

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH
I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHU**

Decision No. [2023] NZEnvC 186

IN THE MATTER of the Resource Management Act 1991

AND an appeal under clause 14 of the First
Schedule of the Act in relation to the
proposed Second Generation Dunedin
City District Plan

BETWEEN RUSSELL LUND & H C TRUSTEES
LIMITED

(ENV-2018-CHC-221)

Appellants

AND DUNEDIN CITY COUNCIL

Respondent

Court: Environment Judge P A Steven
Environment Commissioner K A Edmonds
Environment Commissioner C J Wilkinson

Hearing: at Dunedin on 22 May 2023

Appearances: P Page and R Crawford for appellants
M Garbett and G Cassidy for respondent
P and T Cotter in person, s274 parties

Last case event: 13 June 2023

Date of Decision: 31 August 2023

Date of Issue: 31 August 2023

DECISION OF THE ENVIRONMENT COURT



A: The appeal is allowed to the extent that Dunedin City Council is directed to amend the provisions of the proposed Dunedin City Second Generation District Plan as set out in Appendix A, attached to and forming part of this decision.

B: Costs lie where they fall.

REASONS

Background

[1] The hearing resolves an appeal by Russell Lund and H C Trustees Ltd (the trust) and others on provisions in the proposed Second Generation Dunedin City District Plan ('2GP').¹ The appeal concerns land owned by the trust and located in Abbotsford, a residential suburb of Dunedin (the site). The site comprises an area of 1.56ha and fronting on to North Taieri Road.

[2] The front half of the site contains buildings with a floor area of approximately 4300 m². These buildings are set back from the road. To the rear is an open space area with an uphill gradient towards the eastern boundary of the site.

[3] Under the 2GP, the site is zoned General Residential 1 (GR1). The site is adjoined on three sides by land with this GR1 zoning. Dwellings are located directly opposite the site, across North Taieri Road and adjoining land to the south. To the east the land is zoned Rural Residential 1, and Abbotsford primary school is located approximately 120 m north on the opposite side of North Taieri Road. A railway line runs approximately parallel and to the west of North Taieri Road.

[4] However, the current and historical use of the site has been for industrial

¹ Russell Lund is a trustee and beneficiary of the trust.

purposes. It was used as a brickworks for many decades.² That use ceased in 2004.

[5] Until the early 1990s the site formed a part of a larger area of land, including land to the north. That also contains buildings used for industrial purposes. Following a subdivision, titles were issued for each of these sites (in December 1993). Buildings on these adjoining titles share a common wall approximately 70 m long.

[6] As we elaborate further below, the trust purchased one of these sites in 2005, and is presently using that for storage and distribution.

[7] In its appeal, as originally lodged, the appellants sought an industrial zone for the whole of the site – relying on this historical use of the site in support of that outcome.

Section 274 parties

[8] Paula and Timothy Cotter (the Cotters) joined the appeal as parties under s274 opposing the rezoning. The Cotters reside on a site that is adjacent to the rear portion of the site on its southern boundary. The Cotters objected to the site becoming industrial due to the likely adverse effects resulting from an increase in activity associated with noise, truck movements, and light spill, particularly from the rear hangar. The Cotters do not oppose continuation of the current uses.

Settlement discussions

[9] Prior to the hearing,³ the parties engaged in discussions with a view to resolving the appeal although some matters remained in dispute and required the

² As was the adjoining site to the north.

³ Which had been twice adjourned due to the unavailability of participants due to covid illness.

court's intervention.

[10] The planners called by the appellants and the Council prepared a joint witness statement dated 18 May 2023 ('JWS') setting out areas where agreement had been reached and identifying disputed matters.

Scheduling method agreed

[11] The JWS records agreement that the whole site would remain zoned GR1 with a structure plan mapped area over the western part of the site (that part containing the buildings) that would provide for a range of industrial uses through the 2GP scheduling method.

[12] Scheduling had been discussed in the evidence-in-chief of Ms Christmas, the planner called for the Council. Ms Christmas preferred this method to the rezoning sought by the appellants. Ms Christmas explained that under the 2GP, scheduling involves site-specific rules providing for the ongoing use and development of established activities where those were contrary to the underlying zoning. The 2GP makes limited use of that method, primarily to provide for the ongoing mining activities on older quarry sites (for instance) where the activity would otherwise have to be managed through existing use rights.⁴

[13] If applied to the site, Ms Christmas explained that it would continue to be zoned GR1, although the scheduling could provide for industrial use on the site with specified limits.

Amended appeal

[14] By memorandum of counsel for the appellants (dated 11 October 2022), notice had been given that the scope of the appeal was formally amended such

⁴ Christmas evidence dated 5 August 2022 at [72].

that:

- (a) the first relief would be replaced with a request for a split zone for the site (or any such similar method to like effect) as depicted on a plan attached to the memorandum referred to as Schedule 1 to the proceeding;
- (b) an industrial zone would only be sought for the front part of the site depicted in that schedule, with the rear of the site retaining a GR1 zoning;
- (c) the 2GP provisions in relation to the industrial zone were proposed to be amended by limiting the activities enabled by that zone in accordance with provisions identified in Schedule 2 of that memorandum;
- (d) Schedule 2 modified the list of industrial activities otherwise provided for in the Industrial zone, by excluding the more nuisance causing industrial activities.

[15] Following subsequent settlement discussions, the appellants agreed to the scheduling method discussed by Ms Christmas, although not to the limits proposed by the Council as set out in the JWS.

[16] Initial settlement discussions excluded the Cotters, although they were joined in later discussions. At the hearing, the Cotters were self-represented and supported the Council's position.

Issues remaining in dispute

[17] The JWS records the matters in the dispute for the court's resolution. The issues relate to the range of industrial activities to be provided for on the scheduled site as listed in the appellant's Schedule 2; to the standards for operation of those permitted activities, and to assessment matters for restricted discretionary activities as follows:

- (a) manufacturing and vehicle repair: A1.6 scheduled activities – whether manufacturing and vehicle repair should be permitted;
- (b) Policy 15.2.4.9: the need for and wording of the new policy;
- (c) increase in floor area of new buildings: Rule 15.3.4 – whether provision should be made to enable floor area for buildings used for industrial activities to increase by 15% (while complying with setbacks);
- (d) limits on industrial activities: Rule 15.8.AL – whether vehicle repair stations accessible to the public should be specifically excluded from occurring on the site;
- (e) storage of shipping containers next to landscaping: Rule 15.8.AL.3 and Rule 15.8.AL.6 – whether long-term storage of a single level of shipping containers adjacent to the landscape frontage should be provided for, once the landscaping is established;
- (f) hours of operation: Rule 15.8.AL.4 – whether unloading and loading of goods outside a building may occur between 5:30 am and 7 am and between 7 pm and 9 pm;
- (g) limits on vehicle movements: Rule 15.8.AL.5 – whether heavy vehicle movements requiring a class 3-5 licence may occur on Sundays;
- (h) assessment matters / assessment Rules 15.10.6.9 and 15.11.5.X which paraphrase disputed Policy 15.2.4.9.⁵

[18] By the time of the hearing, parties had accepted that vehicle repair stations accessible to the public are not to be provided for other than as a non-complying activity, and accordingly, that aspect of issue (a) does not need to be addressed.

Statutory tests

[19] The statutory tests for considering this appeal are set out in *Colonial Vineyard*

⁵ The JWS identifies the dispute as pertaining to Policy 13.2.4.9 although this is assumed to be in error. Policy 15.2.4.9 is in fact referred to in the planner's respective opinions on the disputed issues and is recorded in an attachment to the JWS.

Ltd v Marlborough District Council.⁶ In considering the competing policies and rules, the court is to consider their efficiency and effectiveness, and which of the competing provisions are most appropriate for achieving relevant 2GP objectives.

[20] The evaluation must also take into account the benefits and costs of policies, rules or other methods, of the alternative positions and the risk of acting or not acting if there is uncertainty or insufficient information about the subject matter of the policies, rules or other methods.

[21] The court is also required to consider the decision of the Council under s290A RMA. The decision was addressed in the evidence of Ms Christmas and in the Council’s opening submissions which we have considered. In summary, the decision was made that the GR1 zone is the most efficient and effective to maintain residential immunity in the surrounding area and expansion beyond that governed by existing use rights is better managed by resource consent which under the zoning would be a noncomplying activity.

