

ORIGINAL

Decision No. C 4 /2004

**DOUBLE SIDED**

IN THE MATTER of the Resource Management Act 1991 (the Act)

AND

IN THE MATTER of an appeal pursuant to Clause 120 of the First Schedule of the Act

BETWEEN GUARDIANS OF NORTH TAIERI INC.

(RMA 224/03)

AND PLAIN SENSE (TAIERI PLAINS ENVIRONMENTAL PROTECTION SOCIETY INC)

(RMA 230/03)

Appellants

AND DUNEDIN CITY COUNCIL

Respondent

AND CITY FORESTS LIMITED

Applicant

BEFORE THE ENVIRONMENT COURT

Environment Judge J A Smith (presiding)  
Environment Commissioner D H Menzies  
Environment Commissioner S J Watson

HEARING at DUNEDIN on 18 August 2003, 20 August to 22 August 2003 and 9 September 2003

APPEARANCES

Mr P J Page for City Forests Limited (City Forests)  
Mr A J P More and J A Farrow for the Guardians of North Taieri Inc (GONT)  
Mr T J Shiels for Plain Sense Inc (Plain Sense)



Mr M R Garbett for the Dunedin City Council (**the Dunedin City**)  
Mr L J Logan for the Otago Regional Council (leave to withdraw granted)  
**(the Regional Council)**

## DECISION

### *Introduction*

[1] City Forests wish to establish a timber processing facility on a 21 hectare rural site at 270 Dukes Road, North Taieri. The application, heard by a Commissioner appointed for Dunedin City, was granted subject to conditions and this appeal resulted. A concurrent application for consent to discharge to air made to the Regional Council was granted and not appealed. Both GONT and Plain Sense are asking this Court to overturn the Commissioner's decision and decline the resource consent for the activity on this site. It is common ground that the application is for a non-complying activity under both the Transitional and Proposed District Plans and that the Act's provisions prior to the 2003 Amendment Act apply.

### *Background*

[2] The timber processing facility proposed is to be situated on approximately four hectares at the southern end of a 21 hectare site. The facility will include a fine kerf sawmill, processing mill, planer mill, log yard, timber drying kilns, chipper, debarker, anti-sapstain treatment plant, storage facilities and the administration and head office for City Forests.

[3] Improved technology means that the sawmill will be able to operate with a fine kerf saw of 1.5-2 mm compared to the 4-6 mm common for most sawmills in New Zealand. It is intended that the use of such a saw will reduce the amount of sawdust and waste product and provide greater efficiency and economic return for City Forests clear wood trees.

[4] The site is currently utilised as a small lifestyle pastoral farm with the bulk of the land used for low intensity grazing, with a small wood lot of some 2500 square metres of eucalyptus trees at the south-eastern corner of the site. There is a three bedroom



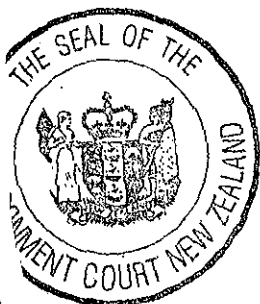
dwelling within the 1.3 hectare landscaped curtilage on the north-eastern portion of the site on the Dukes Road frontage. There is a woolshed located to the middle of the site at the eastern boundary. The site itself has a hedgerow facing Dukes Road in the middle of the site but is otherwise relatively open. The western boundary of the site abuts the Taieri Branch railway line which separates it from industrial land to the west. The Taieri Aerodrome to the west of the site is a significant area of mixed use land with a number of dwellings and various sized land holdings. That land, as well as the land to the north of Dukes Road (the northern boundary of the site), is clearly in use for rural purposes, currently predominantly pastoral farming.

[5] In terms of the District Plans, the land is zoned Rural in the Proposed District Plan for Dunedin and Rural A (I) under the Transitional Dunedin City Plan (Silverpeaks section). Neither plan provides for timber processing plants as permitted, controlled or discretionary activities in the zone. As such the activity is non-complying.

[6] The entire site is identified as containing high class soils in the Proposed District Plan Map 75. In addition, the entire site is subject to a designation for Dunedin Airport approach and land use controls (Designation 274 in the Proposed Plan). However the requirement for maximum height of any structure (being in excess of 200 metres) is of no practical effect. The southern half of the site is subject to the Taieri Aerodrome approach and take-off fan height restrictions, but again these are set between 21 and 36 metres moving west or east over the site, and thus have little effect. It is not proposed that any building within the site would exceed ten metres in height, although planting proposed may reach 20-25 metres.

[7] The Silver Stream is on the southern site boundary and beyond that to the south-west there are a number of smaller blocks containing homes in what appear as lifestyle properties, although the area is zoned Rural. Further to the south, are rural properties with some intensification of residential activity near Factory Road. To the north-east of the site, there is also a concentration of four or five homes along Dukes Road while the land behind that and adjacent to the subject site is still open pastoral land.

[8] From our inspection of the site on this and other occasions, we would describe the subject site as being part of the clear demarcation between the rural area and the



more mixed zones to the west of the Taieri Branch Line and to the south of Silver Stream. This entire area is one that has been subject to pressure, largely for residential/rural lifestyle developments. This pressure is discussed in several recent decisions of this Court, including *Brown v Dunedin City Council*<sup>1</sup>, *Plain Sense v Dunedin City Council*<sup>2</sup>, and *Russell v Dunedin City Council*<sup>3</sup>.

### *Issues*

[9] This case raises issues both in respect of effects and the application of the Transitional and Proposed Plans.

In relation to effects four key matters were the subject of evidence. They were:

- (i) Noise;
- (b) Amenity and visual effects;
- (c) High class soils;
- (d) Transportation effects.

The degree of compliance with the Transitional and Proposed Plans was also an issue in this case. These issues were argued in different ways before the Court, including:

- (a) The continuing integrity of the Proposed District Plan if this application was granted,
- (b) Whether this application constituted a true exception to the Proposed Plan or the Transitional Plan, and
- (c) Whether there were any alternatives to providing for this activity on the subject land.

These matters can be addressed either in terms of the threshold tests under section 105(2A) or in terms of the provisions of section 104.



<sup>1</sup> C102/2002 and an appeal AP 32/02 (H.C.).  
<sup>2</sup> C105/2003.  
<sup>3</sup> C92/2003.

[10] It is clear that prior to making an assessment under section 105(2A) it is necessary to examine the various effects under section 104(1)(a) and all Plan provisions under section 104(1)(d). However, in the context of this case, the issues relating to the integrity of the Proposed District Plan (reverse sensitivity, cumulative effects and the question of alternative sites) convinces us that we should do a full examination of the matter under section 104(1) before returning to the provisions of section 105(2A).

[11] The Proposed District Plan 6.7.3(ii) provides assessment criteria for resource consent applications. Arguably, a duty to consider alternatives may also arise here because of the provisions of the Fourth Schedule Clause 1(b) which reads:

*(b) Where it is likely that an activity will result in any significant adverse effect on the environment, a description of any possible alternative locations or methods for undertaking the activity [should be included in the assessment of effects on the environment].*

Although the applicant argued there was no need to consider alternatives as there was no significant adverse effect, his witness failed to note that consideration of this issue was required under 6.7.3(ii) anyway.

[12] Further, all parties agreed that as a non-complying activity, this application would have to constitute a true exception to the Rural zone provisions of the Transitional and/or Proposed Plan<sup>4</sup>.

### *Scope of Hearing*

[13] It was the applicant's case that, although there would be adverse effects on the environment if this consent is granted, these would be no more than minor, taking into account the significant remedial and/or mitigation works proposed. All parties noted the relevance of the various decisions of the Court relating to the Rural provisions of the Plan, which we have already cited, being *Russell*, *Plain Sense (Bain)* and *Brown*. There was no dispute between the parties as to the terms of the decisions in *Russell* and

<sup>4</sup> See *Russell* 2003 at paras [11] and [20].



*Plain Sense* and each party sought to identify their case with the relevant decision granting or refusing consent.

[14] The appellants, not unnaturally, argued vigorously that there was nothing in this application that took it outside the circumstances contemplated in the Proposed Plan. Mr D R Anderson, a planner called for Plain Sense, went so far as to give evidence that the Council had deliberately resiled from providing for primary processing facilities (including sawmills) in the Rural area. We will discuss that evidence in due course.

[15] The applicant in their submissions described the Court's approach in *Brown* and *Plain Sense* as follows:

- (a) *The Court acknowledged the presence of high class soils had to be weighed against all the other relevant considerations that required examination (Brown, p. 9)*
- (b) *The Court held that the Otago Regional Policy Statement in relation to the soil resource is not directive or determinative in terms of use of High Class Soils, and in that respect is more similar to the Canterbury cases than the Auckland cases (Brown, p. 34, para 134 (c)).*
- (c) *The Court in Plain Sense considered the significance of the amount of soil removed from a construction footprint and the potential for it to be retained on site and used to improve existing soils as a way of addressing objective 4.3.10 (para 33 of that decision).*

[16] To that extent the applicant put the proposition as follows:

*The Court must balance the loss (albeit reversible) of the use of the soil resource with other relevant considerations such as the economic benefits to the community that the proposed plant will bring.*

[17] We accept the applicant's later proposition that there are limits to which the *Brown* case can be applied to the current circumstances. Firstly, *Brown* concerns a reference on a plan and Residential zoning. Further, the proposal in this case is different in type and involves the application of the Plan provisions rather than determining what



the appropriate provisions should be, particularly in respect of zoning. In respect of *Russell* and *Plain Sense*, it is also acknowledged that there is a distinction in those cases relating to the lot sizes which are relevant. In the case of *Plain Sense*, the lot sizes proposed were in excess of the minimum specified in the plan of six hectares, thus making the activity restricted discretionary.

[18] We have concluded that the issues of integrity of the Plan, alternative sites and whether the application constitutes a true exception of the zone are best dealt with as issues under section 104(1)(i). The question of alternative sites may also be relevant to issues of mitigation under Part II section 5(2)(c) when it comes to the judgement to be exercised as to the level of mitigation, avoidance or remedy necessary. That, however, may very well turn on whether the Court determines that there are significant effects, thus bringing it within the Fourth Schedule, Clause 1(b). It is, in any effect, a criterion we must have regard to under the Proposed District Plan 6.7.3(ii).

[19] It is agreed that the activity is a non-complying activity under both the Transitional and the Proposed Plans. The parties have provided a Statement of Facts and Issues which includes at pages 7-17 copies of the relevant objectives and policies and rules of the Transitional District Plan, the Proposed City Plan and, at para 30, the Otago Regional Policy Statement. These are annexed hereto and marked "A". These have been considered by us in the context of the entire Plans as necessary.

[20] It is axiomatic that the application is contrary to the rules in both Plans. We note that section 105(2A) requires only that the application not be contrary to the objectives and policies, it being accepted that a non-complying activity will, by definition, not meet the rules of the Plan (see *Shell Oil v Wellington City Council*<sup>5</sup>).

[21] This activity could be conducted as of right (subject to meeting noise standards) in an industrial zone. Dunedin City Council has introduced Variation 9B, proposing to rezone land close to the site, on Dukes Road and opposite the existing industrial area, from Rural to Industrial.



<sup>5</sup> 2 [NZRMA] 80 at pp 85-86.

*Activity Rules and Activity Standards*

[22] We struggle to understand the applicant's proposition that because the activity is likely to produce excessive noise within the industrial zone, even with mitigation, it is therefore not provided for in the Plan. We conclude that such a reductionist argument would defeat the entire purpose of the Plan. It would identify non-complying applications as true exceptions to the Plan provisions and therefore deserving of consent. Such an approach would mean that the performance standards envisaged for a zone would be capable of being undermined whenever a standard was exceeded. Activity standards are included in this Proposed District Plan to meet an environmental purpose. If the applicant cannot meet the environmental standards in respect of the Industrial zone, then in our view that is even more reason to avoid that same effect outside the zone.

