be consistent with the objectives and policies of the Regional Policy Statement for Otago.
- [5] The proposal is considered to meet both 'limbs' of the Section 104D 'gateway test'. Consideration can therefore be given to the granting of consent to the proposal.
- [6] The proposal is considered to be a true exception, not affecting the integrity of the District Plan in terms of the Industrial Zone or the density anticipated in other Residential Zones of the Plan.
- [7] As a result, I have concluded that the proposal should be granted subject to conditions.

DESCRIPTION OF PROPOSAL

- [8] Resource consent is sought to establish residential activity in an Industrial Zone. It is proposed to establish a seven bedroom apartment in the vacant ground floor of an existing building, and reconfigure the existing consented residential apartments on the first floor to create one additional habitable room.

- [9] The development includes changes to the non-street facade exterior walls including upper (60m²) and lower level (40m²) outdoor decks off apartment living areas. Existing ground level parking for four vehicles at the rear of the building is to remain and be supplemented by bicycle parking. While the applicant has stated in their effects assessment that *'There are no changes proposed to the street frontage of the site, except that lower window treatments will be updated to match the recently upgraded upper level windows.'* This does not address the proposed infill of two pedestrian entrances from Clark Street which are detailed on the elevation plans submitted with the application.
- [10] Vehicle access to the on-site parking area will be via the existing hard surfaced driveway from Clark Street located at the northern end of the building under the first floor level of the building.
- [11] The on-site car parking will make provision for four carparks and two bicycle parks. On-site manoeuvring for cars is provided.
- [12] Currently, pedestrian access is via two entries, the gated driveway to the north of the building and the narrow pedestrian entrance located centrally within the building at the street. The applicant proposes for all access to be via the gated driveway under the current proposal which requires the closing off of the previous doorways at Clark Street.
- [13] The applicant has offered a noise mitigation condition of consent (if granted), to mitigate any potential reverse sensitivity effects created by the intensification of residential use on the site. The condition is worded as follows:
- "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".*
- [14] The applicant has also now provided (on request from Council), a PSI on 22/12/17 confirming that while activities on MFE's Hazardous Activities and Industries List (HAIL) have occurred on the site, it is highly unlikely that there are contaminants present in the soil that could migrate through the sealed surface and becomes exposed to the occupants of the proposed apartments. The PSI concludes that it is highly unlikely there is a risk to human health associated with the construction of apartments within the existing building and the activity should be permitted under regulation 8(4) of the National Environmental Standard to Protect Human Health (NESCS).
- [15] A copy of the application, including plans of the proposed residential units, and the additional information provided by the applicant (Noise Condition and PSI) is contained in Appendix 1 of this report.

DESCRIPTION OF SITE AND LOCATION

- [16] The site is located at 5 Clark Street, Dunedin. Clark Street is a short side street that runs between High Street and MacLaggan Street. An L-Shaped existing two storey building is located on the site up to the Clark Street boundary and adjoining the entire length of the boundary with 3 Clark Street. Vehicle access under the building is provided along the northern boundary.
- [17] The site has 25m of frontage to Clark Street with some open space at the rear of the site.
- [18] For clarity, an aerial view of the site is set out on the following page with north south directions identified.
- [19] To the west of the site, is an industrial building which occupies 100% of the site coverage and building adjoining. To the east of the site is a carpark associated with ACC Offices separated from the site by the two lane Clark Street. To the south of the site is a single storey building elevated above the road owned by Otago Motorcycle Club Incorporated. The building occupies 100% of the site coverage and adjoins the entire length of the southern boundary of the subject site. To the north of the site is an existing two storey residential property (9 Clark Street) which adjoins the street boundary and was once part of the same property as the land at 5 Clark Street. That property provides on-site car parking via a vehicle access on the northern side and with open space to the rear which adjoins the open space areas within the subject site. Further north of that residential property is a mechanical repair business (51 MacGlaggan Street) which occupies the corner property.
- [20] The site is legally described as Lot 2 DP 439708 (CFR 545479) and comprises of 525m².



Figure A: North South Orientation (referred to in this report)

HISTORY OF THE SITE/BACKGROUND TO THE APPLICATION

- [21] The site has a long land use history including the operation of a funeral home and manufacturing of aluminium joinery.

- [22] In 1927 the building was built as a Funeral Home with the basement used for making coffins as well as a garage (for the hearse presumably). The drainage application refers to an operating theatre but it is unclear where in the building mortuary practices took place (it may have been confined to the first floor).
- [23] There appear to have been a number of subsequent businesses who either were operating or proposed to operate within the building basement between 1970's and 1990's: furniture making, repair of jukeboxes and repair of pool tables, joinery business (aluminium and wood joinery manufacture), and gym (possibly in 1940 but ceased in 1999 according to RMA-2001-593).
- [24] On 11 October 2001 resource consent (RMA-2001-0593) was granted for the conversion of the southern portion of the subject building that was vacant into a three bedroom residential unit. The previous tenant of that part of the building had been Powerdome Gym which vacated the building in 1999. A copy of the resource consent decision is attached as **Appendix 4** to this report.
- [25] On 13 April 2011 subdivision consent was granted (SUB-2011-26) to subdivide the site then existing into two, separating the two buildings at 5 and 9 Clark Street onto their own sites (see Figure B: below) which effectively allowed the two buildings to be held in separate ownership. At the same time, land use consent was granted to allow residential activity on Industrial 1 Zoned land (LUC-2011-115) At that time, the subdivision and residential development was assessed as not compromising the integrity of the Industrial 1 zone, or as introducing any reverse sensitivity issues. The resource consent recognised the use of the lower floor of the 5 Clark Street building (on Lot 2) as storage at that time. A copy of the resource consent is attached as **Appendix 4** to this report.



Figure B: Approved Subdivision Plan of 5 and 9 Clark Street SUB-2011-26)

- [26] Note: There is a history of HAIL activities on the adjoining site also being 61 Maclaggan Street.

ACTIVITY STATUS

- [27] Dunedin currently has two district plans: the operative Dunedin City District Plan, and the Proposed Second Generation Dunedin City District Plan (the "Proposed 2GP"). Until the Proposed 2GP is made fully operative, both district plans need to be considered in determining the activity status and deciding what aspects of the activity require resource consent.
- [28] The activity status of the application is fixed by the provisions in place when the application was first lodged, pursuant to Section 88A of the Resource Management Act 1991. However, it is the provisions of both district plans in force at the time of the decision that must be had regard to when assessing the application.

Dunedin City District Plan

- [29] The subject site is zoned **Industrial 1** in the Dunedin City District Plan. Industrial Activity is a permitted activity
- [30] The definition of Industrial Activity within the District Plan means:

"means the use of land and buildings for the primary purpose of manufacturing, fabricating, processing, packing or associated storage of goods, and includes offices and staff facilities which are ancillary to the primary activity on the site".

- [31] The following activities are also permitted within the Industrial Zone under Rule 10.5.1:

Service activities, recreational activities, service stations, vehicle and boat yards, garden centres, and industrial tourist activities.

While "residential activity" is specifically provided for under Rule 10.5.1(viii) as a permitted activity in part of the Industrial zone located between Hanover and Frederick Streets and also fronting Harrow Street, outside of those areas, residential activity is not more generally provided for.

The definition of a residential activity is:

"means the use of land and buildings by a residential unit for the purpose of permanent living accommodation and includes rest homes, emergency housing, refuge centres, halfway houses, retirement villages and papkaika housing if these are in the form of residential units. Residential activity also includes (a) home occupation; (b) childcare facility for up to and including 5 children; (c) homestay or boarding house for up to and including 5 guests – provided that these are secondary to the permanent living accommodation."

- [32] While residential activity has been consented historically on the site, this has only been at first floor level therefore, the proposal presents an intensification of the residential use on the site.
- [33] Therefore, under Rule 10.5.5(ii) the residential activity is a **non-complying activity** as it is not provided for by any other activity status.
- [34] Note: the existing building breaches Rule 10.5.2(i)(b) with regard to minimum setbacks from a residential zone. The existing building is located up to the boundary of the Residential 4 Zone, however, under Rule 10.5.2(i)(b) a minimum setback of 5m from the site boundary adjoining the Residential Zone site must be maintained and a height plane angle of 35° from ground level. Under Rule 10.5.4(i) any breaches are assessed as a **restricted**

discretionary activity. It is noted however, that no changes to the footprint of the building are proposed and that residential activity has been historically consented (RMA-2001-0593) within the first floor level which also encroaches into that space.

- [35] The Transport Officer has also assessed the vehicle access as not complying with the minimum access requirements under Rule 20.5.7(v)(b)(Table 20.7) which requires residential activity servicing 4-6 units to provide a minimum legal width of 6.0m and a minimum formed width of 4.5m. While the access has been approved previously, this was for a lower number of residential units and for a mixed use development (residential above and industrial below). The vehicle access will now be utilised by 7 residential units.
- [36] Overall, the proposal is assessed as a **non-complying activity** under the District Plan.