[22] For reasons that are stated in the balance of this decision we come to a different decision to the Council at first instance. In the circumstances of this unusual sight and location we agree that the scheduling approach is the most appropriate planning with sponsors to maintain a good level of amenity for residents in the neighbourhood. Our decision may have been different had the relief not been amended.

Further relevant background

[23] At the hearing, the Council and the appellants disagreed on whether the industrial zone provisions or those that apply to the GR1 zone were of greater relevance to our statutory evaluation.

[24] The Council’s case relied on a “clear and consistent thread through the

⁶ *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55 at [17].

objectives of the residential and industrial zones to ensure that the effects of industrial use on the amenity of residential neighbours is minimised, and a good standard of amenity for residential neighbours is maintained”.⁷ For that reason, the Council “has sought to justify restrictions on the scheduled industrial uses to achieve this outcome”.⁸

[25] The evidence of Ms Christmas was primarily informed by the residential zone provisions which we shortly discuss, although her evidence was also informed by the background to the proceedings including an Environment Court decision in *Dunedin Ratepayers and Householders Assn Inc v Dunedin City Council* (the 2004 decision).⁹ The 2004 decision granted a (non-complying) resource consent application to allow use of the site for brickmaking.

[26] Ms Christmas also addressed a later Council decision (in 2016) on an application for an existing use rights certificate (EURC) for storage activity, and a resource consent granted shortly thereafter (in 2017) which was for the purpose of converting the EURC into a resource consent (the 2017 resource consent).

[27] The resource consent granted in 2017 is currently relied on as authorisation for the storage and distribution activities occurring on site.¹⁰ At the close of the hearing, the court was told that whatever the court’s decision, the resource consent would continue to be relied on to authorise storage activities, particularly on the rear of the site where the request for a rezoning was no longer being pursued.

[28] We further understood the Council and the appellants to agree that the site could be used for storage activities authorised by that resource consent *in conjunction* with other activities provided for in terms of the 2GP rules sought to be provided for under the scheduling method if approved by the court.

⁷ Submissions of counsel for DCC dated 22 May 2023 at [35].

⁸ Submissions of counsel for DCC dated 22 May 2023 at [35].

⁹ *Dunedin Ratepayers and Householders Assn Inc v Dunedin City Council* C 39/2004.

¹⁰ Christmas evidence at [9] and [52]; Anderson evidence at [10].

[29] We discuss the implications of this further on in this decision. It suffices to note that resulting issues were addressed in the closing submissions of Mr Garbett for the Council from an enforcement perspective.

[30] Reverting back to the evidence of Ms Christmas; she referred to the appellants' contention that an industrial zoning was an outcome said to be supported by the 2004 decision. Indeed, this 2004 decision was a focal point of the evidence of Mr Lund, a company representative who gave evidence at the hearing.

[31] Given the appellants' reliance on the 2004 decision, it is useful to refer to that together with EURC and the 2017 decision of the Council. We will then return to our consideration of the relevant 2GP provisions as relevant context for our statutory evaluation.

Environment Court decision 2004

[32] The 2004 decision records that the brickworks were established early 1900s and operated until around 1987, although operations recommenced late 1991/early 1992. Shortly after that, the site was subdivided. Between 1990 and 2000 various proceedings were determined by the Environment Court, all involving some form of enforcement action. Activities continued on the basis of an existing use right involving storage of brickmaking equipment.

[33] The 2004 decision resolved an appeal against a later decision to decline resource consent for a continuation of brickmaking, which under the relevant plan was a non-complying activity. The court considered a range of effects including noise, dust and odour, noting that the most affected properties were those adjacent to the southern boundary of the site.

[34] In coming to its decision to grant resource consent, the court was influenced by the fact that the premises contained buildings and infrastructure that had been used for a period of over 70 years until operations ceased in 1987 before

recommencing some four years' later.

[35] The court described that infrastructure as a “major physical asset” which would have been apparent to anyone moving into the area at the time,¹¹ negating any expectation of residential use of the site as contemplated by the district plan provisions. This observation was relied upon by the appellants in support of the position advanced before this court.

[36] The 2004 decision referred to several other sites around Dunedin of former major industrial activities, noting that some had been adapted to other uses where some had been zoned industrial and said:

It is apparent to us that in the background to zoning this site residential 1, the City Council assumed the continuation of the activity on the site as a brickworks or as an existing Industrial use and sought to manage future expansion through a resource consent process rather than to change the activity.¹²

[37] However, in considering the adverse effects of the operations in the s104(1)(a) context, the court found that the condition of the buildings constituted a detraction from the local amenity even if an existing use.¹³ It held that the ability to impose conditions on the consent would enable an improvement of the existing use permitted baseline in terms of residential amenity.¹⁴ Conditions imposed on the grant of consent were comprehensive, involving expenditure of significant sums.

The trust's use of the site after the 2004 decision

[38] The trust purchased the site at the end of 2005, aware of the 2004 decision. Mr Lund's evidence referred to various passages in that decision and states that it

¹¹ At [96].

¹² At [97].

¹³ At [63].

¹⁴ At [101].

gave him confidence that a “more benign industrial use than the existing brick manufacturing” would be possible given the proximity of other non-residential uses, all of which had been referred to in the 2004 decision.

[39] From 2006, the trust embarked upon a major programme of work to the site and buildings, spending more than \$1.5 million. In 2006, the resource consent for the brickworks was surrendered. The site was then leased for wool storage and distribution and associated activities. The present storage operations commenced in mid-2018.

[40] An application for an EURC under s139A RMA, was granted by the Council in 2016. That EURC allowed the use of land for “Storage and Distribution of Goods and associated offices and staff amenities” which were described in the EURC as a ‘service activity’. That service activity was referred to as the actual and intended use of land as at the date of issue of the certificate, whereas the former use of the land was referred to as “Brickworks/Storage Activity”.

[41] In 2017 the EURC was converted to a resource consent by way of an application for a non-complying activity granted by the Council (the 2017 resource consent). The 2017 resource consent described the activity as “an already established activity”. No other detail of the activity is included in the decision other than in generic terms by describing that as involving “storage and distribution of goods ... existing ancillary offices and staff facilities”. That description was based upon the scope of the EURC.

[42] Conditions were carried over from the EURC and were imposed on the 2017 resource consent, namely that:

- (a) the proposal shall be given effect to generally in accordance with the details of the application LUC-2017-587 received at the Council on 10 November 2017, and the existing use certificate EXI-2015-3 issued by the Council 29 March 2016, except where modified by the following;

- (b) the use of land and existing buildings on the site at 61 North Taieri Road is confined to a service activity for a storage and distribution of goods. This activity includes the use of the existing ancillary offices and staff facilities;
- (c) the storage and loading activity is to occur within the existing buildings and on the existing yard areas used for storage as shown on the attached aerial photograph;
- (d) heavy vehicle movements to, from, and within the site must not be undertaken earlier than 7 am or later than 9 pm on any day;
- (e) the intensity of heavy vehicle uses is limited to average heavy vehicle movements of 10 trips per day (10 in and 10 out). The average can be calculated over a period no longer than the respective six-day working week (Monday to Saturday);
- (f) the loading or unloading in the open yards is to take place between 7 am and 9 pm, Monday to Saturday inclusive. Loading or unloading in the open yards is not to occur on Sunday or a Public Holiday;
- (g) noise on the forecourt or elsewhere on site associated with the consented service activity must not at any time exceed the maximum permitted noise levels of Rule 21.5.1 – Performance Standard: Noise Limits-General Levels;
- (h) all heavy vehicles must enter and exit the site via the North Taieri Road entrance.

[43] The decision granting the 2017 resource consent acknowledges that the applicant had sought and was being granted consent for “an element of generality in the nature of the service activity to be given consent”. However, the conditions were considered sufficient to ensure that the effects of any service activity for the site would be similar or lesser in scale, such that there would be no change to the amenity values or character of the area in any way.¹⁵

¹⁵ Resource consent 2017 decision at 4.

[44] We make three observations about the 2017 resource consent, all of which have informed our ultimate decision; firstly, a service activity is no longer provided for (least of all defined) in the 2GP, although it was described in the (then) operative district plan as:

the use of land and buildings for the primary purpose of the transport, storage, maintenance or repair of goods, the hire of commercial and industrial equipment and machinery, and includes offices and staff facilities which are accessory to the primary activity on the site.

