

TO: Hearings Panel

FROM: John Sule, Consultant Planner

DATE: 15 February 2023

SUBJECT: **RESOURCE CONSENT APPLICATION**
LUC-2022-117
124 ABBOTTS HILL ROAD
ABBOTTSFORD

INTRODUCTION

- [1] This report has been prepared on the basis of information available on 15 February 2023. The purpose of the report is to provide a framework for the Panel's consideration of the application and the Panel is not bound by any comments made within the report. The Panel is required to make a thorough assessment of the application using the statutory framework of the Resource Management Act 1991 (the Act) before reaching a decision.

SUMMARY OF RECOMMENDATION

- [2] For the reasons set out in paragraphs 57 to 147 below, I consider:
- The effects of the proposed activity can likely be managed to be no-more than minor, but there is uncertainty in relation to scale and significance of road safety effects and their effective mitigation.
 - That the proposal is inconsistent with key proposed District Plan (2GP) objectives and policies for Rural Residential zones and the Transportation Section.
 - The proposal is consistent with the partial operative Regional Policy Statement and not inconsistent proposed Regional Policy Statement.
 - The proposal is inconsistent with the direction of the National Policy Statement on Highly Productive Land but not contrary to the policy as the proposal is a small-scale land-use activity that has no impact on the productive capacity of the land.
 - That approval of the application may result in an undesirable precedent being set that could impact of the integrity of the proposed Plan.
- [3] I have concluded that the proposal should be declined primarily as the proposal is inconsistent with key 2GP objectives and policies and its approval may result in an undesirable precedent. The proposal is also inconsistent with the direction of the National Policy Statement on highly productive land and I note there is uncertainty regarding the significance of road safety impact and the effective mitigation of road safety effects.
- [4] I acknowledge the proposal passes the objectives and policies limb of the Section 104D gateway test and may pass the effects limb. The Committee can therefore consider granting consent and may come to a different conclusion.

DESCRIPTION OF PROPOSAL

- [5] The applicant, Callum Bond, seeks authorisation for an industrial depot on the site at 124 Abbotts Hill Road.
- [6] 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. Up to 5 staff are proposed to be employed on the site.
- [7] 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.
- [8] 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 original application suggested the activity is a commercial activity, but in a further information response it was accepted by the applicant that the activity is an Industrial Activity under the proposed District Plan(2GP). The proposal is best described as a contractor's depot and as there are 5 employees it would be equivalent to the Rural Contractor and Transport Depots - Large Scale activity classification defined in the proposed Plan. No signs are proposed for the site.
- [9] A copy of the application, including a site plan for the proposed contractors depot, is contained in Appendix 1 of this report.

DESCRIPTION OF SITE AND LOCATION

- [10] The site at 124 Abbotts Hill Road is an irregular shape with frontage to Abbotts Hill Road and an unnamed legal road along the eastern boundary of the site. The site has 28m of frontage to Abbotts Hill Road and slopes down from the road to the south.
- [11] There is a small rectangular portion of the site adjoining Abbotts Hill Road which is to contain the proposed industrial activity. The remaining area of the site sloping to the east is to be retained in pasture until the applicant establishes a dwelling on the site or in the case of the identified area of instability to be retained in trees. The area of the site to be used for the depot is approximately 1000m² in area.
- [12] The site has an area of 2.8134 ha and is legally described as Lot 1 DP 535885. The site is held in Record of Title 887652. The title interests include a consent notice (11505034.3) that imposes development conditions designed to ensure a stability hazard on the site does not impact on any future residential activity.

HISTORY OF THE SITE/BACKGROUND TO THE APPLICATION

- [13] The site was formerly zoned Rural under the operative District Plan, and it was rezoned to Rural Residential 1 under the 2GP. 124 Abbotts Hill Road was created by a subdivision (Sub2018-152) that was issued consent in March 2019. The rezoning was subsequently confirmed when related Appeals on the 2GP were resolved.
- [14] The existing shed on the site was granted a Building Consent (ABA-2019-2145) and a code compliance certificate for the completed shed was issued on 22 November 2021.
- [15] In respect of the planning assessment for the shed it was approved as complying with the District Plan on the basis that the shed would be put to a permitted farming use. It is not unusual for an implement shed to be established prior to any residential dwelling being established on a site and for sheds to be approved on that basis.
- [16] The 2019 Google photo shown below shows an upgraded drain and crossing being constructed to provide access to the site prior to any building being established on the site.



- [17] The activity originally commenced operating on the site without a resource consent and complaints were received. The first recorded complaint was received on 13 December 2021 just after the shed construction was completed. A number of additional complaints have been subsequently received about the activities being undertaken on the site.
- [18] The application for resource was lodged on 25 March 2022. A further information request was sent out on 30 March 2022. An initial response was provided on 27 April 2022, but there was a long delay in supplying an acoustic assessment for the site activity. A report from an acoustic consultant (Marshall Day) was supplied on 3 October 2022.
- [19] A Section 95 Notification Assessment was undertaken when all the further information was provided, and a report was prepared. The assessment determined that the wider effects of the proposal would be minor, and that the proposal would result in adverse effects on some adjoining and adjacent neighbours. The notification details are provided below.

ACTIVITY STATUS

- [20] Dunedin currently has two district plans: the operative Dunedin City District Plan, and the Proposed Second Generation Dunedin City District Plan (the "Proposed 2GP"). Until the

Proposed 2GP is made fully operative, both district plans need to be considered in determining the activity status and deciding what aspects of the activity require resource consent.

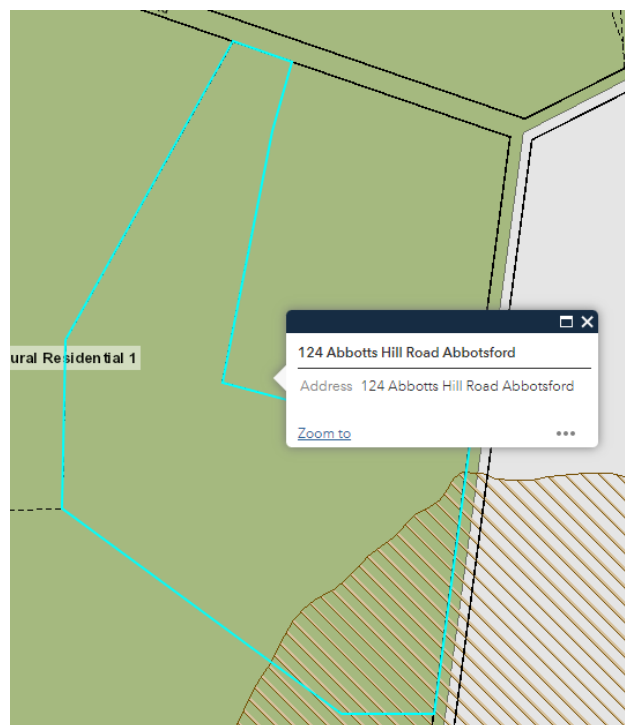
- [21] The activity status of the application is fixed by the provisions in place when the application was first lodged, pursuant to Section 88A of the Resource Management Act 1991. However, it is the provisions of both district plans in force at the time of the decision that must be had regard to when assessing the application.

Dunedin City District Plan

- [22] The site is zoned Rural under the operative District Plan and Abbotts Hill Road is a local road in the District Plans roading hierarchy. There are no relevant planning annotations.
- [23] The rural zoning for the site was changed to Rural Residential 1 by the proposed plan (2GP) and that rezoning is now beyond legal challenge. In addition, the relevant 2GP rules that relate to the proposal are deemed operative and the operative Plan rules deemed inoperative under Section 86F of the RMA as all relevant appeals have been resolved. As a result, there is no assessment required under the operative Plan provisions, although the objectives and policies of the operative Plan remain in effect until the proposed Plan is made fully operative.

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

- [24] The site is zoned Rural Residential 1 in the 2GP and Abbotts Hill Road is a local road in the District Plans roading hierarchy. There are no overlays or mapped areas that impact the site, except for an area of instability that is located in a south-eastern portion of the site as shown on the map below:



- [25] The Proposed 2GP was notified on 26 September 2015, and some Proposed 2GP rules had immediate legal effect from this date. Some rules became fully operative following the close of submissions, where no submissions were received. Additional rules came into legal effect upon the release of decisions. Those additional rules become fully operative

if no appeals are lodged or once any appeals have been resolved. In this case the relevant 2GP rules are deemed operative under Section 86F of the RMA.

- [26] The proposal falls under the definition of Industrial Activities within the proposed 2GP. Industrial Activities means:

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."

- [27] Industry is defined as follows:

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.*

For the sake of clarity, this definition includes:

- *any ancillary offices and staff facilities*
- *the use of rail sidings as part of industry; and*
- *the generation of energy from the combustion of biomass waste that is the by-product of industry.*

This definition excludes:

- *bakeries ancillary to food and beverage retail; and laboratories ancillary to any major facility activities or office activity, which are included as part of those definitions, respectively*
- *activities otherwise defined as working from home*
- *direct 'customer facing' retail sales, which is provided for under the definition of retail and included in 19.3.3 activity status table as 'retail ancillary to industry'; and*
- *activities otherwise defined as operation, repair and maintenance of the rail network.*

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

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

Industry is an activity in the industrial activities category.

