

3 April 2023

Callum Bond
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Via email: vyvienne.evans@ppgroup.co.nz

Dear Callum

RESOURCE CONSENT APPLICATION:

**LUC-2022-117
124 ABBOTTS HILL ROAD
DUNEDIN**

The above application to authorise an industrial depot on the site at 124 Abbots Hill Road, Dunedin, was processed on a limited notified basis in accordance with section 95 and 95B of the Resource Management Act 1991. The Consent Hearings Committee, comprised of Commissioner Megan Justice (Chairperson) and Councillors Steve Walker and Andrew Whiley, heard and considered the application at a hearing on 10 March 2023.

At the end of the public part of the hearing, the Committee, in accordance with section 48(1) of the Local Government Official Information and Meetings Act 1987, resolved to exclude the public.

Following the adjournment of the hearing, a site visit was undertaken by the Hearings Committee during the afternoon of 10 March 2023. The hearing concluded with the subsequent receipt of the applicant's written reply on 15 March 2023.

The Committee has **declined** consent to the application on 27 March 2023. The full text of this decision commences below.

The Hearing and Appearances

The applicant was represented by:

Kurt Bowen (Consultant Surveyor and Planner)
Callum Bond (Applicant)

Council staff attending were:

Campbell Thomson (Senior Planner/Advisor to Committee), John Sule (Processing Planner), Trevor Watson, Reece Martin and Ian Martin (Transportation) and Jenny Lapham (Governance Support Officer)..

All the submitters were present or represented at the hearing being.

Michael and Dr Kirsty Dwyer
Sharon McCraw
Laura & Matthew Hayes

Procedural Issues

No procedural issues were raised.

Principal Issues of Contention

The key issues of contention subject of evidence presented to the Committee were as follows:

- Traffic movement associated with the industrial activity
- Noise disturbance from activity on site
- On-site management of activity
- Existing and intended site development
- Effectiveness of mitigation proposed
- Rural residential amenity values
- Precedent issues

Summary of Evidence

Introduction from Processing Planner

The Consultant Planner (John Sule) summarised the key matters in his report, giving an overview of the proposal before commenting on the submissions received.

Mr Sule advised that the proposal had been assessed as a complying activity, as the proposal was for an industrial activity within the rural residential zone. He commented on the nature of the building business subject of the application, noting that it was focused on unusual projects requiring specialist equipment and skills. Mr Sule noted that the applicant had erected a 144m² shed where the applicant stores equipment such as abseiling gear with other equipment stored outside.

Mr Sule noted the application anticipated up to 20 vehicle movements per day. As noted in the applicant's evidence, this included the use of one truck, small diggers, and skid steer loaders based on site. The main activity involves workers picking up and dropping off equipment, with the maintenance and washing down an occasional part of the activity on site. It had been proposed that up to 5 staff would be employed at the site, but this was proposed to be reduced to 3 in evidence from the applicant.

Mr Sule identified and commented on a few corrections to his report. He acknowledged changes the applicant had proposed to mitigate effects, but advised he would be waiting to hear from all parties before reviewing his recommendation.

In response to questions from the Committee, Mr Sule advised there are differences between the activity at the subject site and the consented activity subject of LUC-2022-237. He advised the effects would likely be greater, as the applicant's business involves a truck and machinery. This was not part of the other application.

Mr Sule clarified his view that consideration must be given to the comparable effects of the permitted baseline of working from home activity, as this would be possible once a dwelling is established on the property. He advised it was for the applicant to explain why the business was set up without consent. As no dwelling has been established, Mr Sule considered the subject activity to be an industrial activity.

Mr Sule indicated there was some difficulty working out the traffic effects over and above the baseline of permitted activities. He advised that if the panel did not consider it had enough evidence to determine this matter it could seek further information. Mr Sule considered the permitted baseline comparison was credible as it was not unusual for people to run home businesses from rural residential sites, including businesses with machinery. Where the District Plan provides for such activity the scale is a controlling factor.

