

BEFORE THE DUNEDIN CITY COUNCIL

**IN THE MATTER OF an application for a resource
consent by R V Lund and Loan & Mercantile Trust**

RIGHT OF REPLY – APPLICANT R. V. LUND

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Right of Reply – Applicant

1. I will respond to the points raised by the various objectors, but first would like to look at the overarching provisions of the RMA and the District Plan.

Overall Objective of the RMA

2. Council in the Betterways decision noted in Para 417 that Section 5 (1) of the RMA “contains the very essence of the Act. In arriving at a decision we are bound to determine whether or not the proposal, overall, is consistent with this single purpose of the Act”.
3. Section 5(1) states “The purpose of the act is to promote the sustainable management of natural and physical resources”.
4. In Para 416, the Commissioners noted “Section 6 of the act is concerned with matters of national importance that this decision is required to recognize and provide for”.
5. Section 6(f) States “The protection of historic heritage from inappropriate subdivision, use and development”.
6. Mr Entwisle has stated in his evidence that this building is of national importance, and thus deserves the approval of the application on this ground alone.
7. The permitted uses under the zoning are all inappropriate for this heritage building.
8. The position of a number of submitters is that reverse sensitivity concerns take precedence over heritage (and a viable use) is shown to be incorrect when measured against sections 5 and 6 of the Act.
9. The sustainable management of this significant physical heritage resource, of national significance, requires that this application be approved to accord it the protection it deserves under sections 5 (1) and 6(f) of the Act.

District Plan / Zoning

10. District Plan – Principal Reasons for Adopting Objectives:
11. It is notable that the objectors are not support activities for the ports, but industrial activities. This is important when we consider what the district plan sets as the principal reasons for adopting objectives for the port areas. Page 11.5 of the District Plan states “Other activities within port areas need to be limited where they are incompatible with port areas to ensure that the main intended activity is not compromised”.
12. The point being that there is a hierarchy of uses: the main intended activity, and then other permitted uses as secondary uses. A foundry and an engineering workshop are secondary activities. Port Otago operates a “main intended activity”. If the application presents no compromise to a main intended activity, then we contend that the alleged effects on the secondary users can meet a lower standard.

Harbourside Zoning

13. Much has been made of the plan change from Harbourside back to Port Industrial. To a man, all objectors have cited the Plan Change 7: Dunedin Harbourside as a major plank to advance their case. All objectors claim the reason for the plan change back to Port Industrial was to prevent residential accommodation.
14. However, a closer reading will show that the reasons for the revision to the plan change was not to exclude residential dwellings as all objectors claim.
15. Council only deferred the full execution of the plan change. They did not state that the plan was dropped.
16. The reasons given by Council in the public notice withdrawing the plan change were as follows:

17. "Council considers that reducing the extent of the harbourside zone under Plan Change 7: Dunedin Harbourside to the south of the Steamer Basin is a more appropriate fit with the overall vision for the city at this stage".
18. "Industrial 1 and Port 2 Zoning currently better achieves the purpose of the RMA".
19. "The retention of the Schedule 25.1 items will provide protection for those buildings and structures assessed as having heritage value. The protection of heritage values is important and is not dependent upon Plan Change 7: Dunedin Harbourside".
20. It is clear from the above that Council does not view the withdrawal as permanent, it is just a holding position to see how the area develops. A key point made by Mr Anderson is that if Council had intended to permanently drop the idea of the mixed use concept promoted by Plan Change 7, it would have prohibited residential and other activities to send a clear signal for future uses and consent applications. Council did not do this.
21. This brings us to the "Tight Five".

The "Tight Five"

22. Mr Page gave us a history of opposition to the harbourside plan change, which was the 5 parties referred to as the tight five. The 5 parties to the tight five were Farra Engineering, Newlcast (the foundry now operated by Esco), Kaan's Catering, The Chamber of Commerce and Crawford Glass.
23. He did not, however, name the 5th member of the tight five, which was Crawford Glass. This is notable because Crawford Glass who are a manufacturer, are no longer in the area.
24. The Chamber of Commerce by their own admission in this hearing do not speak for their wider membership on this application, thus their objection carries no weight. Mr

Kaan, in a brave statement which I thank him for, confirmed that he could "live with" the application if it did not set a precedent (which is Council's position).