- [28] Industrial Activities are a non-complying Activity under Rule 17.3.3.25 and general assessment guidance is provided under Rule 17.12.2. There is no specific guidance provided for the assessment of Industrial Activities.

- [29] The shed is constructed and it was assessed at that time as meeting the relevant 2GP standards. As the site is to be used as a contractor's yard it is subject to site development standards including standards relating to parking, loading and access.
- [30] The application identifies the driveway and parking area will comply with all relevant performance standards except surfacing and marking of parking areas (Rule 6.6.1.5) and minimum width for driveways (Rule 6.6.3.9).
- [31] The contravention of the hard surfacing and car park marking performance standard in Rule 6.6.1.5a and the contravention of the required driveway width for a non-residential driveway standard in Rule 6.6.3.9 are a restricted discretionary activity under Rule 6.6.1.5.b and Rule 6.6.3.9.b respectively.
- [32] The applicant intends to operate in compliance with relevant noise, light spill and hazardous substances performance standards and no signs are proposed.

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

- [33] The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 came into effect on 1 January 2012. The National Environmental Standard applies to any piece of land on which an activity or industry described in the current edition of the Hazardous Activities and Industries List (HAIL) is being undertaken, has been undertaken or is more likely than not to have been undertaken. Activities on HAIL sites may need to comply with permitted activity conditions specified in the National Environmental Standard and/or might require resource consent.
- [34] The site was subdivided in 2018 and its HAIL status was assessed at that time. It was not determined to be HAIL at the time of subdivision. The site is not recorded in the ORC regional database as a HAIL site. The proposed use of a site for a contractor's depot that involves the washing down of equipment is a potential HAIL use under category F8: *Transport depots or yards including areas used for refuelling or the bulk storage of hazardous substances*.
- [35] The sustained use of the site for a contractor's depot will likely mean that part of the site will become HAIL and if that occurs any future change to the piece of land to a more hazard sensitive land use will trigger the requirements of the NESCS. I note that the NESCS Regulations are not designed to prevent new industrial activities from establishing, but to protect a more hazard sensitive future land use from soil contamination if the land use changes and avoid health effects from soil disturbance.
- [36] Because the contractor's depot activity has already commenced on the site, albeit on a limited basis, the site may already be considered HAIL. The proposal proposes a continuation of that use of the land and no additional earthworks are proposed. As a result, I consider the NESCS is not triggered by the proposal, but may be in the future if the land use is changed or earthworks are undertaken on the site that exceed permitted activity thresholds.
- [37] The National Environmental Standard is not deemed applicable to the proposal.
- [38] Overall, using bundling principles the application is considered to be a **non-complying activity**.

NOTIFICATION AND SUBMISSIONS

[39] Written approvals were submitted with the application from the following parties.

Person	Owner	Occupier	Address	Obtained
J E McKnight and D J Bilner	✓	✓	110 Abbotts Hill Road	27/05/2022
G E and T H Osbourne	✓	✓	115 Abbotts Hill Road	8/06/2022

[40] In accordance with Section 104 of the Act, where written approval has been obtained from affected parties, the consent authority cannot have regard to the effects of the activity on that person.

LIMITED NOTIFICATION

[41] After initial consideration of the application and the undertaking of a Section 95 assessment, it was considered that the wider adverse effects of the proposal would be no more than minor, having regard to the surrounding environment and the mitigation measures proposed.

[42] It was therefore determined that the adverse effects of the proposal would be restricted to a limited number of parties being the owners and occupiers of the properties at:

- 128 Abbotts Hill Road
- 127 Abbotts Hill Road
- 141 Abbotts Hill Road

[43] The written affected party approval of all these parties was not obtained and the application was, therefore, notified on a limited basis on 29 November 2022 with submissions closing on 18 January 2023:

[44] Three (3) submissions (one of which was split in two parts), were received by the close of the submission period. All submissions were in opposed to the proposal.

[45] The submissions are summarised in the table below, and a full copy of the submissions is attached in Appendix 2.

Name of Submitter	Support/ Oppose	Summary of Submission	Wish to be heard?
M S and Dr K Dwyer 141 Abbotts Hill Road	Oppose	Transportation & Parking Abbotts Hill Road is a dead-end road that continues as a walking track between regenerating pine forest and rural pasture. The landscape is breath taking. Due to the road's historical low level of vehicle use, it has always been regarded by wider community users as a safe road to walk, cycle, or horse ride up and down. The entire Abbotts Hill Road community is adversely affected through the increase of vehicles carrying/towing heavy equipment on a low user road. This is an activity that	Y

		would be better suited to one of the many industrial zones around Dunedin. Safety issues are inherent with a 50% increase in daily vehicle movements on a narrow road, some of which are large truck movements. Safety issues arise from the conflict between recreation use by residents and heavy vehicles and there are parts of the road that are not a uniform width with poor visibility. Regular use of the truck will impact on maintenance of road The narrow driveway and narrow road means that towing vehicles have difficulty entering the yard resulting in the road being temporarily blocked. The road is regularly used as a parking lot and extension of the yard. There is inadequate space for manoeuvring on-site and vehicles manoeuvre on the road The truck used is not a small truck and it is akin to the size of a logging truck that have been used in the past. It is difficult to pass this truck with a car let alone if we, or one of the other neighbours, were towing a trailer. The adverse transport effects are not minor as alluded to in the resource consent application. For those of us who live on Abbotts Hill Road, and the wider community who used to enjoy using the road for recreational purposes, they are major adverse effects, in terms of safety and the ability to travel on the road, that have been experienced on a daily basis including weekends. There is no way to mitigate the transport effects. Rural Residential Character and Amenity The shed is larger than is permitted for a working from home activity and the large shed, mobile trailers and equipment, and the yard area are an eyesore that is out of character for a rural residential zone. The site is industrial in character. The low-level landscaping on the site is ineffective in mitigating the effects of the activity. There has been no serious attempt to proactively hide (visually) the industrial activity Effects on Amenity of Neighbours <u>Noise</u> The background noise in the area is low and the elevated nature of our site means that noise can be heard from distance.	
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		The type of noise created is out of character and incompatible with a rural residential zone. It can be jarring, and after a couple of years of being afflicted by it, it has yet to blend into the background; some days it's nothing, others it's highly irritating. The most annoying noise is truck idling for significantly longer than necessary (occasionally for up to an hour) with no pitch change to indicate that it was moving or having load applied (i.e. the crane being used). The fence is creating reflections that are increasing the noise at our property. The noise failed a noise test in August 2022. <u>Hours of operation</u> The site is regularly operated outside of the hours specified, including on weekends. We have been woken at midnight to the crashing and banging of gear and machinery being unloaded, the idling of the large diesel truck during this activity, and then staff vehicles leaving. The site has continued to be used although resource consent has not been obtained. <u>Light Spill</u> The site lighting is industrial in character. The gate security lights are sensor driven and come on when driving past the gateway at night. The lights are not directed away from the road as required by Rule 9.3.5.3. <u>Fumes</u> When the wind is blowing from the south, we are affected by diesel fumes. <u>Property Values</u> We are concerned that the granting of resource consent to the Bonds will reduce our property values. Objectives and Policies The proposal is not a compatible activity under Objective 17.2.1. The activity does not ensure a good level of amenity to minimise conflict under Objective 17.2.2. The proposal impacts on maintenance rural residential amenity values, and it is contrary to 17.2.3. The productive potential of the site for hobby farming is not maintained as required under Objective 17.2.4.	
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		Granting resource consent would set a dangerous precedent to the RR1 zone via encroachment of an industrial activity, irrespective of its size, and be contrary to objective 17.2.3. Conclusion The effects of the activity are more than minor and there are major effects experienced by residents on a daily basis. The proposal is contrary to objectives and policies for the RR1 zone and approval would set a dangerous precedent for the use of the zone. The submitter seeks: 1. That resource consent to operate an industrial activity in a rural residential 1 zone be declined. 2. That the Bond's business (and all assorted vehicles, equipment, and storage) be immediately relocated to an approved industrial zone. ➤ If the Bonds appeal, then they should still be ordered to move to appropriate premises. Their resource consent application was started in February 2022, the entire neighbourhood should not have to put up with their industrial activity over the coming year whilst any appeals wind their way through the system. 3. That the gross floor area of the oversized shed be reduced to 100m² as per 17.5.7.	
S A McCraw 128 Abbotts Hill Road	Oppose	The site was previously grazing land but now it is a yard that does not maintain landscape character. It is an eyesore that adversely impacts on the rural residential living of neighbours. The industrial activity constantly uses equipment that creates noise, and it is located only 19m from my house. Loading and unloading of vehicles is a 7 day operation going through to 6pm on a Sunday. The applicant has continued to operate from the site without consent. The proposed activity creates significant safety issues for the narrow road. The increase in traffic cannot be safely accommodated by the road. Local residents no longer use the road for recreation as it is unsafe. The yard does not provide sufficient space for manoeuvring and the road is blocked The yard is in an untidy condition and also used for storage for trailers and equipment that are not part of the activity. The yard is	Y