Mr Sule commented on the existing height of the acoustic fence and proposed increase. He advised it would reduce the visual impact and may have a benefit of reducing noise, up to a certain point. He considered that it was not uncommon as a mitigation feature and the Building Act allows 2.5m fences without consent.

The Applicant's Case

Mr Bowen spoke to the application and supporting evidence. He commented on the background to the application and commencement of the activity. He advised the shed constructed on the site is not entirely for business use, but partly used for storage of equipment for personal use. Mr Bowen commented on the working from home provision allowed as a permitted baseline, but accepted that the business was an industrial activity, that fits within a description of a contractor's depot.

Mr Bond also commented on the background to the application and clarified the nature and scope of the business activity. He advised that he never intended to set up a business in breach of District Plan rules, was not aware of the need for consent until spoken to by the compliance officer. He advised that his company builds cell phone towers and for the most part the work was based out of town. Mr Bond advised the general coming and going from the subject site for business purposes is limited, with the property also used for children's recreational activity with motorbikes, and farm maintenance with two acres of trees to be cleared.

Mr Bond outlined a typical workday at the site with a Monday morning load up and the timing between jobs which were mostly away from Dunedin. He noted that his business has no projects in Dunedin for the rest of the year. He advised he had 2 staff, with the business growing in terms of projects, but with no need to increase staff based in Dunedin, as the business uses local based contractors, around the South Island. Regarding the truck size and loading activity at the property, he advised that it needs a class 2 heavy licence but can be turned around on the site.

Mr Bond advised that it was his intention to live on site, with a timeframe of 24 months proposed to establish a house.

In response to questions from the Committee, Mr Bowen commented on the timeframe for residential development, the area and hours of activity on site, changes to the proposal and mitigation conditions offered, the transportation assessment, and comparison made in evidence to the activity at 3 Corsall Street, subject of resource consent LUC-2022-237.

Council Officers' Evidence

Mr Watson introduced the team from Transportation and explained their respective roles. He commented on the background to the assessment of the application from Transportation, and reasons for attending the hearing having regard to the submissions and possible questions the Committee may have. Mr Watson gave an overview of the transportation position, and determination that the traffic effects will be no more than minor. However, he noted the concerns of submitters about traffic safety issues.

Ian Martin confirmed that his role was to advise through the consent process on safety matters. In response to questions from the Committee, Mr Martin observed that the condition of Abbotts Hill Road has probably not changed in the last decade and was a typical rural road. He advised the Council would expect to carry out normal maintenance work for this type of road. The road could accommodate the present traffic levels and the 20 movements per day from the industrial activity that is the subject of this decision. No specific works would be required for the proposed land use activity. However, it was subsequently noted with respect to the road widening offered by the applicant, that this bend in the road was the best location for any safety improvement to the carriageway.

Evidence of Submitters

Dr Kirsty Dwyer spoke to her submission and outlined her concerns about the activity on the subject site. She considered the activity was out of character with the area and expressed concerns with noise from the activity and hours during which it was undertaken. She noted that until the applicants reside on site there was no working from home activity and contended that if consent was granted then the area would become an industrial transitional zone.

Dy Dwyer noted that a pipeline to the water reservoir goes through that corner where road widening was proposed. She requested that any widening work be undertaken by a professional roading crew.

Dr Dwyer commented on the size of the shed which she considered industrial and disputed the evidence of Mr Bowen about the extent and hours of activity on site. She commented on the conflict over traffic movement and contrasted this to her experience of with movement of forestry trucks on the road when harvesting was undertaken. She did not accept that the applicant would adhere to conditions based on past behaviour.

Sharon McCraw

Ms McCraw did not agree the comparison to 3 Corsall Street was applicable. She considered the present application would set a precedent if allowed and that it would impact on property values. She commented on the conflict between rural amenities and Industrial activities and conditions offered by the applicant. She did not think the wooden fence will mitigate the noise and that the existing road was inadequate as it is for those who use it. Ms McCraw commented on other effects and the history of the activity with complaints made to Council. She questioned why an industrial activity should be allowed in a rural residential zone, when a house can't be built in an industrial area.