Proposed Second Generation Dunedin City District Plan (Proposed 2GP"

- [37] The Proposed 2GP was notified on 26 September 2015. The 2GP zoning maps indicate that it is proposed that the subject site be zoned as **Industrial** as is land to the north and north west along MacLaggan Street. The maps also indicate that the property is within an **Archaeological Alert Mapped Layer**. In the vicinity of the site, the Inner City Residential Zone will abut the southern boundary, and the Commercial and Mixed Use (CBD Edge Commercial) Zone runs along the eastern half of Clark Street to the north and south of the site.
- [38] The Proposed 2GP was notified on 26 September 2015, and some 2GP rules have immediate legal effect. In this instance, there are no relevant 2GP rules to consider.

Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ("the NES")

- [39] The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 came into effect on 1 January 2012. The National Environmental Standard applies to any piece of land on which an activity or industry described in the current edition of the Hazardous Activities and Industries List (HAIL) is being undertaken, has been undertaken or is more likely than not to have been undertaken. Activities on HAIL sites may need to comply with permitted activity conditions specified in the National Environmental Standard and/or might require resource consent.
- [40] The applicant initially disputed the HAIL status given the established and historical residential use on the property however, Council regards the site as a HAIL site by virtue of the historical industrial uses carried out within the building. There has also been some dispute about whether or not resource consent is required for the proposed change of use under the NES. A permitted activity status for land use changes is a possibility but only where it is 'highly unlikely' there is a risk to human health from soil contaminants for the intended land use. Given this, Council sought a report from a suitably qualified and experienced practitioner (SQEP) which looks at the land use history, the proposed usage and any physical characteristics about the site/building in assessing whether it meets this test. As set out in the proposal description the applicant has now provided a preliminary site investigation (PSI) from e3scientific Ltd (e3).

- [41] The e3scientific report makes it clear that there are two separate activities which have taken place on the land that appear on the HAIL; funeral home activities (probably including embalming) and an aluminium joinery manufacturing business. Council's Environmental Specialist Consultant (Stantec) has reviewed the findings of e3scientific's PSI and agrees with the various conclusions reached:
- [42] *"The PSI concluded that it is highly unlikely that an exposure pathway will exist between residents of the reconfigured building on the site and any historic contaminants in the soils underlying the property. The site is fully sealed and this will not be compromised at the conclusion of the proposed property improvements. While there may be some exposure of workers carrying out the improvements to possible soil contaminants if soil disturbance is necessary, this is expected to be limited in extent and can be managed by suitable health & safety procedures.*
- [43] *In any event, heavy metals contamination is not expected to be present at anything above negligible levels and any organic contaminants (in particular, formaldehyde associated with historic embalming activities) will have long since completely biodegraded, given that the half-life of formaldehyde in soil is around 48 hours. Accordingly the risks to both workers carrying out the redevelopment works and to residents of the building are very low.*
- [44] *The PSI states that '...any subsurface work that may be required can be undertaken within the permitted activity volumes set out in the NESCS' although no indication is given of the expected extent of disturbance likely to be necessary.*
- [45] Stantec accepts that the pertinent permitted activity criteria (set out below) of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (the NESCS) **will not be exceeded** by the proposed site works at this property where any contaminants are effectively **"safe by position" and are either no longer present in significant concentrations or cannot migrate such that they represent a risk to health.**
- [46] Therefore, in summary the use is changing from light industrial to residential and the new land use will not raise any implications for human health. As such, the National Environmental Standard is not deemed applicable to the proposal.
- [47] Regulation 8 of the National Environmental Standard states that for subdivision, soil disturbance and/or **change of use** the following conditions must be met:

Disturbing Soil

(3) Disturbing the soil of the piece of land is a permitted activity while the following requirements are met:

(a) Controls to minimise the exposure of humans to mobilised contaminants must—

- (i) Be in place when the activity begins:*
- (ii) Be effective while the activity is done:*
- (iii) Be effective until the soil is reinstated to an erosion-resistant state:*

(b) The soil must be reinstated to an erosion-resistant state within 1 month after the serving of the purpose for which the activity was done:

(c) The volume of the disturbance of the soil of the piece of land must be no more than 25 m³ per 500 m²:

(d) Soil must not be taken away in the course of the activity, except that,—
(i) For the purpose of laboratory analysis, any amount of soil may be taken away as samples:

- (ii) *For all other purposes combined, a maximum of 5 m³ per 500 m² of soil may be taken away per year:*
- (e) *Soil taken away in the course of the activity must be disposed of at a facility authorised to receive soil of that kind:*
- (f) *The duration of the activity must be no longer than 2 months:*
- (g) *The integrity of a structure designed to contain contaminated soil or other contaminated materials must not be compromised.*

Subdividing or Changing Use

(4) Subdividing land or changing the use of the piece of land is a permitted activity while the following requirements are met:

- (a) A preliminary site investigation of the land or piece of land must exist:*
- (b) The report on the preliminary site investigation must state that it is highly unlikely that there will be a risk to human health if the activity is done to the piece of land:*
- (c) The report must be accompanied by a relevant site plan to which the report is referenced:*
- (d) The consent authority must have the report and the plan.*

Information has now been provided with the application which demonstrates that all of the permitted activity conditions will be fully met. Accordingly, in terms of the National Environmental Standard, the proposal is a permitted activity. Resource consent is therefore only required under the District Plan. A review by Otago Regional Council accepts the conclusion of the PSI report as 'reasonably, based on the site history and proposed use'. They acknowledge that the soils on the site have not been investigated and that it is possible that contaminants are present in soils on site from the known and unknown historic land uses. They acknowledge that the site is fully paved and will remain so as part of the development, however, should any soil disturbance activity be required in the future i.e. re-sealing or capping any areas exposed for services etc, then the soil disturbance will need to meet the permitted activity provisions of the NES (outlined above).

NOTIFICATION AND SUBMISSIONS

- [48] No written approvals were submitted with the application.
- [49] After initial consideration of the application, it is considered that the adverse effects of the proposal would be no more than minor, having regard to the existing built form on the site and the surrounding mixed residential/industrial/commercial environment.
- [50] It was therefore determined that the effects of the proposal would be restricted to a limited number of parties being the owners and occupiers of the properties at 3 Clark Street (to the south), 51 MacLaggan Street (to the north) and 61 MacLaggan Street (to the west). The written affected party approval of all these parties was not obtained and the application was, therefore, notified on a limited basis on 7 February 2018.
- [51] Copies of the application were sent to the following parties with submissions closing on 6 March 2018:
 - 61 MacLaggan Holdings Limited
PO Box 13120
Green Island List
 - The Occupier
61 MacLaggan Street
Dunedin Central
Dunedin 9016

- T and J Family Trust
9 Clark Street
Dunedin 9016
- Otago Motorcycle Incorporated
PO Box 1160
Dunedin 9054
- The Occupier
3 Clark Street
Dunedin 9016

[52] One opposing submission was received by the close of the submission period.

[53] The submission is summarised in the table below, and a full copy of the submission is attached in Appendix 2.

Name of Submitter	Support/ Oppose	Summary of Submission	Wish to be heard?
T & J Family Trust	Oppose	▪ Requests consideration be given to the effect of a changed street facing façade with no front doors on the streetscape. ▪ Requests consideration for the heritage values of the building when considering the changes being proposed to the building. ▪ A lack of information on the location on the lack and number of heat pump units may raise new noise effects that need to be considered. ▪ Objects to reliance on LUC-2014-356 (to support the proposal given the subject site is also bordered by industrial activities. ▪ Objects to any consideration being given to the Central Activity Zone rules (District Plan) or the Inner City Residential Zone Rule (2GP). ▪ Objects to consideration for constrained industrial use on the site due to the existing established residential use within the property. ▪ Removal of further industrial floor space for residential use will impact on the affordability of industrial land. ▪ District Plan does not permit residential use (Objective 4.2.3, Policy 10.3.2). Proposed 2GP does not permit residential use (Policy	Yes

		19.2.1.3, Policy 19.2.1.9). ▪ Design allows for increased occupancy and increased outdoor amenity space at the rear of the building over two levels increasing the likelihood of reverse sensitivity effects. ▪ Design promotes overlooking and reduction in privacy for existing residential activity at 9 Clark Street. ▪ Design/layout promotes use of rear access rather than the street which reduces privacy, security and increases the potential for noise at 9 Clark Street. ▪ No mitigation is offered by the applicant in terms of noise generation, loss of privacy or security concerns (i.e. acoustic insulation, mechanical ventilation). ▪ The 11 new and refitted bedrooms appear to be 'studio rooms' which will have environmental effects that exceed that anticipated by three residential units.	
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ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

[54] Section 104(1)(a) of the Act requires that the Council have regard to any actual and potential effects on the environment of allowing the activity. 'Effect' is defined in Section 3 of the Act as including-

- a) Any positive or adverse effect; and*
- b) Any temporary or permanent effect; and*
- c) Any past, present, or future effect; and*
- d) Any cumulative effect which arises over time or in combination with other effects—*
regardless of the scale, intensity, duration or frequency of the effect,
and also includes –
- e) Any potential effect of high probability; and*
- f) Any potential effect of low probability which has a high potential impact.*

Permitted Baseline

[55] An important consideration for the assessment of effects is the application of what is commonly referred to as the permitted baseline assessment. The purpose of the permitted baseline assessment is to identify the non-fanciful effects of permitted activities and those effects authorised by resource consent in order to quantify the degree of effect of the proposed activity. Effects within the permitted baseline can be disregarded in the effects assessment of the activity.