		incompatible with a rural residential environment. The noise and fumes from machinery used in the yard and from the truck idling on the site are intolerable. The noise effects are major, and I have to close my windows to block noise and fumes. The activity causes vibrations that shake my floor. My life is affected hugely, impacting on the ability to enjoy the outside with my animals and tending to my property. My privacy is impacted as there is a view right into my lounge, especially when on back of truck and container, hence why I have to keep lounge blinds closed for privacy and to block out the mess of trucks, diggers and containers which are higher than the fence. The fence does not eliminate noise, fumes and privacy and my outlook is impacted as it's like living next to a commercial yard. My property values will be impacted by the activity The shed and the activity were commenced without notification to neighbours. The application should be declined. If consent is granted: ➤ No machinery is to be visible over the fence ➤ The size of the shed made smaller or removed ➤ Landscaping is in place to screen the activity from the road and surrounding sites ➤ There is no loading or vehicles blocking the road	
L Hayes 127 Abbotts Hill Road	Oppose	The road and area we live in is frequented by others, from the residential area of Abbottsford at the bottom of our hill. It is an especially popular place to walk for families, those with dogs, for people to Mountain bike up and down due to the track behind us, a place of recreation as well as the farming lifestyle, while not looking into or over your neighbour's house and instead being able to enjoy amazing views out over green island and beyond to the ocean and to the other side of us of the farmland and hills Prior to this resource consent being lodged the applicant chose to unlawfully operate from his property as a place of work which was then reported to council by another neighbour due to the noise, parking on the roadside affecting access to neighbouring properties, many more comings and goings from the property and use of the road from traffic and heavy vehicle movements increasing even after the building of a large shed on the property, with work of a	Y

		commercial and industrial nature taking place from the site. I, at the time, was tolerant but the work undertaken on the site over that period was disruptive and affected the enjoyment of my property and the time I spent with my horses, which are flight animals and easily spooked. Decline the application	
M Hayes 127 Abbotts Hill road	Oppose	General The location of our property at the end of a rural road is one of the reasons we bought it. The area appealed to me as, the lack of traffic noise and general noise that comes from living in the city cannot be heard. My wife Laura is an avid horse rider. Having the lifestyle area and quiet road which is safe for her to ride her horse down is great. I enjoy the quiet outlook of the area by, walking, running or biking up or down the road. When we have friends or family over, they often comment on how lovely it is to stay and how quiet the area is. I am a shift worker and often have to work night shift. I am concerned that approval of this activity will impact on my enjoyment of the property. I never thought that an industrial yard could happen in the middle of a lifestyle area. We checked the zoning in this area before purchasing the property, all lifestyle land around us, with the exception of the forestry. Lifestyle property is getting harder to find this close to the city. We checked the zoning in this area before purchasing the property, all lifestyle land around us, with the exception of forestry. While the development of part of the site as residential would be permitted, the current application is only for a commercial activity. There is no proof that a residential activity will still be progressed and there is no residential activity established therefore the permitted baseline is fanciful. The activity meets the definition of an Industrial Activity, and the activity is inconsistent with the intent of the zone. The activity is not consistent with a working from home use. The activity has operated within consent in a manner that did not meet District Plan performance standards, and which disturbed the enjoyment of neighbours. Soil Contamination & discharges A detailed soil investigation (DSI) should be supplied as a minimum as the washing down of equipment and storing of hazardous substances is inconsistent with residential or rural uses. The onus is on the applicant to	Y

		prove the activity is not considered a HAIL activity which they have not done. There has been no provision of swale for storage of chemicals or outline of requirements under the HSNO Act. The applicant needs to demonstrate at the least their ability to comply with the ORC Regional Plan Rule 12.B <i>Discharge of hazardous substances, hazardous wastes, specified contaminants, and stormwater; and discharges from industrial or trade premises and consented dams.</i> Possible Site Expansion & Operating Hours We are concerned that if granted that this land use could continue indefinitely. We are also concerned about expansion of the activity on the site. Generic Mon-Friday operating hours have been suggested, however nowhere does it limit the activity to these days only. We would like to have it clarified that this would not include weekends or public holidays. Noise & Vibration The acoustic report is based on limiting testing that does not cover all noise sources The report did not consider other properties, or all the noise sources that can be present. The background noise level was not considered. Averaging has been used to calculate compliance which means some noise sources will be louder than permitted it operated for short periods. The sensitive times that the noise will occur, early in the morning and in the evening, have not been considered. No reassessment has been undertaken to confirm the activity complies with noise limits. The noise has not been mitigated to our property and it may limit development options. This activity creates vibration and I note vibration, has not been considered or noted by the applicant, despite emissions from the site occurring onsite. The effect is not mitigated. Transport There is an increased risk to road to users and pedestrians as the road is low use and enjoyed by many walkers, horse riders, cyclists, dog walkers at all times of the day	
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		multiple days of the week. Areas of the road are very narrow and there are 3 blind crests and corners on what is essentially a single lane, gravelled road. There has been no traffic study for vehicle management submitted in this application, only a mitigation measure proposed of no more than 20 per day Fumes and Odour This activity creates odour and I note odour, has not been considered or noted by the applicant, despite the emissions from the site occurring onsite. The effect is not mitigated. Objectives and Policies & Precedent The proposal is not a working from home activity and therefore, the application doesn't support strategic objectives 2.3.2 and 2.4.3 or their policies. The activity is not compatible with a rural residential environment as required by Objective 17.2.1 and industrial activities are not included in the limited range of compatible activities. The proposal is contrary to Objective 17.2.1 and Policies 17.2.1.1, 17.2.1.2 and 17.2.1.3. The proposal fails to meet objectives and policies threshold test. We are concerned that allowing this activity to occur would set a precedent for others to set up similar commercial or industrial activities along Abbots Hill Road and on neighbouring roads.	
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[46] Please note the above table is a summary of the submissions received on the proposal and the full submissions are attached as Appendix 2.

ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

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

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

Permitted Baseline

- [48] An important consideration for the assessment of effects is the application of what is commonly referred to as the permitted baseline assessment. The purpose of the permitted baseline assessment is to identify the non-fanciful effects of permitted activities and those effects authorised by resource consent in order to quantify the degree of effect of the proposed activity. Effects within the permitted baseline can be disregarded in the effects assessment of the activity.
- [49] I consider the permitted baseline in this case could comprise the establishment of a Standard Residential Activity and it could also include the use of a 100m² building or 100m² of the floor area of a larger building for a compliant Working from Home activity. The relevant definitions are as follows:

Residential Activities

The category of land use activities that consists of:

- *supported living facilities (including rest homes, retirement villages, and student hostels)*
- *standard residential (including papakaika); and*
- *working from home.*

Working from Home

The use of land and buildings as a place of work, as part of an occupation, craft, profession, or service, ancillary to their use as a principal place of residence. For the sake of clarity, this means that the activity:

- *can only be carried out by a person or persons living on the site as their principal place of residence; and*
- *cannot employ any other person on-site, including by way of operating from the site (relying on equipment or vehicles stored on the site or making regular visits to the site).*

Working from home may include retail services but not direct retail sales except for goods produced on-site.

For the sake of clarity, this definition includes:

- *hosted visitor accommodation, in the form of homestays, bed and breakfast, or similar, for no more than five guests, provided the accommodation is contained within the same residential unit that is being used as the principal place of residence;*
- *early childhood education for five or fewer children; and*
- *animal breeding involving one breeding pair of dogs and/or cats.*
- *Working from home is an activity in the residential activities category.*

- [50] A key criteria to be a working from home activity is that it can only be carried out by persons living on the site. If a person undertaking work on a site is not resident on that site, the activity is not a working from home activity.
- [51] If a residential activity is established on the subject site a working from home activity could be undertaken, and this would permit 100m² of a building or buildings to be used as follows:

17.5.7 Maximum Gross Floor Area

Activity		Maximum gross floor area
1.	Rural ancillary retail	60m ²
2.	Working from home	100m ² (applies only to area used within buildings)

[52] In addition, performance standard 17.5.4 Hours of Operation would need to be complied with as follows:

17.5.4 Hours of Operation

1. *For rural ancillary retail, customers must not arrive before 7am or depart after 7pm.*
2. *For working from home, customers and deliveries must not arrive before 7am or depart after 7pm. This standard does not apply to homestays.*
3. *Activities that contravene this performance standard are restricted discretionary activities.*

[53] In this case, I consider a residential activity with a working from home activity using 100m² of a building is not a fanciful baseline. I note that this activity could include more than one worker if they are resident on the site. For example, a family business may have more than one family member or boarder engaged in the business activity as long as they are living on the site. An example of a working from home activity that could occur in a Rural Residential 1 zone would be a rural contractor. Use of a truck and equipment would also be part of the permitted baseline.

[54] I consider it appropriate to apply the permitted baseline to the assessment of effects in this case, as a dwelling and ancillary working from home activity are not unexpected activities in a Rural Residential 1 zone.

[55] In relation to the 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.

[56] For the subject site, the existing and reasonably foreseeable receiving environment comprises a 2.8ha rural residential site that has a vehicle access, yard and shed established on it which can be put to a farming or property maintenance use as a permitted activity. It is primarily used for grazing and the slip prone area is planted in trees. There are no unimplemented resource consents that relate to the site. The site is able to be developed for a residential activity which is a likely outcome. The application identifies a dwelling is proposed to be built within three years.

