

**IN FRONT OF THE HEARINGS PANEL
AT DUNEDIN**

LUC-2022-117

In the Matter

the Resource Management
Act 1991

And

an application for resource
consent

Applicant

CALLUM BOND

BRIEF OF EVIDENCE OF KURT BOWEN

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Introduction

1. My full name is Kurt Alistair Bowen. I am a Principal of Paterson Pitts Limited Partnership.
2. My qualifications and professional experience are as follows:
3. Registered Professional Surveyor, with the New Zealand Institute of Surveyors;
 - (i) Licensed Cadastral Surveyor;
 - (ii) Bachelor of Surveying Degree, 1997, University of Otago;
 - (iii) Master of Planning Degree, 2000, University of Otago;
 - (iv) 25+ years' experience in private practice surveying with Paterson Pitts Group, the majority of which has included experience with resource management planning processes.
4. I have been given a copy of the Environment Court code of conduct for expert witnesses in section 9 of the Environment Court Practice Note 2023. I have reviewed that document and confirm that this evidence has been prepared in accordance with it and that all opinions that I offer in this evidence are within my expertise. I have not omitted to refer to any relevant document or evidence except as expressly stated.
5. This brief of evidence relates to a resource consent application to undertake an industrial activity on the property at 124 Abbotts Hill Road, Dunedin.

Evidence

6. My evidence includes the following appendices:
 - A. Consent decision for LUC-2022-237.
7. I have read the s42A report prepared by Mr John Sule.

8. I have read the applicant's offered modifications document, dated 22nd February 2023.
9. I have read the consent decision for LUC-2022-237.
10. My evidence is written with the documents described in paragraphs 7-9 above in mind.

Summary of Evidence

11. I have evaluated the proposed activity in terms of its effects of the environment and its consistency with the relevant objectives and policies of the 2GP. I believe that the potential adverse effects are able to be appropriately managed and that any inconsistencies with the Plan provisions are particularly slight.
12. I consider that the application will not result in an undesirable precedent being established.
13. I consider that the proposed activity is similar in many respects to the recently-issued LUC-2022-237. That consent decision is a useful reference for the considerations that are important to the current application.
14. Overall, I consider that there is scope for the Panel to grant consent to the proposed activity.

Description of Proposal

15. The applicant, Callum Bond, seeks authorisation for an industrial depot on the site at 124 Abbotts Hill Road.
16. The applicant runs a building business (Rigging and Construction Ltd), which focuses on unusual projects requiring specialist equipment and skills. The business therefore requires space to store a variety of equipment and the applicant is proposing to use the northern end of the site for this purpose. The applicant has erected a 144m² (9m × 16m) shed, where he stores equipment such as abseiling gear. Other equipment is stored outside. The main activity on the site will involve workers arriving on the site to pick up vehicles and equipment and

leaving the site and then the returning of the vehicles and equipment at the end of the day. Maintenance and washing down of vehicles/equipment will occasionally occur as part of the activity, but not daily. As noted in the applicant's modifications document, up to 3 staff are proposed to be employed on the site.

17. The applicant anticipates up to 20 vehicle movements per day (VPD) and 1 small truck, 2 small diggers and 2 skid steer loaders will be based at the site. The truck is the only heavy vehicle based on site, and its main purpose is to transport machinery to job sites and back. The frequency of the truck use will depend on the type and number of jobs the applicant is undertaking, but on average there are 16 heavy vehicle movements per month. These heavy vehicle movements are included in the proposed 20 VPD intensity of use. Additionally, when the truck and loaders are stored on site, they are occasionally used to load/unload heavy items. Parking space for 4 vehicles will be provided.
18. Apart from the construction of the existing shed no building work is being undertaken on the site for the purpose of the business, as the site is to be used only as a depot from which the applicant and his staff can pick up equipment. The applicant has accepted that the activity is an Industrial Activity under the proposed District Plan (2GP).
19. The proposal is best described as a contractor's depot, and with a maximum of 3 employees without an associated residential activity it would be considered a 'Rural Contractor and Transport Depots – Large Scale' activity. When a residential activity is established on the property, and provided that 1 or more of the 3 employees is also living on the site, the activity would be consistent with a 'Rural Contractor and Transport Depots – Small Scale' activity as defined in the 2GP (section 1.4.1). No signs are proposed for the site.

Description of Site and Location

20. I agree with paragraphs 10-12 of the s42A report, which provide a description of the site and location.

History of the Site/Background to the Application

21. I agree with paragraphs 13-18 of the s42A report, which provide a history of the site/background to the application.

Activity Status

22. I agree with paragraphs 20-37 of the s42A report, which provide an assessment of the activity status of the proposed activity.
23. I agree with paragraph 38 of the s42A report, which concludes that the proposed activity is overall a non-complying activity.

Permitted Baseline and LUC-2022-237

24. I generally agree with paragraphs 48-58 of the s42A report, which provide a description of a non-fanciful permitted baseline against which the proposed activity should be assessed.
25. I note that the applicant's has advised, in the offered modifications document, that the residential activity intended for the property is likely to be established ahead of the three years indicated in the original application.
26. I disagree with paragraph 59 of the s42A report. Having taken into account the applicants offered modification (which were not available at the time the s42A report was prepared), I consider that paragraph 59 could now be more accurately written as follows-

In applying the baseline of a standard residential land use that includes a working from home activity, I note that the proposal can potentially comply with the District Plan performance standards for noise (with an upgraded fence to remove gaps and improve its acoustic performance), light spill and hours of operation. The following aspects of the activity differ from a permitted working from home activity:

- *There is no Residential Activity associated with the activity at present, and evidence submitted with the application indicates it is not expected to be immediately established, with the applicant seeking up 30 months for its*

establishment. It will therefore not be ancillary to a residential use at this time, and there is ~~little certainty~~ no guarantee this situation will soon change.

- *The proposal will exceed the maximum permitted gross floor area of 100m², by 44m².*
- *Up to ~~5~~ 3 staff will be employed, and they will make regular visits to the site. This is likely to result in a greater intensity of use than would typically be expected with a permitted working from home activity. While it is possible for a large family to work in a family business it would be a rare occurrence.*

27. It is my view that the proposed down-scaling of the number of staff proposed in the modifications offered by the applicant, has resulted in the intensity of use of the proposed activity becoming consistent with that of a typical working from home business.
28. Part of the permitted baseline assessment, not described in the s42A report, is the consideration of resource consents that have issued for comparable activities. In this instance, I consider the decision for LUC-2022-237, to have elements that are comparable to the current application.
29. The relevant aspects of LUC-2022-237 include:
 - (i) LUC-2022-237 sought consent for a deemed industrial activity within a rural-residential zone. The activity was deemed to be a 'Rural Contractor and Transport Depots' activity, however it is not identified whether this meets the definition for 'Large Scale' or the 'Small Scale'. The activity proposed that 13 workers would arrive on the site each morning and leave at the end of the day. I consider that this scale of activity is consistent with the 'Large Scale' category of this type of industrial activity.
 - (ii) The function of the activity under LUC-2022-237 is for up to 13 workers to prepare themselves each day with the equipment

needed to carry out conservation work at other locations, and to return this equipment later in the day. On occasion, workers would remain on-site for longer periods during the day, to maintain or sort equipment. These activities might entail light power tool or hand tool use.

- (iii) On most days, a maximum of four vehicles might arrive at the beginning of the day and depart at the end of the day, and no more than four worker vehicles would be parked on site during the day.
- (iv) In addition to these activities, on up to 25 days per year, a maximum of ten volunteers might arrive on site to meet prior to departing for a conservation activity at another site (vehicles bringing these volunteers would be parked off-site on road reserve).
- (v) The property on which the activity proposed by LUC-2022-237 was to be carried out was also occupied by an established residential activity.
- (vi) The activity proposed in LUC-2022-237 was determined to be a non-complying activity.
- (vii) No written approvals from neighbours were provided by the applicant in support of LUC-2022-237. Council's processing planner did not identify any affected persons, or any requirement for notification. This decision was reached with the following considerations in mind (page 3 of LUC-2022-237)-

"No person or party is considered to be adversely affected by the activity. This is because the environmental effects of the proposal are limited to effects on parties that are less than minor.

Particular regard was had to potential adverse effects on the immediately adjoining property at 7 Corsall Street. As detailed in the effects assessment below, the proposed activity was

found to compare favourably with the baseline of activities that could occur on the site as of right. Having regard to the further information submitted by the applicant, including modification of the original proposal with regard to access, the adverse effects on 7 Corsall Street were therefore deemed to be less than minor.”