[45] Accordingly, in order to understand what is meant by the term ‘service activity’ a reader must revert to the operative district plan which is now almost entirely overtaken by the 2GP.

[46] Noise limits referred to in condition (g) also refer to soon to be redundant district plan provisions. Numerical noise limits are not set out in the resource consent, and although Mr Lund was questioned about these limits, he did not know what they were, least of all whether they are being complied with. Nor does the court know whether those limits are the same that would apply through the scheduling method under the 2GP proposed by the parties here. That is an unsatisfactory position for the Council from an enforcement perspective.

[47] We also question whether a resource consent can be granted (as a non-complying activity) so as to reauthorise an existing service activity operating under an existing use right, particularly where the resource consent provides for *any* service activity as described in the 2017 resource consent.

[48] That comes perilously close to authorising a spot zoning via a resource consenting process. There is nothing that the court is able to do about that. However, we consider that the scheduling method that we intend to approve will provide a more efficient, effective regime than the 2017 resource consent and will also provide the parties a more certain regime.

Relevant 2GP provisions

Residential provisions

[49] The underlying zone for the scheduled part of the site will retain a GR1 zoning. As rezoning of the rear part of the site is no longer pursued by the appellants, this will also retain a GR1 zoning.

[50] The GR1 zone provides for suburban density residential activity. The introductory statement within Section 15 of the 2GP includes the following passage:

Inappropriate land-use, subdivision, and development in residential areas can adversely affect the character and amenity of Dunedin's residential environments and is a major concern. Furthermore, commercial activities that do not support the day to day living of residents and which detract from residential character and amenity need to be avoided.

In response to these issues, the Plan encourages the development of attractive, safe and compact residential environments through controlling matters including the siting of appropriate activities in residential zones, the design, location and scale of land-use activities and buildings, the avoidance of certain activities in sensitive locations, and impacts on the efficiency and affordability of public infrastructure and services.

[51] Limited provision is made for non-residential activities as reflected in Objective 15.2.1, this being of relevance to the issues we have to determine.¹⁶ This objective is that:

Residential zones are primarily reserved for residential activities and only provide for a limited number of compatible activities, including; visitor accommodation, community activities, major facility activities, and commercial activities that

¹⁶ Submission of counsel for DCC dated 22 May 2023 at [24].

support the day-to-day needs of residents.

[52] Implementing Policy 15.2.1.6 is to:

Avoid industrial activities, rural activities, and major facility activities other than those expressly provided for, sport and recreation that involves motor vehicles, and any other activities not compatible with the character and amenity of the residential zone.

[53] Objectives 15.2.3 and 15 2.2.4 state:

Objective 15.2.3

Activities in residential zones maintain a good level of amenity on surrounding residential properties and public spaces.

Objective 15.2.4

Activities maintain or enhance the amenity of the streetscape, and reflect the current or intended future character of the neighbourhood.

Strategic provisions

[54] The appellant relied on Strategic Objective 2.3.1 and its implementing Policy 2.3.1.4. These provisions state:

Objective 2.3.1 Land and Facilities important for Economic Productivity and Social Well-being

Land, facilities and infrastructure that are important for economic productivity and social well-being, which include industrial areas, major facilities, key transportation routes, network utilities and productive rural land:

- (a) are protected from less productive competing uses or incompatible uses, including activities that may give rise to reverse sensitivity; and
- (b) in the case of facilities and infrastructure, are able to be operated, maintained, upgraded and, where appropriate, developed efficiently and effectively.

Policy 2.3.1.4

Identify land strategically important for industrial activities, including near the Harbour and key transport routes, and use industrial zoning and rules to protect industrial activities from incompatible or competing land uses in these areas. ...

[55] The appellants consider that this strategic policy would support an industrial zoning for the site. On that basis the appellants' version of the schedule should be preferred over the Council's. That is because the site is used for an industrial use and is close to a key transport route, this being an important locational factor.

[56] The appellants' planner, Mr Anderson, considers that the site is strategically important, although he notes that the plan does not explain what that means other than by referring to a site's proximity to key transport route.

Industrial provisions

[57] One of the industrial zone provisions referred to in the appellants' evidence is Objective 19.2.2 which is that:

activities are designed and operated so that:

- (a) a reasonable level of amenity is maintained within the industrial zones;
- (b) adverse effects on the amenity of adjoining residential, school or recreation zones are minimised as far as practicable; and
- (c) a high standard of amenity along identified **amenity route mapped areas** is maintained.

(original emphasis)

[58] As Mr Garbett notes, this objective only applies to land with an industrial zoning. The Council considers that this provision is not directly applicable and we broadly agree. However, to the extent that it has some relevance, this provision compliments the GR1 Zone objectives and policies cited above.

The Council's evidence on 2GP

[59] In her evidence, Ms Christmas stated that the focus of Strategic Objective 2.3.1 is to protect existing industrial areas from the incursion of competing activities, including residential activities.

[60] The aim of the objective is to avoid reverse sensitivity effects and threats to the availability and affordability of industrial land from encroachment of non-industrial activities occurring within them.

[61] In support of her opinion, Ms Christmas referred to the introductory statement for the industrial zones which identifies “key resource management issues that are being experienced or are anticipated in industrial zones” as follows:

- Reverse sensitivity due to off-site effects such as noise, odour (managed by Otago Regional Council), heavy traffic movements, and the interaction between industrial activities and adjacent activities also needs to be managed under the RMA. Often the extent of these effects is such that physical separation is required between industrial activities and more sensitive activities.
- Threats to the availability and affordability of industrial zone from the encroachment of non-industrial activities (particularly retail and residential activities) into industrial zoned land. ... The use of industrial zoned land for retail and residential activity reduces the availability, and increases the value, of industrial zoned land and consequently reduces the potential for industrial activities to be able to successfully operate in these locations. Such encroachment also exacerbates potential reverse sensitivity issues. For this reason, one of the primary focusses of the Industrial Zone is the protection of industrial zoned land for industrial activities.

[62] These passages are followed by the statement that:

In response to these issues, the Plan provisions proposed to protect the existing clusters of industrial zoning, including areas near the centre city in order to take

advantage of economies of scale and connectivity, while identifying new industrial land in strategic locations.

[63] Ms Christmas explained that the industrial zone provisions referred to by the appellants respond to these strategic directions' provisions as they are intended to. Ms Christmas pointed to support for that in the introductory statement to Section 2 where it is stated that:

The strategic directions section focuses on key issues for the city and establishes the overall management approach for the Plan, including zoning and other methods used in the Plan.

...

The objectives and policies in the strategic directions section are generally incorporated into the objectives, policies and methods of the rest of the Plan, but they may also be relevant to the assessment of resource consent applications, notices of requirement for designations, and in directing future changes to the Plan.

[64] In considering these provisions we acknowledge that the site represents a significant existing physical asset and that it is reasonable to expect that it will continue to be used for industrial use for many years, not the least due to the significant financial investment made to the buildings by the trust.¹⁷

[65] However, more relevantly, the strategic direction provisions do not compel an industrial zoning for all sites used for industrial purposes where they are close to a key transport route, least of all this site.¹⁸ Nor do they provide support for the appellants' preferred provisions as against those preferred by the Council. We consider that these are neutral to our evaluation of the competing positions.

[66] We further agree that the site is an isolated storage activity and for that reason it cannot be considered to be a strategically important industrial area in the context of Policy 2.3.1.4. Mr Garbett notes that the site is small for an industrial

¹⁷ Recognised by the Environment Court in its 2004 decision.

¹⁸ Christmas rebuttal at [18].

site and we agree with his observation. We further agree that the presence of other site-specific industrial activities in the immediate locality does not justify a contrary finding in this policy context.

[67] After careful consideration, we find that the Section 15 ‘residential environment’ provisions are the more relevant provisions to consider in our statutory evaluation, although as we observed above, the more relevant industrial zone Objective 19.2.2.2 is not in conflict with those.

Relevance of the 2004 decision

[68] We have turned our mind to the appellants’ reliance on the 2004 decision as supporting a wider range of industrial activities than are agreed to by the Council. However, we find nothing in that decision that explicitly supports that position. We note that the court was addressing a non-complying activity in circumstances where the site was within a residential zone, albeit under a former version of the district plan.

