



14 March 2023

The Hearings Panel
Dunedin City Council
Wendy.Collard@dcc.govt.nz

Our Ref.: 18197

LUC-2022-117 ABBOTTS HILL ROAD APPLICANTS RIGHT OF REPLY

Clearly, the manner in which the existing industrial land use activity has been established on the application site has generated some conflict between the applicant and several of the nearby residents on Abbots Hill Road. In particular, noise and transportation issues appear to be common concerns raised by residents.

It is entirely correct to state that some of the perceived conflict results not from the industrial activity that is occurring on-site, but from permitted use of the applicant's land, including farming and recreational activities. Noise from farm machinery, operation of motorbikes, and family visitors parking on the roadside, are examples of such permitted activity. It is however difficult to accurately define the extent to which these activities fall into the industrial use and the personal use categories, and the applicant acknowledges that this cross-over of activities has potentially exacerbated the issues that are of concern to other local residents.

The applicant has sought consent to legitimise the industrial activity, and has proposed a raft of control measures to mitigate the effects of the activity. These mitigation measures include noise and vibration controls, limits of operation (including public holidays, and the applicant is agreeable to these limits also including weekends), upgrades to the transportation network, and additional landscaping works. It is the applicant's position that with these measures in place, any adverse effects from the proposed activity will be minor.

Furthermore, the applicant has proposed a robust means of monitoring compliance with the imposed consent conditions. This will be undertaken by having a rolling 6-month video camera footage available to Council on request. Review of this footage will be able to readily confirm whether the applicant is meeting the stipulated consent obligations.

It is the applicant's desire to resolve the conflict that has developed between the industrial land use activity and the manner in which nearby residents wish to enjoy the local environment. The applicant believes that this can be achieved through the combination of the mitigation measures proposed and the monitoring facility that has been offered. Ultimately, the applicant would like to continue operating an industrial activity from the land, but in a manner that is compatible within the local environment.

DUNEDIN:

P.O. Box 5833,
Dunedin 9058.

T 03 477 3245

CHRISTCHURCH:

P.O. Box 10094,
Christchurch 8141.

T 03 928 1533

ALEXANDRA:

P.O. Box 103,
Alexandra 9340.

T 03 448 8775

CROMWELL:

P.O. Box 84,
Cromwell 9342.

T 03 445 1826

QUEENSTOWN:

P.O. Box 2845,
Queenstown 9349.

T 03 441 4715

WANAKA:

P.O. Box 283,
Wanaka 9305.

T 03 443 0110

Industrial activities are specified as having a non-complying activity status in the Rural Residential zones (Rule 17.3.3.25). However, working from home activities are specified as having a permitted activity status (Rule 17.3.3.13), subject to restrictions around the size of the activity, hours of operation and the requirement that there is a principal place of residence on the land and that persons carrying out the activity must also reside on-site. Industrial activities that meet the working from home standards are permitted.

The proposed activity is not a working from home activity. While the proposed activity meets the standard for hours of operation, it does not comply with the size requirement (having a gross floor area of 144m² when the maximum working from home floor area is 100m²), and the activity will be carried out by up to 3 staff members who will not reside on-site. Furthermore, there is no place of residence yet on the property. Regarding the size of the activity, the workshop is 144m², however as noted during the hearing some of the space inside this structure is used for storage of personal equipment that is not used with the industrial business. The extent of the floor area used for the industrial activity is most likely more than 100m², but somewhat less than 144m².

The applicant has proposed that a place of residence is expected to be established within a 24-month period. A building consent for a family home is expected to be issued within the next 12-months.

Considering a permitted baseline assessment, it has been discussed during the hearing that an appropriate, non-fanciful activity comparison would be that of a complying working from home industrial activity. For example, a comparable (and permitted) working from home industrial activity might be one that occupies 100m² of gross floor area, with a principal place of residence and 3 residents that carry out loading/unloading of equipment and travel to and from the site to external work sites.

It is the applicant's position that the effects generated from the proposed activity, noting the mitigation measures that have been offered, will be consistent with the effects that can be expected to occur from the complying permitted baseline activity.

In respect to the potential that a decision to grant consent might challenge the integrity of the district plan, the applicant considers this risk to be particularly low. This position is reached being mindful of the following matters-

1. The effects of the proposed activity are considered comparable to those of the complying permitted baseline activity.
2. The proposed activity is not considered to be contrary to the objectives or policies in the 2GP.
3. There is a clear distinction in the 2GP between industrial activities in the Residential and Rural zones, in which there are policies in place that seek to avoid industrial activities (Policy 15.2.1.6 and Policy 16.2.1.8), and industrial activities in the Rural Residential zones, in which there is no such avoid policy. The genesis of this distinction is not clear, however the applicable policies are in place and these policies serve to confirm that the type of activity proposed at this site is more compatible

within the Rural Residential zones than it would otherwise be if proposed within the Residential or Rural zones.

This is also supported by case law, and in particular *Dye v Auckland Regional Council*, CA86/01, which 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. Points 2 and 3 above speak to the nature of the district plan, while all three points above have influences in respect to the local environment.

Overall, it is the applicant's view that approval of the application will not undermine the integrity of the district plan, principally due to the effects of the proposed activity being comparable to those of a permitted working from home industrial activity, and the broad level of consistency with the objectives and policies of the 2GP when considered by and large.

Council is required to apply the 'true exception' test when a plan's integrity is at risk. In this instance, the applicant considers that the risk of an undesirable precedent being established as a consequence of a decision to approve the application is particularly low. Accordingly, it is the applicant's opinion that a true exception test is not required here.

Yours faithfully

PATERSON PITTS GROUP

A handwritten signature in blue ink, appearing to read 'Kurt Bowen', with a long horizontal flourish extending to the right.

Kurt Bowen
Planner