(viii) The assessment of effects contained in LUC-2022-237 considered the following matters-

- Compatibility with Zone
- Reverse Sensitivity / Amenity of Surrounding Properties / Health of People
- Character and Amenity of the Rural Residential Zones
- Productive Potential
- Safety and Efficiency of the Transport Network

The assessment of effects ultimately concluded that any environmental effects generated by the proposed activity would be either negligible, no more than minor, able to be mitigated, or otherwise compatible with the environment.

(ix) The activity consented under LUC-2022-237 was found to be consistent with the relevant objectives and policies of the 2GP. The decision states (page 12 of LUC-2022-237)-

“The proposal is consistent with these objectives and policies because, as noted in the effects assessment above, when assessed against the permitted baseline, the nature and scale of the proposed activities will be compatible with other activities that might occur as of right in a rural residential environment. Any reverse sensitivity issues, or adverse effects on the amenity of surrounding properties and public spaces and on the health of people, will be no more than minor; and there will be no effect on the character and

amenity of the zone ... Adverse effects on the safety and efficiency of the transport network will be no more than minor.”

- (x) LUC-2022-237 also explored the potential for an undesirable precedent to be established by the granting of consent. The decision states (page 12 of LUC-2022-237)-

“Section 104(1)(c) of the Resource Management Act 1991 requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application. The matters of precedent and Plan integrity are considered potentially relevant here. These issues have been addressed by the Environment Court, starting with Russell v Dunedin City Council C092/03, where the case law directs the Council to consider whether approval of a non-complying activity will create an undesirable precedent. Where a plan’s integrity is at risk by virtue of such a precedent, the Council is required to apply the ‘true exception test’. This is particularly relevant where the proposed activity is contrary to the objectives and policies of the district plan and/or the proposed district plan.

However, subsequent case law indicates that the importance of plan integrity and precedent will vary, depending on things such as the nature of the district plan itself, and the local environment in which an activity is proposed (refer Dye v Auckland Regional Council, CA86/01).

In this case, the proposal has been found to be consistent with the policy direction anticipated by both district plans, and consideration of the matter of precedent is not considered necessary. Nevertheless, for the avoidance of doubt, it is discussed here anyway, as follows:

The proposal is non-complying because, in the absence of a more fitting land use classification, the proposal is deemed to be most akin to a rural contractor depot, which is an industrial activity. While the 2GP does not provide for industrial

activities being carried out in rural residential zones, in this instance, the proposed activity has been found to be benign in its potential effects; and is supported by a strong permitted baseline. Accordingly, it is considered that approval of the application will not undermine the integrity of the either the Operative District Plan or the Proposed 2GP.”

(xi) The decision for consent LUC-2022-237 was issued under delegated authority on the 26th August 2022, without having been subject to a notification process.

30. The determinations made in the decision-making process for LUC-2022-237 are significantly relevant to the current application, and these will be discussed in the remaining sections of my evidence below. It is my opinion that the activity consented in LUC-2022-237 and the activity proposed at 124 Abbotts Hill Road, are exceptionally similar in respect to the permitted baseline and environmental effects considerations. The most meaningful difference between the two applications is, in my view, the existence of an established residential activity within the property that LUC-2022-237 relates to.

Assessment of Effects

31. I have made an assessment of the environment effects of the proposal activity, under the headings below, in the same sequence as the assessment in the s42A report. My assessment includes consideration of the contents of the applicant's offered modifications and the findings of the LUC-2022-237 decision, neither of which were reviewed as part of the s42A report assessment.

Rural Residential Character and Amenity Values

32. Paragraphs 62-72 of the s42A report discuss the effects on rural residential character and amenity values. It is noted (paragraph 62) that the yard is described as unkempt, with submitters expressing concerns about adverse effects on character and amenity arising from the activity.

33. To address the concerns that have been raised, the applicant has offered to undertake the following-
- (i) Increase the height of the existing fence between #124 and #128 Abbots Hill Road to 2.5m.
 - (ii) Remove the proposed outside storage region at the northern end of the shed (located between the shed and the road corridor) from the proposed activity.
 - (iii) Engage a suitably qualified person to develop a landscape/planting plan, and then arrange to implement this plan.
34. It is my opinion that any adverse effects relating to rural residential character and amenity values will be less than minor provided that applicant is required to implement the offered mitigation.

Transportation

35. Paragraphs 73-83 of the s42A report discuss the effects of the proposal on transportation matters. Paragraph 77 raises some concerns in relation to vehicle speeds, the road environment, sight distances, the road user mix, vehicle type and manoeuvring and concludes that there is a higher risk to all users of the road due to the increased volume of traffic and also the type of vehicles transporting or being transported. Paragraph 78 notes that there is an expectation that the applicant could further mitigate the risks (potentially using features such as passing bays, road widening and improved drainage). This paragraph also suggests that it may be difficult to ensure the activity keeps to their stated traffic movements.
36. The applicant has considered the transportation concerns raised in the s42A report, and has carried out a further inspection of the Abbots Hill Road carriageway. In the applicant's offered modifications document, the applicant has provided arrange of photos looking east along Abbots Hill Road. The applicant has identified a bend in the road carriageway, between #110 and #115 Abbots Hill Road, at which sight distances appear to be constrained. The applicant has proposed that

the existing carriageway be widened at this location, and a diagram of how this might occur has been provided.

37. I am not an expert in transportation safety, however in my layman's opinion I believe that the road widening proposed by the applicant has the potential to improve the section of Abbotts Hill Road that is current the least safe.
38. The applicant has offered to install a camera within the site, and to make the camera recordings available to Dunedin City Council on request, as a method to avoid 'creep' of vehicle movement to and from the site beyond the proposed limits.
39. The applicant has proposed to erect signage at the exit of the activity site, to specify that no vehicles are to reverse onto Abbotts Hill Road. This signage will also be used to make drivers aware of other road users (pedestrians and animals), and to encourage road users to drive at a safe speed for the standard of the road.
40. The applicant has also clarified the size of the truck vehicle in the offered modification document. Furthermore, should any vehicle larger than the applicants Hiab unit need to access the activity, the applicant has offered to provide a 24-hour notification of this to neighbours.
41. It is my opinion that if the proposed road widening is completed, and if the applicant is required to maintain a camera record of the site activities and to notify neighbours whenever a vehicle larger than the Hiab unit is being used as part of the activity, then the effects of the proposed activity on the transportation network will be minor.

Public Health and Safety Effects

42. I agree with paragraphs 84-98 of the s42A report, which discuss the effects on various public health and safety aspects.
43. In regard to noise effects, paragraph 93 of the s42A report concludes by suggesting that the effects of noise from the proposed activity can be managed to be minor and acceptable. This conclusion is reached

on the basis that a number of mitigation measures should be considered, comprising-

- (i) Increasing the height of the existing fence between #124 and #128 Abbots Hill Road to 2.5m.
- (ii) The development of a noise management plan.
- (iii) Establishment of a vibration limit.
- (iv) Testing to confirm the adequacy of the noise mitigation measures once these have been established.

The applicant has agreed to the above measures in the offered modifications document. Accordingly, it is my opinion that any noise effects will be minor.

44. Noise is an effect that is addressed in LUC-2022-237. In that consent decision, it is stated (page 8)-

“In terms of the amenity of surrounding properties, a matter commonly associated with adverse effects on amenity is noise. In this instance, in the morning there will be noise associated with vehicles arriving, and preparation and loading up of work vehicles. In the evening, there will be noise from workers returning, unloading equipment and departing the site. Sometimes during the day, there might be noise from workers maintaining or repairing tools and equipment.

In terms of noise associated with vehicles and workers coming and going, this is expected to be very limited in intensity and duration. Taking into account the permitted baseline, there are a number of permitted activities that could be expected to have multiple vehicle movements associated with them. For example, domestic animal boarding and breeding, rural ancillary retail, working from home, community and leisure – small scale, and stand-alone car parking. In my view, the proposed maximum of four vehicles arriving and departing each day compares favourably with these permitted

activities. Overall, the noise effects from activity will be less than minor.”

It is my view that the considerations expressed in LUC-2022-237 are equally applicable to the current application.

45. Regarding light spill, I agree that the effects of the proposed yard lighting can be appropriately controlled using consent conditions. I understand through subsequent conversation with the applicant a requirement for the consent holder to test the light level and confirm compliance before commencing the activity would be acceptable.
46. Regarding any effects from fumes, I agree with the s42A report that these can be appropriately managed through a site management plan. A site management plan has not been specifically discussed in the applicants offered modifications document, however I understand through subsequent conversation with the applicant that this would be acceptable.
47. Overall, I consider that there are appropriate methods available, which the applicant has either proposed or is otherwise agreeable to implementing, that will ensure any potential public health and safety effects can be mitigated to a level that is less than minor.