[69] The court discussed the tension between the policies providing for the sustainable management of existing infrastructure and the policy framework that applied to the Residential 1 zone in the context of the threshold test for a non-complying activity as it then was. The decision then records the court’s observations that the Residential 1 zoning of the land, including observations referred to by appellants:

... has done nothing to avoid conflict between the site and the surrounding neighbours

[70] And, further, that:

... if a reference had been taken before this Court, either against the zoning or as to the scheduling of activities, there is a strong prospect that the Court would have used one of those methods to recognise the existing infrastructural assets.

[71] That discussion had followed mention of an earlier decision in *Cerebos Greggs Ltd v Dunedin City Council*¹⁹ where the court had been critical of the Council's position in advancing a zone based around a "directive planning approach adopted by the Council in respect of future development within the city" rather than being based around adverse effects.²⁰ The appellants had directed the court to this discussion.

[72] *Cerebos* had identified the more relevant questions in the context of the s32 analysis²¹ as being:

- (a) does the proposed zoning achieve integrated management of the effects of the use, development or protection of the land?
- (b) does it control the potential effects of the use, development or protection of the land?

[73] Those paraphrase in broad terms the evaluations we have undertaken.

[74] On our reading of the 2004 decision, we infer that the focus of any zoning or scheduling method (inferentially) preferred by the court would have addressed the conflict observed to exist between the activities occurring on the site and the surrounding residential neighbours.

[75] However, there is nothing to suggest that court would have gone beyond making provision for a continuation of the (then) existing brickmaking activities, including associated storage and office activity particularly as at the time of that decision, no other industrial use was being undertaken. To suggest otherwise is reading too much into the 2004 decision.

¹⁹ *Cerebos Greggs Ltd v Dunedin City Council* C 169/01.

²⁰ See para [21].

²¹ Citing *Boon v Marlborough District Council* [1998] NZRMA 305 (EnvC).

Our overall evaluation

[76] We agree with the Council that authorising an industrial zone in which a new range of industrial uses beyond those authorised by the 2017 resource consent might occur, has the potential to generate off-site effects that would impact on residential neighbours including any new residences established on the rear of the site that remains within the GR1 zone.

[77] The scheduling proposed by the Council does provide for a wider range of industrial activities that are able to be appropriately managed to ensure that the existing residential amenity is maintained. Moreover it provides for an expansion of the buildings via a restricted discretionary activity consent.

[78] We find that the Council's version of the schedule, and use of the scheduling method in general in this location, responds appropriately to the tensions that arise due to the site's location in that it provides for the ongoing use of the existing built resources, while managing likely adverse effects on residential amenity in the vicinity of the site.

[79] The benefits and costs of the Council's position was summarised in the Council's opening submissions. We can do no better than to refer to Mr Garbett's submissions as we are in agreement with counsel:²²

The real benefits of a GR1 zone with a scheduling set of rules is that the status quo can continue with a wider range of industrial uses on site. This allows efficient use of the existing built resource without (generally) the need for a non-complying resource consent process. This can be achieved while minimising the adverse effects on residential amenity consistent with the relevant objectives discussed. Any future use breaching these controls can be evaluated by resource consent.

The cost of a GR1 zone will entail resource consent processing cost for the land owner/occupier, DCC and any affected parties for any future industrial use

²² Submission of counsel for DCC dated 22 May 2023 at [61]-[63].

proposed in breach of the proposed rules. DCC considers this to be an appropriate process cost to enable an assessment of suitability, scale, effects and possibly conditions for certain industrial use on this site that are considered to potentially create greater effects on residential amenity.

The key cost of not imposing the DCC's promoted standards (i.e. the Rules proposed by the Appellant but not supported by the Council) is that this is likely to adversely affect the amenity and enjoyment of residential neighbours. It is considered effects from a wide range of industrial uses (e.g. manufacturing) will not be able to be managed on site. Acoustic insulation of existing dwellings will not occur adjacent to the site, as this can only be required for new dwellings. Dwellings are already in place adjacent to the site. This, from DCC's perspective, is a key issue – that the cost of future noisy and disturbing industrial use will be born[e] by the adjoining neighbours by reducing their residential amenity. While difficult to measure, it is considered that this is a significant and possibly permanent cost for current and future residents, if it arises. This might also cause further rounds of complaints and possible dissatisfaction should more intense industrial activity develop.

Agreed provisions of the new schedule

[80] Parties agree that a new appendix would be inserted into the 2GP addressing the scheduled site. This will make provision for an expanded range of industrial activities compared to those authorised under the 2017 resource consent.

[81] Performance standards agreed between the parties carry over some conditions of the 2017 resource consent (in equivalent effect) – including the requirement for industrial activities to be located entirely within the existing buildings on site.

[82] The existing buildings are depicted on a figure to be included in the 2GP although this excludes the hangar to the rear.

[83] Storage and distribution of goods; loading and unloading vehicles, and vehicle parking and manoeuvring is not required to be carried out within buildings.

[84] A new rule (Rule 15.8.AL.6) has been agreed between the parties that would require landscaping along the road frontage in specified circumstances (including where any new building work is proposed). This provides an opportunity to achieve a more attractive frontage to the street than currently exists due to the lines of shipping containers stored along the street frontage.

[85] This far, we agree that the scheduling method is an appropriate method to use in the circumstances of this case. We further agree with the inclusion of these agreed provisions in relation to the scheduled site.

Disputed provisions

[86] As to the disputed issues, the position of the parties is next set out and considered.

Manufacturing

[87] The appellant called planning evidence from Mr Anderson. The JWS records Mr Anderson's position on disputed issues. In supporting provision for manufacturing, Mr Anderson observes that the 2GP already provides for a residential/industrial zone interface. Mr Anderson notes that under the 2GP, the term 'manufacturing' is very broad and could include some benign activities such as jewellery manufacturing.

[88] Mr Anderson proposed additional performance standards that could be included for the scheduled site where manufacturing is proposed, namely:

- (a) a maximum noise standard rather than an average (which applies in the industrial zones);
- (b) limits on hours of the time of day – 7 am-7 pm, which aligns with the 2GP day time hours for operation of the noise limits;
- (c) requiring manufacturing activities to be undertaken indoors, with any external doors closed apart from access/egress.

[89] A similar response was advanced in support of the provision sought for vehicle repair activities.

[90] The Council opposed provision for manufacturing as a permitted activity, in favour of restricted discretionary activity status. This is because manufacturing activities can vary in scale and effect. Ms Christmas notes that “certain types or scales of manufacturing activities can generate adverse effects which would not achieve a good level of residential amenity”. She referred to intermittent loud noise and types of noise that are disturbing, either because they involve repetitive banging or metallic screeching.²³

[91] Manufacturing activities can also create high demand on water and wastewater services potentially requiring network upgrades that would take time to implement. In the absence of infrastructure available to support this demand, the Council considers that the most appropriate pathway to provide for any manufacturing activity is the resource consent process.²⁴

[92] The Cotters did express some concern about the potential nature of the noise from manufacturing being banging from (say) a hammer, and the repetitive nature of manufacturing and the noise that would emanate from that.²⁵ Their greatest concern relates to the prospect of manufacturing within the hangar.

[93] The building is currently open and is closest to their property. Historically the hangar was used for the dumping of clay when the site was used for brickmaking. It is presently used for storage and distribution. The Cotters are not opposed to a continuation of that activity within the hangar.

²³ Planning JWS dated 18 May 2023.

²⁴ See JWS Attachment 1 Record of discussions between planners.

²⁵ NOE at 70.

Our consideration

[94] We agree that the provision for manufacturing as a permitted activity on the site would be an extension of industrial activities currently occurring that could vary in scale and effect. This could include a broad range of activities from relatively benign activities to activities involving large machinery with associated noise and disturbance.

Vehicle repair

[95] As with manufacturing activities, the appellants proposed that provision should be made for vehicle repairs subject to site-specific noise limits that would apply to manufacturing activities, although no evidence on noise had been proffered.

[96] The Council opposed provision being made for vehicle repairs as a permitted activity. The Council's concern stems from its observations that these activities typically operate from buildings with open frontages for ease of access and ventilation. That results in the potential for noise and disturbance to neighbouring properties. A resource consent process is considered to be the more appropriate method.