[57] For adjacent land the existing and reasonably foreseeable receiving environment comprises rural residential land use in an environment characterised by pasture, shelterbelts, and hedges. Dwellings and sheds are evident along Abbotts Hill Road, but

natural elements predominate over built elements. Abbotts Hill Road is a narrow no exit road that is not hard surfaced at its eastern end. The environment has a low background noise consistent with a rural residential environment separated from major traffic routes.

[58] It is against the characteristics of the existing environment that the effects of the activity, beyond the permitted baseline, must be measured.

[59] 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 this situation will soon change.
- The proposal will exceed the maximum permitted gross floor of 100 m² by 44 m².
- Up to 5 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.

Assessment of Effects

(Dunedin City District Plan)

[60] The assessment of effects is not limited in this case as the proposal has a non-complying activity status and all relevant effects can be considered. Some limited guidance is provided by Rule 17.12.2, which direct the assessment to relevant Rural Residential zone and Strategic objectives, but there is no specific guidance in respect of the matters to consider for non-complying Industrial Activities.

[61] Having regard to the potential effects likely to arise where and the matters raised by submitters the following effects have been assessed:

- Rural Residential Character and Amenity Values
- Transportation
- Public health and safety effects (noise, dust, light spill, fumes etc)
- Hours of Operation
- Hazards (Natural Hazards; NESCS; Hazardous Substances)
- Productivity
- Natural Environment
- Property Values
- Positive Effects
- Cumulative Effects

Rural Residential Character and Amenity Values

[62] The receiving environment is rural residential in character, and it is consistent with zone descriptions. As the locality is near the end of a narrow no exit local road, it has a secluded character and low traffic volumes which increases its sensitivity to amenity impacts.

- [63] All submitters value the character and amenity of the locality, and most submitters identify the visual and amenity effects of the shed and yard area that have been developed on the site as a major detraction from the character and amenity of the area. The yard is described as unkempt, and it is noted as containing equipment and storage not used for the activity. Numerous photos have been included with submissions to illustrate the submitters concerns about adverse effects on character and amenity arising from the activity.
- [64] While maintenance of amenity values is an objective of the zone under Objective 17.2.3 there are limitations to what any district plan can achieve. If the shed established on the site is being used for a farming purpose it is permitted activity in the Rural Residential 1 zone. The shed currently complies with the relevant zone setbacks. As a farm shed, its scale is not controlled by the Plan, and it can be painted in any colour the owner wants as the area is not subject to any landscape overlay. There is also nothing in the plan to prevent a yard area being established on a Rural Residential 1 zone site (for a permitted land use) and the storage of trailers and equipment within such a yard is also not controlled by the Plan, unless they are being used as part of an unauthorised activity. There are many examples of hobbyists with large sheds and yards full of equipment located within the Rural Residential 1 zone that are not breaching any District Plan rules. The only limit to acceptability in these situations involving enthusiastic hobbyists, or avid collectors of machinery and equipment, is the general duty under Section 17 to avoid, remedy, or mitigate adverse effects.
- [65] In this case, I consider that there is a valid non-fanciful baseline and I have applied the baseline to the assessment. This baseline provides for permitted effects to be disregarded in the assessment of this proposal. In my experience, working from home activities in the Rural Residential 1 zone are not uncommon, and there are few restrictions on sheds for farm use. I also note that the existing shed could form part of a permitted rural residential baseline. On that basis, I consider the effects arising from the bulk of the shed building can be disregarded. I note that the proposed level of activity in the shed is greater than a permitted working from home activity (were a dwelling established on the property) and this may result in a greater intensity of activity, traffic generation and more equipment storage within the shed and in the yard and it is these effects that require assessment.
- [66] Because of the terrain and existing vegetation, the visual effects of the shed and yard are relatively confined, and it's the immediate neighbours to the site that will primarily experience any adverse amenity and character effects. Recreational users may also view the yard but as they are only passing the site the effects will only be experienced over a relatively short duration. The scale of the activity in relation to typical residential dwellings and the vegetative screening enclosing of the site are evident in a photo provided in the Hayes submission which appears to be a taken from a drone. The activity will occupy approximately 1000m² of the site.



- [67] To further demonstrate the enclosed nature of the site the photo below is taken from Abbots Hill Road looking west towards the site. The dwelling at 128 Rd is in the centre and the yard is not visible beyond the dwelling due to trees on the site at 128 Abbots Hill Road.



- [68] The yard is also not visible in the photo below photo taken from the West of the site looking towards the east due to screening from trees on 110 Abbots Hill Road.



- [69] The applicant is proposing to mitigate the visual effects of the yard on rural residential character and amenity through a fence located along the northern boundary with the site at 128 Abbots Hill Road and through landscaping along that boundary and at the road frontage. I note that the fence is only partially mitigating the visual impact for the closest dwelling at 128 Abbots Hill Road. This is because the dwelling at 128 Abbots Hill Road is at a higher elevation and structures, containers, trucks and trailers are visible above the fence. The submission from Ms McCraw provides photography demonstrating the visibility from her property. This could be remedied by increasing the height of the fence. In a Rural Residential 1 zone there is no District Plan restriction on fence height although a building consent would be triggered once the fence is higher than 2.5m.
- [70] Landscaping is proposed and has been installed on the site. As noted by submitters the installed landscaping is ineffective and while there are some native trees planted along with grasses at the front of the site, they are small and not well protected. If they survive it will likely take many years for them to be effective in screening and softening the effects of the

yard. As the yard directly adjoins a vehicle crossing there will always be a view into the site, but views into the site can be constrained by effective vegetative screening. Overall, the applicants attempt to successfully integrate the shed and yard into the setting in which they are located has been unsuccessful to this point and the industrial nature of the yard contrasts with the surrounding environment. The photo below demonstrates the limited scale of the landscaping and lack of screening it provides.



- [71] The construction of a shed and yard have altered the character and amenity of the piece of land on which they are located and reduced amenity values for a small section of Abbots Hill Road, but this change needs to be considered in relation to the permitted baseline. The shed is a permitted structure, a yard is also permitted and there are no controls in the plan preventing storage of containers or trailers. There is, however, a storage activity and an intensity of use that is potentially greater than the baseline and conditions are recommended to manage these effects.
- [72] If the Panel is considered granting consent to the proposal it is recommended that the landscaping for the site be improved. It is recommended that a landscape/planting plan prepared by a suitably qualified person be provided for certification by the Resource Consents Manager. A landscape plan with a screening objective could secure the planting of larger closely spaced trees at the front of the site. This will greatly improve the effectiveness of the existing landscaping in mitigating visual effects from the site that are impacting on rural residential character and amenity values.

Transportation

- [73] All submitters have identified transportation issues and traffic safety as a particular concern with the proposal. The Road is identified by submitters as narrow and there are areas where visibility is restricted that have been identified. A number of photos have been included with the submissions to illustrate the submitter concerns. Submitters also point out that there is frequent pedestrian and recreational use of the low vehicle volume road. They have raised safety issues arising from the incompatibility between pedestrian and recreational users and the truck and trailers used by the activity as a particular concern.
- [74] Concerns have also been expressed regarding the suitability of the manoeuvring space on the site, roadside parking, and the blocking of the road by the activity. The application refers to a use of a small truck, but the submitters suggest is similar to logging trucks that have used the road in the past. It may be useful for the applicant to clarify this in evidence exchange. The application identifies that no staff vehicles will be parked within the Abbots Hill Rd road reserve and that no more than 4 staff vehicles will be parked onsite at any one time.

- [75] The applicant anticipates up to 20 vehicle movements per day (VPD) and as part of these vehicle movement that a truck will be used as part of the operation to transport machinery to job sites and back. The applicant anticipates that on average there will 16 heavy vehicle movements per month. On the basis of the applicant's advice on the scale and intensity of the proposed activity the Transportation Planner initially concluded the transportation effects would be minor and the Transportation Advice is included in Appendix 3 together with further transportation safety advice that responds to the submissions received.
- [76] The original assessment did note that a review of conditions may be needed, and the following conditions were recommended:
- Car parking must be provided on the site for at least four (4) vehicles. The car parking area must be designed to comply with the minimum dimension requirements of Rule 6.6.1.1.b.
 - Pursuant to Section 128 of the Resource Management Act, the transportation requirements of this activity may be reviewed one year after the commencement of the activity, to ensure any adverse effects on the transportation network are sufficiently managed.
- [77] Further traffic safety advice was provided by Ian Martin the Council's principal advisor for road safety following the receipt of submissions and he 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.
- [78] Mr Martin considers that his expectation would be for the applicant to further mitigate the risks and he raises concerns about the principal mitigation of scale as it may be difficult to ensure the activity keeps to their stated traffic movements. Mr Martin also considers that the installation of passing bays, road widening, improved drainage, may be necessary to adequately manage the effects on the activity, but no specific areas are identified in the advice as requiring improvement.
- [79] It is accepted that Abbotts Hill Road is unsealed and narrow at its eastern end and that it less than ideal for heavy vehicle use, but I also note that the permitted baseline includes a working from home activity that may involve use of a truck. If the baseline is applied, then the effects of a truck are able to be disregarded unless there is a level of truck activity beyond the baseline that can be identified. I also note that Abbotts Hill Road is legal road is able to be legally used by trucks. From submissions it is evident that the road has been used by permitted forestry trucks in the past.
- [80] Given that there are up to 5 employees proposed this proposed activity may generate a level of activity that is greater than a typical working from home activity, but I consider that the stated movements of 20 vehicles a day and 16 heavy vehicles a month would likely fall within the permitted baseline. I also acknowledge that ensuring that the activity is restricted to this stated level of usage is not always easy from a compliance perspective. The stated use in the application is not expressed as a limit and some level of flexibility would be appropriate. A log can be a useful means to tracking vehicle usage, but even if a log is required as a condition there still may be issues with the log not being correctly completed.
- [81] In terms of road improvements as a means of mitigation, I note that aside from vehicle entrance improvements that are the clear responsibility of a landowner, upgrades to a legal road are typically undertaken by the Council and these improvements are partly

funded through development contributions. The applicant will be likely be required to provide a roading development contribution for establishment of an out of zone industrial activity in this case. I also note that if this proposal was a permitted working from home activity involving a truck similar to that to be used by the applicant, then upgrading of the road by the landowner would not be required.