Hours of Operation

48. I agree with paragraphs 99-100 of the s42A report, which discuss the effects from the proposed hours of operation.
49. The applicant has proposed hours of operation that are slightly less than the hours identified for a permitted working from home activity. The applicant has further clarified that these hours have been offered as limits. Accordingly, I consider that the effects from hours of operation will be less than minor.

Hazards

50. I agree with paragraphs 101-106 of the s42A report, which discuss the effects on hazards and the effects from hazardous substances.

51. I consider that there are no significant risks from natural hazards that need to be addressed.
52. The applicant has clarified in the offered modifications documents how contaminated material is, and can continue to be, appropriately managed at the wash-down facility. A site management plan could be imposed on the consent condition to require documentation of wash-down processes and treatment provisions in the event that any contaminated material is transported to the site, however this may not be necessary if the Panel is satisfied that the applicant's off-site processes are sufficient to avoid such material reaching the site.
53. Accordingly, I consider that the effects on hazards and the effects from hazardous substances will be less than minor.

Productivity

54. I agree with paragraphs 107-109 of the s42A report, which discuss the effects on productivity.
55. Productivity effects are considered to be less than minor.

Natural Environment

56. I agree with paragraph 110 of the s42A report, which discusses the effects on the natural environment.
57. The applicant has proposed a range of measures to mitigate environmental effects (both in the original application and in the offered modifications). The applicant has also clarified in the offered modifications documents how contaminated material is, and can continue to be, appropriately managed at the wash-down facility. With these measures in place by way of suitably constructed consent conditions, I consider that the effects on the natural environment will be less than minor.

Property Values

58. I agree with paragraph 111 of the s42A report, which discusses the effects on property values.

Positive Effects

- 59. I agree with paragraph 112 of the s42A report, which discusses positive effects.
- 60. Positive effects are likely to be limited to the applicant.

Cumulative Effects

- 61. I agree with paragraphs 113-115 of the s42A report, which discuss cumulative effects.
- 62. Cumulative effects are considered to be minor.

Overall Effects Assessment

- 63. It is my overall opinion that the effects of the proposed activity will be less than minor, provided that the mitigation measures offered by the applicant are appropriately implemented.

Objectives and Policies

- 64. I address below the 2GP objectives and policies in which the s42A report has found the proposed activity to be inconsistent with.
- 65. Objective 6.2.3 and Policies 6.2.3.3, 6.2.3.9 and 6.2.3.10 relate to transportation matters. The s42A report has found that the proposed activity will be inconsistent with these objectives unless mitigation questions can be resolved.
- 66. The applicant has offered a range of transportation-related mitigation measures, which include improvements on Abbots Hill Road, manoeuvring controls, signage for drivers exiting the activity site, and the notification of neighbours in the event of any vehicles larger than the applicant's Hiab needing to access the activity site.
- 67. With the offered mitigation in mind, I consider that the proposed activity is not inconsistent with Objective 6.2.3 and Policies 6.2.3.3, 6.2.3.9 and 6.2.3.10.
- 68. Objective 6.2.4 and Policies 6.2.4.1 and 6.2.4.2 relate to loading, access and parking. The s42A report notes that while these issues are

not considered significant, the proposal is still inconsistent with these plan provisions.

69. The applicant has proposed manoeuvring controls to ensure that there will not be any reversing of vehicles onto Abbotts Hill Road. The applicant has also removed a region of outdoor storage from the proposal, which will allow more space on the site for vehicles to manoeuvre.
70. With the offered mitigation in mind, I consider that the proposed activity is not inconsistent with Objective 6.2.4 and Policies 6.2.4.1 and 6.2.4.2
71. Objective 17.2.1 seeks to enable lifestyle blocks and hobby farms and provide for a limited range of other compatible activities. Policy 17.2.1.1 seeks to enable farming, grazing and conservation.
72. The s42A report finds that the proposed activity is inconsistent with these plan provisions as the proposed activity is not seen as an activity that is compatible with the rural residential zones (by virtue of the non-complying activity status that is afforded to industrial activities in these zones).
73. The s42A report advises that working from home, which could be an, industrial activity, is considered to be a compatible land use if it is undertaken at a scale that is ancillary to productive rural uses and is compliant with zone performance standards. The report expands this to find that scale and effects management are a consideration in determining compatibility in the absence of direct policies that seek to avoid the activity being established. I agree with this.
74. In evaluating the information that was submitted with the original application, the s42A report concludes that as the proposed activity is at a greater intensity than that envisaged as a compatible working from home activity. The area of shed used for the activity is almost 50% greater than the permitted floor area within a building for working from home and the intensity of use will be greater as 5 employees are proposed. Potential effects in respect of noise, vibration, fumes, and lighting are also noted as being problematic in terms of compatibility.

75. Since circulation of the s42A report, the applicant has offered to modify the proposed activity. Mitigation measures to managed effects have been proposed (described above), the number of staff attending the site at any one time has been reduced, and a region of outdoor storage has been removed for the activity area. These modifications all serve to improve the compatibility of the proposed activity with the rural residential zone.
76. It is relevant to highlight that a working from home activity can include industrial activities. Furthermore, once a residential activity has been established at 124 Abbotts Hill Road, the proposed activity will fit the 2GP definition of a 'Rural Contractor and Transport Depots - Small Scale' activity.
77. As evaluated in the s42A report, scale and effects management are a consideration in determining compatibility. An industrial activity operating with 3 staff who all live on-site, and limited to an area of 100m² would be deemed to be a valid working from home activity. This activity is considered compatible with the rural residential zones. The proposed activity differs from a valid working from home activity in three ways-
 - (i) There is no existing residential activity on the property, and
 - (ii) The area used for the activity is 44m² larger than the required 100m² maximum, and
 - (iii) Up to 3 of the staff members working at the activity do not reside on-site.

Of the above differences, it is only the increase in activity area above the maximum 100m² size that I consider offends Objective 17.2.1 and Policy 17.2.1.1. The lack of an associated residential activity is a temporary situation, and the effects of having up to 3 staff members arriving to and leaving from the site can be mitigated as previously discussed. The shed will remain with a floor area of 144m².

78. It is my opinion that the proposed activity, with the modifications offered by the applicant, is inconsistent with Objective 17.2.1 and Policy 17.2.1.1, but only by a very small margin.
79. Objective 17.2.2 and Policies 17.2.2.3 and 17.2.2.4 seek to ensure minimise conflict between activities in rural residential zones and to maintain a good level of amenity on surrounding rural residential properties.
80. The s42A report has concluded that due to a number of adverse effects that have the potential to arise, the proposed activity is inconsistent with this objective and these policies.
81. I consider that the applicant has proposed sufficient appropriate mitigation, as described in the original application and the offered modification document, that conflict between activities at this location can be minimised, and that a good level of local amenity can be maintained. Accordingly, I consider that the proposed activity is not inconsistent with Objective 17.2.2 and Policies 17.2.2.3 and 17.2.2.4.
82. Objective 17.2.3 and Policy 17.2.3.1 seek to ensure the character and amenity of the rural residential zones are maintained. This includes maintaining and managing land for farming, grazing, conservation and rural residential activities.
83. Rural residential activities can legitimately include working from home activities (which themselves can include industrial activities). Accordingly, just like with Objective 7.2.1, I consider that scale and effects management are a consideration in determining compatibility when evaluating the proposed activity against Objective 17.2.3 and Policy 17.2.3.1.
84. With this in mind, and for the same reasons as I consider the proposed activity to be inconsistent with Objective 17.2.1 and Policy 17.2.1.1 (principally due to the area of the activity being larger than the maximum 100m² permitted of a working from home activity), I consider the proposed activity to also be inconsistent with Objective 17.2.3 and Policy 17.2.3.1. However, again I consider this margin to be small.