[97] No acoustic evidence was called by the appellants. Accordingly, the court is not able to make a finding that the proposed noise limits could be complied with if either manufacturing or vehicle repairs are to occur on site. Accordingly, we do not consider that provision should be made for either manufacturing or vehicle repairs as a permitted activity.

[98] The Council's version of the schedule would provide for a restricted discretionary activity resource consent process to be followed for these activities, at which point, noise and other potential adverse effects would have to be considered. We agree that this is the more effective and appropriate method for implementing the relevant Chapter 15 objectives.

Proposed new Policy 15.2.4.9

[99] A new policy is proposed by the Council to implement existing Objective 15.2.4 which is that:

Activities maintain or enhance the amenity of the streetscape, and reflect the current or intended future character of the neighbourhood.

[100] The new policy proposed by the appellants is worded as follows:

Only allow new or expanded industrial activity and new buildings and additions and alterations that increase the floor area of buildings used for industrial activities in the former brickworks structure plan mapped area where those activities are compatible with the **surrounding environment** and avoid, or if avoidance is not practicable, adequately mitigate adverse effects on the amenity of the streetscape and the current or intended character of the neighbourhood.

(emphasis added)

[101] The issue is whether the reference within this policy to the “surrounding environment” (emphasised above) ought to be amended so it refers to the “surrounding residential environment” as sought by the Council. For the appellant, Mr Anderson supported removing ‘residential’ in recognition that the surrounding area is a mixed environment.

[102] Mr Anderson focused on the fact that Objective 15.2.4 relates to “amenity of the streetscape” and “character of the neighbourhood”. He notes that in the present location that character includes a mix of residential and non-residential activities. Accordingly, he resisted the amendment sought by the Council.

[103] The difficulty with the appellants’ version is that the immediate surrounding environment of the site is residential on one side and industrial on the other. In determining the current or intended character of the neighbourhood, the question is whether that is the industrial environment, the residential environment, or a blend of both.

[104] It was the Council's position that whilst acknowledging the presence of non-residential activities near the site, the neighbourhood is residential and that maintaining a residential character and amenity is more appropriate in implementing the objective.

[105] The court acknowledges that the character of the streetscape and the character of the neighbourhood in terms of the residential amenity afforded to residents is compromised by the presence of industrial activities in particular. The presence of a school is not so unexpected in a residential zone. Nor is a school likely to generate adverse effects typical of the industrial activities proposed for the site by the appellants.

[106] We are concerned that the policy wording proposed by the appellants could lead to a further incremental degradation in the residential amenity presently enjoyed by residents living close to the site, and for that reason we prefer the Council's version of the policy as the more appropriate reference point for considering compatibility of any new or expanded industrial activity in the context of new Policy 15.2.4.

[107] In terms of our evaluation of the competing versions of this new policy, we question the effectiveness of considering the compatibility of a new industrial activity proposed for the site with reference to the character of *existing* industrial or other non-residential activities in this neighbourhood, including those on the subject site.

[108] We find that the policy worded as the appellants propose would be ineffective in implementing Objective 15.2.1, given its focus on residential activities within residential zones. We further agree that the policy, worded as preferred by the Council, should be included.²⁶

²⁶ As recorded in the Planning JWS, the parties agreed on a consequential amendment to the assessment rules to insert a cross-reference to this new policy. That was agreed to regardless of

[109] As consequential amendments, the parties had each proposed a set of assessment matters that paraphrase disputed Policy 15.2.4.9 (as Rules 15.10.6.9 and 15.11.5.X). We agree that the inclusion of these new rules is an appropriate amendment to make as a consequential amendment to the inclusion of new Policy 15.2.4. The version proposed by the Council, which follows the wording of its version of new Policy 15.2.4.9, is also favoured by the court.

Provision for an increase in floor area of new buildings

[110] An amendment is sought to existing Rule 15.3.4 to allow an increase in buildings by 15% as a permitted activity.

[111] The Council opposes this in favour of restricted discretionary activity status. The Council considers that it is important to ensure that an appropriate level of acoustic insulation and enclosure is achieved in the design of any new buildings. In that way, an assessment can be made as to whether the buildings and uses proposed to be carried out within them are compatible with a residential environment as much as is practicable.

[112] Mr Garbett notes that agreed new Rule 15.8.AL.2 limits industrial activities to within the *existing* buildings depicted on the former brickworks structure plan, excluding the hangar. Accordingly, where any new or expanded building for industrial activity is proposed, any proposal to carry out industrial activities within that new building element would require a resource consent under Rule 15.8.AL.2.

[113] This was not disputed by the appellants. However, it does mean the 15% increase in building size proposed to be added to Rule 15.3.4.22A would have no practical effect in the sense that resource consent would be required for new activities conducted within any new building footprint.

[114] Accordingly, the Council considers that resource consent should also be

the ultimate wording of the policy approved by the court in its decision.

required for any new building work in order to ensure that it is designed appropriately for any proposed new industrial use in order to manage effects on residential neighbours.

[115] In legal submissions Mr Garbett had noted that the 2004 decision imposed comprehensive conditions, including a condition requiring specified acoustic insulation levels on the southern wall of the main building in order to improve residential amenity for the neighbours.

[116] We agree that the scheduling provisions should not allow for any detraction in residential amenity provided by the court in the 2004 decision, inadvertently or otherwise, particularly as this decision will result in a wider range of industrial uses being permitted. Accordingly, we favour the Council's position on this issue.

Provision for long-term storage of shipping containers

[117] As to the provision proposed for the storage of containers, the appellants seek an additional rule that “[n]otwithstanding rule 15.8.AL.3 (location and screening of outdoor storage) once the landscaping in (b) has been established, a single level of shipping containers not exceeding 2.9 m in height may be stored adjacent to the landscaping”.

[118] Mr Anderson notes that the consented environment provides for storage in this location with no height limit. On that basis, he considers that provision should be made for permanent storage of a single level of containers and temporary storage of up to 3 containers in height for a defined period of no more than 30 days.

[119] Mr Anderson proposed that following a period of temporary storage, there should be an equivalent period where storage of more than a single height does not occur.

[120] The Council opposes permitted activity for the storage of up to three

containers in height along the street frontage. However, the Council supports short-term storage for single height containers, for no longer than 10 days a month and provided the street frontage landscaping strip has been first established.

[121] Ms Christmas makes the point that even then the landscaping requirements under Rule 15.8.AL.6 may not completely screen the containers if stacked at single height along the street frontage. The landscaping rule requires that trees be at least 1.5 m high at the time of planting and that they be capable of growing to a minimum height of 3 m within 10 years of planting, although only an average of one tree for every 5 m frontage is required to be planted.

[122] We accept that the consented environment does not contain any restriction on the location of container storage or as to the height at which containers are able to be stored. However, this is a function of the generality of the activity for which the 2017 resource consent was granted. That resource consent originates from the 2016 EURC which was based upon the former activity of storage of brickmaking machinery and bricks which had occurred on the site following cessation of the brick making operations. Container storage was not expressly contemplated when either of those two Council decisions were made, or in 2004 decision for that matter.²⁷

[123] That issue to the side, we consider that the visual impact of three levels of storage containers along the site frontage would be a significant detractor from the existing streetscape which, as Mr Christmas notes, currently affords a poor level of amenity. We agree that some screening could be achieved by vegetation along the street frontage if a single layer of containers is to be stored in front of the existing buildings. That will be an improvement on the existing amenity of the streetscape. However, this landscaping requirement is only triggered if new buildings (or additions/replacements) are proposed for the site under

²⁷ The 2004 decision restricted activities outside the eastern walls of the buildings to the reception and storage of clay, sand and other aggregates for use in the manufacturing process.

Rule 15.8.AL.6.

[124] No additional landscaping was required under the 2017 resource consent. At that time, the existing landscaping had to be maintained while preserving site distances from the vehicle entrances. However, no landscaping exists at present. Accordingly, container storage could occur for a considerable period of time without any visual screening at all.

[125] Mr Lund accepts that currently containers are stacked along the street front for most of its width and that this is a “significant detriment to amenity”.²⁸ We certainly agree with that observation. We consider that storage of containers proposed by the appellants would worsen that streetscape amenity and cannot support that. Again, we favour the Council’s position on this issue.