25. We do not then have a tight five objecting to this application, but a "tight two".
26. There are of course many other industrial businesses in the area, who have not objected to the earlier harbourside plan change or this application.
27. I believe that the opposition to the application in the immediate area is in fact the exception, not the rule.

Parking Issues

28. We note that while there is an issue with the amount of parking available in the area, it is not that car parks are not available. Parking spaces are available, but they have to be paid for. There are at the present time 16 parking spaces available in the DCC carparks on either side of the railway lines.
29. The issue for objectors is that there is not enough free parking in the area. This problem is not confined to this area, but is a general problem in the city.
30. The following parking information is relevant to this application:
31. The DCC carpark on Thomas Burns St contains 128 spaces. The South entrance is approx. 150m from the site, not 285m. We acknowledged that Thomas Burns St has to be crossed.
32. There are also spaces in the DCC carpark on the Railway Station side.
33. There are 16 spaces available in the DCC carparks as of August 14, 2014.
34. The cost of each park is \$20 per week, and \$4 per working day.
35. As the carparks are not fully leased, this indicates that the parking issue is not as bad as portrayed.
36. There are a total of 18 kerbside spaces around the site, ie on the 3 street boundaries of the properties.

37. There are a further 15 parking spaces in the south carpark created when the railway crossing adjacent to the Chinese Garden was closed.
38. We propose the following solution: If DCC was willing to create residents only parking on a proportion of the kerbside parking, say 7 spaces, and we committed to lease or provide 12-15 carparks for a period of 3 years, that would provide an additional 22 residents carparks. The 3 year period will allow actual demand to be established. If we add the 22 to the 10 already provided for, this gives a total of 32 carparks.

Noise & Accoustic Insulation

39. I refer to Mr Farrens submission which addresses issues raised by Council in their letter of September 3. To summarize the position on noise:
40. Port Otago have confirmed that the acoustic performance standards proposed are more than adequate.
41. Port Otago have cautioned Commissioners in this hearing against imposing anything in excess of this standard.
42. Port Otago have more experience than any other party to the hearing in respect of the reverse sensitivity concerns around noise from port operations.
43. Our acoustic engineers have provided a set of conditions that can be included in the consent that address the issues with noise. These have been tabled by Mr Anderson.
44. We note that the noise limit for a large area adjacent to the building, including the rail yards as shown on Map 64 of the District Plan shows the limits to be 55 dBA daytime, and 40 dBA night-time. I understand that Kiwirail have a designation that allows them to exceed these limits within this site for the railyard activity, but other activities in this area have to comply with the lower limits noted on Map 64.

45. The recommended draft conditions of consent include a condition to ensure that rooms meet a minimum performance standard of $D2m_{nT, w} + Ctr > 30$, which we accept.
46. Esco confirm their noise levels are 'agreed and accepted', ie within District Plan limits.
47. Mr Sule confirmed to the hearing there is no record of any noise complaints to DCC from Anzac Ave apartments about industrial activities in this area.
48. We have requested from Mr Boss records of any noise complaints from existing dwellings in the area (Fryatt St & Willis St) about noise from Foundry or engineering activities. We have not been provided with these, and we infer from this that there are none.
49. There are statements from the Wharf Hotel and the Customhouse Restaurant confirming that noise is not and never has been an issue for those businesses. The Customhouse Restaurant is very relevant to this application. It would not be able to operate as an upmarket restaurant if it was unable to offer a quiet relaxing environment to its patrons.

Air Discharges & Odours

50. Council have requested response to reverse sensitivity concerns in relation to air discharges and odour.
51. We make the following points
52. The Ministry for the Environment (MFE) in their "Good Practice Guide to managing odours" in Section 3 "Legislation & Case Law" stress that the courts have ruled that the doctrine of 'Internalisation of Adverse Effects' must apply, even in cases of reverse sensitivity. Section 3.3.3 States "The principle of internalisation is that those who create adverse effects must confine them within their own sites rather than force society to bear the burden of dealing with them".