- [82] The additional transportation advice provided creates some uncertainty in the assessment of transportation effects for this proposal, and I note that it has been provided without any consideration of the permitted baseline. The advice also does not identify any specific improvements or additional conditions beyond that identified in the original transportation advice that may be applied to ensure effects are appropriately mitigated. If the baseline is applied and baseline effects disregarded, and the stated traffic movements by the applicant are observed, then having regard to the permitted baseline, I expect transportation effects will be no more than minor. However, due to uncertainty created by the additional transportation advice, I am, however, reluctant at the time of writing this report to make a definitive conclusion about transportation effects and whether the effects can be adequately mitigated to be minor and acceptable.
- [83] I will be in a better position to make a conclusion on these matters following an exchange of evidence and the submissions and the panel questioning of experts undertaken at the hearing.

Public Health and Safety Effects (noise, dust, light spill, fumes etc)

Noise & Vibration

- [84] Noise is noted as a concern by submitters, with the idling of a diesel truck for long periods being identified as particularly annoying. Machinery noise is also identified as an issue. The background noise level in the area will be low as it is sheltered area that is removed from major transportation noise sources. This will mean the noise will be audible from a greater distance than in areas with a higher background noise level.
- [85] The property most affected by noise is 128 Abbotts Hill Road where the dwelling is approximately 19m from the yard. Compliance at the boundary of this site will mean that the noise level will comply at more distant locations. In rural and rural residential zones noise limits are measured at notional boundaries, which are 20m from the wall of a dwelling, unless the boundary is closer which is the case for the dwelling at 128 Abbotts Hill Road.
- [86] The applicant has provided a noise assessment from Marshall Day that indicates that the activity on the site would not comply with the relevant District Plan noise limits without additional mitigation. The report indicates that with mitigation in the form of an acoustic fence in place, that the activity would be able to comply with relevant noise limits. The applicant has altered the fence in response to this report to ensure that gaps are removed, and the fence will now be more effective in reducing noise as a result.
- [87] Submitters have questioned the noise assessment, noting that it did not cover all relevant noise sources, including low frequency noise sources, consider the low background noise or adequately cover propagation effects. The noise assessment is accepted as being as being relatively brief but it appears to adequately address the relevant compliance requirements.
- [88] It is import to note that compliance with Plan noise limits does not mean that the noise will not be audible, as audibility is not the test for reasonableness. Depending on a person's sensitivity a complying noise source may still be annoying, particularly if it

represents a change in the environment. Time of day can also be an issue in relation to the level of background noise. With a depot, there will be early morning and late afternoon noise that may create annoyance to residents even if noise limit compliance is achieved.

- [89] In respect of the permitted baseline, a permitted dwelling with a working from home activity could be present on the site if it complied with the relevant performance standards including noise and that use could involve a truck or diesel motors. Having regard to the permitted baseline, if the proposed activity operates in compliance with noise performance standards, then these noise emissions from the site would typically be considered acceptable even if they are audible and potentially annoying in certain conditions.
- [90] In this case, based on the report from the acoustic consultant, it appears possible for the activity to operate within acceptable noise limits with mitigation in place. I also note that the applicant also has a general duty to avoid unreasonable noise under Section 16 of the RMA and additional effects mitigation appears possible. If the panel is considering granting consent, I would also recommend considering an increase in the height of a section of the boundary fence to 128 Abbotts Hill Road to 2.5m. This can be done without a building consent, and it will improve both noise and landscape mitigation to the most affected property at 128 Abbotts Hill Road. The development of a simple noise management plan for the applicant and workers to follow to minimise noise emissions from the site as far as practicable is also recommended. A noise management plan could, for example, identify that any noisy grinding work can be undertaken with the shed or within an acoustic enclosure.
- [91] Vibration falls with the RMA definition of noise, and it is identified as a concern by some submitters. I note that the Plan has no standards for the control of vibration from a land use activity and it is usually only an effects issue that arises with construction activity. There are international standards that could be used to set a vibration limit for activities on the site and I am aware of reports that indicate that vibration is perceptible at 1mm/s Peak Particle Velocity (PPV) and can generate complaints at 2-3 mm/s PPV. If the Panel is considering granting consent, then a limit could be potentially set on a permitted vibration level and the activities that may potentially create vibration could also be identified and controlled through a noise management plan. Given the estimated 19m distance to the nearest dwelling, I consider it is likely that any vibration from the proposed activity can be controlled to be with acceptable limits.
- [92] To address concerns regarding the adequacy of the Marshall Day report I note that a further noise test could be undertaken prior to the operation commencing, to confirm that the activity can operate in compliance with noise limits with the required mitigation in place. This requirement for testing was suggested by a submitter and should include testing the truck idling noise source identified as particularly annoying by submitters.
- [93] If the noise effects of complying working from home activity are disregarded under the baseline, and appropriate mitigation is in place to ensure the activity complies with Plan noise limits and minimises noise emissions, I consider the effects of noise from the proposed activity can be managed to be minor and acceptable. If the panel is considering granting consent, a noise limit condition is recommended together with conditions that secure appropriate mitigation including an increase in fence height, and a noise management plan. A condition requiring a pre-commencement noise test is also recommended.

Light spill

- [94] The applicant has installed security lighting that the submitters note is triggered when vehicles pass. It is accepted that security lights are not a typical feature of the local environment, but I note that they should be able to be set to avoid being triggered by a passing vehicle. I also note that the use of security lighting is not controlled by the proposed Plan and that it could be a feature of a permitted working from home activity.
- [95] The effects of light spill are controlled in all zones through compliance with by the performance standard 17.3.5 to a level of 3 Lux between 10am and 7am. This rule also requires lights to be directed away from adjacent roads and site boundaries. I consider the effects of the light spill can be controlled by conditions if the consent is granted, and this could include a requirement for the consent holder to test the light level and confirm compliance before commencing the activity.

Fumes

- [96] Fumes and dust are air discharges that are under the jurisdiction of the Otago Regional Council, but in the case of a non-complying land use activity they may also be a consideration for a land use proposal. The proposed Plan contains no performance standards for air emissions due to this jurisdiction division.
- [97] I note that control of these effects will be dependent on maintenance of equipment and management controls. A site management plan maybe the most appropriate approach to controlling fumes from the site, which are only likely to be an issue in certain weather conditions and other discharges.
- [98] Operating equipment that can generate fumes will be a part of the permitted baseline if the discharges are permitted under the Regional Air Plan, and the effects are expected to be minor if equipment is well maintained and not left to idle for long periods. A site management plan that addresses effects arising from storage to materials and discharges is considered to be an appropriate method of managing these effects if the Panel is considering granting consent to the proposal.

Hours of Operation

- [99] Submitters have raised concerns about the applicant operating outside of the stated operation hours. Operating Hours are a simple way of avoiding adverse effects on surrounding sites from unanticipated activity during the night or early in the morning. The hours specified in the application for the activity are as follows:

- 7.30 am to 7pm in summer and 7.30 am to 6 pm in winter.

- [100] These hours are slightly less than the hours identified for a permitted working from home activity and are considered acceptable.

Hazards

Natural Hazards

- [101] Section 6(h) of the Resource Management Act 1991 requires the Council to recognise and provide for the management of significant risks from natural hazards, as a matter of national importance. In addition, under Section 106 of the Resource Management Act 1991, the Council may decline a subdivision consent, or it may grant the subdivision consent subject to conditions, if there is a significant risk from natural hazards.
- [102] The assessment of the risk from natural hazards requires a combined assessment of:

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

[103] The natural hazards identified for the site are confined to a part of the site that is some distance from the yard area. it is considered that there are no significant risks from natural hazards that need addressing as part of this application.

NESCS & Hazardous Substances

[104] The NESCS is not triggered by the proposed use of the site as a depot and the application indicates that the applicant will either comply with District Plan storage limits for hazardous substances or obtain a further consent if that is needed in the future.

[105] The Hayes submission raises concerns about chemicals in washdown water from equipment which will discharge to a watercourse within the site. The submission identifies that it is a discharge that is subject to the Regional Council Water Plan and in particular Rule 12.B *Discharge of hazardous substances, hazardous wastes, specified contaminants, and stormwater; and discharges from industrial or trade premises and consented dams*. The submission requests that the applicant confirm that the proposal is compliant with Regional Council requirements. It is recommended that the applicant respond to this issue in its evidence submitted to the panel.