Unloading of goods between 5.30 am and 7 am and between 7 pm and 9 pm

[126] The appellants seek hours of operation for outdoor loading commencing at 5.30 am to provide flexibility around loading times. The 2017 resource consent restricts heavy movements to, from, and within the site to the hours of 7 am to 9 pm on any day with further limits on heavy vehicle movements. Loading or unloading in the open yards is similarly limited, although it is not to occur on Sunday or a public holiday.

[127] When cross-examined by Mr Garbett, Mr Anderson acknowledged that he had conducted his own research to support this provision, including speaking to a truck driver who operated elsewhere.²⁹ That person had stressed to Mr Anderson the need for flexibility due to occasional mechanical breakdowns, road closures and the like, although he acknowledged that he had not consulted neighbouring or

²⁸ NOE at 42.

²⁹ NOE at 59.

other residents in this location.³⁰

[128] This amendment was opposed by the Council. Ms Christmas considers that vehicle and forklift operations commencing prior to 7 am would not achieve a good level of amenity for nearby neighbours and is considered to be contrary to Objective 15.2.3.

[129] Mr Garbett further challenged the methodology employed by Mr Anderson to support the appellants' position and contended that the researching of an individual truck driver is not a proper basis upon which our planning rules ought to be formulated. We wholly agree with that observation.

[130] Similar grounds of opposition are raised by the Council to the 9 pm closure. The Council considers that hours of operation should be restricted to 7 am to 7 pm, noting that 7 pm is consistent with the time at which the night time noise limits under the 2GP are triggered.

[131] The Cotters were also opposed to a 5.30 am commencement for loading and unloading of goods, although they were supportive of an 8 pm closure.

[132] We note that under the 2017 resource consents, hours of operation for loading and unloading are restricted to 7 am to 9 pm and that this resource consent can continue to be relied upon by the appellants in conjunction with activities occurring under the 2GP rules (at least for the scheduled site) whatever our decision. From the Council's enforcement perspective that gives rise to an unsatisfactory position in terms of the opening and closing hours of operation.

[133] We do not agree with a 5.30 am commencement for loading or unloading as this will inevitably result in a reduction in residential amenity. However, we agree to a continuation of the 9 pm closure.

³⁰ NOE at 59.

[134] Although the Cotters supported an 8 pm closure, we did not understand their evidence to disclose any material concerns about adverse effects during the existing evening hours of operation. Accordingly, we consider that hours of operation should be 7 am to 9 pm.

Vehicle movements involving class 3, 4 or 5 vehicles on a Sunday

[135] The rule agreed to by the parties limits vehicle movements of vehicles that require a class 3, 4 or 5 drivers licence (all heavy vehicle movements) to no more than 28 movements per day on Monday to Saturday, with an averaging requirement of no more than 20 per day over Monday to Saturday in any one week.

[136] The appellants sought provision for no more than 10 movements per day on a Sunday, with a commensurate adjustment to the averaging requirement.

[137] Mr Anderson supported this provision due to a combination of external factors such as timetable scheduling, weather events and the like which could often be beyond the operator's control, requiring the need to visit the site on a Sunday. However, we had no other evidence to support the need for any operations to occur on a Sunday.

[138] The appellants' position was also opposed by the Council. Ms Christmas gave evidence that typically Sunday is a day where residents have expectations of a peaceful environment. That sentiment was supported by the Cotters who supported the opportunity for some respite from the adverse effects of activities on the adjoining site.

[139] Accordingly, we favour the Council's position on this matter.

Outstanding issues

[140] We have earlier observed that the 2017 resource consent applies to the whole of the site at 61 North Taieri Road and would allow for a continuation of

activities associated with the storage and distribution across the whole of the site whereas the scheduling would only apply to the front part of the site with the rear retaining a GR1 zoning.

[141] However, both could be invoked as authorisation for activities on that part of the site that is to be scheduled.³¹ As Mr Garbett explained in his closing submissions, that would lead to enforcement issues, particularly if truck movements on the rear of the site are associated with additional activities provided for under the scheduling that are not authorised by the resource consent.

[142] The scheduling does not authorise any industrial activities on the rear of the site, including vehicle movements associated with such activities occurring on the scheduled site. In contrast, the 2017 resource consent would allow those movements where they are associated with storage activities within the buildings on the scheduled site. However, any such storage activity will be permitted under the scheduling approved by this decision.

[143] On that basis, there would be no need to rely on the 2017 resource consent if storage and distribution is to be continued on the scheduled site, particularly as the limits we have approved by this decision are less restrictive.

[144] We acknowledge that problems are likely to arise if the scheduled site is used for storage and distribution activities in conjunction with industrial activities only provided for under the new scheduling rules. That combination of activities could generate noise and involve traffic movements that could cause problems for the Council from an enforcement perspective for reasons touched on earlier in this decision.

[145] In Mr Garbett's closing submissions, an additional rule was proposed to overcome that problem. The proposed new rule would require surrender of the resource consent as a condition precedent to invoking any of the rules provided

³¹ That is the 2017 resource consent in conjunction with the new 2GP rules.

for in the scheduling. However, we have our doubts as to the vires of such a provision.

[146] Mr Garbett accepts that the Council (and the court) is unable to require the appellants to surrender that resource consent. We agree that our hands are tied in that regard. However, the rule that Mr Garbett proposed, which would only be triggered if the new scheduling rules are to be relied upon, still involves a (forced) surrender of the 2017 resource consent.

[147] We are not inclined to adopt that suggested rule. In resolving this appeal, the court is able to make provision for activities under the scheduling method that (hopefully) incentivise reliance on those rules instead of the 2017 resource consent.

[148] The court considers that the scheduling provisions that it considers are appropriate and which should be included within the 2GP, are as enabling as the 2017 resource consent if all that is intended for the scheduled site is a continuation of storage and distribution activities. However, the rules will provide for a wider range of industrial activities.

[149] Moreover, a restricted discretionary activity will be provided for where an expansion of any of the permitted industrial activities are to occur in new buildings (noting that consent would also be required for the building) whereas under the status quo, resource consent would be required (in each case) for a non-complying activity.

[150] Accordingly, we do not agree to the Council's proposed Rule 15.8.AL.10.

[151] We were provided with versions of the scheduling provisions favoured by the appellants and the Council. Our decision agrees with the Council's version in all but one respect.

[152] Accordingly, we have made amendments to the Council's document to reflect the decision of this court. A copy of that schedule is attached as

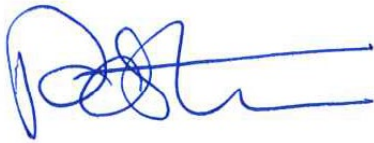
Appendix A to this decision. This sets out the amendments that the court is requiring be made to the 2GP.

[153] Notably, this depicts the site which is to be the subject of the new “Former brickworks structure plan mapped area” and “Former brickworks scheduled industrial activity” at 61 North Taieri Road which is to be reflected on the relevant planning map and leaves the rear of the appellants’ site within a GR1 Zone.

Costs

[154] We consider that costs should lie where they fall.

For the court



P A Steven
Environment Judge



Appendix A

1. Amend the 2GP Planning Map at 61 North Taieri Road to add a new Former brickworks structure plan mapped area and a new Former brickworks scheduled industrial activity, as shown below:



2. Amend 1.3 nested table

Industrial activities category

Activities	Sub-activities
Industry	Industrial ancillary tourism
	Rural industry
	Rural contractor and transport depots (note that this activity is managed at two scales: rural contractor and transport depots - large scale and rural contractor and transport depots - small scale) <u>Scheduled industrial activity</u>

3. Amend 1.4 Definitions to add definition for Scheduled Industrial Activity

Scheduled Industrial Activity

An industrial activity listed in Appendix A1.6 - Scheduled Industrial Activities.

A scheduled industrial activity is a sub-activity of industrial activities.

4. Amend definition of Industry to add sub-activity scheduled industrial activity

Industry

...

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

- industrial ancillary tourism
- rural contractor and transport depots; ~~and~~
- rural industry; and
- scheduled industrial activity.