53. Section 3.3.4 Which deals with reverse sensitivity states "All activities are still under an obligation to avoid, remedy or mitigate adverse effects and contain adverse effects within their own sites: The overriding duty in section 17 (of the Resource Management Act) still applies".
54. Thus it is clear that if there were issues with air discharges and odours, the responsibility lies with the polluter.
55. Mr Clay posits that residents under this application are somehow more entitled or will expect a better or healthier environment than other people working in the area. This is not credible. Everyone is entitled to the same protection afforded by the National Environmental Standards whether they live ,work, dine, fish, jog or simply pass through the area.
56. The good news is that there is no problem. The ORC confirm that there are 3 air discharge permits in the area. One, for the ANI Bradken Foundry on Mason Street is redundant as the foundry is about to be closed and relocated to the Hillside workshops. Another is for the Milburn Cement Silo's some 600-700m away from the applicant site. The other is for the Esco foundry.
57. The Milburn cement silo is distant from from the applicant site, so I will focus on the Esco Foundry air discharge permit.
58. As noted in my evidence, ORC have no record of any complaint relating to air discharges or odours since Esco's new baghouse was installed in 2012.
59. To provide the Commissioners with some further certainty about this, I summarize some of the findings of the ORC recommending report in respect of the Esco air discharges. The report is very thorough. It analyses the discharges from each of the foundry processes, and discusses the likely impact of the proposed expansion which Mr Taig confirmed has not occurred at this time, due to economic conditions.

60. **Raw Materials Handling:** This is basically particulates from the handling of sand. Para 2.1.12 states that "current sand transfer system ... is mechanical ... And generates minimal discharges of dust to air". A new pneumatic system is proposed with a new bag house which will have emissions that will not exceed 25 milligrams per m³.
61. **Mould & Core Production:** The ORC advise that volatile organic compounds (VOC's) are released from the use of resins in mould and core production. They state that the "alkali phenolic resins that the applicant uses are water soluble and produce very low fume and odours during casting".
62. **Ferrous Metal Melting:** Emissions from the furnaces are predominantly particulates and metal fume. Small amounts of carbon monoxide, organics, nitrogen oxides, chlorides and fluorides are also generated. Esco has confirmed that this foundry does not use scrap metal for casting which greatly reduces trace metal and organic compound emissions. The ORC report states "The highest ... emissions occur when furnace lids and doors are open during ... operations. These emissions prior to the 2012 improvements were "difficult to collect" and "vented through roof vents directly to atmosphere". ORC state "the new baghouse and ventilation system will capture the fugitive emissions currently discharged to air via vents".
63. **Pouring & Casting:** As per the process above, at present the discharges from pouring and cooling are vented through roof vents direct to the atmosphere. The new ventilation system with best practice filtration captures these "fugitive emissions".
64. The ORC state that the phenolic resins system used by the applicant produces the lowest odours during casting as well as mould formation.
65. **Finishing / Shotblasting:** The ORC advise that emissions from the previous shotblast baghouse were measured in 2007, 2009 and 2011. The emissions in 2011 were over double the consent limit of 45 grams per hour. The new shotblast baghouse will have a "maximum particulate concentration of no more than 25 milligrams per m³".

Odours

66. Page 13 of the MFE Good Practice Guide states “that for an odour to be objectionable or offensive in the eyes of the court, information on the effects of the odour must be gathered which demonstrates that the test of the ordinary reasonable person can be met. This generally means a history of complaint information, council officer investigations, and evidence from affected parties is needed for such a case”.
67. As none of those items exist – (no complaints since the foundry upgrade in 2012, and only 16 complaints in the prior 14 years), there is no basis to assume this needs to be considered.
68. It is again telling that the Wharf Hotel, Customhouse Restaurant or the Monarch Cruises operations have experienced no problems with odours.
69. The ORC, the agency tasked with monitoring odours, also see no issues and have confirmed to me via email on August 21, “I would re-iterate that providing the air discharge consents are complied with, any adverse effect on surrounding properties should be no more than minor”.

Esco's Evidence

70. Mr Clay's Evidence:
71. Mr Clay has not produced any evidence to support Esco's contention in their summary 2.1 c) “likely to require significant expenditure to mitigate currently acceptable environmental effects”. We have shown that air quality and emissions are simply a non-issue, a view shared by the ORC. Mr Taig, Esco's manager advised me

that Esco had spent millions of dollars upgrading the plant since 2010, to meet air quality standards. Esco's management were willing to spend a seven figure sum to resolve this issue for the next 35 years. He is confusing the experience Esco may have had elsewhere where they were required to upgrade the plants to mitigate effects for noise and air discharges. Here, they have already upgraded, and we are the ones that are taking the mitigation measures. There is no cost to Esco.