- [56] Industrial use is a permitted activity on the subject site, therefore, any adverse noise and/or traffic effects that could occur as a result of that land use activity must be considered against what the noise/traffic effects of the current proposal are. Particularly, with respect to the potential noise and reverse sensitivity concerns raised by the opposing submitter at 9 Clarke Street (northern adjoining two storey residential property).
- [57] A permitted industrial use of the site could occupy up to 100% of the site subject to compliance with performance standards (including staff/visitor car parking) – this could occur within a building and/or within the open air of the site.
- [58] The District Plan is largely silent on the effects of permitted industrial activities on any long established residential uses in the Industrial 1 Zone, focusing on the exclusion of activities not part of or associated with industrial activities. Although, the exception to this is where industrial activities adjoin a Residential Zone as well as the historical residential development (i.e. student accommodation) within the Industrial 2 Zone in the Plan. The Plan recognises the latter as being due to their need to locate close to campus. The residential activity occurring at 9 Clark Street is also located 'out of zone' relying on existing use rights.
- [59] Accepting that it is not 'fanciful' to consider a redevelopment of the entire site for strictly industrial land use and acknowledged potential noise and vehicle movements that could be anticipated with such use, given the long and well established use of the site for residential, and the extensive modifications to the site required to re-develop the site for industrial use (i.e. possible demolition required), the likelihood of this occurring is considered low.
- [60] The existing environment is not strictly industrial with the site being located at the intersection of three zones, Industrial 1 to the north and west of the site, Residential 4 to the immediate south and Central Activity Zone on the opposite side of Clark Street to the east of the site. This affects the apparent character of the area, which does not appear as strictly industrial. Non-residential uses are established under existing use rights to the immediate south of the site 3 Clark Street (motorcycle club), however, this could return to residential use at any time.

Assessment of Effects

Dunedin City District Plan

- [61] The following assessment of effects has been carried out in accordance with Section 104(1) of the RMA 1991. It addresses those assessment matters listed under Industrial (10.8) and Transportation (20.6) sections of the District Plan considered relevant to this activity, but is not limited to them and as set out above under the site description and the permitted baseline assessment, is carried out on the basis that the environment is characterised by a range of activities including, industrial, commercial and residential and recreational activities.

- Sustainability;
- Amenity, Character and Visual Effects (Assessment Matters 10.8.3, and 10.8.5)
- Noise Effects (Assessment Matters 10.8.6 and 10.8.8, and 10.8.11); and Reverse Sensitivity Effects
- Traffic Effects (Assessment matter 10.8.18);
- Effects on the Stormwater, Water and Sewerage Infrastructure;
- Effects on Hazards;
- Positive Effects;

- Cumulative Effects;

Sustainability

- [62] Although the site is zoned Industrial, it is located on the margins of two other zones, the Residential 4 Zone to the south and the Central Activity Zone to the east.
- [63] The environment is characterised by mixed use area, where residential activity, commercial activity and industrial activity are in relative close proximity. The subject site has a long established usage for residential use and light industrial use. The site directly adjoins one industrial property which is bounded by a high brick wall across the entire boundary. The site has been consented for residential use and previously included the residential use now within 9 Clark Street.
- [64] I consider the proposal to be consistent with the objectives and policies of the Sustainability section of the District Plan. While locating residential activity on an Industrial zoned site is not specifically provided for in the Plan, this is because development of residential activity is generally incompatible with an Industrial environment. It has been determined below that the environmental effects of the proposed activity will be no more than minor. The proposed residential units will complement the present authorised residential units to the north of the site and the existing recreational use (possible future residential use) to the south of the site. It is considered that this can be achieved without compromising the existing industrial activities operating in this area and/or future industrial activities. Given the proposal is compatible with the character and amenity of the environment surrounding the site, the intensification of the residential use represents a sustainable use of the existing resources in relation to the subject site.

Bulk, Location, Design and Appearance and Amenity and Character Values

- [65] The proposal involves minimal change to the footprint of the existing building when viewed from Clark Street. While residential is already present on the site, the Council's Urban Design Officer was asked to review the proposal with respect to its effect on the streetscape and amenity values.
- [66] The Officer first acknowledges the mix of building types which includes character houses, modern low rise office buildings and associated car parks in the vicinity of Clarke Street, MacLaggan Street and High Street, noting that 51 MacLaggan is the only building in Clark Street which reads as an industrial building. Where there is industrial activity, the Officer seeks it as being limited to small scale activity and confined to a small section of the street. The Officer goes so far as to say it "*is hardly surprising and in many ways a positive move*" that the proposal seeks to provide more centralised residential activity thereby reducing private vehicle reliance.
- [67] The Officer identifies the proposal includes changes to the east elevation, most notably the infill of two pedestrian entrances from Clark Street. The Officer reflects on the existing configuration which provides for some permeability of the façade. The Officer outlines that the loss of these doors is less than ideal in terms of pedestrian amenity and readability of the building, noting that the only proposed pedestrian entrance to the building will then be via the covered driveway only.
- [68] However, the Officer reconciles on balance, *'the streetscape is robust with a history of mixed use and no particular architectural style to consider'* and that effects on streetscape values will be less than minor. The officer does not think

that the overall character of 5 Clark Street will be significantly affected even with the loss of pedestrian amenity by removing the doors.

- [69] Giving consideration to the submitters concerns about an increase in pedestrian movements with sole access next to their building, it is necessary for the Panel to decide whether to apply the permitted baseline. In the event of re-establishing industrial use at ground floor level, any vehicle movements of staff and customers would not be controlled, albeit the existing residential use above and beside the business are likely to constrain such operations. A larger redevelopment of the site for industrial would however more likely have a greater potential disruption to the amenity enjoyed by residents at 9 Clark Street than the proposed residential use.
- [70] Industrial activity is typically operating in normal business hours, providing for quieter evenings and weekends, however, this is not always the case and while residential activity has happily (apparently) coincided with industrial use in this location for some time, the status quo may not always be retained, in the event the whole site is redeveloped.
- [71] I note that even with provision for pedestrian access at the street front, it may be that occupiers/tenants will still have a preference for entering via the vehicle crossing, particularly where the re-design allows for improved access to the rear of units via improved decks/stairs. The Urban Designers suggestion that a more pedestrian friendly entrance be promoted at the vehicle entrance could provide a compromise for the 'permeability' that is being lost with the design.
- [72] The Residential 4 Zone to the immediate south of the site (3 Clark Street) is also located in a townscape precinct (TH03), indicating the value of the streetscape amenity. Given the proximity to the precinct (see **Figure C**), if the Panel is minded to give more weight to the need for retention of 'readability' of the façade, the proximity to the Precinct, may provide some emphasis to this recommendation.

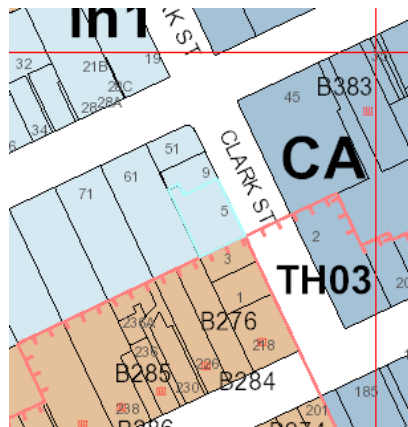


Figure C: Zone and Precinct (TH03) Boundaries

- [73] At the rear of the building, outdoor deck areas are being expanded at both ground floor and first floor level. Outdoor decks are already present at the rear of the first floor level apartments; however the applicant seeks to introduce ground floor decks and also enlarges the upper floor deck. The size of the existing deck restricts outdoor use by virtue of their size, so a higher usage of the first floor decks may result in reduced privacy for adjacent residential occupants (9 Clark Street).
- [74] The size of the upper floor deck is increasing and is extending closer towards the dwelling at 9 Clarke Street. This is more clearly illustrated by plans I have

highlighted (in yellow) at **Appendix 4** of this report. A floor level plan for the adjoining two storey dwelling at 9 Clark Street indicates that two bedroom windows are located at a similar level to the new deck space. The proposed north elevation of 5 Clark Street does not indicate what treatment is proposed to the balustrade at this elevation however, given its proximity to the dwelling of 9 Clark Street, this detail warrants some further consideration. Council's Urban Design Officer has not raised the potential for reduced privacy for occupiers of 9 Clark Street, however, the concerns raised by the submitter regarding the higher use of upper level outdoor living spaces in proximity to the submitters dwelling i.e. privacy, noise and security are warranted. The two buildings are joined on the boundary wall having been previously located on the same site until they were subdivided in 2011. The treatment of any decking should give consideration to existing residential activity given the expansion of the deck area. If the Panel are minded to approve the activity, it is recommended that a condition be included in a decision certificate requiring the consent holder to demonstrate sufficient mitigation can be achieved with the design of the deck addition to mitigate any potential adverse effects on the adjoining property and/or the applicant could reduce the proximity of the deck to the adjacent property.