5. Add new Appendix A1.6 Scheduled industrial activities

A1.6 Scheduled Industrial Activities

<u>Scheduled industrial activity number</u>	<u>Name</u>	<u>Activities provided for</u>	<u>Location</u>	<u>Related performance standard</u>
<u>SIA001</u>	<u>Former brickworks</u>	<p><u>Scheduled industrial activity is limited to the following types:</u></p> <ul style="list-style-type: none"> • <u>assembly, storage, repair, maintenance, and packing of goods and materials;</u> • <u>transport facilities including distribution centres, collection points and courier depots;</u> • <u>depots for the storage and dispatch of goods, vehicles, equipment, and/or materials, and the administration and dispatch of workers using these in the field;</u> • <u>laboratory or factory-based research</u> • <u>property and equipment maintenance services; and</u> • <u>any ancillary offices and staff facilities associated with the above.</u> 	<u>Pt Part 61 North Taieri Road</u>	<u>Rule 15.8.AL</u>

6. Add new assessment rule to Rule 6.10.3 Assessment of performance standard contraventions (performance standards located in zones)

6.10.3 Assessment of performance standard contraventions (performance standards located in zones)			
Performance standard		Matters of discretion	Guidance on the assessment of resource consents
Y.	<p><u>In the former brickworks structure plan mapped area</u></p> <ul style="list-style-type: none"> • <u>Limits on vehicle movements</u> 	<p>a. <u>Effects on the safety and efficiency of the transport network</u></p>	<p><i>Relevant objectives and policies:</i></p> <p>i. <u>Objective 6.2.3</u></p> <p>ii. <u>Adverse effects on the safety and efficiency of the transport network will be avoided or, if avoidance is not practicable, adequately mitigated (Policy 6.2.3.9.a).</u></p> <p>iii. <u>Any associated changes to the transportation network will be affordable to the public in the long term (Policy 6.2.3.9.b).</u></p>

7. Add new assessment rule to Rule 6.11.2 Assessment of restricted discretionary activities (activities located in zones)

6.11.2 Assessment of restricted discretionary activities (activities located in zones)			
Performance standard		Matters of discretion	Guidance on the assessment of resource consents
Y.	<p><u>In the former brickworks structure plan mapped area</u></p> <ul style="list-style-type: none"> • <u>All other industrial activities in the industrial activities category</u> 	<p>a. <u>Effects on the safety and efficiency of the transport network</u></p>	<p><i>Relevant objectives and policies:</i></p> <p>i. <u>Objective 6.2.3</u></p> <p>ii. <u>Adverse effects on the safety and efficiency of the transport network will be avoided or, if avoidance is not practicable, adequately mitigated (Policy 6.2.3.9.a).</u></p> <p>iii. <u>Any associated changes to the transportation network will be affordable to the public in the long term (Policy 6.2.3.9.b).</u></p>

8. Amend Policy 9.2.2.2 as follows:

Require that noise sensitive activities, where undertaken in buildings, have adequate acoustic insulation to avoid, as far as practicable, significant adverse effects from the higher noise environment anticipated in the following areas: ...

m. the Stadium Zone; ~~and~~

X. **Fonterra noise control mapped area;** and

XX. within 20m of the **former brickworks structure plan mapped area.**

9. Amend Rule 9.3.1 Acoustic insulation

4. Rule 9.3.1.1 applies in the following locations: ...

m. the Stadium Zone; ~~and~~

X. **Fonterra noise control mapped area;** and

XX. within 20m of the **former brickworks structure plan mapped area.**

10. Add new assessment rule to Rule 9.6.2 Assessment of restricted discretionary activities

9.6.2 Assessment of restricted discretionary activities			
Performance standard		Matters of discretion	Guidance on the assessment of resource consents
AA	<p><u>In the former brickworks structure plan mapped area</u></p> <ul style="list-style-type: none"> All other industrial activities in the industrial activities category 	<p>a. Effects on the efficiency and affordability of infrastructure (wastewater and water supply)</p>	<p><i>Relevant objectives and policies:</i></p> <p>i. Objective 9.2.1</p> <p>ii. Only allow land use or subdivision activities that may result in land use or development activities in a wastewater serviced area where:</p> <ol style="list-style-type: none"> it will not exceed the current or planned capacity of that infrastructure at the time of development or compromise its ability to service any permitted activities; or for restricted discretionary land use activities, communal on-site wastewater detention infrastructure can be integrated into the public wastewater network prior to development in a way that meets DCC's requirements; or an unplanned upgrade to the public wastewater network that addresses any capacity constraints can be implemented prior to development with agreement from the DCC (Policy 9.2.1.1A). <p>iii. Only allow land use or subdivision activities that may result in land use or development activities in an area with public water supply where:</p> <ol style="list-style-type: none"> it will not exceed the current or planned capacity of that infrastructure at the time of development or compromise its

9.6.2 Assessment of restricted discretionary activities

Performance standard	Matters of discretion	Guidance on the assessment of resource consents
		<p><u>ability to service any permitted activities; or</u></p> <p>2. <u>an unplanned upgrade to the public water supply network that addresses any capacity constraints can be implemented prior to development with agreement from the DCC (Policy 9.2.1.4).</u></p>

11. Amend Policy 15.2.3.2 as follows:

Require ~~working from home, dairies, training and education, and community and leisure~~ small scale activities provided for to operate in a way (including hours of operation) that avoids or, if avoidance is not practicable, adequately mitigates, noise or other adverse effects on the amenity of surrounding residential properties.

12. Add new Policy 15.2.4.9 under Objective 15.2.4

Only allow new or expanded industrial activity and new buildings and additions and alterations that increase the floor area of buildings used for industrial activities in the **former brickworks structure plan mapped area** where those activities are compatible with the surrounding residential environment and avoid or, if avoidance is not practicable, adequately mitigate adverse effects on the amenity of the streetscape and character of the neighbourhood.

13. Amend Rule 15.3.3 Land Use Activity Status Table to add new rows Y and YY and amend row 32:

Industrial activities	Activity status	Performance standards
<p><u>Y.</u></p> <p><u>Scheduled industrial activity in the former brickworks structure plan mapped area</u></p>	<p><u>P</u></p>	<p><u>a. Former brickworks structure plan mapped area performance standards</u></p>

YY.	All other activities in the industrial activities category in the <u>former brickworks structure plan mapped area</u>	RD	a. <u>Former brickworks structure plan mapped area</u> performance standards
32.	All other activities in the industrial activities category	NC	

14. Amend Rule 15.3.4 Development Activity Status Table to add new rows after row 22, and make consequential changes to numbering in other rows:

<u>Buildings and structures activities in the former brickworks structure plan mapped area</u>		<u>Activity status</u>	<u>Performance standards</u>
22A.	<u>New buildings and additions and alterations that increase the floor area of buildings used for industrial activities.</u>	RD	

15. Amend Rule 15.5.1 Acoustic insulation

Noise sensitive activities in the following areas must comply with Rule 9.3.1: ...

6. within 20m of an industrial zone; and

7. within 70m of a railway line; and

8. within 20m of the **former brickworks structure plan mapped area**.

16. Add a new performance standard 15.8.AL Former Brickworks Structure Plan Mapped Area Performance Standards

15.8.AL Former Brickworks Structure Plan Mapped Area Performance Standards

15.8.AL.1 Limits on industrial activities

a. Industrial activity must not include:

- i. a foundry, furnace, surface blasting and treatment, painting, or any other activity that triggers the need to obtain a discharge consent;

- ii. bus depots;
 - iii. bulk fuel storage facilities;
 - iv. waste management facilities including refuse transfer and recycling stations; and
 - v. vehicle repair and testing stations.
- b. Industrial activity that contravenes this performance standard is a non-complying activity.

15.8.AL.2 Location of industrial activities

- a. Industrial activities must be located entirely within the buildings marked on Figure 15.8.ALA, except:
- i. storage and distribution of goods may be located in any building; and
 - ii. loading and unloading of vehicles and vehicle parking and manoeuvring.
- b. Activities that contravene this performance standard are restricted discretionary activities.

15.8.AL.3 Location and screening of outdoor storage

- a. Long term (more than 10 days in any calendar month) outdoor storage of goods or materials (including shipping containers) associated with industrial activities must not occur between the western facade of the building marked 'A' on Figure 15.8.ALA and the North Taieri Road frontage.
- b. Containers stored between the western facade of the building marked 'A' on Figure 15.8.ALA and the North Taieri Road frontage must not be stacked more than one high.
- c. Activities that contravene this performance standard are restricted discretionary activities.