[23] During the course of this hearing, it became clear that a prime reason for the placement of this activity in the Rural zone related to the wording of the Rural noise rule, which provides under 21.5 "Compliance with Performance Standards":

*Activities which are permitted, controlled or discretionary (restricted) in any section of the District Plan must comply with the performance standards below.*

*21.5.1 Performance Standard: Noise Limits – General Levels*

*(i) Maximum  $L_{10}$  and  $L_{max}$  limits*

*Subject to: (ii) The maximum noise limits generated by any activity shall not exceed:*

- (a) The maximum day-time, night-time and shoulder period  $L_{10}$  noise limits identified on District Plan Maps 62 to 70, measured at the boundary or within any other property within the same noise area, except that in the case of a noise generated within any Rural or Residential Zone noise shall be measured at or within the notional boundary of any dwelling not on the same site.*  
*[emphasis added]*



[24] The applicant's expert evidence was based on an assumption that noise limits would be calculated and measured at the notional boundaries because the site was within the Rural area. We have concluded that such an assumption is entirely misconceived. It is clear that the performance standard only applies to permitted, controlled or discretionary (restricted) activities. The activities which fall within these categories are listed in rules 6.5.2, 6.5.4 and 6.5.5, which is annexed hereto and marked "B". Brief perusal of these shows that no rules envisaged this type of industrial activity in the Rural zone. Accordingly, neither an unrestricted discretionary activity (such as aggregate extraction) or non-complying activity (a sawmill) are covered by the rules of 6.5.6 or chapter 21, Environmental Issues. In short, there is no notional boundary standard which can be adopted for non-complying activities.

[25] Even in respect of activities which are permitted, controlled or restricted discretionary activities, the criteria of 21.6.1 are relatively broad with the exception that the notional boundary definition in the Plan shall be used. The Proposed District Plan provides that "notional boundary" means

*the line 50 metres from the façade of any dwelling, except that, if the dwelling is located closer than 50 metres to the site boundary the notional boundary is the site boundary.*

Again provision 21.6.2 only applies where there is a non-compliance with the standards of 21.5, and thus the activity becomes a restricted discretionary activity.

[26] In conclusion, the applicant has no ability to rely on standards in the Proposed District Plan that apply to permitted, controlled or restricted discretionary activities. This has particular importance in relation to noise issues.



*Section 104(1)(a) Effects**Noise*

[27] Having heard the evidence, we are satisfied that there are significant differences between the noise from this proposed activity and those from activities which are permitted, controlled or restricted discretionary. Of the activities which are controlled or restricted discretionary, one noise-related feature in common relates to vehicle access and parking. In those cases the Council can exercise control over that noise. Vehicle noise is also a feature of the current application, both for the sawmill operation and for administration staff.

[28] However, we have identified four significant differences in the operation of the timber processing facility which mark this out from those contemplated as activities within the zone. These are:

- (a) The frequency of the activity. The intention is to have a 24 hour, possibly seven day a week, operation with nearly constant noise sources from the operation within the site [see criterion 6.7.5 of the Plan]. There is no evidence the Plan contemplated such a constant noise source in the Rural zone.
- (b) The tonality of the noise. Having regard to the type of activities being undertaken and the operation of machinery, we have concluded that the tonality of this noise will be different in nature from that anticipated in the Rural area. It could be typified as a hum with occasional maximum noises (dropping of logs) superimposed, compared with the more variable tonality anticipated within the Rural zone.
- (c) The character of the noise. We accept that this is a subjective judgement which must be based upon the experience of the Court. We are satisfied that the character of this noise is different from that of the Rural area and will mark it out as being distinctive from the other noises within the Rural zone.
- (d) Volume issues. Even with the mitigation proposed, it is clear that the applicant will not comply with the levels required on the noise maps of



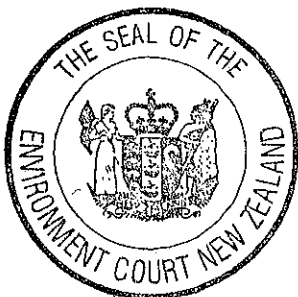
55 dBA L<sub>10</sub> day-time and 40 dBA L<sub>10</sub> night-time at the property boundaries. If the industrial activity was to be constrained to the four hectares land proposed, it is clear that those limits could not be met at the outer edge of the site.

[29] We note that internalisation of all noise effects within the site is not proposed, although bunding was proposed to surround most of the activity, as a mitigation measure. The proposition put to this Court was on the basis of a reasonable level of noise increase within the zone to comply with the standard for permitted, controlled and restricted discretionary activities. The basis on which we were to accept adoption of those 55/40 rules in respect of noise which we find to be different in character, tonality and duration, is unclear.

[30] We accept that the undertaking of these activities, as proposed to this Court, will limit the use of neighbouring land and affect the amenity on that land for owners or occupiers. It was also accepted by the applicant that, in certain weather conditions, the noise can propagate well beyond the proposed bunding and have an increased effect. It is at these times of weather inversion that the public's perception of the noise levels from the factory is likely to be established. We also note that the noise modelling assumes minimal traffic noise on the site and from the administrative block at night. In light of the realities of operation of these types of businesses, we consider that those assumptions are impractical.

[31] The current noise levels in the vicinity of this site as stated by Mr S Camp and Mr J Farren, noise consultants called by the applicant, to be in the range of 25-30 decibels at night (very quiet) and 35-40 decibels in the daytime (quiet). The predicted levels at a position 50 metres from the nearest houses were 36 decibels (daytime) and 34 decibels (night-time) at the Mackintosh property, and 37 decibels (day-time) and 35 decibels (night-time) at the Patrick property. The applicant did not provide to the Court the levels at the boundary to this proposed site and these must be estimated from the contours given to the Court.

[32] Overall we are satisfied that at the boundaries of the proposed site the levels are likely to be approximately 10 dBA higher than those currently experienced or perceived



at neighbouring properties. This is a significant increase in volume in that 5 dBA is regarded as "noticeable". We are satisfied that, having regard to the currently low levels of noise in the area, it is likely this increase will have a more significant impact on neighbouring properties because of the contrast with the existing noise environment. Portions of the rural properties to the east will receive noise in excess of 45 dBA  $L_{10}$  in all scenarios. In addition, there is some land occupied by residences to the south that may, in certain conditions, receive over 40 dBA  $L_{10}$ . When we take into account that all these levels are measured as  $L_{10}$  levels, this means that these levels may be exceeded for up to 10% of the time in any one hour period. We also note that there will be levels in excess of 45 dBA  $L_{10}$  at the boundary with the industrial land on Stedman Road.

[33] In respect of noise, we have concluded that noise from the operation will be noticeable and distinct, not only at the boundaries of this property, but also at more distant points beyond including the nearest residences. We have concluded that there is no minimum permissible level in the Plan and the Court must have regard to the existing environment and that envisaged as a result of this activity. We are satisfied that we are looking at increases in  $L_{10}$  levels in the region of 10 dBA with the probability that there will be frequent instantaneous sounds up to 65 dBA (being the  $L_{max}$ ) which are not (or rarely) occurring at present.

[34] Taking into account the constancy of the receipt of that noise by the neighbouring environment, the assorted vehicle movements and tonality of the activity, we have concluded that there will be a significant change in the noise environment. Overall we are satisfied that there will be a change to the noise character of the Rural area to one more in keeping with a Commercial or Industrial area.

#### *Visual and Amenities*

[35] Mr M W Moore, a landscape architect, was the only expert called on landscape issues. However Mr P Constantine, planner for the appellants, also gave evidence and provided helpful photographs in respect of this matter. Having regard to the significant amount of evidence we regularly receive on this type of issue from expert witnesses, we found Mr Moore's evidence in respect of the landscape and visual amenity effect to be somewhat equivocal. In his evidence to the Court, Mr Moore accepted that the area had



a distinctive and attractive rural character and that, without mitigation, there would be a substantial effect from the proposed activity on the visual and amenity features of the area.

[36] In summary we have concluded that Mr Moore's objective is to reduce the bulk and visibility of the processing facility by:

- (a) Placing the facility at the back of the site some 370 metres from Dukes Road;
- (b) Providing mounding to screen the buildings and activities on open land from passing traffic;
- (c) Planting around the facility to screen the buildings and internal activities from public gaze.

[37] In respect of the view from Dukes Road, he considers that impact will be moderate at first, grading to minor once screening is achieved. Mr Moore considers a whole series of views in this category, including Stedman Road, adjacent properties, properties further to the north-east and the industrial area. His overall assessment relates to a comparison of this site with the Variation 9B site and in his conclusion notes that the development is planned to minimise negative effects on the visual environment. He concludes that there will be moderately significant visual effects on a limited number of adjacent roads and properties in the short term, which will be quickly mitigated by the proposed planting. Various, through his evidence, he speaks of planting taking effect over three to five years or five to eight years. He accepts that there will be a moderately significant impact from many of these view points in the short term, which we take to mean for up to three to eight years.

[38] Mr Moore is somewhat ambivalent as to the overall effect, with phrases such as *the effects are unlikely to be more than minor*. It may be that Mr Moore is in part influenced by the fact the applicant could plant as of right hedgerows on the roadside, which would change the character of the area. This may have some effect on the baseline approach in relation to the questions of comparison. However Mr Moore himself accepts that openness is currently a feature on the plains and we conclude as a fact that this is the case in this area.



[39] Having regard to all of the evidence and our site visit, we have concluded that people's appreciation of their environment in this area will be coloured largely by what they know. In this case there are a number of clear indicators as to the site activity:

- (a) For between three and eight years there will be a clear visual impact (accepted by Mr Moore).
- (b) There is to be a road through the middle of the site and traffic to a mounded site on a flat plain.
- (c) There will be glimpses of buildings through the trees and the road entry, with buildings up to nine metres. It was not suggested that these buildings would not be visible at all, even after eight years.
- (d) As we have discussed, there will be noise which will be discernible, particularly to nearby residents, but also to people who may be on the nearby properties.
- (e) Finally, people who live in the area will know that the activity is there.

[40] The definition of amenity values in section 2 makes it clear that cultural and physical qualities contribute to people's appreciation of this environment. This must mean that understanding is coloured by foreknowledge and past experience. We accept that there is an effect on visual amenity which will be significant in the initial period of three to eight years. Although that effect will lessen over and beyond this period, the ongoing appreciation of amenity will be coloured by that experience and knowledge. We note in particular that most people who are likely to experience an amenity effect will be people living in the area.

#### *High Class Soils*

[41] There is no debate between the parties that the site contains high class soils. The applicant proposes to avoid or mitigate any effect by limiting the site coverage (20% of the 20 hectare site) and by preserving the soils within the four hectare footprint in bunding.



[42] Dr C W Ross, a soil specialist (whose evidence was not disputed), gave evidence that most of the life supporting capacity could be preserved in bunds for a period of some 10 to 15 years. In cross examination he indicated that there was evidence that this could extend to 20 years. Accordingly, although the area of the complex (the land area of 4 hectares) is removed from primary production, the soils are to be bunded and would be capable of re-use in the future. We accept that the preservation of life supporting soil capacity is theoretically possible. We note that Dr Ross indicated that significant care was required in treatment of the soil to retain its life-supporting capacity. He indicated that the soils needed to be handled properly.

[43] We therefore conclude that there is a prospect of failure of the life-supporting capacity of the soil in bunding, even though that may be a low risk with proper handling. In the end we have concluded that we can only be satisfied that a majority of the life-supporting capacity will probably be preserved with a proper soil management plan if the soil is placed in a bund. It was accepted that at least 10% of the life-supporting capacity of the soil would be lost, even with proper handling. Of course, this makes an assumption that the balance of the site would not be used for anything other than rural purposes.