85. Objective 17.2.4 seeks to ensure the productive potential of the rural residential zones for lifestyle blocks or hobby farms is maintained.
86. The s42A report notes that the loss of this productive potential could also occur through the establishment of a permitted working from home activity, so the loss is considered to be a less than minor effect for the site. It notes also that when considered on a zone basis, the implications for productive potential are also minimal. Despite this, the s42A report has found that the proposed activity presents a slight inconsistency with Objective 17.2.4.
87. I understand the reasoning provided in the s42A report for its evaluation of Objective 17.2.4. However, the difference between the size of the proposed activity and that of a complying working from home activity (at 44m²) when measured in terms of productivity across a rural residential landholding, is in my view, negligible. I consider that the inconsistency of the proposed activity with Objective 17.2.4 is so small as to be inconsequential.
88. The consent decision for LUC-2022-237 provided an assessment of several 2GP objectives and policies that are relevant to this application, including Objectives 17.2.1, 17.2.3, and 17.2.4. Against all of these objectives, the decision for LUC-2022-237 found that the activity being assessed (an industrial activity in a rural residential zone) was entirely consistent.
89. The concluding paragraph of the objectives and policies assessment in LUC-2022-237 states:

“The proposal is consistent with these objectives and policies because, as noted in the effects assessment above, when assessed against the permitted baseline, the nature and scale of the proposed activities will be compatible with other activities that might occur as of right in a rural residential environment. Any reverse sensitivity issues, or adverse effects on the amenity of surrounding properties and public spaces and on the health of people, will be no more than minor; and there will be no effect on the character and amenity of the zone ... Adverse effects on the

safety and efficiency of the transport network will be no more than minor.”

90. The approach taken by LUC-2022-237 is suggestive that provided the nature and scale of activities in the rural residential zone are comparable to activities that might occur as of right, and provided that any adverse effects are appropriately managed, then it is possible to achieve consistency with the relevant objectives and policies.
91. Applying this approach to the application at hand, where the nature and scale of the activity is reasonably comparable to a working from home activity, and where the applicant has proposed a range of mitigation measures to appropriately manage potential adverse effects, it would seem that the proposed activity might similarly be held to be consistent with the relevant objectives and policies.
92. I stop short of stating that the proposed activity is consistent with the assessed objectives and policies (I consider the proposed activity to be just shy of this), however the decision issued for LUC-2022.237 is particularly useful at highlighting the importance of the permitted baseline and effects mitigation considerations when evaluating proposed activities against relevant objectives and policies, particularly where the activity in question is similar to other activities that are considered compatible with the local environment.

Decision Making Framework

93. I agree with paragraphs 134-138 of the s42A report, relating to the s104D tests. I consider that the applicant has offered an appropriate level of mitigation for the potential adverse effects that have been identified. I consider that both limbs of s104D are satisfied by the proposed activity.
94. Regarding paragraph 139 of the s42A report, I agree with this discussion. I also consider that the applicant has since provided sufficient information, as detailed in the applicant's offered modifications document, to enable the Panel to have greater certainty about the effects of the proposed activity on road safety.

95. I agree with the statements made in paragraphs 140-143 of the s42A report.
96. Paragraphs 144-148 consider the matters of true exception and precedent. In paragraph 146, the reporting planner has concluded that the proposed activity does represent a potential challenge to the integrity of the proposed District Plan. If consent is granted, it is suggest that this could result in other similar applications being made to use rural residential land for small scale industrial activities where there is no residential activity initially established.
97. The report goes on to state, in paragraph 147, that if the proposal had been for a working from home activity with an additional employee, then the precedent issues may not have been as pronounced. It is also recognised that the applicant has offered to establish a residential activity with 30 months but there will no residential activity when operation commences and up to 5 employees are proposed.
98. Since the s42A report was circulated, the applicant has proposed a number of modifications to the activity. These include reducing the area of outside storage, a reduction in the number of attending staff member from 5 to 3, and a range of mitigation measures to address concerns over potential adverse effect. The result of these changes is that the scale and nature of the proposal activity is now considerable closer to the scale and nature of a permitted working from home activity. I consider that the modifications offered by the applicant meaningfully reduce the opportunity for an undesirable precedent to be set by the granting of this consent.
99. The consent decision for LUC-2022-237 considers the matter of precedent. Page 12 of that decision states-

“Section 104(1)(c) of the Resource Management Act 1991 requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application. The matters of precedent and Plan integrity are considered potentially relevant here. These issues have been addressed by the Environment Court, starting with Russell v Dunedin City Council

C092/03, where the case law directs the Council to consider whether approval of a non-complying activity will create an undesirable precedent. Where a plan's integrity is at risk by virtue of such a precedent, the Council is required to apply the 'true exception test'. This is particularly relevant where the proposed activity is contrary to the objectives and policies of the district plan and/or the proposed district plan.

However, subsequent case law indicates that the importance of plan integrity and precedent will vary, depending on things such as the nature of the district plan itself, and the local environment in which an activity is proposed (refer Dye v Auckland Regional Council, CA86/01).

In this case, the proposal has been found to be consistent with the policy direction anticipated by both district plans, and consideration of the matter of precedent is not considered necessary.

Nevertheless, for the avoidance of doubt, it is discussed here anyway, as follows:

The proposal is non-complying because, in the absence of a more fitting land use classification, the proposal is deemed to be most akin to a rural contractor depot, which is an industrial activity. While the 2GP does not provide for industrial activities being carried out in rural residential zones, in this instance, the proposed activity has been found to be benign in its potential effects; and is supported by a strong permitted baseline. Accordingly, it is considered that approval of the application will not undermine the integrity of the either the Operative District Plan or the Proposed 2GP."

100. The above statement is highly relevant to the application at hand. I consider that the proposed activity is akin to a rural contractor depot. I also consider that the proposed activity is also benign in its potential effects (provided that the propose mitigation is implemented), and that the activity is supported by a strong permitted baseline. Accordingly, the precedent evaluation for LUC-2022-237, which employs the principles established in *Dye v Auckland Regional Council*, is in my

view, directly applicable to the current consent application. LUC-2022-237 held that approval of that application would not undermine the integrity of either the Operative District Plan or the Proposed 2GP, and it is my view that approval of the current application will similarly not undermine the integrity of either Plan.

Conclusion

101. I consider that the proposed activity is comparable to a complying working from home activity, and that this is the appropriate permitted baseline activity against which that proposed activity can be measured.
102. I consider that the mitigation measures proposed by the applicant will appropriately manage any potential adverse effects from the proposed activity, and that overall, the effects will be minor.
103. I consider that the proposed activity is broadly consistent with the relevant objectives and policies of the 2GP, and that where several inconsistencies might exist, that these are particularly slight.
104. I consider that the evaluations undertaken in the consent granted under LUC-2022-237 are particularly relevant to this application.
105. I consider that the application passes both s104D tests, and that granting of the sought consent will not result in an undesirable precedent being established.
106. Overall, I consider that there is scope for the Panel to grant consent to the proposed activity.

Date: 23 February 2023

Kurt Bowen

Appendix A: Decision for LUC-2022-237

26 August 2022

Mr Andrew Lonie and Ms Sarah Goldsmith
3 Corsall Street
Upper Junction
R D 2
Waitati 9085

Via email: goldsmith.lonie@gmail.com

Dear Andrew and Sarah

RESOURCE CONSENT APPLICATION:

**LUC-2022-237
3 CORSALL STREET
UPPER JUNCTION**

Your application for resource consent was processed on a non-notified basis in accordance with sections 95A to 95G of the Resource Management Act 1991. The application was considered by a senior planner under delegated authority on 26 August 2022.

The Council has granted consent to the application with conditions. The assessment of the application, including the reasons for the decision, is set out in the report attached to this letter. The consent certificate is attached to the rear of this letter.

Please note that the processing of this application could not be completed within the 20 working day time limit prescribed under section 115 of the Resource Management Act 1991. The time limits for the processing of this consent have been extended pursuant to sections 37A(2)(a) and 37A(4)(b)(ii) of the Resource Management Act 1991.

The consent certificate outlines the conditions that apply to your proposal. Please ensure that you have read and understand all of the consent conditions.

You may object to this decision or any condition within 15 working days of the decision being received, by applying in writing to the Dunedin City Council at the following address:

Senior Planner - Enquiries
Dunedin City Council
PO Box 5045
Dunedin 9054

You may request that the objection be considered by a hearings commissioner. The Council will then delegate its functions, powers and duties to an independent hearings commissioner to consider and decide the objection. Please note that you may be required to pay for the full costs of the independent hearings commissioner.

Alternatively, there may be appeal rights to the Environment Court. Please refer to section 120 of the Resource Management Act 1991. It is recommended that you consult a lawyer if you are considering this option.

You will be contacted in due course if you are due a partial refund or you have to pay additional costs for the processing of your application.

Please feel free to contact me if you have any questions.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'K. Bain', with a large, stylized flourish at the end.