[106] Notwithstanding the applicants need to comply with Regional Plan requirements, it would be appropriate for the applicant to undertake measures to manage the stormwater run-off, and to ensure any potential contaminants are trapped and filtered through natural or mechanical means before they enter the swale feature. If the Panel is considering granting consent these measures can be required as a condition of consent as part of a site management plan. With appropriate conditions in place the adverse effects are expected to be minor.

Productivity

[107] The establishment of a yard on a part of the site at 124 Abbots Hill Road will prevent that area of the site from being used productively. I note that the size of sites in rural residential zones will often be a limited factor in the productive value of the site but the objectives on the plan promote the use of rural residential land for hobby farming. It is also noted that in this case, the land within the site is classified as LUC3 land in the Landcare land use Capability Database and therefore it is subject to the National Policy Statement on Highly Productive Soils, which is discussed in the objectives and policies section below. The proposed activity will occupy approximately 3% of the area of site, but its impact is potentially greater than the occupation percentage suggests as it occupies a flatter part of the site that contains the access to the site.

[108] I note that the productive use of rural residential land is a choice of the owner, and it may or may not be used productively. Rural Residential sites being less likely than larger rural zoned sites to be put to a productive purpose due to their size. In this case, it is currently being use for grazing with the exception of the hazard prone part of the site which is planted. In general, the rural residential land in the locality used productively is currently used for low intensity pastoral farming and there is also forestry activity located to the west of the site.

- [109] In this case, the proposed yard will reduce the sites potential for productive use. Despite this the area of the site to be used for the activity is a small area of land and it the proposal is considered to represent a very small loss of productive potential. I note that a similar area of land could be put to a permitted working from home activity that is also not a productive use of the land. Therefore, the productivity loss from the use of land is considered to represent a less than minor impact on productivity. The remainder of the site can still be put to permitted farming or residential land use, although the hazard prone land can't be used for residential activity.

Natural Environment

- [110] The land is highly modified and ecological values of the site will be low. I note that there is a vegetated swale partly located within the property at 124 Abbotts Hill Road which will be used for stormwater discharges. This swale discharges in a southerly direction over pasture until it is picked by the Council's Stormwater system near 39 Christie Street. Discharges into this swale are discussed above under hazards above. Any effects on the natural environment arising from the proposed activity are expected to be minor if conditions are in place to manage effects.

Property Values

- [111] Impacts on Property Values are not an effect recognised by the RMA, but I note that there is likely to be a strong relationship between amenity values and property value and the maintenance of amenity values are an important consideration in determining this consent. The effects contributing to amenity values are assessed above.

Positive Effects

- [112] The applicant notes in the application that:

The applicant's business is a small enterprise and using the site to store equipment reduces overhead costs and will be especially convenient for the applicant once the applicant lives onsite. The proposal will therefore enable the applicant's business to continue to provide specialist services and make a valuable contribution to Dunedin's building industry.

I note that the applicant is performing specialist construction services which are useful to the construction industry, but there will be other appropriately zoned sites that the applicant can operate from. In this case, any positive effects arising from the proposal are likely to be limited to economics benefits for the applicant and are considered to be minor.

Cumulative Effects

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

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

- [114] Similarly, some effects may not presently seem an issue, but after having continued over time those effects may have significant impact on the environment. In both of these scenarios, the effects can be considered to be 'cumulative'.

- [115] The activity is small in scale and located in an area where there are no other industrial activities. The activity will generate effects but any cumulative impacts where these effects combine with other effects to create a composite effect are considered to be minor.

Effects Assessment Conclusion

- [116] The applicant established a shed and yard and commenced operating without a consent. This has caused understandable annoyance to residents and the character of the piece of land used for the activity has changed from a paddock to a contractor's yard. I also note that when the activity commenced noise emissions did not comply with Plan noise limits.
- [117] I consider that there is a valid permitted baseline of a working from home activity that is appropriate to apply to the effects assessment. Effects associated with a valid baseline can be disregarded. In this case the intensity of effects of the activity will be greater than a working from home activity as there are up to 5 employees proposed for the activity but they will not be continuously present on the site as the site will operate as a depot.
- [118] After considering the likely effects of this proposal above and after disregarding adverse effects that fall within the permitted baseline, I consider it is likely that the overall effects of the proposal can be mitigated by conditions of consent so as to be no more than minor, but I acknowledge there is uncertainty in relation to the significance and mitigation of road safety effects that make a definitive overall conclusion difficult. This may be able to be resolved through the evidence exchange process and exploration of the issues at the hearing.

OFFSETTING OR COMPENSATION MEASURES ASSESSMENT

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

OBJECTIVES AND POLICIES ASSESSMENT

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

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

Dunedin City District Plan

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

Sustainability Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 4.2.1 Enhance the amenity values of Dunedin.	Similar to the 2GP strategic objectives and policies these objectives and policies are directed to

Policy 4.3.1 Maintain and enhance amenity values.	establishing the operative Plans framework and strategic principles including maintenance of amenity values, the use of zoning to support compatibility and the avoidance of mixing incompatible activities. Similar to the 2GP it is arguable whether they need to be directly assessed as they are providing the Plans framework. If assessment is required, I consider the proposal is inconsistent with these objectives and policies as the proposed industrial activity is located out of the rural zone that formally applied under the operative Plan.
Objective 4.2.5 Provide a comprehensive planning framework to manage the effects of use and development of resources.	
Policy 4.3.7 Use zoning to provide for uses and developments which are compatible within identified areas.	
Policy 4.3.8 Avoid the indiscriminate mixing of incompatible uses and developments.	
Policy 4.3.10 Adopt an holistic approach in assessing the effects of the use and development of natural and physical resources.	

Rural Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
	The site has been rezoned by the 2GP and the rezoning is beyond challenge. On that basis the operate Plan Rural zones objectives and policies are not considered relevant to the proposal and have not been assessed.

Hazards Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Policy 17.3.2 Control building and the removal of established vegetation from sites or from areas which have been identified as being, or likely to be, prone to erosion, falling debris, subsidence or slippage.	The proposal is considered to be consistent with this policy.

Transportation Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 20.2.2 Ensure that land use activities are undertaken in a manner which avoids, remedies or mitigates adverse effects on the transportation network.	Although the activity is small in scale, the narrow access road to the site and poor sightlines impact on the safe interaction of residential and recreational users and vehicles for the activity and for the safe operation of the roading network. There are also questions surrounding the effective mitigation of these effects on road safety. The proposal is therefore considered to be inconsistent with these objectives and policies unless mitigation questions are appropriately resolved.
Objective 20.2.4 Maintain and enhance a safe, efficient and effective transportation network.	
Policy 20.3.4 Ensure traffic generating activities do not adversely affect the safe, efficient and effective operation of the roading network.	
Policy 20.3.5 Ensure safe standards for vehicle access.	
Policy 20.3.8 Provide for the safe interaction of pedestrians and vehicles.	

Environmental Issues Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 21.2.2 Ensure that noise associated with the development of resources and the carrying out of activities does not affect public health and amenity values.	If compliance with appropriate performance standards to manage effects can be achieved the proposal is considered to be consistent with this Objective and Policy
Policy 21.3.3 Protect people and communities from noise and glare which could impact upon health, safety and amenity.	

Proposed 2GP

[123] The objectives and policies of the 2GP that are considered relevant to the assessment of this application are assessed below. I note that the 2GP Strategic Objectives and Policies have been identified in recent DCC environment court cases for the Rural and Rural Residential zoned sites at 78 Cape Saunders Road (Clearwater) and 256 Blueskin Road (Frew) as not requiring specific assessment. This is because they are strategic, and their primary purpose is to establish the framework of the Plan. As a consequence, they have not been directly assessed.

[124] As the assessment matters for non-complying activities reference the strategic objectives 2.2.4, 2.7.1, 2.3.2 and 2.4.3 and supporting policies I have given them consideration. Objective 2.3.2 seeks to establish a hierarchy of centres and Objective 2.4.3 is concerned with achieving strong vibrant and vital centres and this proposal has limited relevance in relation to those objectives. Objective 2.2.4 relates to a compact urban form and objective 2.7.1 is concerned with efficient and affordable infrastructure. Objective 2.7.1 this has some relevance in relation to transportation effects but transportation issues are able to be more specifically addressed through assessment of Section 6 objectives and policies below.