[44] There was evidence before us that the applicant may be intending to expand the industrial activity over more of the 20 hectare site, which would then constitute a more significant effect. There was a suggestion of a staged development. We annex hereto and mark "C" a copy of a record of discussion between the applicant and Council staff at the consultation phase of this project. Mr P J Taylor, the CEO of the company, is recorded as stating during that meeting that other industrial enterprises will look to locate on the site so the positioning of the plant in the middle of the land would limit feasibility. Mr P A Cubitt, a planner, also commented at that meeting in respect of noise that there is a view towards expanding the site in the industrial zone in the future. This memorandum only surfaced as a result of cross-examination by the appellants and discloses intentions somewhat at variance with those put to the Court by the applicant, including Mr Taylor. This was explained as being a change of view by the applicant. However, in respect of high class soils, it is clear that the Court could impose conditions preventing further development on the balance of the land and requiring either a



restrictive covenant or the like to avoid the balance of the Rural land being used for non rural activities. For current purposes we have assumed that this puts a restraint upon the consent.

[45] However, we note that in comparison with the earlier *Plain Sense* application, which was granted, the proportion of this land area not available for rural purposes is 20% compared with 3-4%, and four hectares compared with approximately 2,000 m<sup>2</sup>.

[46] It is clear to us that there is a connection between the soil and the land area which it occupies. In our view the Plan provisions for high class soils and indeed the categorisation are tied up with the land area which they occupy. Both the substrata, ground water, drainage, mineral composition, and geomorphological characteristics all influence the life-supporting capacity of the soil. Accordingly, although we accept that there may be a mitigation of effect on the soil by virtue of bunding, we cannot conclude that there is no effect or that the area of land which is removed from Rural use is irrelevant. The extent of that effect however is somewhat problematic as we have previously discussed in *Waimakariri Employment Park v Waimakariri District Council*<sup>6</sup>.

#### *Transportation Effects*

[47] There will be some impact on the roading and traffic if this application were to proceed. There will be some logging trucks on rural roads and there will be an effect from trucks entering and exiting the site. There will also be staff and service vehicles, with a substantial number of movements overall. There are some 45 parking spaces on site, with an estimate of 26 heavy vehicles and 120 light vehicle movements per day. In regard to the total of some 2200 movements on Dukes Road, including 130 heavy vehicle movements, there is going to be an increase in overall traffic, with an approximate 20% increase in heavy vehicle movements and 6% in lighter vehicles.

[48] Traffic figures on Dukes Road to the east and west of the railway line were not given and we assume that those produced to the Court for Dukes Road were obtained in



<sup>6</sup> C66/2003 at para 156 (subject to appeal).

respect of the area to the west of the railway line where the industrial area creates substantially heavier traffic than to the east and in the vicinity of the site. Mr P R Dowsett, the traffic engineer for the Council, says that the roads can cope with these predicted volumes although he does not discuss directly the impact of logging trucks on this road. Nor did any party discuss the safety and efficiency of the roading network in terms of policy 6.3.8.

[49] Having viewed the roads in question and considered the evidence, there is unlikely to be any significant impact on the roading network as a result of the granting of this application, assuming the roads have been designed to carry high volumes of heavy vehicles. The traffic figures anticipated appear to be well within the capacity of the roads, and the particular design and mitigation measures for the entry and exit to the site satisfy us that there would be sufficient sight distances and turning areas are to be provided to enable the manoeuvres to be undertaken safely. In respect of the actual traffic movements to and from the site and in relation to other alternatives, we were unable to discern any point that either favoured or was against this proposal, and we saw the activity as neutral in terms of its impact upon the transportation.

#### *Other Infrastructure*

[50] We similarly accept that the impact on other infrastructural networks is not significant. Water and sewer can be provided to the site with minor extensions. We were concerned at the potential for contaminated stormwater to be piped to Silver Stream, which is already degraded. However, we are satisfied that there is sufficient room on the site for pretreatment of stormwater if that is required. Overall we did not consider there was any evidence before us to suggest that any issues arising in respect of general infrastructure could not be addressed through conditions.

#### *Positive Effects*

[51] It was accepted that the construction of the sawmill would provide jobs. Plain Sense suggested that these may be jobs that would otherwise be provided within the existing sawmills in the area or that they would still be provided if the sawmill was constructed in an Industrial zone. Overall we are not satisfied that there is positive



effect occurring in terms of jobs because this activity is situated in the Rural zone, but we do accept that there would be a positive effect for the Dunedin area from its siting within the Dunedin district. We also acknowledge that this sawmill could be sited as of right (subject to performance standards) within the nearby Clutha District, although this would not yield the same benefit in terms of jobs within Dunedin City. We also acknowledge that provision of sawmills is an important service to forestry although there was some issue as to whether or not the existing sawmills had capacity to deal with the available logs. To this extent, the use of the fine kerf saws and less wastage was seen as a significant advantage of this plant compared with others in the area.

[52] We accept that the reduction of wastage is likely to improve the economics of any operation but no doubt new sawmills being established would in any event be seeking to adopt latest technology to increase profits. We also accept that this site is in a convenient central position. However, we are not satisfied that this means that there is nowhere else within Dunedin City that the activity could be placed. Having regard to the fact that there are forests to the north, west and east of this site, we see the advantages in terms of placement as being relatively neutral overall. In respect of it being close to an existing node of industrial activity, this is also correct, although that could hardly be seen as a positive effect if it does not comply with the plan.

### *Reverse Sensitivity*

[53] There was concern from the appellants as to the impact on this proposed activity from normal farming operations; silage, spraying and the like. We accept that there is a potential for complaints to be generated by this activity. Particularly we acknowledge that there may be actions taken by City Forests to prevent residential activities being established in the near vicinity of the site or other activities that might be likely to be affected by the sawmill. Overall however we consider that those potential risks of conflict are relatively small and are likely to be driven by other nearby residential and industrial users rather than just this one sawmill.



### *Cumulative Impact*

[54] There was suggestion of cumulative impact on the area surrounding Mosgiel. This issue relates to the ongoing development of the Rural land surrounding Mosgiel and is a similar issue to that raised in *Brown v Dunedin City Council* (cited above). In the circumstances of this case, this effect is more properly considered as an effect on the integrity of the plan to be considered under section 104(1)(i). This is because the development is occurring outside zone.

### *Regional Policy Statement - Section 104(1)(c)*

[55] The Otago Regional Council policy statement contains several policies that are relevant to consideration of this matter, in particular Policy 5.5.2 and Policy 9.5.5 which are included in the statement of relevant Policies and Objectives, and Rules paragraphs 13 and 30 of attachment "A".

[56] Policy 5.5.2 addresses both the effect of removing the soils or the effect on their life-supporting capacity. It is clear however that the policy contemplates that there may be situations where remedy or mitigation of adverse effects needs to be undertaken if avoidance is not practicable. In the context of this case, the applicant's proposals appear to accord with the intent of the policy statement in that they avoid removal of the soils from the site itself, and adopt a plan to retain their life-supporting capacity. Whether this amounts to avoidance or mitigation depends on the effects and potential effects which we have already discussed. In our view there must be a mitigation of any adverse effects on the high class soils, at least, if the soil management plan is successful. Thus it could not be said that this application was contrary to that policy.

[57] In respect of Policy 9.5.5, it is clear that the regional policy statement contemplates district plans which accord with items (a) through (c). Words such as *acceptable to the community* and *community health and safety* indicate a contemplation that the Plan will reflect the community's expectations in respect of these issues. In this case, we did not understand any party to dispute that the Proposed Plan as promulgated was the Council's attempt to incorporate these issues. As a result of decisions in 1999,



the Plan had the benefit of the public participatory process to that stage and as a result of the various references which have now been resolved, the Plan is now largely a reflection of the community's intention.

[58] Although the precise provisions of the Rural section of the Plan have not been fully settled, there appears to be a large measure of agreement as to such issues as zoning and appropriate levels of amenity throughout the rural zone. We have concluded, therefore, that the level of accord by this application with this policy will depend on the level of accord with the Proposed Plan provisions and, of course, the relative uncertainty of those provisions which are not fully settled. Accordingly, it was not argued before us that the Proposed District Plan did not reflect Policy 9.5.5 and we can see no benefit in comparing the application directly with this policy, which is general and indicative only.

*Provisions of the Transitional and Proposed Plan - Section 104(1)(d)*

[59] It is necessary for us to consider the provisions of both the Transitional and the Proposed Plan in the context of this decision. Unfortunately, the decisions of *Plain Sense* and *Russell*<sup>7</sup> are of limited usefulness in the context of this consideration because both dealt with the subdivision of rural land primarily and the erection of a dwelling as a secondary issue. In *Plain Sense* the application was for a restricted discretionary subdivision activity and a permitted activity for the construction of a dwelling under the Proposed District Plan as amended by Variation 9.

*Transitional Plan*

[60] In respect of the Transitional Plan the Court has previously discussed the Transitional Plan's provisions as to subdivision (see *Plain Sense* paras 39-41 inclusive). The connection between subdivision and the economic use criteria of the Transitional Plan also constituted a distinction in the *Russell* case. In this case there is no subdivision intended and accordingly it is the activity which is the focus of concern. To that extent the Transitional Plan Objectives 3.1.2 and 3.2.1, (listed in appendix "A"



<sup>7</sup> C105/2003 para 20.

items 20 and 21), focus on optimum use of rural land and its connection with the production of food. This is reflected in the policies such as 3.2.2, (22 in appendix "A") and permitted uses Rural A Policy 3.2.4 (item 23 of appendix "A"). We note in particular the statement in the Rule that the Council believes that the relative scarcity of the district's prime land and the proximity of alternative sites necessitates such severe restrictions. Accordingly, the objectives and policies of the Transitional Plan do not appear to even contemplate non-productive uses of land in this industrial sense, as can be seen by reference to Ordinance 6.2 – Predominant Uses – Rural A Zone (page 16 of appendix "A").

[61] As we commented in *Plain Sense*, we must interpret the Objectives, Policies and Ordinances of the Transitional Plan created prior to the enactment of the Resource Management Act through the filter of the Act, putting an emphasis on preserving the life-supporting capacity of the soils rather than food production. Further, we confirm our comment in that case<sup>8</sup>:

*... applications which involve extensive coverage of versatile soils would be contrary to the thrust of this provision. In respect of this particular site however the buildings are likely to cover only some 1-2% of the site, with the potential for all the soils to be retained within the site (as a condition of consent).*

[62] In this case some 20% of the site would be covered by buildings but it is intended that all the soil would be preserved elsewhere on the site. In the end whether this mitigation is appropriate is a matter of judgement, to be assessed under section 104(1)(d) and when reaching an integrated decision under section 5 and section 105(1)(c) of the Act.

#### *Proposed Plan*

[63] Under the Proposed Plan it is clear that this application has little in common with the decision in *Plain Sense*. In that sense it is analogous to the decision in *Russell* in




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Para 46 of *Plain Sense*.

that both applications are for non-complying activities under the Proposed Plan. The Policies, Objectives and Rules of the Plan have been set out in detail in appendix "A".

[64] We are satisfied that the key section of the Plan is Chapter 4 entitled "Sustainability". It sets out the overall resource management objectives and environmental outcomes for Dunedin City. Mr Constantine, a planner called for *Plain Sense*, stated:

*These are the foundation upon which the various spatial zones are based and from which the provisions of each spatial zone take their lead and which, where necessary, inform their interpretation. Of particular relevance to this consideration are the objectives that focus on enhancing the amenity values of the City ... and ensuring that significant natural and physical resources are appropriately protected.*

[65] We agree entirely with that analysis, and particularly that these objectives are implemented through Policies 4.3.1, 4.3.4, 4.3.7, 4.3.8 and 4.3.10. Mr Constantine puts the matter in this way:

*Essentially what this means is that the Proposed District Plan contains some broad environmental outcomes that are applicable equally across the district, and then a series of zone-based outcomes that are applicable within the various areas delineated on planning maps.*

[66] We agree and conclude that zoning is the key method utilised by the Proposed Plan to segregate incompatible activities (Policies 4.3.7 and 4.3.8). The zoning maps themselves are not policies but these provisions are no longer in dispute in that the zoning of this land as Rural is settled.