72. The applicant has shown that Esco has already taken up the opportunity to have a 35 year air discharge permit and has provided a very high air quality.

Existing Residential Accommodation

73. Mr Clay claims in his summary in Section 2.1 that effectively the establishment of residential accommodation would cause the sky to fall in for Esco and is "likely to require significant expenditure ... and may result in relocation or closure".
74. The inconvenient fact for Mr Clay is that there are already consented (and unconsented) residential dwellings in this industrial area. Examples are 57 Fryatt St and 27A Willis St, as noted by Mr Kaan in his evidence. These dwellings are actually closer to the foundry operations than the applicant site. The door to the "changed receiving environment" and reverse sensitivity due to residential development has already been opened by these previous consent decisions.
75. According to Mr Kaan, the above dwellings were approved by the Environment Court in 2008. We note that Mr Kaan gave his consent to these. There is no record of Esco objecting to these dwellings. Further, in reply to my evidence, Mr Clay claims that in 2010, Esco had checked with Council about the current and future status of the area. Given the absolute importance now being placed by Esco upon the exclusion of any residential accommodation, Esco would have asked Council the obvious question – is there any existing residential in the area? We do not know if they did, but now,

wittingly or unwittingly, they are in an area that has some residential accommodation, a changed receiving environment, and a responsibility for the higher standards that they allege are required, for reverse sensitivity issues.

76. Mr Taig also said in his evidence in para 22 that his company made the decision to further invest in 2010, in the knowledge that "the land and surrounding area of the harbourside was intended for industrial use only". He also stated that his company had checked on the status of the area. Whether they knew it or not in 2010, they were already in an area that contained residential accommodation.
77. In Para 4.20 Mr Clay states the issue very clearly "should consent be granted ... Such a decision would ... set an undesirable precedent which future decision makers would find it extremely difficult to deviate from. He goes on to say "This application is the thin end of a wedge of incompatible neighbouring uses".
78. Mr Clay cannot now say these existing dwellings don't matter or are inconsequential. They saw this application as opening the door to future problems for them. The door was already open, and thus Mr Clay's position is flawed.
79. Throughout Mr Clay's evidence there are broad statements of a general nature, with no factual material to confirm them.
80. Para 4.1 states that the adverse effects will "undoubtedly be more than minor". It also states "Esco operations result in authorized and acceptable noise, odour and particulate emissions".
81. We agree with this statement. Our acoustic expert has confirmed that our proposal will easily meet the District Plan requirements (ie Esco's "authorized and acceptable", we take as conforming with the district plan).
82. Further, our acoustic expert has given evidence that he has assumed the worst case scenario of the noise levels is created at the nearest point to the applicant site of 30m away, which is not the case. The activities generating noise are approx. 120m away. Our acoustic expert has also not given any consideration for that fact that there are

concrete boundary or inter-tenancy walls within the site, between the foundry noise and the street.

83. By confirming that the discharges are authorized and acceptable, Mr Clay then puts to rest any possible claim that Esco had existing use rights for higher noise levels than permitted by the district plan (ie that the foundry has operated for at those levels for a very long time and there is no practicable way to reduce them). This is an important point for Commissioners to consider.
84. Para 3.9, Mr Clay complains that residential activities will change the receiving environment, and “would not militate against the obligation ... to adopt the best practicable option to ensure that noise emissions do not exceed a reasonable level, or the general duty to avoid , remedy or mitigate adverse effects. Mr Clay is complaining after the horse has bolted in respect of air quality – Esco have spent their millions, and are secure for the next 35 years, with a 35 year air discharge permit from the ORC. In respect of noise, the simple fact is that this foundry is built of in situ concrete walls. Our architect Mr McKenzie has confirmed that this is the best sound barrier of all. This is not a tin shed as in Esco’s Portland’s facility, that needs sound treatment.
85. Esco provide no evidence of facts about the noise levels at the boundary of their property. They simply say it is authorized and acceptable, and we agree. Our acoustic consultant has reviewed the perimeter noise levels and confirmed that his initial impression is that the levels are well within acceptable limits.
86. Para 4.3 Complains about future resource consents “Councils are legally required to consider the effects on residents ... even if the residents do not submit in opposition”. We have already shown that there are existing legal apartments, and so this argument ceases to be valid. In addition, and more importantly, we have already provided solutions to ensure the apartments will provide a healthy living environment up to the maximum noise limits allowable in industrial areas. There is only an issue if applicants wish to exceed noise limits. Esco say they do not, and we agree. If an

applicant did seek a consent to exceed a noise limit, with or without a residential activity, they would still be required to take measures to limit the noise.