Karen Bain
Planner

APPLICATION LUC-2022-237: 3 CORSALL STREET, UPPER JUNCTION

Department: Resource Consents

DESCRIPTION OF ACTIVITY

Resource consent is sought to use existing farm buildings and yard areas within the property at 3 Corsall Street as a depot and storage facility for conservation activities to be undertaken off-site. No physical works or development is proposed within the subject site. The proposed land use will remain secondary to the principal use of the property by the applicants as a residence.

The property will be used as an arrival and departure point by up to 13 workers, generally from Monday to Friday, between the hours of 8:00 am and 5:00 pm. It is anticipated that workers will arrive at the beginning of the day to collect equipment, and then depart to other sites to undertake native planting and predator control activities, before returning to unpack and depart at the end of the day. On occasion, workers may remain on-site for longer periods during the day, to maintain or sort equipment. These activities might entail light power tool or hand tool use. Heavy power tools will not be used on site, and will be maintained/tested offsite by service agents.

On most days, a maximum of four vehicles will arrive at the beginning of the day and depart at the end of the day, and no more than four worker vehicles will be parked on site during the day.

In addition to these activities, on up to 25 days per year, a maximum of ten volunteers might arrive on site to meet prior to departing for a conservation activity at another site. The numbers of vehicles parked, arriving and departing on any given day will not exceed the numbers detailed above, as volunteers will be required to park off-site on road reserve.

In an email dated 27 July 2022, Mr Andrew Lonie provided updated application documentation, including an amended site plan. The updated information notes that the accessway along the north-east side boundary of the site is no longer to be used as part of the proposal.

The subject site is legally described as Lot 1 Deposited Plan 21683 (held in Record of Title OT13B/956).

REASONS FOR APPLICATION

Dunedin currently has two district plans: the Operative Dunedin City District Plan 2006 (the “Operative 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.

Similarly, Variation 2 of the Proposed Plan was notified on 4 February 2021. Decisions were released on 31 May 2022 and most of the associated changes are now fully operative.¹ This application was lodged prior to the decisions being released however, and consequently, pursuant to section 88A of the Resource Management Act 1991, the rules of Variation 2 have no relevance when *determining the activity status* of the application. 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.

¹ The provisions that affect sites that contain a pre-1940s building and where intensification changes were proposed through Variation 2 have been appealed. Consequently, while these provisions have legal effect, they will not be fully operative until the appeal is resolved or withdrawn. The provisions are not relevant to the current application in any case.

Operative District Plan

The subject site is zoned **Rural**.

The relevant Rural zone rules set out in Section 6.5 of the Operative District Plan are deemed inoperative and have been replaced by rules in the Proposed 2GP (Section 6: Transportation, Section 9: Public Health and Safety, and Section 15: Rural Residential Zones).

Proposed 2GP

The subject site is zoned **Rural Residential 1**, and is subject to the following overlays:

- High Class Soils mapped area
- Flagstaff-Mt Cargill Significant Natural Landscape overlay zone.

Corsall Street and Cleghorn Street are classified as local roads in the road classification hierarchy.

Land Use Activity

The proposed use of the subject site as a depot and storage facility for an off-site conservation activity is not readily defined in the 2GP land use classifications. It is not considered to be a "Conservation" activity, as this requires that the activity be occurring on the subject site.

In the absence of a more fitting land use classification, the proposal is deemed to be most akin to a rural contractor depot, which is an Industrial activity. "Rural Contractor and Transport Depots", "Industry" and "Industrial activities" are defined in the 2GP as:

Rural Contractor and Transport Depots

The use of land and buildings as a depot for rural contractor and transport services. Examples of rural contractor and transport services are:

- *fencing*
- *crop harvesting*
- *rural drainage; and*
- *stock transport services.*

For the sake of clarity, this includes the storage, maintenance, repair and refuelling of the vehicles, machinery and other materials associated with these activities as well as the administration and dispatch of workers.

This definition excludes any retailing of farm equipment or other heavy machinery, which is defined as yard based retail.

...

Industry

The use of land and buildings for any of the following:

- *manufacturing, assembly, processing, storage, repair, maintenance, and packing of goods and materials, including machinery or vehicles*
- *transport facilities including distribution centres, collection points, courier depots and bus depots (except where passengers are picked up or dropped off)*
- *depots for the storage and dispatch of vehicles, equipment, and/or materials, and the administration and dispatch of workers using these in the field*
- *bulk fuel storage facilities*
- *laboratory or factory-based research*
- *waste management facilities including refuse transfer and recycling stations*
- *property and equipment maintenance services*
- *vehicle repair and testing stations; and*

- *wholesale.*

...

The following activities are managed as sub-activities of industry:

- *industrial ancillary tourism*
- *rural contractor and transport depots; and*
- *rural industry.*

Industrial Activities

The category of land use activities that consists of industry including industrial ancillary tourism, rural industry and rural contractor and transport depots, which are sub-activities of Industry.

Rule 17.3.3.25.c determines that industrial activities in the Rural Residential zones and within a Significant Natural Landscape Overlay are a **non-complying** activity. The relevant assessment rules are 17.12.2.1, 6.13.2.1 and 9.8.3.1.

Residential activity on the subject site is a non-complying activity under Rule 17.5.2.2 due to the small size of the property. However, it is noted this existing land use was lawfully established prior to the Operative and Proposed District Plans. Under the zoning and rule provisions of the preceding District Scheme for this locality, residential activity on a separate certificate of title was a permitted activity. As there is no evidence the effects of the residential land use have changed since the current plans came into force, it is accepted that existing use rights continue to apply for the current land use. No further consideration will therefore be given to the existing residential land use in this report.

Development Activity

There is no development proposed as part of this proposal.

City-wide Provisions

While the subject site is within the Flagstaff-Mt Cargill Significant Natural Landscape overlay zone, no physical works or development are proposed, and therefore no rules from Section 10: Natural Environment are triggered.

National Environmental Standards

There are no National Environmental Standards relevant to this application.

Overall Status

Where an activity requires resource consent under more than one rule, and the effects of the activity are inextricably linked, the general principle from case law is that the different components should be bundled and the most restrictive activity classification applied to the whole proposal.

As discussed above, the relevant Rural zone rules set out in Section 6.5 of the Operative District Plan are deemed inoperative and have been replaced by rules in the Proposed 2GP (Section 6: Transportation, Section 9: Public Health and Safety, and Section 15: Rural Residential Zones). Accordingly, the activity status for the proposal is assessed on the basis of the Proposed 2GP, and is a **non-complying activity**.

WRITTEN APPROVALS AND EFFECTS ASSESSMENT

Affected Persons

No affected persons forms were submitted with the application. No person or party is considered to be adversely affected by the activity. This is because the environmental effects of the proposal are limited to effects on parties that are less than minor.

Particular regard was had to potential adverse effects on the immediately adjoining property at 7 Corsall Street. As detailed in the effects assessment below, the proposed activity was found to compare favourably with the baseline of activities that could occur on the site as of right. Having regard to the further information submitted by the applicant, including modification of the original proposal with regard to access, the adverse effects on 7 Corsall Street were therefore deemed to be less than minor.

Effects on the Environment

Permitted Baseline

Under sections 95D(b) and 104(2) of the Resource Management Act 1991, the Council may disregard an adverse effect of the activity on the environment if the district plan or a national environmental standard permits an activity with that effect. In this situation, a number of activities are permitted within properties that are within both the Rural Residential 1 zone and a Significant Natural Landscape Overlay Zone (subject to performance standards). These activities are:

- Domestic animal boarding and breeding (not including dogs)
- Farming
- Grazing
- Rural ancillary retail
- Standard residential activity
- Working from home
- Community and leisure – small scale
- Conservation
- Stand-alone car parking (a commercial activity)

Given the nature of the proposed activity, stand-alone carparking is considered to be particularly relevant. This is defined in the 2GP as:

The use of land or buildings for the short or long term lease or hire of car parks that are not provided as parking ancillary to another activity on-site. Examples are:

- *free public car parking*
 - *sites used entirely for car parking as the primary activity on the site; and*
 - *letting of more than 2 excess car parks on a site that are not required by the activity on the site.*
- Stand-alone car parking is an activity in the commercial activities category.*

These permitted activities are considered to comprise a helpful baseline against which to assess the proposal.

Receiving Environment

The existing and reasonably foreseeable receiving environment is made up of:

- The existing environment and associated effects from lawfully established activities;
- Effects from any consents on the subject site (not impacted by proposal) that are likely to be implemented;
- The existing environment as modified by any resource consents granted and likely to be implemented; and
- The environment as likely to be modified by activities permitted in the district plan.