- [75] In summary, the greatest level of change is to the internal spaces and to the rear of the existing building. The site is separated from adjoining northern and southern neighbours by solid concrete walls. A brick wall is also located on the western industrial site, however, reliance on the wall remaining at that height cannot be guaranteed (in the event of future redevelopment). Any adverse effects of the building design on the character of the streetscape, visual impacts and amenity effects on the adjoining residential development are considered to be no more than minor subject to conditions. Additional conditions requiring a pedestrian entrance to be demarcated separately from the vehicle access will further alleviate any potential adverse effects on streetscape amenity.

Reverse Sensitivity

- [76] The environmental health officer's primary concerns relates to reverse sensitivity issues, in particular the impact of noise from existing industrial and commercial activities including traffic routes near the residents/occupants of the proposed accommodation. The officer identifies the potential for reverse sensitivity effects particularly the LAF max values (loud, spontaneous noises) which could potentially cause sleep disturbance.
- [77] The Officer identifies that the insulation requirements for noise reduction (road and industrial noise) in the inner city is $D_{2m, nT,W} + C_u > 30$ (district plan minimum performance standard). The Officer recommends that this be a condition of consent if granted. To address this condition, the applicant will need to review the level of glazing for windows and insulation provided through existing or added building materials during construction to achieve substantial noise reduction.
- [78] Importantly, the Officer has highlighted that consideration may need to be given to the installation of an **internal ventilation system** as the noise reduction calculations (assuming window glazing has been installed) refers to all windows remaining closed.
- [79] Additionally, without noise measurements being provided to ascertain the background noise levels in this location, Environmental Health cannot confirm whether 'party walls' are sufficiently reducing noise levels within the courtyard area. The Applicant may undertake some monitoring of background noise levels prior to the hearing. The officer states that should noise monitoring indicate an insufficient noise level reduction (considering the World Health

organisation recommendations/guidance) (Refer to the Officer comment in **Appendix 3** appended to this report) further construction/insulation work may need to be undertaken by the applicant with regards to the party walls.

- [80] The Officer notes the lack of information regarding the material between the two floors of residential activity. However, notes that whilst within the same building, occupiers of accommodation on the ground floor are still protected by the provisions under the Resource Management Act 1991 with regards to excessive or unreasonable noise being generated from activities from the first floor.
- [81] Some construction noise is anticipated in establishing the new residential activity at ground floor level. It is not known whether existing tenancies will continue while construction is underway, however residential activity is established at 9 Clark Street and is in close proximity. Therefore, the Officer has highlighted the need to comply with the noise limits (Leq) of 55dBA during daytime or 45 dBA at night time which may mean that no construction work can take place at night. The construction noise standards are outlined below:
- [82] The period of construction applied for by the applicant is expected to be of 'Typical duration'. The **New Zealand Standard Acoustics - Construction Noise (NZS 6803:1999)** states that "Typical duration" of construction, means construction work at any one location for more than 14 calendar days but less than 20 weeks. If the applicant is proposing that construction times are not of 'typical duration' the applicant is advised to contact this department for clarification on the noise limits that apply.

Table 2 – Recommended upper limits for construction noise received in residential zones and dwellings in rural areas.

Time of week	Time period	Duration of work					
		Typical duration (dBA)		Short-term duration (dBA)		Long-term duration (dBA)	
		Leq	Lmax	Leq	Lmax	Leq	Lmax
Weekdays	0630-0730	60	75	65	75	55	75
	0730-1800	75	90	80	95	70	85
	1800-2000	70	85	75	90	65	80
	2000-0630	45	75	45	75	45	75
Saturdays	0630-0730	45	75	45	75	45	75
	0730-1800	75	90	80	95	70	85
	1800-2000	45	75	45	75	45	75
	2000-0630	45	75	45	75	45	75
Sundays	0630-	45	75	45	75	45	75

and public holidays	0730				
	0730-1800	55	85	55	85
	1800-2000	45	75	45	75
	2000-0630	45	75	45	75

- [83] In terms of compliance with noise limits (L10), the following noise limits apply to the Industrial 1 zone, as per the Dunedin City District Plan (Volume 2).

Time Period	L10 Limit (dBA)
Daytime (7am – 9pm daily)	55 dBA
Night time (9pm – 7am daily)	40 dBA

- [84] As set out earlier in this report, the Applicant has offered a condition wording intended to mitigate any potential reverse sensitivity to noise within the Industrial Zone by both existing and new occupants of the new units. This has been offered up in lieu of any noise testing having been undertaken at the site. However, the minimum performance standard set out by the Council is very similar to the minimum performance standard offered by the applicant although there is a subtle difference in measurements 'C^u>30' versus 'C^{tr}>30' which first needs to be compared by Technical Officers if the Panel are minded to approve the proposal. A draft condition wording offered by the applicant has been set out in recommended conditions if the Panel is minded to approve the proposed activity.
- [85] Overall, the officer concludes that ambient background noise levels will reduce considerably at night respect to commercial activity and traffic noise. Environmental health acknowledges the application states no record of any conflict between the existing residential activity on the site and adjoining industrial and commercial activities have been identified. They do, however, as referred to above, recommend that conditions are included to insulate the property (in terms of noise reduction) and in terms of insulating between floors of the building to minimise any potential reverse sensitivity effects.
- [86] Overall, subject to conditions, the adverse reverse sensitivity effects are considered to be no more than minor subject to conditions.

Traffic Effects

- [87] The proposal will result in the number of residential units increasing from three to four in total. Some informal provision for on-site car parking has been provided in the past for the ground floor industrial space, however, it is not known whether any space has been allocated for the existing first floor residential units above. The Transport Officer has also noted that the reconfiguration of the first floor apartments will result in an additional habitable room. Parking available in Clark Street is time restricted.
- [88] The Officer has calculated that the proposal will generate need for a single parking space for each upstairs unit and an additional two car parks for the larger 7 bed unit downstairs. A total of five car parks is required and four are provided, resulting in a shortfall of one carpark. Despite this, the Officer considers the shortfall to be acceptable given the close proximity to the CBD and the provision of two bicycle parks within the site. However, the Officer does recommend that an allocation of the parking space be required, to ensure

tha the largest 7 bedroom unit is guaranteed on-site parking, which will minimise the effect of any parking shortfall created by that unit.

- [89] On-site manoeuvring is not required on Clark Street because it is a local road, however, the Officer has noted that sufficient manoeuvring space has been provided within the site to enable vehicles to drive onto and off Clark Street in a forward direction.
- [90] The Officer recommends conditions for the marking of the on-site parking spaces and for the allocation of them to individual units, and for the provision of the bicycle parks. The recommended condition wording is outlined below this report, if the Panel is minded to approve the activity.

Effects on Stormwater, Water and Sewerage Infrastructure

- [91] The Council's Water and Waste Group have reviewed the proposal and considered the additional loading on the existing infrastructure servicing this mixed residential/industrial site. The Officer acknowledges the existing 100mm diameter water pipe and 150mm diameter wastewater pipe in Clark Street which they consider will provide suitable capacity for the proposed development. In terms of the effects on stormwater, the Officer has considered the existing context which is a site that is currently 100% impermeable, however, the Officer encourages the utilisation of water saving devices, including but not limited to, low-flow shower heads, 6/3 dual flush toilets and aerated sink mixers. The officer does not require these to be conditions of consent. However, the non-complying activity status of the proposed activity under the current District allows the Panel (if minded to approve the consent) to require such measures as a condition of consent given the likelihood of them being required for any future resource consent in the adjoining Residential 4 Zone (future Inner City Residential Zone under the Proposed 2GP) particularly where density is to be exceeded.
- [92] The Officer identifies the density breach that would occur under an assessment of the proposal against the Proposed 2GP Residential 4 density requirements:
- [93] *"The adjacent Residential 4 zone permits a density of 1 unit per 200m², so if this site was in this zone, 2 units would be allowed (site is 525m²). Inner city residential in the 2GP (which the adjacent zone will become) allows 1 habitable room per 45m². This site would allow 11 rooms if it was under that zoning (so it would be over dense under this criteria also)."*
- [94] Although the site is not located in the Residential 4 Zone, nor is it located within the future Inner City Residential Zone, it does illustrate the need for appliances which can conserve water, particularly where additional building coverage/density is being proposed, which is an effects consideration that the panel can have regard to given the intensification of an out of zone activity.
- [95] While it has been identified that there are no issues with supplying water or fire flows to this development, the inclusion of an advice note regarding firefighting water availability and compliance with the New Zealand Fire Services Code of Practice for Fire Fighting Water Supplies SNZ PAS 4509:2008 is recommended by the Officer and included in draft conditions if the Panel is minded to approve development. I note, however, that the Officer has identified fire hydrant locations which appear to comply with the requirements of that Code of Practice.
- [96] While no issues with water have been identified, the officer still recommends a condition requiring an application for water supply and backflow prevention device to be installed. The officer advises that as the development will increase the number of habitable rooms to 15 (and up to 4 units), a larger

water connection will be required to get a consistent flow of water. A larger water connection will then require a water meter and backflow prevention device. While this is typically a building consent matter, given the residential activity is not anticipated in this zone and the applicant seeks to intensify the use, there is discretion to include conditions of this nature to address effects on infrastructure, provided the Panel are satisfied this requirement is fair and reasonably necessary for resource management purposes.