87. It is important to remember that other existing activities in the area are entitled to quiet enjoyment of their premises, and are entitled to rely on the provisions of the District Plan.
88. Esco seem to be looking for a free hand, unencumbered by the provisions of the district plan.
89. When questioned by Commissioner Benson Pope, Mr Clay stated he believed there were different standards for workers in the areas vs residents. This goes to the heart of the Esco position in respect of adverse environmental effects.
90. He stated that Esco's workers and other workers in the area "work in the area knowing the risks and conditions". As an employer, I find that statement disrespectful to staff. That is a nineteenth-century attitude. As employers, the HSE Act requires that we must take all practicable steps to protect the health of our staff. To suggest that the very people that are producing revenue and profits for the company and other workers in the area should be treated as second class citizens with their health at risk is simply untenable.
91. Para 4.5 We have a bald statement that complaints will be "inevitable". It has been confirmed by Esco there have been no complaints in respect of air quality. We await with great interest the DCC register of complaints for the area around Esco. Mr Sule of the DCC confirmed that there had been no complaints to DCC from the Station Apartments complex. There are 21 bedroom apartments in that complex. (We do note that Farra's advise they had received one complaint some years ago on a still night when punching 6mm steel plate.)
92. We note that Mr McKenzie who designed those apartments has completed a post occupancy evaluation of the complex and he confirmed there were no issues raised at all.

93. Mr McKenzie has further confirmed that the Station Apartments were built with no specific acoustic insulation measures at all. He has confirmed that the windows are not even double glazed.
94. We have heard from Mr Kaan that the residents adjacent to his business were not shrinking violets when it came to complaints to the DCC about noise. Those residents are closer than the applicant site. If there have been no complaints from them about noise from Esco operations then that is the best indicator of all that noise is not the problem Esco claim it is.

Potential Esco Closure Claims

95. Para 4.7 Mr Clay states there will be “the major impact on the existing industrial activities and their contribution to the local economy and employment opportunities”. Firstly, he has not been able to specify these “major impacts”. In terms of the “major impacts” on Esco. He goes on to say in Para 4.8 that car parking is an adverse effect. However, as Esco already provide off street parking for staff, this is not a major impact or adverse effect on Esco.
96. Para 4.6 Mr Clay states that the proposal “would put a significant strain on the current investment” ... which could “potentially result in closures ... forced to close its foundry”. This is very close to a threat.
97. Mr Clay also refers to Mr Taig’s evidence, where Mr Taig states in para 19 of his evidence that the additional costs or requirements imposed on Esco’s operations in Brisbane and Portland “contributed” to the closure of Brisbane in January 2013 and the loss of jobs in Portland in July 2014.
98. The threat seems to be, we will close down if you impose any conditions on us.
99. It is worthwhile to examine this in some detail.
100. Mr Taig’s statement is at odds with Esco’s own press release about the closure of the Brisbane facility. It stated “A number of factors made it unworkable to operate

economically” ... “It wasn’t any one factor but a series of hurdles that lead to the closure”.

101. Esco VP of Global Operations, Joe Weber stated “it was relatively low volume when bought by Esco, but planned to expand”.
102. The biggest hurdle would seem to be the decline of the Australian coal mining industry. I refer to a Guardian article May 5, 2014 “Australian Coalmining entering structural decline”. Read excerpts.
103. It is further confirmed by the statement by Cal Collins, Esco CEO, in a corporate newsletter, *The Edge*, in March 2014 where he stated that “2013 faced hurdles ... including the current and continuing softness in some of our core markets”.
104. ESco’s own reports to the Noirhwest Portland Good Neighbour scheme confirm that the Portland foundry’s production had been in significant decline since the third quarter of 2011, and a big reason for the much improved results was the smaller production.
105. Esco had only owned the foundry for 2 years, since December 2010, so it does not seem likely that unforeseen creeping compliance costs forced the closure.
106. In terms of the Portland closure, Esco’s Vice President and Chief Operating Officer, Mr Jon Owens told the *Portland Business Journal* on July 26, 2014 that the company opted to shut down the line in part because it produced older parts, and in part because weakening commodity prices translated into fewer orders for the wearable parts used to mine copper, iron ore, gold, coal and other commodities.
107. The decision affects 20 full time employees and 50 part time employees. Esco employ over 900 staff in Portland.
108. Mr Owens said Esco has innovated new product offerings, rendering older and outdated products obsolete. Esco is discontinuing over 1,500 of those products at years end, many of them manufactured in the affected line.
109. There is no mention whatsoever about compliance or reverse sensitivity issues being a factor.