For the subject site, the existing and reasonably foreseeable receiving environment is described in the application as follows:

The site comprises a rectangular shaped corner parcel of land which has a frontage of approximately 61 metres to Corsall Street, with 100 metres to Cleghorn Street, with the title denoting a total land

area of 6117m². It is located approximately 8 kilometres from the city centre. The parcel of land slopes gently downwards in a westerly direction. The site is a lifestyle block with a private dwelling close to the south corner of the parcel, and a linear series of three farm buildings, parallel to the north east boundary and set back about 10 metres from it. On the north east side of the two buildings closer to Corsall St, an old driveway, and a bank with recent native planting further separates the buildings from the boundary with 7 Corsall St. ...

Current use of the site is residential only and vehicle movements / off street parking on site are in accordance with this. The central of the three farm buildings is used occasionally for light power tool/workshop purposes, and the owners' vehicle is normally parked in the farm building closest to Corsall St.

For adjacent land, the existing and reasonably foreseeable receiving environment comprises an enclave of rural residential properties on the hilltops near Upper Junction, to the east of North Road.

Assessment Matters/Rules

Consideration is required of the relevant assessment matters in the Operative District Plan and the relevant assessment rules in the Proposed 2GP, along with the matters in any relevant national environmental standard. In carrying out this assessment, no regard has been given to any trade competition or any effects of trade competition.

1. Compatibility with Zone (2GP Assessment Rule 17.12.2.1)

The 2GP anticipates that lifestyle block, hobby farms and associated residential activities will occur in the rural residential zones. A number of other compatible activities are also anticipated, where their effects can be adequately mitigated.

As noted in the activity status section above, the proposed use of the site as a depot and storage facility for conservation activities to be undertaken off-site, is to be assessed as an Industrial activity.

The application advises that the subject site will be an arrival and departure point for up to 13 workers, and anticipates that workers will arrive at the beginning of the work day to check / pick up gear, and then depart to other sites, returning to the site to unpack and depart at the end of the day. At times workers might be present during the day for longer periods, using the existing buildings within the property to maintain or sort gear.

In terms of potential effects on the wider environment, the application suggests:

...the proposed activity does not involve the building of any structures or installation of any signage, fencing or lighting. The proposed activity involves small groups of people arriving, departing, and being on site to plan and gather equipment for conservation related activities. This is entirely consistent with "lifestyle block" type activities that currently occur in the area.

Noting that the baseline provides for working from home activities and stand-alone parking, I agree with the applicant's assessment, and consider that the nature and scale of the proposed activities will be in compatible with other activities that might occur as of right in a rural residential environment.

2. Reverse Sensitivity / Amenity of Surrounding Properties / Health of People (2GP Assessment Rules 17.12.2.1 and 9.8.3.1)

The 2GP seeks to ensure that the potential for conflict between activities within the rural residential zones, and between activities within the rural residential zones and adjoining residential zones, is minimised through measures that reduce the potential for reverse sensitivity, and ensure a good level of amenity on surrounding properties and public spaces. Adverse effects from noise on the health of people are to be avoided.

The application advises that existing buildings will be used, without extending or altering them in any way, and any items stored will be kept inside these buildings. As such, it suggests:

...there will be no shading, loss of outlook or building dominance effects. The only loss of privacy to consider, would be loss of privacy to the applicants themselves at 3 Corsall St. This has been considered by the applicants and is mitigated by established trees and plantings that separate the house and garden from the buildings/parking areas of the proposed activity.

...

The proposed activity would only generate minimal noise (for example small groups of people arriving, passenger vehicle engines, moving around of light storage items and hand tool / light power tool use. No offensive odours or particulates will be generated. Heavy power tool use / testing would not occur on site.

It concludes that any adverse effects on people and neighbouring properties will be minimal.

With regard to reverse sensitivity, in my view no such issues arise in association with the proposed activity, because the majority of activities associated with the proposal (i.e. the conservation activities) will occur off site. There might be workers remaining on site to carry out maintenance work on tools and equipment, but the applicant has confirmed that this will essentially be limited to hand tools. Larger powered equipment will be serviced off site. This maintenance work is therefore not considered to be a sensitive activity, and these workers are unlikely to be disturbed by any lawful activities occurring in the surrounding environment.

In terms of the amenity of surrounding properties, a matter commonly associated with adverse effects on amenity is noise. In this instance, in the morning there will be noise associated with vehicles arriving, and preparation and loading up of work vehicles. In the evening, there will be noise from workers returning, unloading equipment and departing the site. Sometimes during the day, there might be noise from workers maintaining or repairing tools and equipment.

In terms of noise associated with vehicles and workers coming and going, this is expected to be very limited in intensity and duration. Taking into account the permitted baseline, there are a number of permitted activities that could be expected to have multiple vehicle movements associated with them. For example, domestic animal boarding and breeding, rural ancillary retail, working from home, community and leisure – small scale, and stand-alone car parking. In my view, the proposed maximum of four vehicles arriving and departing each day compares favourably with these permitted activities. Overall, the noise effects from activity will be less than minor.

It is noted that a performance standard for hours of operation applies to a number of these permitted activities (refer to Rule 17.5.4). This rule requires that (for rural ancillary retail, and working from home activities) customers and/or deliveries must not arrive before 7am or depart after 7pm.

The application indicates that hours of operation will be Monday to Friday, between the hours of 8am and 5pm. The activity must be undertaken in general accordance with the details included with the application (refer to consent condition 1). A specific consent condition to specify hours of operation is not considered necessary, bearing in mind the permitted activities in this environment, and the fact the 2GP appears to provide for more permissive hours of operation for permitted activities in this zone.

With regard to impacts on amenity from noise associated with the maintenance of tools and equipment, such noise is considered unlikely to be greater than that associated with day to day life on a rural residential lifestyle property, where noises associated with working the land (farm machinery, ride-on mowers, chainsaws etc), or a resident tinkering in their man cave, are to be expected. Given the information from the applicant about scope of maintenance work to be

undertaken on site, the noise associated with this aspect of the proposal is likely to be less than noise of permitted activities expected to occur in this environment.

Overall, it is considered that any reverse sensitivity issues, or adverse effects on the amenity of surrounding properties and public spaces, and on the health of people, will be no more than minor.

3. **Character and Amenity of the Rural Residential Zones (2GP Assessment Rule 17.12.2.1)**

Consideration of the extent to which the character and amenity of this rural residential zone will be maintained is appropriate.

The site is within the Flagstaff – Mt Cargill Significant Natural Landscape overlay zone, which is described in 2GP Appendix A3.3.2 as follows:

This Significant Natural Landscape covers the hills to the north of urban Dunedin including Flagstaff (Whānau-paki), Swampy Summit (Whawha-raupō), and the lower slopes of Mount Cargill (Kapaketaumahaka), below the Mt Cargill ONL, to Signal Hill. The geology is largely volcanic and the hills reach elevations of 739 metres (Swampy Summit). The area is the catchment for numerous small rivers and streams, most notably the Waitati River, Water of Leith and Lindsay Creek.

Land cover/land use is a mix of remnant indigenous vegetation (forest and grassland), agriculture, forestry, rural residential development and exotic scrub. The main northern approaches to Dunedin traverse these hills and the hills provide the northern backdrop to the city and the west harbour, as well as the southern backdrop to the Blueskin Bay area. The area is host to a number of utility structures, as well as quarries.

The peaks are a cultural identity marker for Manawhenua and are identified as a wāhi tūpuna.

The application notes that the proposed activity does not involve the building of any structures, nor the installation of any signage, fencing or lighting; and suggests that there will be no effect on the built environment or the landscape.

I concur with this assessment on the basis that no physical development is proposed, and consider that any effects on the character and amenity of this zone (and on the landscape values of the Flagstaff – Mt Cargill Significant Natural Landscape overlay zone) will be negligible.

4. **Productive Potential (2GP Assessment Rule 17.12.2.1)**

The productive potential of the rural residential zones for lifestyle blocks or hobby farms is to be maintained; and land use activities in a high class soils mapped area are allowed only where any adverse effects on high class soils are avoided or, if avoidance is not practicable, are no more than minor.

While the subject site is within a high class soils mapped area, no earthworks, or physical works of any kind, are proposed. As such, any adverse effects on high class soils or the productive potential of the underlying zone will be non-existent.