- [97] Overall, any adverse effects on the Council's service infrastructure is considered to be no more than minor subject to conditions.

Effects on Hazards

- [98] Section 6(h) of the Resource Management Act 1991 requires the Council to recognise and provide for the management of significant risks from natural hazards, as a matter of national importance.

- [99] The assessment of the risk from natural hazards requires a combined assessment of:

- (a) *the likelihood of natural hazards occurring (whether individually or in combination); and*
- (b) *the material damage to land in respect of which the consent is sought, other land, or structures that would result from natural hazards; and*
- (c) *any likely subsequent use of the land in respect of which the consent is sought that would accelerate, worsen, or result in material damage of the kind referred to in paragraph (b).*

- [100] A small part of the northern corner of the site is annotated in the Council's Hazards Register as being subject to potential risk of land movement (Hazard ID: 10106). However, as no development is occurring within that section of the site, and the proposal is largely internal redevelopment of an existing building, the application was not forwarded to the Council's consultant engineer, Stantec New Zealand Ltd for assessment and there are not considered to be any adverse effects resulting from the hazard risk present on the site.

- [101] Note: Site contamination by historical industrial activities on this site is addressed in the NES section above.

Positive Effects

- [102] The proposal will provide additional residential accommodation within close proximity of the city centre which has a residual positive effect on the transport infrastructure and on wider sustainability matters.

Cumulative Effects

- [103] The concept of cumulative effects, as defined in *Dye v Auckland Regional Council & Rodney District Council* [2001] NZRMA 513, is:

"... one of a gradual build up of consequences. The concept of combination with other effects is one of effect A combining with effects B and C to create an overall composite effect D. All of these are effects which are going to happen as a result of the activity which is under consideration".

- [104] Similarly, some effects may not presently seem an issue, but after having continued over time those effects may have significant impact on the

environment. In both of these scenarios, the effects can be considered to be 'cumulative'.

- [105] The potential for cumulative adverse effects, particularly for reverse sensitivity resulting from the incremental creep of residential development into an industrial environment must be considered with any proposal to allow residential activity within an industrial zoned site. However, the location of existing residential activity must be acknowledged as a mitigating factor. Some of the new residential use is located within a floor of a building that already accommodates residential living (first floor). The intensification of residential use within the existing residential confines (first floor area) is proposed via a re-configuration of the first floor layout.
- [106] The site to the north is 9 Clark Street which is occupied by a long established two storey residential dwelling. The dwelling remains in residential use today as confirmed by the submitter who it is presumed lives at the property given the address for service on the submission form (Submission Form 13) is the same. Further, the zoning of 3 Clark Street (while in recreational use currently) supports permitted residential development. It is not fanciful to consider the redevelopment of the existing recreational building at 3 Clark Street as residential accommodation since there are numerous examples within the City. In the event that it was, the site would effectively be straddled quite literally by residential use.
- [107] The proposal is for intensification of residential use which results in a potential increase in cumulative reverse sensitivity effects, however due to the above factors, these are considered to be mitigated subject to conditions (including the noise condition offered by the applicant referred to above in the proposal description).

Proposed 2GP

- [108] At time of writing, there are no applicable assessment rules, because the only 2GP rules that have legal effect currently are ones relating to rural subdivision and the clearance of indigenous vegetation. As noted in paragraph 15 above, the proposed zoning for the subject site remains **Industrial** and the residential zoned land to the immediate south continues to be supported for higher density residential living in the new Inner City Residential Zone.

Effects Assessment Conclusion

- [109] After considering the likely effects of this proposal above, overall, I consider the effects of the proposal can be appropriately mitigated by conditions of consent so as to be no more than minor.

OFFSETTING OR COMPENSATION MEASURES ASSESSMENT

- [110] Section 104(1)(ab) of the Resource Management Act 1991 requires that the Council have regard to any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity.
- [111] In this case, no offsetting or compensation measures have been proposed or agreed to by the applicant.

OBJECTIVES AND POLICIES ASSESSMENT

Assessment of Objectives and Policies of the District Plan (Section 104(1)(b)(vi))

[112] In accordance with Section 104(1)(b) of the Resource Management Act 1991, the objectives and policies of the Dunedin City District Plan and the proposed 2GP were taken into account in assessing the application.

Dunedin City District Plan

[113] The following objectives and policies of the Dunedin City District Plan were considered to be relevant to this application:

Sustainability Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 4.2.1 Enhance the amenity values of Dunedin. Policy 4.3.1 Maintain and enhance amenity values.	The Urban Design Officer has assessed the proposal as having effects on streetscape values that are less than minor, albeit with some loss of pedestrian amenity resulting from the removal of doorways at street level which is not fatal to the maintenance of amenity along this street, but would not support it. The apartments will provide amenity space within the site suitable for the higher intensity of residential use but in a location which provides some separation from the industrial boundary. The proposal is considered in part inconsistent with this objective and policy but is not contrary to these provisions. Ultimately the industrial resource (at ground floor level) will be removed and there is a clear policy direction for the avoidance of out of zone activities, particularly where they are incompatible uses. However, the proposed use is compatible with the environment that exists at the subject site. Objective 4.2.3 seeks to ensure effects of development on the infrastructure are managed . The existing services to the site are more than capable of meeting the needs of the development as supported by the Water and Waste Officers. And, the requirement for efficient appliances and for changes to the water connection ensures that the proposal remains only inconsistent with the intention of these objectives and policies. An holistic approach as promoted by Policy 4.3.10 could include recognition of the existing mixed character of this end of Clark Street.
Objective 4.2.3 Sustainably manage infrastructure	
Objective 4.2.5 Provide a comprehensive planning framework to manage the effects of use and development of resources.	
Policy 4.3.5 Require the provision of infrastructure services at an appropriate standard.	
Policy 4.3.7 Use zoning to provide for uses and developments which are compatible within identified areas.	
Policy 4.3.8 Avoid the indiscriminate mixing of incompatible uses and developments.	
Policy 4.3.10 Adopt an holistic approach in assessing the effects of the use and development of natural and physical resources.	

Industrial Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 10.2.1 Avoid, remedy or mitigate the adverse	The effects assessment has determined some conditions are necessary to ensure

effects of industrial activities.	that any adverse reverse sensitivity effects are mitigated by the internal cladding/window design of the units. The ground floor space of the building will be removed from industrial use, which conflicts somewhat with the intention of these objectives, however, since policy 10.3.1 is not an avoidance policy but has a management objective, the proposal is only considered to be inconsistent rather than contrary to these objectives and policies. This objective is considered to be more enabling than restricting since it does not prohibit non-industrial activities but instead is focused on ensuring they do not limit the operations of legitimate industrial activities. While the non-complying status is a clear signal to the stance towards residential activities in these zones, the objective requires that they 'do not limit' the continued operation of existing industrial activities. As mentioned previously, in the site description and effects assessment, the physical barrier provided by existing residential activity (including possible future residential activity at 3 Clark Street) provides a limiting effect on the industrial activities beyond. The owners of 61 MacLaggan have not lodged a submission therefore, the full extent of any impact of the proposal on 5 Clark Street is not fully known, however, a brick wall runs the length of the boundary adjoining the subject site and no complaint history is evident from the well-established residential use at the site. Whether this is the result of a lack of industrial tenants present at 61 MacLaggan, is unclear. The conditions being promoted both by the applicant and in the effects assessment (by Officers), seeks to ensure that any potential reverse sensitivity effects by residents of the proposed development from activities occurring on that property are reduced to no more than minor. The applicant must acknowledge the risks posed by any redevelopment of the 61 MacLaggan Street property in terms of privacy and/or reverse sensitivity. There is room on the site to establish additional physical barriers on the boundary should that possibility eventuate. Policy 10.3.2 seeks to give effect to this objective by 'excluding' activities not part of or associated with industrial activities. This is slightly at odds with the more permissive 'not limiting' language used in the objective and provides more of a barrier to proposals like that being considered. Despite this, overall, the proposal is considered to be inconsistent with the
Objective 10.2.2 Manage in a sustainable manner the natural and physical resources of the Industrial Zone.	
Policy 10.3.1 Manage the adverse effects of industrial activities in Industrial zones.	
Objective 10.2.3 Ensure non-industrial activities in industrial areas do not limit the operation of industrial activities.	
Policy 10.3.2 Exclude activities not part of or associated with industrial activities from the Industrial Zone.	