110. This is all at odds with Mr Taig's evidence.
111. We note that Esco issued another press release in May 2013 announcing that it had withdrawn its share market IPO as it had been making record sales, profits and profit margins. It didn't need to raise funds.
112. What this shows is that Esco, like any multinational, will simply move capital and resources to the parts of the globe where it can earn its best return.
113. This is demonstrated again by the closure of Esco's Saskatoon Canada Plant in May 2009, employing 40 staff. Vice President of human resources Mr Nick Blauwieckel said it was a victim of the economic slowdown and excess operating capacity. He said the companies other foundries in Nisku, Alta, and Port Hope in Ontario are able to take on the Saskatoon plants work. I" It was a very good workforce, its just unfortunate that the economics were not such that we could build on that operation".
114. Mr Dave Doyle International vice president of the Glass, Moulders, Plastics and Allied Workers International Union who represented the majority of the employees at the plant said, about the closure "The foundry industry is a dying industry in Canada, for sure".
115. Esco's Mr Collins, again in the Esco corporate publication, *The Edge*, noted in March 2014 that "much of our growth and focus will be global, and in developing countries such as China and South Africa".
116. Esco have a large foundry operation in China. They employ 675 people in China.
117. I am very sure the production costs of Esco's Chinese foundries are markedly less than in Dunedin, Portland or anywhere else. That is the ticking clock for the Dunedin foundry, and other Esco foundries.
118. The bottom line is that Esco will operate this small Dunedin foundry only as long as it serves their shareholders' interests. If the market conditions dictate that consolidation is required and it is surplus to requirements, then they will act swiftly, as they did in Brisbane.

119. Paras 4.11 and 4.12 Mr Clay notes that the Proposal is fatally flawed ... As a non-complying activity". He then cites District Plan 4.3.8 "Avoid indiscriminate mixing of incompatible uses and developments". We contend that this application is far from "indiscriminate" and that Port activities and residential are not incompatible. We provide as an example the Port of Timaru, and Cain St.
120. Some of Timaru's most expensive residences overlook the Port of Timaru on Cain St. They are very close to Port Facilities (less than 200m away in some cases) and are immediately beneath the main Trunk railway line. As well as residences, lawyers, accountants, insurance brokers and surveyors all have offices there.
121. Mr Clay advised that no complaints covenants were not going to stop people from objecting if there was an event such as a plan change. He gave the example of some owners he was representing who had signed covenants, and were objecting to the new unitary plan. It would be surprising and illogical if dealing with the same issues via a planning process, the courts allowed the precedent set with covenants to be undermined. Mr Clay did not cite any case law to support this position, but in any event we have taken his advice and included a clause in our proposed no complaints covenants to prevent tenants or occupants objecting to plan changes or new or revised district plans.
122. Paras 4.17 and 4.18 Mr Clay struggles with the idea that Council has deemed the application to meet the test of the true exception. He posits "How future residential ... Can be reasonably distinguished from the present proposal" ... he goes on ... "such a distinction will be extremely difficult to make". Mr Entwistle has shown in his extensive review of the heritage buildings in the area that it is obvious and beyond doubt that the application site has a unique history and a set of circumstances not even closely replicated anywhere else in the Port Industrial zone.
123. Para 4.20 he states "the applicant has not established that there is no reasonable alternative to residential use". The best riposte to that is that the building like many older buildings, has had a declining hierarchy of uses over its life. It has gone from

being the grandest building in Dunedin, with indoor railway lines, to its last use – for the storage of used car parts on the ground floor and basement, with upper floors vacant. When a building is no longer suitable to store the bumpers and fenders of wrecked cars, then it can fall no further.