[67] The outcomes in terms of amenity values anticipated within the area are listed in Policy 6.3.5. It was suggested by Mr Page for the applicant that this set out a number of effects-based evaluations. We cannot agree. We accept that it involves a series of subjective judgements and thus an evaluation. However these are not necessarily related



to effects. For example, the use of words *predominance* (6.3.5(a)), *high ratio* (6.3.5(b)), *significant* (6.3.5(c)), *large numbers* (6.3.5(d)), *low* (6.3.5(f)), *generally* (6.3.5(g)), and *general* (6.3.5(h)), all involve an evaluation but not necessarily any assessment of effect. The policy requires, among other things, activities to be of a nature, scale, intensity and location consistent with maintaining the character of the Rural area. Those that follow in (a) to (h) are indicative rather than prescriptive.

[68] We note also that Policy 6.3.12 again reflects the desire to avoid or minimise conflict between differing land uses that may affect rural amenity or its production. Again we agree with Mr Constantine that the ratio of undeveloped space relative to built environment will change with this application, as will the noises, smells and effects associated with the use of rural land. Other features will include the higher concentration of people working on the land, which will be at industrial levels at least within the four hectare development. Establishment of industrial infrastructure also gives the possibility that other parties will seek to link into that for further developments. There is at least the prospect that there will be a more comprehensive and progressive development of the site in the medium to longer term.

[69] Policy 6.3.6 is also relevant and the explanation to this policy recognises that increased density of buildings can adversely affect the openness and character of the rural environment. To that extent the bunding itself will act like a structure, and together with the screen plantings will have an effect on the amenity of surrounding properties.

[70] In our view Policy 6.3.14 is of particular importance in this case because it notes that irrespective of any mitigation, activity should not occur where this may result in cumulative adverse effects in relation to (a) amenity values and (b) rural character. We find it interesting that the policy uses the word *cumulative* adverse effects rather than the words *significant* or *more than minor*. We have concluded that there is an adverse effect on amenity values and rural character in terms of the Plan and accordingly we have concluded that this application offends against Policy 6.3.14.

[71] Although the explanation to Policy 6.3.14 discusses the prospect of a number of sites being developed that create changes, the actual wording of the policy, interestingly,



is more direct and can apply to single applications. This situation may be compared with that discussed in *Pigeon Bay Aquaculture* relating to “the first cut being the deepest”<sup>9</sup> (with apologies to Rod Stewart). In this case there is a very real prospect that, with this application being granted and the rural character and amenity values of the area being changed, there will be consequential applications based upon the change that has occurred. We agree with Mr Constantine that because of the clear and uncompromised character and amenity of the immediate locality, the granting of consent to the application would be directly contrary to the outcome sought by this particular policy.

[72] We have already discussed in general terms the rules of the Plan and it is quite clear that the zoning and the Plan provisions relating to the activities within the Rural zone do not provide for this activity.

[73] Curiously during the course of this hearing neither the statement of facts and issues nor the evidence of any of the witnesses discussed any assessment criteria in respect of resource consent applications within the rural section. On preliminary perusal this appeared to be because there was none contained within the Plan.

[74] However in another case (*Doherty v Dunedin City Council*), argued around the same time, on which a decision is still to be issued, the Council’s planning witness made reference to the assessment criteria of section 6.7. This is contained within the Plan in the rural section but after section 6.6 which deals with Rural/Residential zone. It is also located behind a divider described as Rural/Residential zone and gives the mistaken impression that the balance of Chapter 6 is related to Rural/Residential zones.

[75] Because the planner in *Doherty* referred to these criteria in the context of an application for residential activity in the Rural zone, we have had cause to look at section 6.7 of the plan and consider whether it is generally applicable to all applications within the Rural zone. We have concluded that quite clearly section 6.7 does contain criteria that apply to any application within the Rural zone. A further teleconference with counsel after the hearing has confirmed the applicability of section 6.7.



<sup>9</sup> *Pigeon Bay Aquaculture v Canterbury Regional Council* [1999] NZRMA para 52.

[76] This is, of course, of importance in this case and the failure of the Council to identify this in the Statement of Facts and Issues, or for the planners to discuss the matter, is of significant concern.

[77] Annexed hereto and marked "D" is a full copy of section 6.7 of the plan. We note the opening words state

*In assessing any application, in addition to the matters contained within the Fourth Schedule, the Council will have regard to, but not be restricted by the following matters:*

[78] We are unable to read down the wording of this provision to apply only to the Rural/Residential section which stands in a separate section 6.6, whereas the General/Rural zones are under section 6.5. In our view the opening wording can only mean that in assessing any application within the Rural zone section 6.7 criteria apply. It is clear from the wording, this is also mandatory.

[79] Although we accept that the provisions of the Rural section of the plan cannot be regarded in any way as settled, it is still necessary for the Court, and the Council at first instance, to have regard to them. Many of the matters referred to are ones that the Council and Commissioners would have had regard to in any event by virtue of the consideration of the Plan as a whole. There are several relevant provisions, particularly 6.7.3, 6.7.4, 6.7.5, 6.7.13 and 6.7.25 which are directly relevant to this application and a failure to consider them may have influenced the Commissioner's final decision. For example, 6.7.3(ii) requires the Council to have regard to the option of locating the activity in a zone where that activity is permitted. Thus notwithstanding Mr Page's argument to the contrary, it is mandatory for the Council to consider that option. The weight to be given to that in the final integration under section 105(1)(c) is of course a different issue.

[80] Similarly with cumulative effect, this includes all of the effects that have already been identified and links directly in with 6.3.14 of the Plan. Clause 6.7.5 notes the hours of the operation and the frequency of the activity in terms of its effect on the amenities



of the surrounding environment. This makes explicit an effect we have found to occur in any event and requires this to be a specific consideration of the territorial authority. The fact that this has not been covered or mentioned by the District Council in its evidence to this Court is of significant concern.

[81] Bulk and location is directly addressed under clause 6.7.9 in no broader terms than they are already discussed by us in terms of effect. Land disturbance, 6.7.11, includes consideration of the return of the original productive use under (ii) and under (iv), the extent to which the high class soils will be taken out of production.

[82] Visual impact, 6.7.13, includes the general matters we have already discussed under effects but includes specifically under (iii) the effect of an activity on the open amenity of the rural area. Accordingly the degree of openness is a matter specifically before the Court and one to which regard must be had. As we have already discussed previously, as a matter of fact the site is currently open and the effect would be to reduce the openness of the site.

[83] Finally under 6.7.25 the question of conflict with existing rural activities is specifically raised.

[84] It is clear from this oversight that it is the duty of the parties and particularly the Council whose District Plan it is to correctly identify the relevant provisions of the Plan. Lack of assessment criteria was the subject of comment by the Court during the course of the hearing, yet section 6.7 is relied on by other Council staff in relation to other hearings before this Court. The reason for this may relate to the misplaced chapter divider used in the document. This divider is probably inappropriate in all the circumstances, having regard to the fact that section 6.7 follows on after the rural/residential rules.

[85] We thus conclude in the circumstances that the failure to consider these criteria may have significantly influenced both the planners, in their assessment of this matter and the Commissioner, in considering this application.



[86] Having regard to all these matters and looking at the matter on an holistic basis, we conclude that the application is in direct contradiction to a number of the policies of the Proposed Plan. We note particularly that under the principal reasons for adopting the policies there is the following statement:

*In order to protect the rural amenity and the natural and physical resources of the rural zone, intensive development of activities normally associated with urban areas of the City is not permitted (p. 6:19).*

### ***The Baseline***

[87] We note that the Proposed Plan intends that the rural character of the area be maintained and enhanced and, in this regard, the applicant pointed out that there must be a baseline comparison with what can be conducted in the area as of right. Firstly Mr Page argued that there was the potential for farm structures to occupy a similar area of the site. As a permitted activity, accessory structures and buildings would be permitted provided they are accessory to the farming activity. Farming activity is defined as:

*Means the use of land and buildings for the primary purpose of the production of vegetative matter or commercial livestock but excludes factory farming and forestry activity, and includes on-farm extraction of aggregate for the sole purpose of constructing and maintaining access within that farm.*

[88] The definition of factory farming is also illustrative and means:

- (a) *the use of land or buildings for intensive production of livestock or vegetable matter which is not dependent on the fertility of soils on the site and which may involve the special housing of animals or plants or a high concentration of waste per unit area;*

[89] In our view it is not clear from these definitions whether activity such as glasshouses would be permitted or constitute factory farming in terms of the definition. We note that factory farming is an unrestricted discretionary activity within the zone. For current purposes we are not prepared to accept that it is either plausible or probable



that there would be such a significant area covered with tunnel houses or the like on this site. Even if it were, such activity would have to rely on the natural fertility of the soil to constitute a permitted activity and thus would involve utilisation of the soils on the site. It is also difficult to envisage what change to rural character would occur as a result of glasshouses beyond the visibility of such structures on the site.

[90] Mr Page also suggested that there could be shelter belts on the boundaries of the land and we accept that that would be a permitted activity.

[91] Mr N N Baker, planner for Dunedin City, seems to suggest that the application is not contrary to the Plan because the impact is adequately mitigated by such planting. However we notice that Policy 6.3.5 does not directly discuss mitigation of the impact of reduction in openness. Openness is one of the features of rural character that is altered whether permitted or not. Essentially we cannot conclude that Policy 6.3.5 is effects based and therefore that mitigation is a satisfactory meeting of Policy 6.3.5. That judgement is based upon a whole series of issues including not only the policies but the effects that we have already discussed.

[92] Finally, we wish to make further comment in respect of the policies as they relate to high class soils and a distinction between the life-supporting capacity of the soils and the area or land upon which they are based. In our view soils cannot easily be disconnected from the area (land) on which they are situated. As a living organism their very classification and nature is affected by the underlying geology, ground water, flood hazard, existing biota (both flora and fauna) and micro-organisms as well as climatic factors. It may be that the distinction drawn in section 5(2)(a) and (b) relates to that, namely that the physical resource is the area or land and the soil the overlying organic structure. The Policy in 6.3.10 is to *protect areas that contain high class soils*. To that extent we have concluded that the policy, at least, seeks to protect both elements, namely (a) the soils and (b) the land or the area on which they are situated.

[93] The question must therefore be whether the objective of 6.2.6 to maintain the life-supporting capacity of soil and water resources is met by the suspended animation of the soil beyond the short to medium term. Having regard to the wording of Policy



6.3.10, it appears to us that this must be a matter of judgement in every case and reflects our discussion on the effects on the soil resource earlier in our decision.

*Other Matters – Section 104(1)(i)*

[94] There are three other matters that were raised with this Court, which on reflection we believe are interconnected. They are:

- (1) alternative sites;
- (2) a genuine exception to the zone;
- (3) the integrity of the Plan.

[95] For reasons we will shortly explain, it may be that all three of these are in fact a restatement of the same issue. The question of the integrity of the Plan was at the forefront of the Court's earlier consideration of non-complying activities, and the question of the true exception was discussed in some detail<sup>10</sup>.

[96] We adopt our discussion as to the integrity of the Plan contained in para 34 of the *Russell* decision with the necessary modification that the intent is to create an industrial activity in the Rural zone.

[97] In respect of alternatives, a number of other sites were discussed. Some are within Industrial zones and include several with similar proximity, size and infrastructure to the proposed application. One is within an area contained in Variation 9B to the Plan which zones an area to the north of Dukes Road, several hundred metres distant, as Industrial. As we have already discussed, the Fourth Schedule assessment 1(b) requires such an assessment where there are significant adverse effects. Such assessment is also required under the Proposed Plan 6.7.3 if there is a zone where the activity is permitted.