In response to questions, Ms McCraw indicated she was not confident the conditions offered would be adhered to. The Chairperson noted that property values are considered in terms of effects that a proposal might have on amenities values.

Matthew and Laura Hayes

Mrs Hayes spoke to the submission and commented that the activity is operated in such a way that has caused complaint and conflict. She noted the site is situated on a narrow section of road and considered that 3 blind corners and the road gradient have not been considered. She noted that there was no residence on site and the activity was a non-complying activity. She did not consider the other application cited as example was comparable.

Mrs Hayes commented on the acoustic assessment and contended the applicant had not proved he can operate within the noise level. She expressed concern about pollution from contaminants and implications of potentially allowing a HAIL site to be established. She questioned the relevance of an affected party approval. In response to questions she acknowledged the mitigation offered through conditions but expressed her concern that it would not occur.

Processing Planner's Review of Recommendation

Mr Sule reviewed his assessment in light of the evidence presented and indicated that his recommendation was unchanged. He was satisfied the environmental effects were no more than minor if the baseline effects of permitted activities are disregarded. He considered the proposal was inconsistent with but not contrary to the policy direction of the District Plan. He therefore considered the Committee could grant the application, but precedent effects needed to be considered. He noted that most activities of an industrial nature that had been granted in rural or rural residential areas were in association with an established residential activity on the same site. He acknowledged the applicant's offer of mitigation and considered the recommendation was a difficult choice given the baseline considerations.

In regard to the existing shed, Mr Sule noted it was compliant with rules for rural residential buildings and structures and it was the land use that required consideration.

Applicants Right of Reply

The applicant's reply was provided in writing. The reply acknowledged concerns of submitters and commented on the distinction between effects of the industrial use that have occurred on site from the effects of permitted farming and recreational activities undertaken. It suggested the cross-over of these activities has potentially exacerbated issues of concern.

The reply affirmed the range of control measures offered to mitigate adverse effects. It contended that these would be effective and enable the business to continue in a manner compatible with the local environment. The reply set out the applicant's position in terms of activity status and permitted baseline considerations, the policy direction of the District Plan and matters of plan integrity. The reply concluded that the risk of an undesirable precedent would be low.

Statutory and Other Provisions

In accordance with section 104 of the Resource Management Act 1991, the Planner's Report detailed in full the relevant statutory provisions and other provisions the Committee considered. Regard was given to the relevant provisions in the following sections of the Proposed District Plan: 2 Strategic Directions, 6 Transportation, 9 Public Health and Safety, and 17 Rural Residential Zone. Consideration was also given to the status of the operative Dunedin City District Plan provisions having regard to Section 86F of the Act. Regard was also given to the Regional Policy Statement for Otago, and the National Policy Statement on Highly Productive Soils.

Main Findings on Principal Issues of Contention

The Hearings Committee has considered the evidence heard, the relevant statutory and plan provisions, the principal issues in contention. The main findings on the principal issues have been incorporated within the reasons discussed below.

Decision

The final consideration of the application, which took into account all information presented at the hearing, was held during the public-excluded portion of the hearing. The Committee reached the following decision after considering the application under the statutory framework of the Resource Management Act 1991. In addition, the site visit undertaken during the public-excluded portion of the hearing assisted the Committee's understanding of the physical context of the site, and issues subject of evidence received.