124. Mr Clay does not appreciate that this is not Auckland, where there may well be a new tenant opportunity every week. Mr Hazelton of the DCC will confirm that even in the Central Activity Zone there have been many conversions of buildings into residential as there is simply no other viable alternative.
125. Mr Clay shows his true colours when he goes on to state that “even if there were no alternatives, it would not follow that the proposal should be allowed with the consequential effects”. Demolition does not concern him. He protests that the Esco position is not anti-development, but it is clearly no friend of heritage. Even in the Port Industrial zoned areas, heritage is an important consideration.
126. Mr Clay makes his intentions clear in Para 4.13 and 4.14 where he quotes district plan Policy 11.3.3 (to provide for port related activities on land adjoining ports) and Objective 10.2.3 which he says goes “to the heart” of reverse sensitivity “ensure non industrial activities do not limit the operation of industrial activities”.
127. Objective 10.2.3 does not relate to the applicant site as it is covered under the Port Industrial zoning, but more importantly what Mr Clay appears to say is that Esco will object to any activity which is not a Port Industrial zoned use and any use in his view that will limit industrial activities. In short, there is no use for the building if we are to run with Mr Clay’s position. For example, if the building was to be converted to an office use, assuming a density of 1 person per 20 m², there would be over 300 people working in the building. We can be sure Mr Clay would not be happy about that.
128. Commissioner Benson Pope explored this issue when he asked Esco’s planner, Mr Roberts, about Esco’s position on the theoretical alternate use of the Loan and Mercantile Building for offices and Mr Roberts declined to answer the question.

129. Mr Taig's Evidence:
130. Para 13 Mr Taig states that heavy trucks will find access more difficult with the proposed carpark entrance. Mr Taig acknowledged in response to questions that light trucks, ie class 2 or 3 trucks, are used for deliveries. At the present time they use Willis St because they then only have to make a left turn to get onto the correct side of Fairley St. However, Fairley St is lightly used and it would not be an issue to make a right turn into Esco off Fairley St, if Cresswell St was used instead of Willis St.
131. We have addressed the other points we wish to raise on Mr Taig's evidence with Mr Clay's evidence.

Mr Roberts' Evidence:

132. Mr Anderson has reviewed Mr Roberts' evidence. I note the following further matters:
133. Para 30 Mr Roberts raises the issue that there is no protection from Noise and Odour in the internal street. The street is simply an access route; residents do not live there, hence the name "street".
134. Para 38 Mr Roberts refers to Sustainability Policy 4.3.8, being "the indiscriminate mixing of incompatible uses and developments". As noted above, with the Environment Court having given consent to dwelling units in the same zone, Mr Roberts is not able to say that there is indiscriminate mixing, or that the uses are incompatible.
135. Mr Roberts states in para 40 that the receiving environment is characterised by large utilitarian buildings ... industrial activities producing noise, odour and particulate emissions ... an arterial road, a rail corridor and port related activities. This is selective. The receiving environment directly around the applicant site includes a hotel, a restaurant, the Monarch tourist vessel operation and wharf, the pedestrian steamer wharf, an office building. The Esco site that is closest to the applicant site is

the office block, as is Farra Engineering. There is no actual industrial operation by Farra Engineering or the Foundry within 70m of the site.

136. Paras 46, 48, 50 and 51 Mr Roberts proposes declining the application because the proposal “reduces the amount of land available for port related activities”. There are many responses one could give to this, but it is indisputable that the building is not suited or viable to use for port related activities. Mr Roberts appears to accept this in paras 97-99 where he promotes the demolition of the building and the retention of the facades. At para 100 he suggests that the building could be “adapted” to service or industrial use. We choose not to further respond to these statements.
137. Para 92 Mr Roberts attempts to make a further, desperate case for demolition when he states that “I do not consider that using the site for a non-port or industrial use is sustainable management of the land as a physical resource”. Quite simply, this is unbalanced thinking and completely at a odds with the DCC’s vision for the city and the status accorded to heritage in the District Plan.

Mr Page’s Evidence:

138. Mr Page’s submission notes in para 10 that the Betterways application failed because it was contrary to the objectives and policies of the district plan. We contend that the Betterways decision gives a clear path that our application is in fact in accordance with the overriding provisions of the district plan.
139. Objective 4.2.1 of the plan seeks to enhance the amenity values of Dunedin. The Betterways commissioners, in making their decision said in para 413, that a “fundamental purpose of the plan is to maintain the existing fabric of the city” and that this was a key factor.
140. Para 13 Mr Page claims that the Betterways decision is a “determination to hold fast to the underlying principle of functional separation”. Para 359 of the Betterways decision says otherwise. “Overall we considered that industrial activities would not be affected by the proposal to any significant extent.” This for a 28 level building!