[98] The issue of Plan integrity also raises the issue as to whether the application is a true exception to the Plan. The argument of the applicant in this case is that there are no



<sup>10</sup> *Russell v Dunedin City Council* C92/2003 paras [20]-[31].

other suitable in-zone sites. The issue of alternatives directly interrelates with the question of the integrity of the Plan. Mr Page for the City Forests in final reply stated:

*Mr Cubitt's evidence was that the plan demonstrates that there are no sites that are available which have the necessary following features:*

- (a) Are capable of being serviced for water, sewage and stormwater.*
- (b) Are close to City Forest holdings.*
- (c) Are not on high class soils; or are within an industrial zone.*
- (d) Have proximity to suitable roading infrastructure.*
- (e) Are approximate to existing industrial or associated other activities (such as the Young Brothers site on New Zealand Wood Mouldings).*

[99] It is clear from the evidence of the applicant that they relied on servicing of the rural forest resource and that industrial processing of this primary resource was an exceptional feature of this case.

[100] Mr D R Anderson however went through the history of the provisions in relation to industrial activities complementary to rural resources. He noted that the original notified plan (1995) contained the following policies:

*Policy 3.3.3*

*To allow the establishment of activities that are complementary to rural resources provided that adverse effects resulting from these activities can be avoided, remedied or mitigated.*

*and*

*Rule 3.5.5(iv) – Discretionary Activities (Unrestricted) provide for:*

*Industrial Activities for the purpose of processing, storage, or transportation of primary produce.*



[101] As a result of a significant number of submissions, the Council resolved to alter these two issues and removed these particular provisions from the notified Plan. Forestry now excludes milling and processing of trees. Discretionary (unrestricted) activities include only industrial activities related to processing and storing of minerals and aggregate. We must conclude that the removal of these provisions from the 1995 Plan was not an oversight on the part of the Council.

[102] We further conclude that the Council has addressed the shortfall of industrial land by the introduction of Variation 9B to rezone land close to the current site. In our view that is the correct procedure for making further industrial land available. In *Te Aroha Air Quality v Waikato Region (2)*<sup>11</sup>, resource consent was sought due to the delays and deliberation on a rezoning application. The Court stated:

*The applicant contended that a proposal to establish the rendering plant on land suitably zoned would inevitably be a site with land zoned Rural B nearby; so that even on such a site effects on adjacent properties would need to be considered in a similar way.*

*That may be true as far as it goes. However, during the transitional period, regard is to be given to the provisions of the Transitional District Plan. Where such a plan expressly provides by objectives, policies and rules for rendering plants to be directed to particular zones, the effect of having regard to the Plan must be to strengthen the case for the establishment of a site in such a zone and to weaken the case of such a site in a zone where it is not provided for.*

In the current case we have concluded that the failure to provide for this activity within the Rural zone was deliberate and that the intention to rezone other land must strengthen the case for establishment within the appropriate zone rather than on the rural land.

[103] Looking at the exceptional features cited by Mr Page, we are unable to conclude that there is anything exceptional about this application. To suggest that it may not meet the performance standard for the Industrial zone as to noise, in our view, merely



<sup>11</sup>

2 NZRMA at 584/585.

strengthens its non-compliance in a Rural zone. In the Rural zone there are legitimate expectations of lower noise levels and for noises of a rural character.

*Part II*

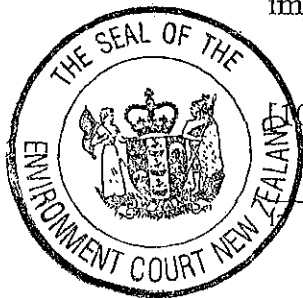
[104] We acknowledge that as a non-complying application the section 105(2A) thresholds must be met. However, having examined all the section 104 criteria, we conclude that it is more appropriate in this case to examine first the overall discretion under that section and then whether section 105(2A) is met (if necessary). It is clear that even if the threshold tests are met under section 105(2A) the Court retains an overall discretion under section 104 (*Kennett v Dunedin City Council*<sup>12</sup>). In this case we consider that section 105(2A) presents some particular difficulties because:

- (a) There are a number of different effects with the requirement that overall they be no more than minor. This is difficult to integrate in a precise sense;
- (b) There are issues in this case about the level of inconsistency between the proposal and, particularly, the Transitional Plan.

[105] The discretion under section 105(1)(c) has regard to the factors under section 104 but is informed by Part II of the Act. The application must meet sustainable management as that term is described in section 5. Section 5 is in turn informed by the provisions of sections 6, 7 and 8. Section 5(2)(a) and (b) are of particular relevance in this case, relating to firstly sustaining the potential of physical resources to meet reasonably foreseeable needs of future generations and secondly safeguarding the life-supporting capacity of soil and the ecosystems.

[106] Section 6(d) is relevant. The applicant proposes providing a riparian strip to the rear of the site along the frontage to Silver Stream. The planting of such a strip would improve the amenity of the existing river access.

[107] No parties raised any particular issues under section 8.



[108] Of particular relevance to this case are section 7(b) – efficient use and development of (natural and) physical resources, section 7(c) – maintenance and enhancement of amenity values and section 7(f) – the maintenance and enhancement of the quality of the environment. We have concluded that these factors are subsumed within our earlier discussions as to noise, visual amenity and the integrity issues. The parties accept that the Proposed District Plan addresses its obligations under the Act and particularly under Part II.

[109] It is important to keep in mind that section 5 is enabling while providing for the matters in sections 5(2)(a)-(c). It involves a broad judgement. The Act contemplates that a community's interpretation of Part II will be set out in relevant plans. In this case there is no argument that the Proposed District Plan set out in its policies and objectives the Council's interpretation of its obligations under the Act, including Part II. The rules are to implement the policies and objectives of the Plan. Again there was no suggestion that zoning in this case did not form part of the community's interpretation of their obligations under the Act. The zoning is not in dispute, and accordingly the integrity of that zoning is a matter of some weight in this case<sup>13</sup>.

### *Conclusion*

[110] Where we are dealing with a plan generated under the Resource Management Act and where the relevant provisions are settled, there should be good reason to depart from the relevant rules. In this case, the particular concern of the Court relates to the integrity of the zoning provision and, to a lesser extent, the provisions of the Rural zone, particularly high class soils and the permitted activities. We acknowledge that there are positive benefits to the Dunedin area in the sense of job creation but realise this would be the same wherever the activity was sited within the Dunedin district.

[111] We have concerns about noise and amenity. We also have clear concerns about the compliance with Policy 6.3.14. We have concluded that Mr Moore was equivocal on the overall effect of this activity in the longer term. He accepted that the impact was more than minor over the short to medium term, which we understood to be three to



<sup>13</sup> *Russell* para [33]; *Stark v Auckland Regional Council* [1994] NZRMA 126 at p. 137.

eight years. We have concluded that there will be a real and ongoing effect on amenity. This will change the character of the area from rural to industrial, similar to that in Stedman Road on the other side of the railway line.

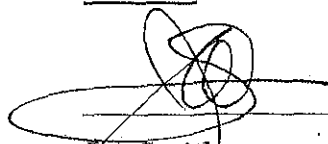
[112] We have also concluded that there will be a significant effect on the integrity of the Plan and the zoning provisions of the Plan in particular. If this consent was allowed, we are unable to see any proper basis of distinction for other applications. In our view the consent would undermine the zoning basis of the Plan. We are particularly concerned that the consent would permit a cumulative effect in the area, which would derogate from the Rural zone and be directly contrary to Policy 6.3.14. We have reached this conclusion in part because of our concern as to the change in noise levels that will occur as a result of allowing this resource consent. We are not satisfied that the applicant can rely on performance standards for permitted activities within the Rural zone as establishing the performance criteria for non-complying activities. This is particularly so where we are satisfied that the type of noise being produced is different in duration, tonality and character to that anticipated in the Proposed Plan.

[113] Overall we consider that the certainty of zoning enables the community, pursuant to section 5, to plan appropriately and organise their living and working lives. Zoning provisions are critical to the ongoing implementation and utility of the District Plan. For these reasons we must decline the application. On this basis it is not necessary for us to go on and consider whether the threshold tests under section 105(2A) are met. The appeals are allowed and the resource consent cancelled.

#### *Costs*

[114] Costs in this matter are reserved. Any application for costs is to be filed within fifteen working days, any response within ten working days thereafter, and a final reply within five working days.

**DATED** at CHRISTCHURCH this 27<sup>th</sup> day of January 2004.

  
 J A Smith  
 Environment Judge



Issued<sup>14</sup>: 27 JAN 2004

Relevant Issues, Objectives and Policies of the Dunedin City Council  
Transitional District Plan (Silverpeaks Section)

20. Rural General - Objective 3.1.2

To recognise, provide for and promote, the optimum use of the rural land within the District.

21. Rural A Zone Objective 3.2.1

It is a principal rural objective of Council, to ensure that land within the District that comprises soils of high actual or potential value for the production of food, is available for the realisation of the land's food producing potential during the period of this review and beyond, when predictably the potential of the land will be required to sustain intensive forms of production. The Council's policies for the implementation of the above objective are as follows:-

22. Rural A Policy 1: Soils 3.2.2 -

To identify on the district planning maps as Rural A, the land units that comprise those soils that are considered to fall within the definition of Class I, II, and III in the Department of Scientific and Industrial Research's Soil Bureau classifications. The principle areas identified involve --

1 The Taieri Plain

...

It is acknowledged that there is a variation in the food producing potential of the areas identified and zoned Rural A. Accordingly, the District Scheme maps contain a notation that indicates the relative significance of the particular areas based upon the following constraints.

Unit Limitations to Food Producing Potential

1 Minimal limitations to land use.

...

Rural A Unit 1 is the District's prime land for food production. ... The Rural A zone boundary has been established to encircle the District's prime food producing land and has mainly adopted road lines and existing cadastral boundaries for clarity of interpretation. Accordingly, there will be land both within the zone and at the zone boundary that will have a lower food producing potential. It is Council's policy to encourage farmers within the zone to recognise such variations and to site farm buildings on the land of lower potential. The Council does not accept that such variations are a basis for departing from the objective set out above.

23. Rural A Policy 3: Permitted Uses 3.2.4

To restrict the range of permitted uses to only those which are best able to realise the potential of the soil characteristics of the zone. Rural



activities not dependent on soil fertility or involving substantial buildings to house the means of production have been excluded. Those land uses producing a high proportion of effluent per unit area, or those land uses that could be reasonably expected to locate within other rural zones or within the adjacent county have been excluded. Council believes that the relative scarcity of the District's prime land and the proximity of alternative sites necessitates such severe restrictions.

## Dunedin City Proposed District Plan

### 24. Sustainability Section

**Objective 4.2.1** – Enhance the amenity values of Dunedin.

**Objective 4.2.2** – Ensure that the level of infrastructural services provided is appropriate to the potential density and intensity of development and amenity values of the area.

**Objective 4.2.3** – Sustainably manage infrastructure.

**Objective 4.2.4** – Ensure that significant natural and physical resources are appropriately protected.

**Objective 4.2.5** – Provide a comprehensive planning framework to manage the effects of use and development of resources.

**Policy 4.3.1** – Maintain and enhance amenity values.

**Policy 4.3.2** – Avoid developments which will result in the unsustainable expansion of infrastructure services.

**Policy 4.3.4** – Provide for the protection of the natural and physical resources of the City commensurate with their local, regional and national significance.

**Policy 4.3.5** – Require the provision of infrastructure services at an appropriate standard.

**Policy 4.3.6** – Provide access to natural and physical 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 4.3.9** – Require consideration of those uses and developments which:

- (a) ... Could give rise to adverse effects.
- (b) Give rise to effects that cannot be identified or are not sufficiently understood at the time of preparing or changing the District Plan.