15.8.AL.4 Hours of operation

- a. Loading and unloading of goods outside a building must:
- i. only take place between the hours of 7.00am to 9.00pm (e.g. must not occur after 9.00pm or before 7.00am) on any day; and
 - ii. not take place on Sundays and public holidays.
- b. Activities that contravene this performance standard are restricted discretionary activities.

15.8.AL.5 Limits on vehicle movements

- a. Vehicle movements of vehicles that require a Class 3, 4 or 5 driver licence within the entire former brickworks structure plan mapped area, are limited to:
- i. no more than 28 per day on Monday to Saturday;
 - ii. an average of no more than 20 per day averaged over any Monday to Saturday period of one week; and

- iii. the hours of 7.00am to 9.00pm (e.g. must not occur after 9.00pm or before 7.00am) on any day.
- b. Vehicle movements of vehicles that require a Class 3, 4 or 5 driver licence must not take place on Sundays and public holidays.
- c. Industrial activities must record the number of vehicle movements of vehicles that require a Class 3, 4 or 5 driver licence each day, and provide this data to the Dunedin City Council on request.
- d. Any vehicle movements that contravene this performance standard are a restricted discretionary activity.

15.8.AL.6 Boundary treatments and other landscaping

- a. New buildings, additions and alterations that increase the gross floor area of a building, demolition or removal for relocation of buildings, new or additions to parking areas and industrial activities must provide a landscaping area with a minimum width of 1.2m within the site boundary along the full length of the North Taieri Road frontage of the site, excluding existing accessways.
- b. The landscaping area must:
 - i. be planted with a mix of native trees and shrubs and/or ground cover plants that achieves a total coverage of the ground area in planting (when mature);
 - ii. have an average of one tree for every 5m of frontage;
 - iii. be protected by a physical barrier that prevents vehicles damaging plants;
 - iv. for required trees, use trees that are at least 1.5m high at the time of planting and capable of growing to a minimum height of 3m within 10 years of planting;
 - v. be planted prior to occupation of any relevant building(s) with industrial activities; and;
 - vi. be maintained to a high standard, which means trees and under-planting are healthy at all times and areas are regularly cleared of rubbish and weeds.
- c. Activities that contravene this performance standard are restricted discretionary activities.

15.8.AL.7 Maximum height

- a. The following additional exception to Rule 15.6.6.2 applies to new buildings, new structures, and additions and alterations to buildings to be used for industrial activities:
 - i. a maximum height of 12m.

15.8.AL.8 Building length

Rule 15.6.1 Building Length does not apply to new buildings, new structures, and additions and alterations to buildings to be used for industrial activities.

15.8.AL.9 Boundary setback

- a. New buildings, new structures, and additions and alterations to buildings to be used for industrial activities must have a minimum set back as follows:

<u>Location</u>		<u>Setback distance</u>
i.	<u>From side and rear boundaries</u>	<u>5m</u>
ii.	<u>From any road boundary</u>	<u>15m</u>

- b. Any buildings to be used for activities other than industrial activities must meet the performance standards in Rule 15.6.13.
- c. Activities that contravene this performance standard are restricted discretionary activities.

Figure 15.8.ALA: Former brickworks structure plan



16. Add new assessment rule to 15.10.6 Assessment of restricted discretionary performance standard contraventions in an overlay zone, mapped area, heritage precinct or affecting a scheduled heritage item

<p>9.</p>	<p><u>In the former brickworks structure plan mapped area:</u></p> <ul style="list-style-type: none"> • <u>Hours of operation</u> • <u>Limits on vehicle movements</u> • <u>Location of industrial activities</u> 	<p>a. <u>Effects on surrounding sites' residential amenity</u></p>	<p><u>Relevant objectives and policies:</u></p> <ol style="list-style-type: none"> <u>Objective 15.2.3</u> <u>Activities provided for operate in a way (including hours of operation) that avoids or, if avoidance is not practicable, adequately mitigates, noise or other adverse effects on the amenity of surrounding residential properties (Policy 15.2.3.2).</u> <p><u>General assessment guidance:</u></p> <ol style="list-style-type: none"> For contraventions of the location of industrial activities performance standard, Council will consider the appropriateness of the building design in relation to matters
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	<ul style="list-style-type: none"> • <u>Location and screening of outdoor storage</u> • <u>Boundary treatments and other landscaping</u> • <u>Maximum height</u> • <u>Boundary setback</u> 		<p>such as acoustic insulation and the degree of enclosure, to ensure that effects on residential amenity are acceptable for the type of industrial activity proposed. Any consent issued will usually be specific to the activity proposed, and a new consent will usually be required for a change in industrial activity within the building.</p>
		<p>b. <u>Effects on neighbourhood residential character and amenity</u></p>	<p><i>Relevant objectives and policies:</i></p> <ol style="list-style-type: none"> <u>Objective 15.2.4</u> <u>New or expanded industrial activity and new buildings and additions and alterations that increase the floor area of buildings used for industrial activities in the former brickworks structure plan mapped area are compatible with the surrounding residential environment and designed, located and operated in a way (including consideration of effects from location, hours of operation and associated vehicle movements) to avoid or, if avoidance is not practicable, adequately mitigate adverse effects on the overall amenity of the residential neighbourhood for residents.</u>
10.	<p><u>In the former brickworks structure plan mapped area:</u></p> <ul style="list-style-type: none"> • <u>Limits on vehicle movements</u> 	<p>a. <u>Effects on the safety and efficiency of the transport network</u></p>	<p><u>See Rule 6.10</u></p>

17. Add new assessment rule to 15.11.5 Assessment of restricted discretionary activities in an overlay zone, mapped area, heritage precinct or affecting a scheduled heritage item

<p><u>X.</u></p>	<p><u>In the former brickworks structure plan mapped area:</u></p> <ul style="list-style-type: none"> • <u>All other activities in the industrial activities category</u> • <u>New buildings and additions and alterations that increase the floor area of buildings used for industrial activity</u> 	<p>a. <u>Effects on surrounding sites' residential amenity</u></p> <p>b. <u>Effects on neighbourhood residential character and amenity</u></p>	<p><u>Relevant objectives and policies:</u></p> <p>i. <u>Objective 15.2.3</u></p> <p>ii. <u>Activities provided for operate in a way (including hours of operation) that avoids or, if avoidance is not practicable, adequately mitigates, noise or other adverse effects on the amenity of surrounding residential properties (Policy 15.2.3.2).</u></p> <p><u>Relevant objectives and policies:</u></p> <p>i. <u>Objective 15.2.4</u></p> <p>ii. <u>New or expanded industrial activity and new buildings and additions and alterations that increase the floor area of buildings used for industrial activities in the former brickworks structure plan mapped area are compatible with the surrounding residential environment and avoid or, if avoidance is not practicable, adequately mitigate adverse effects on the amenity of the streetscape and character of the neighbourhood (Policy 15.2.4.9).</u></p>
<p><u>XX.</u></p>	<p><u>In the former brickworks structure plan mapped area:</u></p> <ul style="list-style-type: none"> • <u>All other activities in the industrial activities category</u> 	<p>a. <u>Effects on the safety and efficiency of the transport network</u></p> <p>b. <u>Effects on the efficiency and affordability of infrastructure</u></p>	<p><u>See Rule 6.11</u></p> <p><u>See Rule 9.6</u></p>

18. Add a new assessment rule to Rule 15.13.5 Assessment of non-complying performance standards

6.	<u>Limits on industrial activities in the former brickworks structure plan mapped area</u>	<p><u><i>Relevant objectives and policies (priority considerations)</i></u></p> <p>a. <u>Objectives 15.2.1, 15.2.3, 15.2.4</u></p> <p>b. <u>Policy 15.2.1.6</u></p> <p>c. <u>Policy 15.2.3.2</u></p> <p>d. <u>Policy 15.2.4.9</u></p> <p><u><i>General assessment guidance:</i></u></p> <p><u>Council will consider the matters outlined in Rule 15.13.2.1.</u></p>
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19. All necessary consequential changes to plan, including numbering, formatting and paraphrasing of the amended policies in other assessment rules.