148. Para 15 Mr Whitaker notes that the oil and gas industry may not consider Dunedin if it is peppered with apartments. However, this is only one building, on the outer edge of the area, and it is deemed by Council to be a true exception, and will not set a precedent.

149. Para 16 Mr Whitaker discusses the issue of rent competition, of industrial businesses being forced out by rising rents. My legal advice from our lawyers who are very familiar with the leasehold land in the Auckland Harbour basin, and associated issues is that this cannot happen in this case with the application being deemed to be a true exception.

Mr Kaan's Evidence:

150. In response to Mr Kaan's evidence we have proposed a revised parking scheme in para 38.

141. Para 14 Mr Page discusses how he sees the Port zones being a “specialised form of industrial zone”. Quite apart from the fact that that the applicant site is not bare land, but is a heritage building, he has overlooked paras 356 and 357 in the Betterways decision. In Para 356 the Commissioners considered my own position that the Betterways land was not suited to industrial use. Para 357 reports that “The later view (my own) was accepted by Council’s Ms Darby, in that she agreed that the land was not presently used as such and did have an existing consent for an alternative use.”
142. Our position is that if Council has come to the conclusion that bare land is not suitable for industrial activities in that position, there is an overwhelming reason to make the same case for the applicant site. Mr Roberts view in Para 137 has been crushed, and all heritage enthusiasts can be thankful for that. .
143. Para 15 Mr Page suggests “that that horse had already bolted”, in respect of consents for a non-industrial use of the Betterways site. As noted in our response to Mr Clay’s evidence, the residential “horse” has also bolted (with consented dwellings already in the area) taking with it a large part of Mr Page’s and other objectors’ positions. We further note Mr Page suggests that the Betterways application had better scope to “engineer out” negative effects generated by industrial activities. While Mr Page is not correct, he raises an important point. The Loan and Mercantile Building is a substantial masonry building of considerable mass. All acoustic engineers will advise that mass is the best way to mitigate noise transmission. To achieve the acoustic performance possible in this building is far more difficult in a glass curtain walled building as proposed by Betterways. We only have to deal with windows and treating the roof.
144. Para 16 Mr Page makes the case that because there are 20 new heritage buildings listed, there exists a problem of precedent. Mr Page says “There is no possible basis for differentiating this building against the other empty listed heritage buildings in the zone”. He only has to look at the scale, design, location and history of national

significance to understand this building is a true exception. As noted Mr Entwistle has crushed any contention about precedent in his review. Further, Mr Page may not realise that only three of the 20 heritage buildings he refers to in the Port Industrial Area that are in the Townscape Heritage 12 overlay. They are the Wharf Hotel and the small building adjacent, both of which are already used for accommodation. We note the Wharf Hotel had a building consent in recent years to refurbish its upper floor rooms but was unable to proceed for economic reasons. The adjacent building has low quality accommodation, and I understand is vacant at present.

145. Para 17 Mr Page asserts there will be adverse effects on the Industrial zone if the door is opened to residential activities. Like other objectors, no proof of this is given. And as noted in para 15, the door is already open.

Mr Whitaker's Evidence:

146. Mr Whitaker in para 11 explains how tenants from the Anzac Ave apartments complained about the noise. I understand that it was only on one occasion on the rare combination of a still night, and 6mm steel plate being punched. The Anzac Ave apartments do not have ventilation so it is unknown if the people complaining had shut the windows. We do know however, that the units have no acoustic treatment and are single glazed.
147. Para 13 Mr Whitaker is concerned about the fact that covenants suppose that Farra's will have adverse effects on people. We believe that there will be no adverse effects because we have taken proper measures to mitigate noise, and shown how odours and air discharges are also not creating adverse effects. These issues were thoroughly canvassed in the Harbourside plan change, and the standards adopted for Harbourside are now being used in other parts of the city where noise, or reverse sensitivity is a concern. We are complying with those same standards. The no-complaints covenant is simply the belt and braces, not the primary method of solving the problem.