	objective and contrary to the Policy. When considered collectively, the intention must be that activities are excluded unless they can demonstrate they do not have a limiting effect on the industrial businesses occupying the zone. It is noted that any reverse sensitivity policies (such as Policy 10.3.3) are specific only to the Industrial 2 and Special Development Zones which acknowledges the mixture of activities that is more a characteristic of those zones. However, in seeking to manage adverse effects Policy 10.3.1 is also nodding towards the need to address potential reverse sensitivity effects.
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Transportation Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 20.2.1 Avoid, remedy, or mitigate adverse effects on the environment arising from the establishment, maintenance, improvement and use of the transportation network.	The proposal is considered to be consistent with these objectives and policies. The utilisation of an existing physical resource for more intensive residential activity in close proximity of the city achieves the intentions of these objectives and policies. The access is onto a local road and the proposal promotes varied options for transportation, including vehicles, and bike storage. Additionally, the proximity of the development to the city centre favours a reduced reliance on motor transport. The Transportation Officer has indicated support for the activity because of these factors which mitigate the effects of any shortfall in parking required for a residential development of the size proposed. The proposal would be more aligned with Policy 20.3.8 in particular, if there was better separation between pedestrian access for all the units from the vehicle access. This in turn, would support the Urban Design Officers recommendations for reinstatement of pedestrian entrances off the street or a better delineation/demarcation of pedestrian versus vehicle access.
Objective 20.2.2 Ensure that land use activities are undertaken in a manner which avoids, remedies or mitigates adverse effects on the transportation network.	
Objective 20.2.4 Maintain and enhance a safe, efficient and effective transportation network.	
Policy 20.3.4 Ensure traffic generating activities do not adversely affect the safe, efficient and effective operation of the roading network.	
Policy 20.3.5 Ensure safe standards for vehicle access.	
Policy 20.3.8 Provide for the safe interaction of pedestrians and vehicles.	

Environmental Issues Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 21.2.2 Ensure that noise associated with the development of resources and the carrying out of activities does not affected public health and amenity values.	The proposal is considered to be consistent with this objective and policy. The residential use is promoted within an existing residential footprint (with the exception of some expanded outdoor living i.e. decks). The applicant has adequately demonstrated that the historic industrial uses will not have any public health issues for future residents (of the ground floor). Environmental Health Officer comment highlights the need for noise attenuating properties for the
Policy 21.3.3 Protect people and communities from noise and glare which could impact upon health, safety and amenity.	

	windows and ventilation requirements which if met, should ensure the amenity values of residents are met and potentially improved for the existing units.
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Proposed 2GP

[114] The objectives and policies of the 2GP must be considered alongside the objectives and policies of the current district plan. The following 2GP objectives and policies were considered to be relevant to this application:

[115] **Objective 2.2.4 and Policy 2.2.4.1 (Strategic Directions)** seek to ensure that Dunedin stays a compact and accessible city with resilient townships based on sustainably managed urban expansion. With urban expansion only occurring if required and in the most appropriate form and location. Policy 2.2.4.1 gives effect to this objective by requiring a prioritisation of efficient use of existing urban land over urban expansion. The current proposal utilises existing urban land which is unlikely to be utilised for more intensive industrial operation due to its locality and the existing established residential activity at this site. The re-configuration of the building as a whole provides for a more efficient infill development supporting a medium density housing that meets almost all the policy criteria for this objective:

- locations with good transportation choices (proximity to frequent bus services);
- good access to services and facilities (proximity to CBD and centres and other community facilities);
- locations with older or cheaper housing stock more likely to be able to be redeveloped;
- compatibility of medium density housing with existing neighbourhood character;
- ability for medium density housing to be developed without significant effects on streetscape amenity;
- locations with a topography that is not too steep;
- locations that will receive reasonable levels of sunlight;
- locations that are not subject to significant hazards, including from rising sea level; and
- market desirability particularly for one and two person households.

[116] **Objective 2.3.1 and Policy 2.3.1.4 (Strategic Directions)** seeks to identify land strategically important for industrial activities and to use zoning and rules to protect industrial activities from incompatible or competing land uses in these areas, in particular retail (other than yard based retail) and residential activities. The proposal is **inconsistent** with this objective and policy which seek to 'protect' industrial land, since clearly there is a policy framework not allowing residential into existing industrial areas which this development conflicts with. However, it is doubtful given the character of the site and location that it could be considered part of an area strategically important for industrial activities. The policy wording is not reflective of the existing mixed residential/industrial character of the site, but nor does it recognise some locations as being more suitable to meet other intended plan objectives as set out in the compact city and accessible city objectives outlined above.

- [117] **Objective 6.2.2 and Policy 6.2.2.1 (Transportation Section)** seek to require land use activities are accessible by a range of travel methods by requiring land use activities whose parking demand either cannot be met by the public parking supply, or would significantly affect the availability of that supply for surrounding activities, to provide car parking either on or near the site. It is anticipated that this parking be an amount that is adequate to avoid excessive pressure on parking in the vicinity of the site, avoid adverse effects on the availability of public parking in the vicinity of the site. The proposal is considered **consistent** with this objective and policy. The Transport Officer does not consider the shortfall of one carpark will impact on the parking within the vicinity of the site given the proximity to the city centre and ability to rely on other methods of transport.
- [118] **Objective 6.2.3 and Policies 6.2.3.3, 6.2.3.4 and 6.2.3.9 (Transportation Section)**, which seeks to ensure that land use, development and subdivision activities maintain the safety and efficiency of the transport network for all travel methods. For similar reasons to that outlined above under Objective 6.2.2 and Policy 6.2.1 the proposal is considered to be **consistent** with this objective and policy.
- [119] **Objective 9.2.1 and Policy 9.2.2.1 (Public Health and Safety Section)**, seek to ensure that land use and development maintains or enhances the efficiency and affordability of water supply, wastewater and stormwater public infrastructure. The Water and Waste Services Officer has indicated that the proposed will not comprise any existing infrastructure and that to further support the intensity of residential activity, additional requirements can be put in place by way of condition to further support the intensity (i.e. backflow, meter, larger water connection, more efficient water appliances etc).

The proposal is **consistent** with this objective and policy.

- [120] **Objective 19.2.1 and Policies 19.2.1.1 and 19.2.1.9 (Industrial Section)** seek to enable and protect industrial zones for industrial activities to establish and operate by only providing for a very limited range of specified non-industrial activities to establish or operate. Policy 19.2.1.1 in particular gives effect to that objective by seeking to provide for the establishment and operation of industrial activities in these zones. Policy 19.2.1.3 seeks to give effect to that objective by avoiding the establishment of non-industrial activities, other than those expressly provided for in the zone, unless they would have significant positive effects on the successful operation of surrounding industrial or port activities. As the premise is on avoiding and the proposal could not be said to provide any positive benefits for any existing industrial activities the proposal must be **contrary** to the objectives and policies within this section. While I concur with the applicant that the mixing of activities within the zone has already occurred (i.e. the horse has already bolted), the policy framework does not appear to support any consideration for this.
- [121] Overall, the proposal is considered to be **inconsistent with** the objectives and policies of the Proposed 2GP in Strategic, Transport, Public Health and Safety sections of the Plan and **contrary to** those for the Industrial Zone.

Overall Objectives and Policies Assessment

- [122] Having regard to the relevant objectives and policies individually, and considering these in an overall way, the above assessment indicates that the application is **inconsistent** with the provisions of the Operative District Plan and **contrary** to the provisions of the Proposed 2GP in relation to the Industrial Zoning.

- [123] The Operative District Plan seems to apply a more holistic framework to consideration of activities locating close to the city centre in industrial zones. It does this through its focus on the provision of appropriate infrastructural service levels, the protection of natural and physical resources and the management of effects of the use and development of those resources alongside amenity objectives in the strategic section. The industrial policy framework is around 'limiting' non-industrial activities. While the one specific policy directive seeks to 'exclude' non industrial activities it is clear that objective is to exclude only where activities will adversely effect the operations of industrial activities in the vicinity. Where an environment includes non-industrial activities already (i.e. a mixed use environment), consideration for that environment can be accommodated more readily. However, there is a stronger directive under the Proposed 2GP to avoid non industrial activities, or only allow if they support industrial development. The policy provisions do not seem to allow for consideration for edge zone locations where the boundaries may have weakened and untypical, divergent industrial activities have been introduced.