*That pursuant to section 34A(1) and 104B and after having regard to sections 104 and 104D of the Resource Management Act 1991, and the provisions of the Dunedin City District Plan and the Proposed Second Generation Dunedin City District Plan, the Dunedin City Council **declines** consent to a **non-complying activity** to authorise an industrial depot (for a specialised building business) on the site at 124 Abbotts Hill Road, Dunedin, legally described as Lot 1 DP535885 (Record of Title 887652), for the reasons set out below:*

Reasons for this Decision

1. The Committee is not satisfied that the proposal represents an appropriate use of the subject site, given the rural residential zoning and character of the location. The Committee considers the development and use of the site undertaken to date, with the existing shed and facilities, is not commensurate with the environmental amenity anticipated for a rural residential property. The use of the site as a depot for a business is not currently secondary to any permitted activity for a dwelling. While the Committee accepted that elements of the applicant's business could be undertaken on site as a working from home activity, if, and when, residential activity is established on the property, the scale of the activity with participation of non-resident staff would still exceed what the District Plan anticipates for any business activity ancillary to residential activity.
2. The Committee does acknowledge the extent of mitigation offered by the applicant to manage the effects of the activity by way of proposed conditions. The Committee accepted that these conditions could reduce the adverse effects of the activity, particularly the road improvements proposed, noise management plan and limits on operating hours. However, the Committee were concerned at the burden it would create for the applicant and Council staff in terms of monitoring compliance.
3. The Committee were mindful of the amenity values anticipated by the District Plan for a rural residential area, and the degree of conflict that had emerged between the applicant's activities and the expectation of residents who had submitted on the application. The Committee considers that it will be difficult to address this conflict by way of conditions of consent in a way that is effective. The Committee recognised that some of the applicant's permitted rural and recreational activity may have exacerbated this conflict, but there are inherent aspects of running an industrial depot that are difficult to avoid in a rural residential location.
4. The Committee considers that the proposal, even with the amendments and conditions offered during the consent process, is inconsistent with the key objectives and policies of the District Plan relevant to the application. The Committee concur with the analysis of the processing planner. They consider that the circumstances of the activity make it difficult to achieve an environmental outcome that is compatible with the amenity of this Rural Residential location, given the industrial character and visibility of the shed and associated activity at the road frontage.
5. In the absence of an 'avoid' policy for industrial activities in the rural residential zone, the Committee accepted the processing planner's conclusion that the proposal is not contrary to the objectives and policies of the Plan. Similarly, the Committee accepts the conclusion of the processing planner that the proposal is not contrary to the Regional Policy Statement or to the National Policy Statement for Highly Productive Soils.
6. The Committee is satisfied that on balance, both gateway tests contained in section 104D of the Resource Management Act 1991 are met. As such, the Committee were, therefore, able to consider the granting of consent to the proposal.
7. The Committee is concerned that the granting of consent to this proposal is likely to threaten the integrity of the District Plan, in terms of zoning framework, policy direction and rules for the rural residential zoned areas. The resource consent process allows for the consideration of applications for industrial activities in the Rural Residential Zone, on a case-by-case basis. When granting consent for a non-complying activity, the application should be a "true exception", otherwise an undesirable precedent may be established, and the integrity of the District Plan may be undermined. The Committee is not satisfied that the proposal is a "true exception", as there is nothing particular about this industrial activity that makes it especially suitable for this site. The nature of the equipment involved, and the storage and transportation requirements, are those of activities anticipated and provided for in Industrial zones. There is no essential connection to another activity at the subject site. Neither is there anything exceptional about the site that makes it specifically

suitable for the activity. Having regard to the above, the Committee considers that the granting of consent will establish an undesirable precedent for future applications for industrial activities to locate in rural residential zoned areas.

8. The Committee concluded that the granting of the consent would not be consistent with the purpose of the Resource Management Act 1991 to promote the sustainable management of natural and physical resources.

Right of Appeal

In accordance with section 120 of the Resource Management Act 1991, the applicant and/or any submitter may appeal to the Environment Court against the whole or any part of this decision within 15 working days of the notice of this decision being received.

The address of the Environment Court is:

The Registrar
Environment Court
PO Box 2069
Christchurch Mail Centre
Christchurch 8013

Any appeal must be served on the following persons and organisations:

- The Dunedin City Council.
- The applicant(s).
- Every person who made a submission on the application.

Failure to follow the procedures prescribed in sections 120 and 121 of the Resource Management Act 1991 may invalidate any appeal.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Megan Justice', written in a cursive style.

Megan Justice
Chair
Hearings Committee