**Policy 4.3.10** – Adopt an holistic approach in assessing the effects of the use and development of natural and physical resources.



25. Rural Section

**Objective 6.2.1** – Maintain the ability of the land resource to meet the needs of future generations.

**Objective 6.2.2** - Maintain or enhance the character and amenity values associated with the rural area.

**Objective 6.2.4**– Ensure that development in the rural area takes place in a way which provides for the sustainable management of roading and other public infrastructure.

**Objective 6.2.5**– Avoid or minimise conflict between different land use activities in rural areas.

**Objective 6.2.6** – Maintain the life-supporting capacity of soil and water resources.

**Objective 6.2.7** – Maintain or enhance the natural character and amenity values of the margins of water bodies and the coastal environment.

**Policy 6.3.1** → Provide for activities based on the productive use of rural land.

**Policy 6.3.2** – Sustain the productive capacity of the rural area by controlling the adverse effects of activities.

**Policy 6.3.5** – Require rural subdivision and activities to be of a nature, scale, intensity and location consistent with maintaining the character of the rural area and to be undertaken in a manner which avoids, remedies or mitigates adverse effects on rural character. Elements of the rural character of the district include, but are not limited to:

- (a) A predominance of natural features over human made features,
- (b) High ratio of undeveloped space relative to the built environment,
- (c) Significant areas of vegetation in pasture, crops, forestry and indigenous vegetation,
- (d) Presence of large numbers of farmed animals,
- (e) Noises, smells and effects associated with the use of rural land for a wide range of agricultural, horticultural and forestry purposes,
- (f) Low population densities relative to urban areas,
- (g) Generally narrow unsealed roads,
- (h) General lack of urban infrastructure.

**Policy 6.3.6** – Avoid, remedy or mitigate the adverse effects of buildings, structures and vegetation on the amenity of adjoining properties.

**Policy 6.3.8** – Ensure development in the Rural and Rural Residential zones promotes the sustainable management of public services and infrastructure and the safety and efficiency of the roading network.



**Policy 6.3.10** – Protect areas that contain 'high class' soils', as shown on District Plan Maps 75, 76 and 77, from activities that will not sustain the soil resource.

**Policy 6.3.11** – Provide for the establishment of activities that are appropriate in the Rural Zone if their adverse effects can be avoided, remedied or mitigated.

**Policy 6.3.12** – Avoid or minimise conflict between differing land uses which may adversely affect rural amenity, the ability of rural land to be used for productive purposes or the viability of productive rural activities.

**Policy 6.3.14** – Irrespective of the ability of a site to mitigate adverse effects on the immediately surrounding environment, subdivision or land use activities should not occur where this may result in cumulative adverse effects in relation to:

- (a) Amenity values,
- (b) Rural character,
- (c) Natural hazards,
- (d) The provision of infrastructure,
- (e) Rooding, traffic and safety, or
- (f) Landscape Management Areas or Areas of Significant Conservation Values.

**Policy 6.3.15** – In the management of the margins of water bodies and the coastal marine area, have particular regard to the maintenance of natural character, amenity and the provision of reasonable public access for recreation.

## 26. Hazardous Substances Section

**Objective 17.2.2** – Prevent or mitigate the adverse environmental effects and risks arising from facilities and activities involving the storage, use, disposal or transportation of hazardous substances.

**Policy 17.3.8** – Control activities involving the storage, use, disposal and transportation of hazardous substances, and identify sites where hazardous substance processes and facilities which pose a risk to the environment and to health and safety are located.

## 27. Transportation Section

**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.

**Objective 20.2.3** – Achieve integrated management of the roading network, including pedestrian and cycle use, with rail, air and sea networks.



**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 20.3.6** – Encourage heavy traffic to use appropriate routes.

**Policy 20.3.7** – Maintain and enhance the safety of users of the transportation network at railway level crossings.

## 28. Environmental Issues Section

**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.

**Objective 21.2.3** – Ensure that the finishing of structures, the construction of signs and the shielding of light sources avoids, remedies or mitigates nuisance glare.

**Objective 21.2.4** – Ensure the disposal of wastes is undertaken in a manner that avoids, remedies or mitigates adverse effects on the health and amenity of people and communities within the City, and on their environment.

**Objective 21.2.5** – Have regard to the effects of discharges associated with activities when considering resource consent applications.

**Policy 21.3.3** – Protect people and communities from noise and glare which could impact upon health, safety and amenity.

**Policy 21.3.7** – Encourage the establishment of buffer areas around activities giving rise to adverse effects on adjoining areas.

## 29. Utilities Section

**Objective 22.2.1** – Provide for the safe and efficient use and development of utilities within the City.

**Objective 22.2.2** – Ensure that any adverse environmental effects of the construction, operation and upgrading of utilities in the City are avoided, remedied or mitigated.

**Policy 22.3.1** – Allow the construction, operation and upgrading of those utilities which have no more than minor adverse effects.

## Otago Regional Council Regional Policy Statement

**Policy 5.5.2** – To promote the retention of the primary productive capacity of Otago's existing high class soils to meet the reasonably foreseeable needs of future generations and the avoidance of uses that



have the effect of removing those soils or their life-supporting capacity and to remedy or mitigate the adverse effects on the high class soils resource where avoidance is not practicable.

**Policy 9.5.5** – To maintain and, where practicable, enhance the quality of life for people and communities within Otago's built environment through:

- (a) Promoting the identification and provision of a level of amenity which is acceptable to the community; and
- (b) Avoiding, remedying or mitigating the adverse effects on community health and safety resulting from the use, development and protection of Otago's natural and physical resources; and
- (c) Avoiding, remedying or mitigating the adverse effects of subdivision, land use and development on landscape values.

### 31. Relevant Proposed District Plan Rules

#### Rule 6.5.2 Permitted Activities in the Rural Zone

The following activities are permitted activities provided that they comply with the conditions in Rule 6.5.3:

- (i) Farming Activity.
- (ii) Forestry Activity.
- (iii) Residential activity at a density of one residential unit per site, provided that the minimum area of the site is not less than 6 ha and the site is not located within a Landscape Management Area.
- (iv) Residential activity within a Landscape Management Area at a density of one residential unit per site, provided that the minimum area of the site is not less than 15 ha.
- (v) Recreational Activity:
  - (a) Recreational Activity on land except for:
    - (i) structures in excess of 25m<sup>2</sup>
    - (ii) organised motorised recreational activities
  - (b) Recreational Activity on the surface of water except that the only structures permitted are maimai and whitebait stands.
- (vi) Scheduled activities as listed in Rule 6.5.8 provided they comply with the relevant conditions in Rules 6.5.3 and 6.5.8. *[Inserted by C175/2001]*
- (vii) Repair and maintenance of the Aramoana Mole and any ancillary works and structures. *[Inserted by Consent Order, 9/4/02]*
- (viii) Mineral Prospecting Activity and Mineral Exploration Activity.
- (ix) Signs permitted in this zone are specified in the Signs Section.
- (x) Accessory buildings for permitted activities, excluding structures for recreational activities in excess of 25m<sup>2</sup>.



**Rule 6.5.3 Conditions Attaching to Permitted Activities**

(i) **Yard Requirements - Buildings**

The minimum yard requirements (excluding maimai and whitebait stands on the surface of water) are:

(a) **Front Yards**

(i) All buildings 20 m

(b) **Side and Rear Yards**

(i) Residential Activity 20 m

(ii) Buildings other than those for the housing of animals 6 m

(iii) Buildings designed or used for the housing of animals 12m

(ii) **Height**

(a) The maximum height of all buildings and structures (excluding maimai and whitebait stands on the surface of water) shall be 10m.

(b) **Tairi Aerodrome Take-Off and Approach Fans - Height Restrictions:**

Notwithstanding (a) above, no structures shall impinge on the height restriction for Tairi Aerodrome shown on District Plan Maps 28 and 29.

(iii) **Residential Buildings within the Airport Outer Control Boundary**

On any site located between the Air Noise Boundary and Airport Outer Control Boundary as shown on District Plan Maps 6 and 54, and shown in its entirety on District Plan Map 71, any new building to be used for residential activities shall be acoustically insulated from external noise so as to meet an indoor design level of 40 dBA Ldn within any kitchen, dining area, living room, study or bedroom.

(iv) **Car Parking, Loading and Access**

**Parking**

On-site car parking shall comply with the performance standards of Section 20 (Transportation) and shall be provided on the following basis:

(a) **Farming and Forestry**

(i) No requirement for on-site car parking.

(b) **Residential Activity**

For sites that do not front a State highway, there is no requirement for on-site car parking.

For sites that front a State highway the parking requirements are:

(i) 1 car park per residential unit up to and including 150m<sup>2</sup> gross floor area (excluding garaging areas)

(ii) 2 car parks per residential unit greater than 150 m<sup>2</sup> gross floor area (excluding garaging areas)

(iii) 1 visitor car park per 5 residential units

(iv) 2 additional car parks for a residential unit where staff provide for between 13 and 18 residents inclusive.

(c) **Recreational Activity**



For sites that do not front a State highway there is no requirement for on-site car parking.

For sites that front a State highway the car parking requirements are:

- (i) 1 car park per 750m<sup>2</sup> of site area.

#### **Loading and Access**

- (a) For the following activities there are no loading requirements. Access requirements shall comply with the performance standards in Section 20 (Transportation):

- (i) Residential Activity.
- (ii) Recreational Activity.
- (iii) Scheduled Activities.
- (iv) Mineral Prospecting/ Exploration.

- (b) For the following activities loading and access shall comply with the performance standards in Section 20 (Transportation):

- (i) Farming Activity and Forestry Activity.

Loading shall be provided for on the following basis:

*Minimum Size:* 20 m long x 3.5 m wide x 4.4 m high.

*Manoeuvre Area:* To accommodate a B Train truck as shown in Appendix 20E.

*[Inserted by Consent Order, 20/12/01]*

#### (v) **Location of Trees Associated with Forestry Activity and Shelterbelts**

- (a) Trees associated with forestry activities shall not be planted within 20 m of the boundary of any Residential Zone or Rural Residential Zone.
- (b) Trees associated with forestry activities and shelterbelts shall not be planted so that the trees:
  - (i) Shade a national, regional, district or collector road as identified in the road hierarchy on District Plan Maps 73 and 74, with the result that the road will be affected by ice.
  - (ii) Shade the residential building and its curtilage on an adjoining site existing at the time of planting.

#### (vi) **Removal of Vegetation**

Vegetation shall not be removed within 5 m of:

- (a) any natural water body whose bed has an average width of 3 m or more, or
- (b) any wetland identified in Schedule 25.4.

Notwithstanding (a) and (b) above, removal of vegetation is permitted if it is for pest plant clearance, normal grazing or Otago Regional Council approved river control works.

#### (vii) **Earthworks**



- (a) Areas disturbed by mineral prospecting activity and mineral exploration activity are to be restored to a standard not less than that previously existing.
  - (b) No activity shall involve the removal from the site of any topsoil or subsoil on any area shown on District Plan Maps 75, 76 and 77 as 'High Class Soils'.
- (ix) **Noise, Glare, Lighting and Electrical Interference**  
Refer to the performance standards of the Environmental Issues Section.
  - (x) **Signs**  
Refer to the Signs Section.

#### Rule 6.5.7 Non-Complying Activities

Any activity not specifically identified as permitted, controlled, discretionary or prohibited by the rules in this zone or in the rules of Sections 17 to 22 of this Plan is non-complying. This rule does not apply to activities identified as permitted, controlled or discretionary in the rules of Sections 13 to 16 of the Plan, regardless of where in the zone those activities are undertaken.