5. **Safety and Efficiency of the Transport Network (2GP Assessment Rules 6.13.2.1 and 17.12.2.1)**

The application provides the following assessment of effects on the transportation network:

Neighbours may observe a slight increase in traffic arriving and leaving Corsall Street. This is estimated to generally be a maximum of 8 vehicle movements per day, will happen on weekdays and principally at the beginning and end of normal working day hours, and on many weekdays will be less due to workers travelling directly to field work sites. A few days per year there may be a greater number of vehicle movements, but this will never exceed 8 vehicles arriving at the beginning of the working day and 8 vehicles leaving at the end. A reasonable

level of traffic activity occurs on Cleghorn and Corsall Street at these times currently. The effect here would be minimal to minor. The effect will be minimised by using carpooling as much as possible.

There will be no effect on parking as all parking related to the activity will occur on private land at 3 Corsall St. Landscape Connections Trust vehicles are light passenger vehicles / utility vehicles and these will not impact on local pedestrian safety, nor be vehicles of a size that would impede other vehicles when passing on Cleghorn or Corsall St.

It concludes that any adverse effects will be minimal.

The application was referred to the DCC Transport Department for assessment. The graduate planner – transport, Mr Reese Martin, has considered the application and advised:

Transport Network

Cleghorn and Corsall Street are Local Roads, accessed from North Road which is classified as an Arterial Road. Corsall Street appears to be sealed from North Road for a distance of approximately 16m where the formation transitions away from North Road, at which point it transitions to an unsealed metalled surface. The surface slopes up gradually away from the road with both streets having an approximate formed width of 3.7m. According to RAMM, estimated traffic volumes on the initial section of Cleghorn Street are 50 ADT reducing to 20 ADT along Corsall Street adjacent to the subject site.

Access

Access to the site will largely remain unchanged as a result of the proposal, continuing to be accessed via an existing formed metalled/gravelled driveway onto the metalled Corsall Street. Upon reviewing DCC Aerial Imagery it appears that the existing unsealed vehicle crossing is long existing and is therefore acceptable to Transport.

Parking and Manoeuvring

Rule 6.6.1.5 requires parking areas that are provided for any activity other than standard residential to be hard surfaced and permanently marked. Two areas are proposed to be utilised as places for on-site car parking to occur, generally on vacant, clear areas within the site and in between the existing farm buildings.

...

On the basis that the site will be only used by staff and infrequently by volunteers, acknowledging its rural nature, and the informal nature of the proposed car parking areas and noting that both Cleghorn and Corsall Street are unsealed, Transport does not require that the parking area to be hard surfaced (despite the requirements of Rule 6.6.1.5.a.ii).

However, this particular matter in combination with the usage of on-street verges should be subject to a review condition so that the usage of the parking area is acceptable for ongoing safe and efficient use, in perpetuity and the proposed parking on North Road does not result in any effects on the safety and efficiency of North Road. ...

Subject to the above, the parking and manoeuvring arrangements are assessed as being acceptable to Transport.

Generated Traffic

We note that the full scale of traffic generated as a result of the proposal is unclear, however Transport understands that typically, no more than 4 vehicles will arrive and depart at the beginning and end of the day, resulting in a total of 8 vehicle movements per day (vpd). The application notes that on a few days of the year a maximum of 8 vehicles may arrive and depart at the beginning and end of the day, on the expectation that no more than 4 vehicles will be parked on site during the day with up to 4 vehicles travelling to and from the various field sites,

the proposed activity will result in a maximum traffic generation of 24 vpd. It is also acknowledged that any increased usage of the site or traffic generated by volunteers is mitigated by vehicles being parked on North Road, not exceeding the maximum anticipated generation and therefore does not form part of this analysis. The applicant also notes that the anticipated traffic generation will also be mitigated by Staff traveling directly to field work sites.

It is noted that the number of vehicle movements from a single activity could be difficult to monitor and would likely need to be reliant on self-reporting by the applicant. The DCC Code of Subdivision states that 8-10 vehicle movements per day per residential unit are anticipated on rural and rural residential Lots. As the applicant lives on site, the proposed activity effectively increases the anticipated amount of movements from 8-10 to a maximum of 34. Although it is noted that the provision of living on site acts to mitigate the number of vehicle movements to some degree from not being required to travel to the site, however the significance of this is unknown, and we therefore place little weight on this component.

As noted above, according to RAMM, Cleghorn Street has an estimated ADT of 50, reducing down to an estimated 20 ADT along Corsall Street. It is noted that an additional 34 vpd may have some noticeable effect on both Cleghorn and Corsall Street but only due to the fact that both of these roads carry a reasonably small amount of traffic. Transport also acknowledges that the proposed activity is unlikely to reach this maximum of anticipated usage and potential conflict between other road users is also likely to be low.

Therefore, on the basis that the proposed activity is unlikely to result in any significant increase in vehicle traffic and can be mitigated by the low frequency of peak usage and carpooling to and from the site, it is considered that the effects of the traffic generated as a result of this proposal will be no more than minor.

Mr Martin has concluded that any effects on the transportation network will be less than minor, subject to the inclusion of a review condition to enable consideration of any effects on the network.

Mr Martin's advice in respect of the potential for issues associated with overspill parking is noted, and his suggestion of a review condition is accepted. I am also mindful of his advice that the proposed activity is unlikely to result in any significant increase in vehicle traffic. As noted under (2) above, a number of permitted activities could have multiple vehicle movements associated with them (such as domestic animal boarding and breeding, rural ancillary retail, working from home, community and leisure – small scale, and stand-alone car parking), and movements associated with the proposed activity are anticipated to be minor in comparison.

Overall, taking Mr Martin's advice, permitted baseline effects, and the proposed conditions of consent into account, it is considered that any adverse effects on the safety and efficiency of the transport network will be less than minor.

NOTIFICATION ASSESSMENT

Public Notification

Section 95A of the Resource Management Act 1991 sets out a step-by-step process for determining public notification. Each step is considered in turn below.

Step 1: Mandatory public notification in certain circumstances

- Public notification has not been requested.
- There has been no failure or refusal to provide further information.
- There has been no failure to respond or refusal to a report commissioning request.

- The application does not involve the exchange of recreation reserve land.

Step 2: If not required by Step 1, public notification precluded in certain circumstances

- There are no rules or national environmental standards precluding public notification.
- The application does not involve: a controlled activity, nor a boundary activity. As a result, public notification is not precluded under Step 2.

Step 3: If not precluded by Step 2, public notification required in certain circumstances

- There are no rules or national environmental standards requiring public notification.
- The activity will not have, or be likely to have, adverse effects on the environment that are more than minor.

Step 4: Public notification in special circumstances

- There are no special circumstances that warrant the application being publicly notified. There is nothing exceptional or unusual about the application that makes public notification desirable.

Limited Notification

Section 95B of the Resource Management Act 1991 sets out a step-by-step process for determining limited notification. Each step is considered in turn below.

Step 1: Certain affected groups and affected persons must be notified

- The activity is not in a protected customary rights area; the activity is not an accommodated activity in a customary marine title area; and, the activity is not on or adjacent to, or might affect, land that is the subject of a statutory acknowledgement.

Step 2: If not required by Step 1, limited notification precluded in certain circumstances

- There are no rules or national environmental standards precluding limited notification.
- The application does not involve a controlled activity that is not a subdivision.

Step 3: If not precluded by Step 2, certain other affected persons must be notified

- The application does not involve a boundary activity.
- There are no persons where the activity's adverse effects on the person are minor or more than minor (but are not less than minor).

Step 4: Further notification in special circumstances

- There are no special circumstances that warrant the application being limited notified. There is nothing exceptional or unusual about the application that makes limited notification to any other persons desirable.

SUBSTANTIVE DECISION ASSESSMENT

Effects

In accordance with section 104(1)(a) of the Resource Management Act 1991, the actual and potential adverse effects associated with the proposed activity have been assessed and outlined above. It is considered that the adverse effects on the environment arising from the proposal are no more than minor.

Offsetting or Compensation Measures

In accordance with section 104(1)(ab) of the Resource Management Act 1991, there are no offsetting or compensation measures proposed or agreed to by the applicant that need consideration.

Objectives and Policies

In accordance with section 104(1)(b) of the Resource Management Act 1991, the objectives and policies of the Operative District Plan and the Proposed 2GP were taken into account when assessing the application.

Operative District Plan

The proposal is considered to be consistent with the following objectives and policies:

- **Objective 6.2.2 (Rural Zones Section)**, which seeks to maintain and enhance the amenity values associated with the character of the rural areas.
- **Objective 6.2.3 and Policy 6.3.8 (Rural Zones Section)**, which seek to provide for rural residential development in a sustainable manner; and ensure the sustainable management of public services and infrastructure, and the safety and efficiency of the roading network.
- **Objective 20.2.2 and Policies 20.3.4 and 20.3.5 (Transportation Section)**, which seek to ensure that land use activities are undertaken in a manner which avoids, remedies or mitigates adverse effects on the transportation network.