Transportation

Provision reference	Summary of provisions	Assessment
Objective 6.2.3 and Policies 6.2.3.3, 6.2.3.9 and 6.2.3.10	These seek to ensure that land use, development and subdivision activities maintain the safety and efficiency of the transport network for all travel methods, including by providing sufficient on-site manoeuvring.	Although the activity is small in scale, the narrow access road to the site and poor sightlines impact on the safe interaction of recreational users and vehicles being used as part of the activity and also on the safe operation of the roading network. There are also questions surrounding the effective mitigation of these effects on road safety. The proposal is therefore considered to be inconsistent with these objectives and policies unless mitigation questions are appropriately resolved.
Objective 6.2.4 and policies 6.2.4.1, 6.2.4.2	These seek to ensure parking loading and vehicle accesses are designed and located to provide for safe and efficient	There are issues identified with the under width nature of the vehicle access

	operation and facilitate safe and efficient functioning of the network	adequately providing for the type of vehicles used in the activity in relation to accessing the site and concerns have also been raised by submitters about manoeuvring capability and road blocking. Although the issues regarding loading, access and parking are not considered to be significant, the proposal is considered to be inconsistent with these objectives and policies.
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Public Health and Safety

Provision reference	Summary of provisions	Assessment
Objective 9.2.1 and Policy 9.2.1.1	These seek to ensure that land use activities maintain or enhance the efficiency and affordability of public water supply, wastewater and stormwater infrastructure, and will not lead to future pressure for unplanned expansion of infrastructure.	The proposal is considered to be consistent with this objective and policy. The proposal would be self-reliant with respect to services and is not expected to lead to future pressure for expansion of infrastructure.
Objective 9.2.2 and Policies 9.2.2.1, 9.2.2.4, 9.2.2.11, 9.2.2.X	These seek to ensure that land use and development activities maintain or enhance people's health and safety, including by ensuring the following: • That activities are designed to properly manage noise and light spill; • that hazardous substances are stored to avoid risk to health and safety; • and that potential contaminants in soil are identified and properly managed.	Although adverse effects issues have been identified in submissions the adverse effects can be effectively mitigated and comply with relevant zone performance standards. The proposal is considered to be consistent with this objective and its policies. The effects of noise or light spill from this or adjoining properties can be managed by conditions. Hazardous substances will comply with permitted limits. The NESCS is not triggered by the proposal and can be managed should the land use change or soil disturbance occur.

Natural Environment

Provision reference	Summary of provisions	Assessment
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Objective 10.2.1 and Policies 10.2.1.1 and 10.2.1.5	These seek to maintain or enhance biodiversity values by ensuring that activities are only allowed where biodiversity values would be maintained or enhanced, including by encouraging conservation activities in all zones and limiting indigenous vegetation clearance.	The proposal is considered to be consistent with these provisions. No indigenous vegetation would be cleared or affected and no building or structure is to be erected, thus no material change to the natural environment is anticipated as a result of the proposal.
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Natural Hazards

Provision reference	Summary of provisions	Assessment
Objective 11.2.1 Policy 11.2.1.7 Policy 11.2.1.11	This objective seeks to develop and locate land use activities in such a way as to ensure that only risk from natural hazards is no more than low in the short to long term. The policies seek to	The subject site is identified as being partly within a hazard 2 (land instability) overlay but the proposed land use is not at a location impacted by the hazard. The proposed activity will not exacerbate the hazard as not earthworks are proposed. The proposal is consistent with this objective and its policies

Rural Residential Zones

Provision reference	Summary of provisions	Assessment
Objective 17.2.1 Policy 17.2.1.1	The objective seeks to enable lifestyle blocks and hobby farms and provide for a limited range of other compatible activities. The policy seeks to enable farming, grazing and conservation.	Industrial Activities are not specifically identified in the objectives and policies of the Rural Residential zones section and unlike Rural zone and Residential zones there are no policies directly seeking that Industrial Activities be avoided in Rural Residential zones. Despite this, Industrial Activities are not considered by the 2GP to be a potentially compatible activity as they are assigned a non-complying activity status. Potentially compatible activities such as Community and Leisure and Sports and Recreation are assigned an activity status of Restricted Discretionary or Discretionary. A 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. Therefore, I consider scale and effects management are a consideration is determining compatibility

		in the absence of direct policies that seek to avoid the activity being established. In this case the activity is proposed at a greater intensity than that envisaged as compatible with a work from home land use. 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. I acknowledge that the 5 employees will not all be on site as the activity is a depot and they will be working at other locations. While a family business could involve more than 1 person, I am not aware of any situation where 5 members of a family are involved with a working from home activity. The proposal will only occupy a relatively small area of the overall site but compatibility in relation to neighbouring sites is not assisted by its industrial character and visibility at the road frontage. Noise that would have exceeded noise limits, vibration, fumes, and lighting have also resulted in neighbour conflict. Improved effects management can improve compatibility, but the proposed scale and intensity of the activity is greater than anticipated by the zone. I consider that the proposed land use is not one of the limited range of activities provided for by the Plan and I have considered whether this proposal is therefore contrary to the objective by being directly opposed or repugnant to this objective. In the absence of a policy that directly seeks to avoid Industrial Activities in the zone I consider that the proposal is not directly opposed or repugnant to this objective and policy, but it is clearly inconsistent as its activity status is indicative that it is not seen as a compatible activity.
Policy 17.2.1.3	This policy requires work from home to be at a scale that is ancillary to rural and conservation activities on a site and references strategic objectives and policies under objectives 2.3.2 and 2.4.3.	This policy is not directly relevant as it relates to working from home, but it does identify that scale is an important consideration as is support for productive activities.

		The strategic policies referenced are related to the centres hierarchy and achieving vibrant and vital centres and are not relevant to the proposal.
Objective 17.2.1 Policies 17.2.2.3 & 17.2.2.4	These objectives and policies seek to ensure minimise conflict between activities in rural residential zones and to maintain a good level of amenity on surrounding rural residential properties, residential zoned properties and public spaces. Working from homes is to operate in a way that avoids or mitigates noise or adverse amenity effects.	The proposal does not impact on any residential zoned properties, but it has the potential to impact on the Abbots Hill Road frontage and adjoining and adjacent sites. The existing shed is setback the required distances which is consistent with policy 17.2.2.3. I note that the commencement of the activity subject of the application prior to a consent being obtained has contributed to neighbour conflict, This partly relates to amenity impacts on neighbours that the objective seeks to minimise. Noise emissions, light spill and fumes, are all identified by submitters as effects that are impacting on rural residential amenity values and submitters consider the industrial character of the shed and yard is detracting from rural character and amenity values. Conflict arises when the environmental effects created by an activity result in an incompatibility between uses. I note that compatibility is anticipated for a working from home activity that complies with scale controls and performance standards, even if it is an industrial activity. However, it is accepted that some conflict can still arise between permitted activities. There are no specific policies for Industrial Activities in the Rural Residential zones, but to achieve the objective the scale must be appropriate, and the effects managed to <u>minimise</u> conflict. If a proposed industrial activity is at a scale that is consistent with a compliant working from home activity with relevant performance standards, achieved through mitigation and secured by conditions, the amenity impacts arising from the proposed activity could minimise conflict by being managed to acceptable levels. The proposed shed and yard are industrial in character and the proposed mitigation of visual effects on character and amenity are currently ineffective in mitigating the adverse effects visual effects of the yard. In

		addition, the scale and intensity of the proposed use exceeds that of a working from home use which increases the potential for conflict. The proposal is therefore considered to be inconsistent with this objective and the relevant policies. It is not, however, considered to be at a scale or intensity which would mean it is directly opposed to the objective and improved effects management can potentially address conflict issues.
Objective 17.2.3 Policy 17.2.3.1	This objective and policy seek to ensure the character and amenity of the rural residential zones are maintained. The characteristics of a rural residential area are to be maintained are as follows: a) a high presence of natural features such as trees, bush, gully systems and water bodies; b) a semi-rural level of development, with a higher proportion of open space and lower density of buildings than in urban areas; and c) land maintained and managed for farming, grazing, conservation and rural residential activities.	The locality in which the activity is proposed exhibits all the zone features identified in the objective. The proposed activity will reduce the land area available for farming or rural residential activities, but the activity will only occupy a small percentage of the site at 124 Abbotts Hill Road. The remainder of the site will be retained in pasture and trees and a higher proportion of open space than urban areas will be maintained. I also note that this objective is concerned about the amenity and character of the wider zone, and the site is visually confined and the activity relatively small scale. As most amenity effects and effects on rural character and amenity in this case are localised the implications for this rural residential zone are not considered significant overall. While I consider that the wider rural residential amenity and character implications are not significant the proposal is inconsistent with this objective and policy.
Objective 17.2.4	This objective seeks to ensure the productive potential of the rural residential zones for lifestyle blocks or hobby farms is maintained.	The proposed activity is not a productive land use or part of a lifestyle land use activity. The yard and shed will reduce productive potential by occupying an area of relatively flat land that makes up approximately 3% of the site area. The effect of the loss of 3% of the site will likely have a greater on the site than the percentage indicates as the land utilised is at the Abbotts Hill Road frontage and on a relatively flat part of the site. I note 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. When considered on a zone basis, the implications for productive potential are also minimal. I also note that the site at 2.8ha is larger than the minimum site size and a lifestyle block is not precluded by the proposed activity. I consider that the proposal is inconsistent with this objective, but the inconsistency is slight.
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Overall Objectives and Policies Assessment