#### Rule 21.5.1 Performance Standard: Noise Limits - General Levels

##### (i) Maximum L10 and Lmax Limits

Subject to (ii), the maximum noise limits generated by any activity shall not exceed:

- (a) The maximum day-time, night-time and shoulder period L10 noise limits identified on District Plan Maps 62 to 70, measured at the boundary or within any other property within the same noise area, except that in the case of noise generated within any Rural or Residential Zone noise shall be measured at or within the notional boundary of any dwelling not on the same site.
- (b) Between 9.00 pm on any night and 7.00 am the following day no noise shall exceed an Lmax of 75 dBA measured at the boundary of the site or within any other site.

##### (ii) Limits Applying at Noise Area Boundaries

At the boundary of any noise area, the maximum level of noise generated by any activity in the noise area shall not exceed:

- (a) **Day-time:** the lower of the day-time maxima for the noise area within which the activity is located and any adjoining noise area.
- (b) **Night-time:** the lower of the night-time maxima for the noise area within which the activity is located and any adjoining noise area.
- (c) **Shoulder period:** the lower of the shoulder maxima for the noise area within which the activity is located and any adjoining noise area.



Relevant Transitional District Plan Rules

**Ordinance 1.3: District Scheme to be Complied With**

No person shall use or permit the use of any land or building or undertaking or permit any new work or any reconstruction, alteration or modification of any existing work, if the use, new work, reconstruction, alteration, or modification does not conform with the Scheme or does not comply in all respects with the terms of any consent given to any application under Part IV of the Town and Country Planning Act 1977.

**Ordinance 6.2: Predominant Uses – Rural A Zone**

Subject to compliance with Ordinances 1 to 5 and Ordinance 6, the following shall be predominant uses in the Rural A zone: -

- (a) Intensive land based farming including market gardening, land grown nursery, berry fruit farm, agricultural production arising from soil tilling or cropping where the use is dependent on highly fertile soils, forestry nursery.
- (b) Dairy farming, grazing and breeding of sheep and cattle.
- (c) The breeding and training of horses by a duly licensed public trainer.
- (d) [Declared invalided by the Court – Tifferton v DCC]
- (e) The breeding and training of horses by other than a duly licensed public trainer.
- (f) Tree seed orchard, high quality tree types requiring highly fertile soils.
- (g) Buildings other than a dwelling or a residential building of any kind, where the building is accessory to and used solely as an essential adjunct to any of the foregoing permitted uses, provided that the building is sited having due regard to the possibility of flooding.
- (h) The repair, replacement and extension of an existing dwelling, providing that the same has been occupied for a period of not less than six months during the 12 months immediately preceding its repair, replacement or extension, provided that due regard has been given to the possibility of flooding.
- (i) Loading ramp associated with the transportation of stock to or from the site, provided that –
  - (i) The loading ramp is sited so as to ensure that no vehicle using the ramp is required to stand on any part of a road reserve or



otherwise cause any obstruction to visibility on the adjoining road.

- (ii) Ingress and egress from any loading ramp to a public road shall be to the satisfaction of the Council or the District Commissioner of Works with respect to State Highways.
- (j) Shelterbelt plantations provided that no such plantings shall be within 50 metres of the centreline of the carriageway of any formed road.
- (k) Soil and water conservation works wholly contained within a single property and all other soil and conservation works in accordance with an overall scheme that has been prepared in terms of the Soil Conservation and Rivers Control Act 1941 and that scheme having been lodged with Council.
- (l) Additions to buildings erected prior to public notification of the original District Scheme for the area or by way of a previous consent under the Act or the preceding Acts, provided:
  - (i) The addition does not result in any significant change in the character, intensity, or scale of the use that has been lawfully established, measured against the zone objective and policies, and
  - (ii) The previous consent did not specifically limit the size of the building, and
  - (iii) Due regard has been given to the possibility of flooding.
- (m) Existing uses as set out in Appendix IIA provided that –
  - (i) The use shall be limited to that specified in the Appendix IIA, and
  - (ii) The site shall be limited to the specified in the Appendix IIA.

#### Issue to be Determined

33. The parties are agreed that the issue to be determined by the Court is whether land use consent should be granted for the proposed timber processing facility, having regard to:

- (a) ~~Noise;~~
- (b) ~~High Class Soils;~~
- (c) ~~Amenity;~~
- (d) ~~Reverse Sensitivity;~~
- (e) ~~Precedent/Cumulative Effects;~~



## 6.5 Rural Zone - Rules

### Rule 6.5.1 Prohibited Activities

The following are prohibited activities in the Rural Zone for which no resource consent application may be lodged:

- (i) New Residential Activity within the area bounded by the Air Noise Boundary identified on District Plan Maps 6 and 54, and shown in its entirety on District Plan Map 71, in the vicinity of Dunedin Airport at Momona.

### Rule 6.5.2 Permitted Activities

The following activities are permitted activities provided that they comply with the conditions in Rule 6.5.3:

- (i) Farming Activity.
- (ii) Forestry Activity.
- (iii) Residential activity at a density of one residential unit per site, provided that the minimum area of the site is not less than 6 ha and the site is not located within a Landscape Management Area.
- (iv) Residential activity within a Landscape Management Area at a density of one residential unit per site, provided that the minimum area of the site is not less than 15 ha.
- (v) Recreational Activity:
  - (a) Recreational Activity on land except for:
    - (i) structures in excess of 25m<sup>2</sup>
    - (ii) organised motorised recreational activities
  - (b) Recreational Activity on the surface of water except that the only structures permitted are maimai and whitebait stands.
- (vi) Scheduled activities as listed in Rule 6.5.8 provided they comply with the relevant conditions in Rules 6.5.3 and 6.5.8. *[Inserted by C175/2001]*
- (vii) Repair and maintenance of the Aramoana Mole and any ancillary works and structures. *[Inserted by Consent Order, 9/4/02]*
- (viii) Mineral Prospecting Activity and Mineral Exploration Activity.
- (ix) Signs permitted in this zone are specified in the Signs Section.
- (x) Accessory buildings for permitted activities, excluding structures for recreational activities in excess of 25m<sup>2</sup>.

### Rule 6.5.3 Conditions Attaching to Permitted Activities

#### (i) Yard Requirements - Buildings

The minimum yard requirements (excluding maimai and whitebait stands on the surface of water) are:

#### Front Yards

- (i) All buildings 20 m

#### Side and Rear Yards

- (i) Residential Activity 20 m



(xi) **Concept Plan**

There shall be no building on land zoned Rural contained in the Concept Plan in Appendix 8.1 (Residential 6 Wakari). *[Inserted by C68/2002]*

**Rule 6.5.4 Controlled Activities**

The following activities are controlled activities:

- (i) Rural Retail Sale Activity, other than those with access from a State highway, which are controlled in respect of the following matters:
  - (a) The scale of the activity.
  - (b) Vehicle access and parking.
  - (c) Signs.
  - (d) The size and location of structures.
  - (e) The location of the retail area.
  - (f) The performance standards of the Environmental Issues Section.
- (ii) Rural Tourist Activity, other than those with access from a State highway, which are controlled in respect of the following matters:
  - (a) The scale of the activity.
  - (b) Vehicle access and parking.
  - (c) Signs.
  - (d) The size and location of structures.
  - (e) The performance standards of the Environmental Issues Section.
- (iii) Papakaika Housing which is controlled in respect of the following matters:
  - (a) The density of housing.
  - (b) Effluent disposal.
  - (c) The size and location of structures.
  - (d) The staging of the development.
  - (e) Vehicle access and parking.
  - (f) The performance standards of the Environmental Issues Section.
- (iv) Marae and Marae-related activities on land subject to Te Ture Whenua Maori Act 1993 which are controlled in respect of the following matters:
  - (a) Effluent disposal.
  - (b) The size and location of structures.
  - (c) Vehicle access and parking.
  - (d) The performance standards of the Environmental Issues Section.



- (v) An additional residential unit on a site equal to or greater than 30 ha in Landscape Management Areas or 12 ha elsewhere in the Rural Zone, which is controlled in respect of the following matters:
- (a) The effect on open space and amenity values.
  - (b) Vehicle access.
  - (c) The size and location of structures.
  - (d) The performance standards of the Environmental Issues Section.

### Rule 6.5.5 Discretionary Activities (Restricted)

The following activities are discretionary activities (restricted):

- (i) Any permitted activity which does not comply with the relevant conditions in Rule 6.5.3 or Rule 6.5.8. The Council's discretion is restricted to the condition or conditions with which the activity fails to comply under Rule 6.5.3 or Rule 6.5.8.
- (ii) Rural Retail Sale Activity with access from a State highway. The Council's discretion is restricted to the following matters:
  - (a) The scale of the activity.
  - (b) Vehicle access and parking.
  - (c) Signs.
  - (d) The size and location of structures.
  - (e) The location of the retail area.
  - (f) The safe and efficient functioning of the State highway.
  - (g) The performance standards of the Environmental Issues Section.
- (iii) Rural Tourist Activity with access from a State highway. The Council's discretion is restricted to the following matters:
  - (a) The scale of the activity.
  - (b) Vehicle access and parking.
  - (c) Signs.
  - (d) The size and location of structures.
  - (e) The safe and efficient functioning of the State highway.
  - (f) The performance standards of the Environmental Issues Section.
- (iv) Organised Motorised Recreational Activities. The Council's discretion is restricted to the following matters:
  - (a) The scale of the activity.
  - (b) Vehicle access and parking.
  - (c) Signs.
  - (d) Hours of operation and the frequency of the activity.
  - (e) Proximity to residential activities.
  - (f) The size and location of structures.
  - (g) The safe and efficient functioning of the State highway.
  - (h) The performance standards of the Environmental Issues Section.



# Record of Discussion



<b>WITH</b> <b>Customer Name:</b> City Forests <b>Others Present:</b> Allan Cubitt, Phil Taylor, Phil Dowsett, Bruce Richards, Ralph Henderson, David Dewhirst, Peter Brown, Brian Laws, Peter Johnstone, Paula Myers	<b>CONCERNING</b> <b>Issue:</b> Proposed Wood Processing Plant <b>Date of Discussion:</b> 04 July 2002
<b>Recorded by:</b> Paula Myers <b>Recorded Date:</b> 04 July 2002	<b>Time of Discussion:</b> 9:00am <b>File Reference:</b> Pre-application consultation
<b>Property Address:</b> Taieri Plains	
<b>Method of Contact:</b> Meeting	

## SUBJECT:

Pre-application consultation regarding requirements for consents, transportation issues, water and wastewater issues and economic development input.

Action Agreed:

Action Required:



Alan Cubitt

City Forests is looking for a processing site. The chosen site is 21.23 hectares. There are 3 houses in close vicinity. Approximately 300/400 metres from the middle of the site. The site is better than the proposed rural variation site because it is on the railway line, and had existing access and services.

Phil Taylor

Primary wood processing commitment made 6 months ago.

Talked to PPCS and Fisher Paykel about utilising their land but couldn't obtain the necessary space. Industrial land is scarce in the area. Talked to Rob Johnston. Don't want to wait for the land to be rezoned industrial. There is a conditional contract on the purchase of the land - 24 months subject to approvals being granted. Aim is to apply for the necessary consents in September with a view to having a decision by Council before Christmas.

The plant will comprise of a sawmill, kiln, planing mill and the finished product being exported to China and America. No immediate plans for further processing but want the option in the future (this necessitates a further consent).

First stage of production is to install a sawmill, 2 kilns and the planing mill. Over a 3 year period staff will increase from an initial 10 to 25 (FTE's?). Within 3 years production will increase to 24,000 cubic metres output. This requires input of 40,000 cubic metres of logs.

Dehumidifier kiln technology - closed system - no venting - contained chamber. Drying takes longer because of the technology. No air discharges from the kilns. Any output is basically distilled water although this is not yet confirmed for certain.

Noise is 25 decibels at the kiln.

At 12 months the proposal is to double-shift and install 4 more kilns. Within 3 years it is proposed to install a second sawmill and double capacity to 8 kilns.