Proposed 2GP

The proposal is considered to be consistent with the following Proposed 2GP objectives and policies:

- **Objective 6.2.3 and Policies 6.2.3.4 and 6.2.3.9 (Transportation Section)**, which seek to ensure that land use, development and subdivision activities maintain the safety and efficiency of the transport network for all travel methods.
- **Objective 6.2.4 and Policies 6.2.4.1 and 6.2.4.2 (Transportation Section)**, which seek to ensure that parking areas, loading areas and vehicle accesses are designed and located to provide for the safe and efficient operation of both the parking or loading area and the transport network; and facilitate the safe and efficient functioning of the transport network and connectivity for all travel modes.
- **Objective 9.2.2 and Policy 9.2.2.1 (Public Health and Safety Section)**, which seek to ensure that land use, development and subdivision activities maintain or enhance people's health and safety; and that activities are designed and operated to avoid adverse effects from noise on the health of people or, where avoidance is not practicable, ensure any adverse effects would be insignificant.
- **Objective 17.2.1 (Rural Residential Zones Section)**, which seeks to ensure that the rural residential zones enable lifestyle blocks, hobby farms and associated residential activities as the appropriate place in the rural environment for these to occur, and provide for a limited range of other compatible activities.
- **Objective 17.2.2 (Rural Residential Zones Section)**, which seeks to ensure that the potential for conflict between activities within the rural residential zones, and between activities within the rural residential zones and adjoining residential zones, is minimised through measures that ensure the potential for reverse sensitivity is minimised; and a good level of amenity on surrounding rural residential properties, residential zoned properties and public spaces.

- **Objective 17.2.3 (Rural Residential Zones Section)**, which seek to ensure that the character and amenity of the rural residential zones are maintained, elements of which include a high presence of natural features such as trees, bush, gully systems and water bodies; a semi-rural level of development, with a higher proportion of open space and lower density of buildings than in urban areas; and land maintained and managed for farming, grazing, conservation and rural residential activities.
- **Objective 17.2.4 and Policy 17.2.4.2 (Rural Residential Zones Section)**, which seek to ensure that the productive potential of the rural residential zones for lifestyle blocks or hobby farms is maintained.

Objectives and Policies Assessment

Decisions on the Proposed 2GP have been released and none of the objectives and policies above are the subject of current appeals. Accordingly, when considering this proposal, greater weight has been given to the objectives and policies of the Proposed 2GP, although the proposal is consistent with both district plans in any case.

The proposal is consistent with these objectives and policies because, as noted in the effects assessment above, when assessed against the permitted baseline, the nature and scale of the proposed activities will be compatible with other activities that might occur as of right in a rural residential environment. Any reverse sensitivity issues, or adverse effects on the amenity of surrounding properties and public spaces and on the health of people, will be no more than minor; and there will be no effect on the character and amenity of the zone or the landscape values of the Flagstaff – Mt Cargill Significant Natural Landscape overlay zone. Adverse effects on the safety and efficiency of the transport network will be no more than minor.

Other Matters

Section 104(1)(c) of the Resource Management Act 1991 requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application. The matters of precedent and Plan integrity are considered potentially relevant here. These issues have been addressed by the Environment Court, starting with *Russell v Dunedin City Council* C092/03, where the case law directs the Council to consider whether approval of a non-complying activity will create an undesirable precedent. Where a plan's integrity is at risk by virtue of such a precedent, the Council is required to apply the 'true exception test'. This is particularly relevant where the proposed activity is contrary to the objectives and policies of the district plan and/or the proposed district plan.

However, subsequent case law indicates that the importance of plan integrity and precedent will vary, depending on things such as the nature of the district plan itself, and the local environment in which an activity is proposed (refer *Dye v Auckland Regional Council*, CA86/01).

In this case, the proposal has been found to be consistent with the policy direction anticipated by both district plans, and consideration of the matter of precedent is not considered necessary. Nevertheless, for the avoidance of doubt, it is discussed here anyway, as follows:

The proposal is non-complying because, in the absence of a more fitting land use classification, the proposal is deemed to be most akin to a rural contractor depot, which is an industrial activity. While the 2GP does not provide for industrial activities being carried out in rural residential zones, in this instance, the proposed activity has been found to be benign in its potential effects; and is supported by a strong permitted baseline. Accordingly, it is considered that approval of the application will not undermine the integrity of the either the Operative District Plan or the Proposed 2GP.

Section 104D

Section 104D of the Resource Management Act 1991 specifies that resource consent for a non-complying activity must not be granted unless the proposal can meet at least one of two limbs. The limbs of section 104D require that the adverse effects on the environment will be no more than minor, or that the proposal will not be contrary to the objectives and policies of both the district plan and the proposed district plan. It is considered that the proposal meets both limbs as any adverse effects arising from this proposed activity will be no more than minor, and the activity will not be contrary to the objectives and policies of both the Operative District Plan and the Proposed 2GP. Therefore, the Council can exercise its discretion under section 104D to grant consent.

Part 2

Based on the findings above, it is evident that the proposal would satisfy Part 2 of the Resource Management Act 1991. Granting of consent would promote the sustainable management of Dunedin's natural and physical resources.

RECOMMENDATION

After having regard to the above planning assessment, I recommend that:

1. This application be processed on a non-notified basis, pursuant to sections 95A and 95B of the Resource Management Act 1991.
2. The Council grant consent to the proposed activity under delegated authority, in accordance with sections 104, 104B and 104D of the Resource Management Act 1991.
3. The time limits for the processing of this consent be extended pursuant to sections 37A(2)(a) and 37A(4)(b)(ii) of the Resource Management Act 1991.



Karen Bain
Planner

Date: 26 August 2022

DECISION

I have read the notification assessment and substantive decision assessment in this report. I agree with the recommendations above.

Under delegated authority on behalf of the Dunedin City Council, I accordingly approve the granting of resource consent to the proposal:

*Pursuant to Part 2 and sections 34A(1), 104, 104B and 104D of the Resource Management Act 1991, and the provisions of the Operative Dunedin City District Plan 2006 and/or the Proposed Second Generation Dunedin City District Plan, the Dunedin City Council **grants** consent to a **non-complying activity** being the use of existing farm buildings and yard areas as a depot and storage facility for conservation activities to be undertaken off-site at 3 Corsall Street, Upper Junction, legally described as Lot 1 Deposited Plan 21683*

(Record of Title OT13B/956), subject to the conditions imposed under section 108 of the Act, as shown on the attached certificate.

and

That, having taken into account:

- *The interests of any person who may be adversely affected by the time extension,*
- *The interests of the community in achieving an adequate assessment of effects of a proposal, policy statement or plan, and*
- *Its duty under section 21 to avoid reasonable delay,*

the Council has, pursuant to sections 37A(2)(a) and 37A(4)(b)(ii) of the Resource Management Act 1991, extended the requirement outlined in section 115 regarding the time in which notification of a decision must be given after the date the application was first lodged with the Council.



Campbell Thomson
Senior Planner

Date: 26 August 2022

Consent Type: Land Use Consent

Consent Number: LUC-2022-237

Purpose: The use of existing farm buildings and yard areas as a depot and storage facility for conservation activities to be undertaken off-site.

Location of Activity: 3 Corsall Street, Upper Junction.

Legal Description: Lot 1 Deposited Plan 21683 (Record of Title OT13B/956).

Lapse Date: 26 August 2027, unless the consent has been given effect to before this date.

Conditions:

1. *The proposed activity must be undertaken in general accordance with the approved plans attached to this certificate as Appendix One, and the information provided with the resource consent application received by the Council on 16 June 2022, as modified by the further information received in an email from Andrew Lonie dated 27 July 2022, except where further modified by the following condition.*
2. *Pursuant to Section 128 of the Resource Management Act 1991, condition 1 may be reviewed one year after commencement of the activity, and annually thereafter, to ensure that the effects on the transport network are sufficiently managed.*

Advice Notes:

1. In addition to the conditions of a 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. The ability to exercise this consent is not restricted to the party who applied and/or paid for the consent application.
3. It is the responsibility of any party exercising this consent to comply with any conditions imposed on the 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.
4. The lapse period specified above may be extended on application to the Council pursuant to section 125 of the Resource Management Act 1991.

Issued at Dunedin on 26 August 2022



Karen Bain
Planner

Appendix One: Approved Plans for LUC-2022-237

(scanned images, not to scale)