Assessment of Regional Policy Statements (Section 104(1)(b)(v))

- [124] Section 104(1)(b)(v) of the Act requires that the Council take into account any relevant regional policy statements. The Regional Policy Statements (Operative and Proposed) for Otago are a relevant consideration in accordance with Section 104(1)(b)iii) of the RMA. The Operative Regional Policy Statement was made operative on 1 October 1998. The proposed Regional Policy Statement (notified 23 May 2015) is in the appeals phase. Given their regional focus, the regional policy statements do not have a great bearing on the land use consent elements of the proposed activity which are subject to the District Plan.
- [125] In the Operative Regional Policy Statement **Chapter 5: Land** is considered relevant in that it seeks to promote the sustainable management of infrastructure to meet the present and reasonably foreseeable needs of Otago's communities and
- [126] **Chapter 9 Built Environment** is considered relevant to the wider objective of promoting the sustainable management of Otago's built environment in order to meet the present and reasonably foreseeable needs of Otago's people and communities and to provide for amenity values (**Objective 9.4.1**). This objective is promoted by the statement alongside the sustainable management of Otago's infrastructure to meet reasonable needs (**Objective 9.4.2**). The statement seeks to achieve this through policies which promote fuel efficient modes of transport (**Policy 9.5.3**), and through the minimisation of adverse effects by avoiding, remedying or mitigating the adverse effects of development (noise, vibration, dust, contaminants) (**Policy 9.5.4**).
- [127] **Chapter 13 Wastes and Hazardous Substances** is relevant in that seeks to minimise the risks to people and the wider environment arising from existing contaminated sites, and the storage, use transportation and disposal of hazardous substances (Objective 13.4.4). It seeks to address this through managing the adverse effects of past waste disposal practices by identifying sites of contamination within Otago and determining any adverse effects arising from those sites and requiring the remedying or mitigation of any adverse effects (Policy 13.5.7).
- [128] As the **Proposed Otago Regional Policy Statement** is still subject to appeal, little weight is given to its provisions; however, the relevant provisions (Council Decisions Version) are outlined below to indicate the how the statement seeks to address the wider regional issues.

- [129] Chapter 3 (Resilient, Safe and Healthy Communities) is considered relevant to a consideration of the application. Objectives 3.1 and policy 3.1.1 seek to protect the use and development of natural and physical resources by recognising environmental constraints and the effects of activities on those constraints including exposure of the activity to technological hazard risks. Policy 3.1.1(e) requires a reflection of the functional necessity for the activity to be located where there are significant constraints.
- [130] Objective 3.7 is focussed on urban areas that are well designed, sustainable and reflect local character. Objective 3.8 also seeks to ensure urban growth is well designed and integrates effectively with adjoining urban and rural environments. Objective 3.9 seeks to ensure hazardous substances and waste materials do not harm human health or the quality of the environment in Otago. Policy 3.9.4 seeks to manage the use of contaminated land by requiring an assessment of associated environmental risk and remediating the land with further consideration being given to the need of ongoing monitoring of contaminant levels and associated risk.
- [131] The proposal is considered to be **consistent** with the Chapter 3 objectives and policies as the applicant has identified the historic constraints (hazardous substances used on the site in association with industrial activities) and present constraints (industrial activity adjoining), and has adequately sought to reduce any impact that the location might have on people's safety, health and wellbeing. The development is to be located in an established residential pocket that occupies the industrial zone. The changes to the residential living within the building will promote more sustainable design, however, not to the extent that it will benefit the streetscape (i.e. removal of pedestrian permeability along Clark Street). While ecological corridors are not provided for, and no amenity planting will be introduced, this is due to a necessity to manage the risks associated with contamination (by historical land uses) and necessary to reduce risk of release of contaminants into the future.
- [132] Overall, I consider the proposal is **consistent** with the objectives and policies within both of these Statements. The hazard risk is known, managed and the potential for reverse sensitivity able to be managed by the physical limitations within the existing environment and by way of conditions of consent.

DECISION MAKING FRAMEWORK

Part 2 Matters

- [133] It is considered that there is no invalidity, incomplete coverage or uncertainty within either the operative Dunedin City District Plan or the Proposed 2GP. As a result, there is no need for an assessment in terms of Part 2 of the Resource Management Act 1991.

Section 104D

- [134] Section 104D of the Act specifies that a resource consent for a non-complying activity must not be granted unless the proposal can meet one of two limbs. The limbs of Section 104D require either that the adverse effects on the environment will be no more than minor, or that the application is for an activity which will not be contrary to the objectives and policies of either the relevant plan or the relevant proposed plan.
- [135] As discussed above in the assessment of effects, overall, I consider that the actual and potential effects associated with the proposed development will be able to be mitigated by imposing consent conditions so as to be no more than minor and therefore the first 'gateway' test of Section 104D is met. Only one

of the two tests outlined by Section 104D need be met in order for Council to be able to assess the application under Section 104(1)(a) of the Act.

- [136] In order for a proposal to fail the second test of Section 104D, it needs to be contrary to the objectives and policies of **both** the Dunedin City District Plan and the proposed 2GP (bearing in mind that limited weight should be given to the 2GP at this stage, because all aspects of that proposed plan are potentially subject to challenge). In order to be deemed contrary, an application needs to be repugnant to the intent of the District Plan and abhorrent to the values of the zone in which the activity was to be established. It is noted that in this instance, overall, the proposal is assessed as being **inconsistent** but not contrary to the relevant objectives and policies of the Operative District Plan. While determined as being contrary to key provisions of the Proposed 2GP, this alone is not enough to fail the second gateway test under Section 104D.
- [137] The proposed development is therefore considered to also satisfy the second 'gateway' test outlined by Section 104D.
- [138] In summary, the application passes both the threshold tests in Section 104D of the Act and therefore, in my opinion, it is appropriate for the Committee to undertake a full assessment of the application in accordance with Section 104(1)(a) of the Act. In turn, consideration can therefore be given to the granting of the consent.

Section 104

- [139] Section 104(1)(a) states that the Council must have regard to any actual and potential effects on the environment of allowing the activity. This report assessed the environmental effects of the proposal and concluded that the likely adverse effects of the proposed development overall will not be significant and can be adequately avoided remedied or mitigated provided recommended conditions of consent were adhered to.
- [140] Section 104(1)(ab) requires the Council to have regard to any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects. No offsetting or compensation measures have been proposed or agreed to by the applicant.
- [141] Section 104(1)(b)(vi) requires the Council to have regard to any relevant objectives and policies of a plan or proposed plan. This report concluded that the application would be inconsistent with the key objectives and policies relating to the Dunedin City District Plan while contrary to those within the Proposed 2GP. Given the decisions on the proposed 2GP have not been released, little weighting is applied to the 2GP objectives and policies.
- [142] Section 104(1)(b)(v) requires the Council to have regard to any relevant regional policy statement. In this report it was concluded that the application is consistent with the relevant objectives and policies of the Regional Policy Statement for Otago.

Other Matters

- [143] Section 104(1)(c) requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application.
- [144] Case law indicates that for the Council to grant consent to a non-complying activity, the application needs to be a 'true exception', otherwise an undesirable precedent may be set and the integrity of the District Plan may be undermined.

- [145] In this regard, I do not consider that the proposed activity represents a challenge to the integrity of the Dunedin City District Plan. The site is an unusual situation for an Industrial Zoned site, with the site being in an inner city location on the border of three zones, with residential activity having always been a component of the activity on the site.
- [146] There are two elements to consider in terms of the Plan integrity, the integrity of the Industrial Zone and the integrity of the adjacent Residential 4 Zone posed by the increase in density beyond that permitted in the most permissive Residential Zone (and future Inner City Residential Zone)
- [147] To address **the first potential integrity challenge**, in my opinion, the 2011 subdivision approving the separation of 5 and 9 Clark Street following by the land use consent allowing the expansion of residential use into the southern end of the first floor have both incrementally supported the loss of the site for strictly industrial use, or at least substantially reduced its potential to be.
- [148] The existing character of the site and surrounds is that of a mixed residential/industrial/commercial nature, with the building presenting visually as being within the Residential 4 zone abutting the site. The proposed intensification of residential use (4 units) is able to be catered for on the site with scope for additional measures to be introduced at a later stage where necessary (boundary treatments adjoining 61 MacLaggan Street) to further mitigate any reverse sensitivity effects. The Panel may wish to address this potential future risk through additional conditions of consent if minded to grant consent. The proposed activity has low physical impact on service infrastructure and on the transportation network surrounding supports the intensification of residential activity to the density proposed. Again, conditions of consent further support the upgrading of infrastructure to better support the intensified residential use on the site.
- [149] In terms of the **second potential challenge** to the integrity of the Plan, the proposal involves an intensity of development greater than that provided for in the adjacent residential zone. The consented baseline has allowed for three units on the site, increasing to four under the proposed redevelopment (1 unit per 200m²). Only two would be allowed under the Residential 4 Zoning for a site of this size. Under the Inner City Resident Zone, the proposed rules are more permissive but still would not provide for the proposal as 11 habitable rooms would be permitted whereas 15 are proposed.
- [150] Despite the density proposed, the proposal is relatively unique in that the new living arrangements are to be accommodated within an existing building footprint. Typically, buildings up to the street frontage and adjoining boundaries would not be permitted in a residential zone, constraining the footprint of the residential living permitted on the site further, however, the existing building has a substantial footprint and the amenity expectations are reduced by the existing environment – brick walls up to the boundary and a lack of lawns. Further, the rules for residential zones service only as a suited to this proposal to assessing whether the intensity of development is likely to result in significant off-site effects. The effects assessment has determined it will not.
- [151] In my opinion, the approved of the expansion of residential use into the southern end of the first floor in 2001 by resource consent and the approval of the 2011 subdivision separating 5 and 9 Clark Street have both incrementally supported the loss of the site to strictly industrial use, or at least limited it to lighter industrial use.