Subject to costings the processing plant is to be hard surfaced and paved. There will be associated runoff from the hard surface. 3 'streams' have been identified as creating runoff - the building itself, the road, and the log handling yard, which has contaminants that will require treatment of some kind on site.

Alan Cubitt

50 cubic metres of green sawn = 25 thousand litres water output

12-16 million litres of water annual output. Water quality research will be undertaken.

Any noise will be generated from general yard working such as trucks, loaders and forklifts. 24 hours flexibility is desirable given in the future there will be double shifting. There is a view towards expanding the site and the industrial zone in the future.



Three options for vehicle access - Dukus Road, existing access from Stedman Road across rail line, or under the rail bridge. Talks are happening with Tranz Rail re the second and third options.

Phil Taylor

The footprint of the plant will be 2-3 hectares on the 21-hectare site so there is location flexibility. Having said that, in the future there is the possibility that other industrial enterprises (likelihood of associated processing plants) will look to locate on the site so positioning the plant in the middle of the land would limit expansion feasibility of the site.

The process would be done in conjunction with the Otago Regional Council should it go through the notification process to a hearing. Stormwater discharge capacity will determine requirement for consent.

There are concerns already with regards to Silverstream. Complaints are received re foaming, fat and blood discharges. Any discharge into the Silverstream brings up sensitive issues for some affected parties.

Taieri Aerodrome will be interested in the flight path.

There should be very little affected persons in terms of air discharges, if any. The kilns don't require boilers or a smokestack. The maximum height for a kiln is around 7 metres.

Bruce Richards

Affected parties may include occupiers of the aerodrome hangars. The hangars are owned by individual parties on leases. Dunedin City Council owns the land, the club leases the land, which is sub-leased to the hangar owners.

Pilots may have issues with taking off. The gum trees get trimmed regularly. A common accident over the area is engine failure, which is also practice. Wind shears are also a factor. There has been talk of shifting the runway but nothing definite. The aero club is perhaps not directly affected but may have an interest.

General

There is a person in the area that makes complaints about the early start of the existing peeling and chip plant.

Peeling is done in the daylight hours. The real noise is generated from chipping which is a small part of the process.

Some may raise concerns of the cumulative effects of the proposal with the Wood Mouldings



Notification drafts will be circulated prior to lodging the application.

Plain Sense is likely to object due to high-class soil concerns.

Submitters to the proposed rural variation want industrial applicants to go through the consent process. They do not want industrial activities provided for in the plan.

Trucks and forklifts operating could be a noise problem. The applicants will live with conditions restricting hours of truck movements to site if necessary. They can control truck movements as they are logging their forests. Double shifting will mean forklifts and loaders working at night. If the noise is kept within district plan limits it may not have to be notified.

The highest on site structure will be the kilns at approximately 7 metres high. The limit under the district plan is 10 metres. The plant will have the appearance of 4 tin sheds.

There is a similar kiln plant in the North Island, East Coast Bays Lumber, which uses the same technology as the proposed one. The applicant is to seek information from them on aspects of their operation to use as part of the application.

A commissioner will make the resource consent decision but the decision on whether or not to notify will be City Planning's. If the application ends up in the High Court it will be a fairly quick trip.

If the discharges are minor there will be no need for a joint process if the application is treated as non-notified.

The consents being applied will be for the 3-year plan.

100 cubic metres of wood produced for export each day, which equates to about 6 logging truck movements per day. (170 tonnes log input per day)

Rail may be used in the future. The area could be an inland port. There are safety issues with level crossings.

Eventually the administration office may be relocated to the site from the current one in South Dunedin.

The sawdust waste created from the operation may be utilised in several ways. There is new technology creating compressed firewood out of the sawdust. Another option is to send to a waste bark facility. And the third is to send it to fire kiln boilers elsewhere. These options could also mean truck movements off site over and above the identified number for the completed product. The operation will create 25% less sawdust than the traditional saw mill.

Fire hydrants will be required on site. Approximately 8. The rule is 200 litres per second out of the 8 hydrants for an industrial plant. There is the ability to get a maximum of 50 litres per second out of one hydrant but the norm is usually half that, hence the requirement for 8 hydrants.

A new water pipe will probably required of about 300 metres in length. Council has a long

plan to extend but to do it now the cost will be the applicants. Approximately \$150,000. An option is to store water for fire fighting in a tank but the bottom of the tank must be 10 metres in the air.



A reserve contribution could be payable plus an esplanade reserve along Silverstream.

A holding tank may be required for waste reticulation. No truck washing will be done on site.

There is a protected groundwater area so there may be concerns re the depth of earthworks.

The applicant has requested copies of submissions to the rural variation. The Hagart Alexander Drive rezoning could be a significant decision in terms of this proposal.

If the application is small and meets the 2 tests (effects and special circumstances) it may be treated as non-notified. The main issue will be noise. A positive spin can be put on the proposal by highlighting landscaping and a contribution to an esplanade reserve. Does not necessarily have to be a cash contribution.

Reserve land will be vested in Council. Land use and subdivision consents under s91 of the RMA. A reserve will keep the Fish and Game Council happy.

Public Health South and the iwi will show an interest. Public Health will probably be concerned with discharges and the iwi with groundwater.

The timeframe for lodging an application is September 2002. As far as entering into the public domain this will happen just prior to lodgement by talking to key affected persons then a back to back meeting with Councillors followed by a press statement.

The proposal is for boutique sawmilling as opposed to the more standard sawmilling operations.

The plant has a capital value of approximately 3.5 million excluding the land value.

Paula Myers  
**TEAM LEADER ADMINISTRATION**



## 6.7 Assessment of Resource Consent Applications

In assessing any application, in addition to the matters contained within the Fourth Schedule, the Council will have regard to, but not be restricted by the following matters:

### 6.7.1 Sustainability

The objectives and policies of the Sustainability Section.

### 6.7.2 Manawhenua

The objectives and policies of the Manawhenua Section.

### 6.7.3 Amenity Values

- (i) The effect that the activity will have on amenity values.
- (ii) The option of locating an activity in a zone where that activity is permitted.

### 6.7.4 Cumulative Effect

The cumulative effect of the activity on the natural and physical resources of the City including, but not limited to, cumulative adverse effects in relation to:

- (i) Amenity values,
- (ii) Rural character,
- (iii) Natural hazards,
- (iv) The provision of infrastructure,
- (v) Roading, traffic and safety, or
- (vi) Landscape Management Areas or Areas of Significant Conservation Values.

### 6.7.5 Intensity of Activities

The hours of the operation and the frequency of the activity in terms of its effect on the amenities of the surrounding environment.

### 6.7.6 Noise

Refer to the Environmental Issues Section.

### 6.7.7 Glare and Lighting

Refer to the Environmental Issues Section.

### 6.7.8 Odour

The impact of any odour generated by an activity and the extent to which the quality and amenity of the environment is affected.



### 6.7.9 Bulk and Location

The bulk and location of buildings and their effect upon the amenity values of the site, adjoining sites, adjoining roads and the surrounding areas.

### 6.7.10 Water and Effluent Disposal

The ability of an activity to establish a water supply and dispose of effluent and other wastes in an environmentally acceptable manner.

*Advice Note: On-site effluent disposal systems are required to comply with the requirements of the Otago Regional Plan: Water.*

### 6.7.11 Land Disturbance

- (i) The effect of any earthworks on landscape, natural environment and heritage values, archaeological values, manawhenua values, siltation of waterways and adjoining coastal margins, and exacerbating instability of land.
- (ii) The provision to be made for the restoration and rehabilitation of the site including future use to ensure:
  - (a) Stability of the site.
  - (b) Integration of the site with the adjoining landscape.
  - (c) The return to the original productive use where possible.
- (iii) The appropriateness of a bond to ensure that the site is rehabilitated to a satisfactory state.
- (iv) The extent to which soils and in particular, high class soils will be taken out of production. Refer to District Plan Maps 75-77.

*Advice Note: Council Bylaw 4.5*

*Earthworks involving:*

- (i) *The movement of any earth or other material, where the level of the existing ground surface of any ground is to be changed by more than 600mm, or*
- (ii) *Where more than 10 m<sup>3</sup> of material is to be moved,*

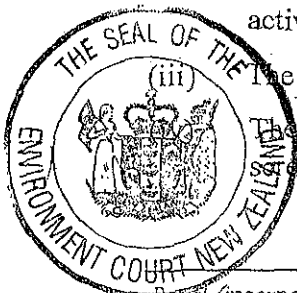
*are termed "restricted earthworks" in terms of Dunedin City Council Bylaw 4.5, unless undertaken in the course of normal agricultural activity. No restricted earthworks may be undertaken without an Earthworks Permit issued by Council.*

### 6.7.12 Factory Farming Activity

- (i) The effect of the factory farming operation on surrounding amenity values, including the proximity of residential dwellings and Residential and Rural Residential Zones.
- (ii) The effects of potential odour, noise, waste treatment and health effects associated with the activity and the steps taken to avoid, remedy or mitigate such adverse effects.

(iii) The extent to which the proposal complies with the principles of any relevant code of practice.

The degree to which existing or proposed landscaping, including plantings, will shelter and screen the proposal.



### 6.7.13 Visual Impact

- (i) The visual impact arising from an activity on the character of the rural landscape, visual amenity and significant views.
- (ii) The potential effect of structures on significant views from public viewpoints, including visibility from State Highway 1.
- (iii) The effect of an activity on the open amenity of the rural area.

### 6.7.14 Forestry and Shelterbelts

- (i) The potential for shading of adjoining properties and roads.
- (ii) The potential for fire risk to residential dwellings.
- (iii) Consideration of visual amenity when establishing forestry activities adjacent to State Highways and Regional Roads.

### 6.7.15 Residential Units

- (i) The cumulative effects of an increased density of residential development in this location.
- (ii) The potential for conflict between adjoining land uses or reverse sensitivity issues arising from the location of the proposed residential activity.
- (iii) The extent to which soil will be covered by hard surfaces.
- (iv) The extent to which a residential unit on the site affects the amenity and economic well-being of neighbouring properties.
- (v) The degree to which amenities relating to the open nature of the environment are compromised.
- (vi) The degree to which the productive potential of the site and adjoining properties and their future sustainable use is compromised.

### 6.7.16 Clearance of Vegetation

- (i) The effect the clearance of vegetation will have on habitats and recreational activities and landscape values.
- (ii) The effect of vegetation clearance on water quality and the natural character of water bodies.

### 6.7.17 Activities within the Airport Outer Control Boundary at Dunedin Airport

Refer to District Plan Map 71.

- (i) The effect of the activity on airport operations.
- (ii) The effect of airport operations (in particular noise) on the proposed activity.
- (iii) Any noise mitigation or acoustic attenuation measures that are proposed to be undertaken to ensure a satisfactory internal noise environment.



**6.7.18 Otago Harbour Islands**

- (i) The need for safe passage of large vessels between islands in Otago Harbour.
- (ii) The extent of any work required and its impact on the environment of the islands.

**6.7.19 Archaeological Sites**

The effect that the activity will have on any archaeological site.

**6.7.20 Trees**

The objectives and policies of the Trees Section.

**6.7.21 Indigenous Vegetation and Habitats**

- (i) The cumulative effects of the incremental loss or modification of areas of indigenous vegetation and habitats if indigenous fauna.
- (ii) The potential for the enhancement of indigenous habitat or vegetation.

**6.7.22 Hazards**

Whether or not the application relates to a site that the Council has good cause to suspect may be prone to natural or technological hazard.

**6.7.23 Transportation**

The objectives, policies and assessment matters of the Transportation Section.

**6.7.24 Landscape**

The objectives, policies and assessment matters of the Landscape Section.

**6.7.25 Conflict and Reverse Sensitivity**

- (i) The extent to which the proposed activity may adversely affect the ability of existing rural activities to continue to operate.
- (ii) The extent to which the proposed activity may result in conflict with existing rural activities.