- [125] As the relevant 2GP provisions are beyond challenge and as the subject site was rezoned by the 2GP from Rural in the operative Plan to Rural Residential 1 almost all weight in this assessment has been given to the 2GP Objectives and Policies in this case. The key objectives and policies in the assessment of this proposal are the Section 17 Rural Residential zone objectives and policies. The objectives and policies seek to achieve land use compatibility and the maintenance of rural residential character and amenity values. Transportation and Public health and Safety policies are also important areas of consideration in relation to identified effects issues.
- [126] The 2GP Policy framework is typically quite directive in identifying and seeking to exclude land use activities the Plan considers are incompatible with the character and amenity of a particular zone. For example, in a Rural zone Industrial Activities are a non-complying land use activity that is specifically identified within the objectives and policies and Policy 16 .2.1.8 seeks that the establishment of industrial activities is avoided. This approach is also applied in the residential zone objectives and policies.
- [127] Surprisingly, in the rural residential zones, which I consider are more sensitive than the rural zones to the impacts of an industrial land use, as sites are smaller and residential densities are higher, there are no objectives and policies that specifically identify Industrial activities as incompatible, and no policies that directly seek to the exclude industrial activities from establishing in the zone. This is an unexpected departure from how the 2GP typically operates. In my opinion, this results in the objectives and policies for the rural residential section of the 2GP being less directive in relation to a specified activity and more effects based in their application.
- [128] While the Plan does not require Industrial activities to be avoided, they are not one of the limited range of compatible activities for the zone, as they have a non-complying activity status. If an activity was considered a compatible activity, I would expect it would be afforded a permitted, restricted discretionary or discretionary status. However, I note that compatibility for a permitted industrial work from home activity in a rural residential zone is achieved through scale and compliance with relevant performance standards, therefore a small-scale industrial activity where effects are effectively managed and compliance with performance standards is achieved may achieve compatibility.
- [129] Having regard to the relevant 2GP objectives and policies that are afforded primary weighting in this assessment individually, and considering these in an overall way, I consider the above assessment indicates that the application is inconsistent with key rural residential and transport section objectives and policies. However, in the absence of a

policy that directly seeks to avoid Industrial Activities in the zone, I consider that the proposal is not contrary to the 2GP objectives and policies, as it is not directly opposed or repugnant to the relevant key objective and policies.

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

- [130] The objectives and policies of the Partially Operative Otago Regional Policy Statement ("RPS") were taken into account in assessing the application. The RPS was made partially operative in January 2019.
- [131] The 2GP provisions of central importance to the application are generally beyond appeal, and as such are deemed to give effect to the relevant objectives and policies of the RPS. The policy assessment above has found that the proposal is not contrary to the objectives and policies of the 2GP. I also consider that the proposal is consistent with the relevant objectives and policies of the RPS (Objective 5.3 and Policy 5.3.1 in particular) and not inconsistent with the proposed RPS UFD-P6.

National Policy Statement on Highly Productive Soils

- [132] The land within the subject site is classified as LUC3 land in the Landcare land use Capability Database and therefore it is subject to the National Policy Statement on Highly Productive Soils. The Policy Statement seeks to protect the loss of productive potential of valuable soil resource through inappropriate subdivision and land use activities. The policy provides strong policy direction for the maintenance of productive potential and directs the Council to avoid inappropriate use of highly productive land.
- [133] I note that the proposal will result in a small area of potentially productive land being prevented from being used for a productive purpose. However, in this case I consider the proposal would satisfy Clause 3.9 (g) of the policy statement and not be contrary to the policy statement as it would be a small-scale land-use activity that has no impact on the productive capacity of the land. I have formed this view as it will 3% of the productive land on the site, and a working from home activity could utilise a similar area of land for a non-productive purpose as a permitted activity under the proposed Plan.

DECISION MAKING FRAMEWORK

Part 2 Matters

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

Section 104D

- [135] Section 104D of the Act specifies that a resource consent for a non-complying activity must not be granted unless the proposal can meet one of two limbs. The limbs of Section 104D require either that the adverse effects on the environment will be no more than minor, or that the application is for an activity which will not be contrary to the objectives and policies of either the relevant plan or the relevant proposed plan.
- [136] Overall, I consider that the actual and potential effects associated with the proposed development will likely be able to be mitigated by imposing consent conditions so as to be no more than minor, and therefore the first 'gateway' test of Section 104D may be met. I note that there is some remaining uncertainty in relation to the significance and mitigation of transportation effects that means a more definite determination was not

possible, but this uncertainty may be able to be resolved through the evidence exchange process or at hearing.

- [137] Only one of the two tests outlined by Section 104D need be met in order for Council to be able to assess the application under Section 104 of the Act. In order for a proposal to fail the second test of Section 104D, it needs to be contrary to the objectives and policies of both the Dunedin City District Plan and the proposed 2GP. In order to be deemed contrary, an application needs to be repugnant to the intent of the District Plans and abhorrent to the values of the zone in which the activity was to be established. It is noted that in this instance the site was rezoned from rural to rural residential and the objectives and policies of the operative Plan zone are not particularly relevant to the assessment. The proposal is assessed as being inconsistent with the key relevant Rural Residential Zone objectives and policies of the 2GP and relevant Transportation Objectives and Policies of both plans and consistent with the Hazards, Public Health and Safety and Natural Environment Sections of both plans. The proposed development is therefore considered to satisfy the second 'gateway' test outlined by Section 104D.
- [138] In summary, the application will pass the objectives and policies limb and may also pass the effects limb of the threshold tests in Section 104D of the Act and therefore, in my opinion, it is appropriate for the Panel to undertake a full assessment of the application in accordance with Section 104 of the Act. In turn, consideration can therefore be given to the granting of the consent.

Section 104

- [139] Section 104(1)(a) states that the Council must have regard to any actual and potential effects on the environment of allowing the activity. This report assessed the environmental effects of the proposal and concluded that the likely adverse effects of the proposed development overall are likely to be no minor, and effects can be adequately avoided remedied or mitigated provided recommended conditions of consent are adhered to. It is noted that there was still uncertainty surrounding the significance of effects on road safety and the effective mitigation of these effects that may impact on this conclusion.
- [140] Section 104(1)(ab) requires the Council to have regard to any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects. No offsetting or compensation measures have been proposed or agreed to by the applicant and the positive effects of the proposal are not considered to be significant.
- [141] Section 104(1)(b)(vi) requires the Council to have regard to any relevant objectives and policies of a plan or proposed plan. This report concluded that the application would be inconsistent with the key 2GP Rural Residential Zone objectives and policies and relevant Transportation objectives and policies which are afforded almost all weight as the rezoning of the land from an operative Plan rural zoning is beyond challenge and the relevant rules deemed operative.
- [142] Section 104(1)(b)(v) requires the Council to have regard to any relevant regional policy statement. In this report it was concluded that the application is not inconsistent with the relevant objectives and policies of the Regional Policy Statements for Otago.
- [143] In relation to the National Policy Statement on highly productive soils the proposal is considered to inconsistent with the direction of the policy Statement but not contrary to the policy statement on the basis of Clause 3.9 (g) of the policy statement that provides scope for inconsequential land use changes.

Other Matters

- [144] Section 104(1)(c) requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application.
- [145] Case law indicates that for the Council to grant consent to a non-complying activity, the application should be a 'true exception', otherwise an undesirable precedent may be set, and the integrity of the District Plan may be undermined.
- [146] In this regard, I consider that the proposed activity does represent a potential challenge to the integrity of the proposed District Plan. Industry zoned land is expensive to purchase or lease and good quality sites are not particular easy to obtain. This approval could then, if granted, 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. While the 2GP policy framework for Rural Residential zones is not directive as in seeking to avoid the establishment of Industrial Activities, the proposal is considered clearly inconsistent with key objectives and policies as Industrial Activities are not considered to fall with limited range of compatible activities provided for in the zone.
- [147] 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 and I note that there are other examples where these types of activities have been approved. I also note 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.
- [148] For the above reasons, I consider that approval of the proposal may create an undesirable precedent and I recommend the Panel considers the potential for an undesirable precedent in determining this matter.

CONCLUSION

- [149] Having regard to the above assessment, I recommend that the application be declined.

RECOMMENDATION

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

- [150] *Pursuant to Part 2 and sections 34A(1), 104B & 104D of the Resource Management Act 1991, the Dunedin City Council declines the proposal for an Industrial Activity at 124 Abbotts Hill Road.*
- [151] *That should the Panel exercise its discretion under section 104D to grant consent, that the draft conditions included in Appendix 4 be imposed.*

REASONS FOR RECOMMENDATION

- [152] The proposal is considered to be inconsistent with key relevant objectives and policies of the Proposed 2GP. The objectives and policies for the Rural residential zone do not specifically identify industrial activities as being incompatible with the zone and seek to avoid their establishment, but they do state that the Rural Residential zone is restricted a limited range of compatible activities. The non-complying activity status assigned to Industrial activities indicates that industrial Activities are not considered a compatible activity.

- [153] The proposal is considered to be inconsistent with the direction in the National Policy Statement for Highly Productive Land to protect against loss of production land, although the loss of land is minimal in this case.
- [154] While the majority of effects are expected to be minor when the permitted baseline is applied and the effects of a permitted activity disregarded, there is uncertainty about the application of the baseline in relation to transportation effects in regard to nature and scale of the effects on road safety that should be be disregard. The scale and significance of road safety effects above the baseline is not easily identified and there are questions regarding the likely effectiveness of any proposed mitigation and conditions to secure that mitigation.
- [155] The proposal may give rise to an undesirable precedent, and it is not considered to be a true exception because the proposal cannot be distinguished from other small scale industrial activities that may seek to establish in a rural residential zone. The proposal will not be ancillary to a residential or rural land use if it is approved and commences operating from the site.

Report prepared by:



John Sule
Consultant Planner

15 February 2023

Date

Report checked by:



Campbell Thomson
Senior Planner

15 February 2023

Date