[152] As it is a relatively unique and confined proposal, I consider that its potential approval would be unlikely to undermine public confidence in the plan's provisions.

[153] For the above reasons, I consider that approval of the proposal will not undermine the integrity of the Plan as the activity will produce only localised and minor effects, if any. I therefore do not consider that the Committee needs to be concerned about the potential for an undesirable precedent to be set in this regard.

CONCLUSION

[154] Having regard to the above assessment, I recommend that the application be **granted** subject to appropriate conditions.

RECOMMENDATION

Conditions:

- 1 *The proposal must be constructed generally in accordance with the plans and relevant details submitted with the resource consent application received by Council on 30 October 2017 and additional information received on 24 November 2017 (noise mitigation), except where modified by the following conditions.*

Transport

- 2 *All on-site parking spaces must be permanently marked in accordance with the layout in the consent application.*
- 3 *Each on-site parking space must be allocated individually to each of the residential units.*
- 4 *Dedicated, covered, and secure storage for at least two bicycles shall be provided within the site.*

Reverse Sensitivity

- 5 *Each residential unit must be insulated (in terms of noise reduction) to minimise any potential reverse sensitivity effects including between the first and ground floor levels and party walls at the south, west and northern boundaries.*
- 6 *The activity authorised by this consent must produce no greater than 8 lux of light onto any other site used for residential activity during nighttime hours pursuant to Rule 21.5.4 (i)(b) of the District Plan.*
- 7 *The consent holder must ensure noise from activity taking place on the site will not exceed the performance standard set out in Rule 21.5.1 of the District Plan.*
- 8 *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:*

- i) *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*
 - ii) *An acoustic design certificate signed by a suitably qualified engineer stating that the design as proposed will achieve compliance with the minimum performance standard.*
- 9 *An amended plan must be submitted to the Planning Manager for approval to demonstrating that additional screening will be provided to the upper deck area to achieve the following:*
- (i) *Screening of views into the bedrooms of the adjoining residential development at 9 Clark Street.*
- 10 *An amended plan must be submitted to the Planning Manager detailing the following changes:*
- (i) *Separation of vehicle access from pedestrian access on Clark Street which increases the readability in the streetscape;*
- AND/OR:*
- (ii) *Retention of one or both of the existing pedestrian accesses into the building to increase the permeability of the building off Clark Street when viewed by pedestrians.*
- 11 *Construction Noise must not exceed the following upper limits for construction noise:*

Time week	of	Time period	Duration of work					
			Typical duration		Short-term duration		Long-term duration	
			(dBA)		(dBA)		(dBA)	
			Leq	Lmax	Leq	Lmax	Leq	Lmax
Weekdays		0630-0730	60	75	65	75	55	75
		0730-1800	75	90	80	95	70	85
		1800-2000	70	85	75	90	65	80
		2000-0630	45	75	45	75	45	75
Saturdays		0630-0730	45	75	45	75	45	75
		0730-1800	75	90	80	95	70	85
		1800-2000	45	75	45	75	45	75
		2000-0630	45	75	45	75	45	75

Sundays and public holidays	0630-0730	45	75	45	75	45	75
	0730-1800	55	85	55	85	55	85
	1800-2000	45	75	45	75	45	75
	2000-0630	45	75	45	75	45	75

Noise limits (Leq) of 55dBA during daytime or 45 dBA at night time may mean that no construction work can take place.

- 12 An "Application for Water Supply" must be submitted to the Water and Waste Group for approval to establish an upsized water connection to the property. Details of how the property is to be serviced for water shall accompany the "Application for Water Supply".
- 13 An RPZ boundary backflow prevention device must be installed on the upsized water connection, to the satisfaction of the Dunedin City Council Water Bylaw Compliance Officer (refer to advice note).
- 14 A water meter is required on the upsized water connection to the property.
- 15 The consent holder must implement water saving devices, including but not limited to, low-flow shower heads, 6/3 dual flush toilets and aerated sink mixers, within existing and new units to reduce water consumption and therefore the volume of wastewater generated.
- 16 The consent holder must advise the Council, in writing, of the start date of the works. The written advice must be provided to Council at rcmonitoring@dcc.govt.nz at least five (5) working days before the works are to commence.

Advice Notes:

General

- 1 In addition to the conditions of resource consent, the Resource Management Act 1991 establishes through Sections 16 and 17 a duty for all persons to avoid unreasonable noise, and to avoid, remedy or mitigate any adverse effect created from an activity they undertake.
- 2 Resource consents are not personal property. This consent attaches to the land to which it relates, and consequently the ability to exercise this consent is not restricted to the party who applied and/or paid for the consent application.
- 3 The lapse period specified above may be extended on application to the Council pursuant to Section 125 of the Resource Management Act 1991.
- 4 It is the responsibility of any party exercising this consent to comply with any conditions imposed on their resource consent prior to and during (as applicable) exercising the resource consent. Failure to comply with the conditions may result in prosecution, the penalties for which are outlined in Section 339 of the Resource Management Act 1991.
- 5 This is resource consent. Please contact the Building Control Office, Development Services, about the need for building consent for the work.

Code of Subdivision & Development

- 6 All aspects of this development shall be compliant with Parts 4, 5 and 6 of the Dunedin Code of Subdivision and Development 2010.

Water services

- 7 Detail of the water supply application process can be found at <http://www.dunedin.govt.nz/services/water-supply/new-water-connections>.
- 8 Installation of a boundary backflow prevention device requires a building consent, or an exemption from a building consent. Further information is available at <http://www.dunedin.govt.nz/services/water-supply/backflow>.
- 9 All aspects relating to the availability of water for fire-fighting should be in accordance with SNZ PAS 4509:2008, being the Fire Service Code of Practice for Fire Fighting Water Supplies, unless otherwise approved by the New Zealand Fire Service.

Private drainage matters

- 10 Private drainage issues and requirements (including any necessary works) are to be addressed via the Building Consent process.
- 11 Certain requirements for building on this site may be stipulated via the building consent process and are likely to include the following points:
- Stormwater from driveways, sealed areas and drain coils is not to create a nuisance on any adjoining properties.
 - Surface water is not to create a nuisance on any adjoining properties.
 - For secondary flow paths, the finished floor level shall be set at the height of the secondary flow plus an allowance for free board.
 - As required by the New Zealand Building Code E1.3.2, surface water resulting from an event having a 2% probability of occurring annually, shall not enter dwellings. The finished floor level shall be set accordingly.

REASONS FOR RECOMMENDATION

- [155] Provided that the recommended conditions of consent are implemented, I consider that the likely adverse effects of the proposed activity can be adequately mitigated and will be no more than minor.
- [156] The proposal is considered to be inconsistent with relevant objectives and policies of both the Dunedin City District Plan and the Proposed 2GP but contrary to those for the Industrial Zone in the 2GP.
- [157] The proposal is considered to be consistent with the objectives and policies of the Regional Policy Statement for Otago.
- [158] As the proposal is considered likely to give rise to adverse effects that will be no more than minor, and will not be contrary with the objectives and policies of both the District Plans, the proposal is considered to meet both 'limbs' of the Section 104D 'gateway test'. Consideration can therefore be given to the granting of consent to the proposal.
- [159] The proposal is considered to be a **true exception** for the following reasons:

(i) Existing residential activity is already established within the footprint of the existing building and the proposed development does not seek to increase the footprint (excluding the enlargement of outdoor decks). While that alone does not amount to a true exception, when combined with the presence of other out of zone residential development to the immediate north of the site, and the location of Residential 4 zoned development to the immediate South of the site, it is considered that the physical environment is not strictly industrial and in fact has been modified to that of a mixed residential/industrial environment on the periphery of the Industrial Zone. While the Proposed 2GP does not recognise this character, instead focusing on the retention of the wider Industrial Area in close proximity of the City, there are locations where residential will be appropriate and assessment on a case by case basis is necessary to ensure a robust assessment in each and every case.

[160] Overall, the proposed development has been assessed as not being likely to give rise to adverse effects on those elements of the Industrial zone that the Dunedin City District Plan seeks to protect. Further, there are no adverse effects resulting from the intensification of residential activity on this site which would give rise to adverse traffic or noise effects for existing established land use in the vicinity of the site subject to conditions being implemented.

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5 April 2018

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