

**BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH**

ENV-

IN THE MATTER OF

the Resource Management Act 1991

AND

IN THE MATTER OF

An appeal under clause 14(1),
Schedule 1, Resource Management
Act 1991

BETWEEN

**HARVEY NORMAN PROPERTIES
(N.Z.) LIMITED**

Appellant

AND

DUNEDIN CITY COUNCIL

Respondent

NOTICE OF APPEAL TO ENVIRONMENT COURT

Dated: 18 December 2018

GREENWOOD ROCHE
LAWYERS
CHRISTCHURCH
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TO: The Registrar
 Environment Court
 Christchurch

- 1 Harvey Norman Properties (N.Z.) Limited (*Harvey Norman*) appeals against the decisions of the Dunedin Second Generation District Plan (2GP) Hearings Panel/Te Paepae Kaiwawao Motuhake O Te 2GP (*Panel*) imposing the "Speights buffer mapped area" (*Buffer Area*) across the eastern side of Harvey Norman's site on the corner of Maclaggan and Rattray Streets (*Site*), and including accompanying provisions/amendments in the Commercial and Mixed-Use chapter of the 2GP.¹
- 2 Harvey Norman received notice of the decision on 7 November 2018.
- 3 The decisions under this appeal (forming part of the decision on the 2GP Commercial and Mixed Use Zones) were made by the 2GP Hearings Panel/Te Paepae Kaiwawao Motuhake O Te 2GP appointed by the Dunedin City Council to hear and make decisions on submissions.
- 4 Harvey Norman is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (*RMA*).
- 5 The decisions under appeal are:
 - (a) the imposition of the Buffer Area over the Site (shown in Appendix 1) and the following provisions accompanying the Buffer Area;
 - (b) the amendment of Rule 18.5.4 to include performance standard 18.5.4.5 which states that:
 - (i) New residential activities or residential buildings must not be located within the Buffer Area.
 - (ii) Activities which contravene this standard are restricted discretionary activities.
 - (c) the amendment of assessment provision 18.9.3 to include assessment matters relevant where performance standard 18.5.4.5 above is contravened; and

¹ 9715, Lot 1 DP 302486 and Lot 2 18012.

- (d) the creation of new Policy 18.2.2.11 which only allows residential activity in the Buffer Area where the potential for reverse sensitivity will be avoided or, if not practicable, adequately mitigated.²

6 The reasons for the appeal are as follows:

- (a) The imposition of the Buffer Area and the accompanying provisions does not achieve the purpose of the RMA. In particular, it does not result in management of the use, development and protection of resources in a way that enables people to provide for their social or economic well-being or their health and safety. Specifically:

- (i) The Panel reached its decision regarding the imposition of the Buffer Area to manage reverse sensitivity issues without any technical evidence identifying the extent or existence of such issues, or if such issues existed, the appropriate methods to address those issues.
- (ii) Notwithstanding the lack of technical evidence to support its decision, the Panel has, through imposition of the Buffer Area (and its accompanying provisions), effectively “down-graded” the Site by requiring resource consent for new residential activities and residential buildings where both activities would otherwise be permitted in the underlying CBD Zone.

- (b) The imposition of the Buffer Area and the accompanying provisions does not give effect to the objectives and policies of the operative Otago Regional Policy Statement, including:

Objective 9.4.1 – to promote the sustainable management of Otago’s build environment in order to:

- (a) Meet the present and reasonably foreseeable needs of Otago’s people and communities; and*
- (b) Provide for amenity value; and*

² Proposed Second Generation Dunedin City District Plan (2GP) - Commercial and Mixed Use Zones – Decision of the Hearings Panel, 7 November 2018, paragraph 263.

(c) *Conserve and enhance environmental and landscape quality; and*

(d) ...

Objective 9.4.3 – to promote remedy or mitigate the adverse effects of Otago’s built environment on Otago’s natural and physical resources...

- (c) The imposition of the Buffer Area and the accompanying provisions does not give effect to the objectives and policies of the proposed Otago Regional Policy Statement, including:

Objective 1.1 – recognise and provide for the integrated management of natural and physical resources to support wellbeing of people and communities in Otago.

Policy 1.1.1 – achieve integrated management of Otago’s natural and physical resources by all of the following...

...

(b) *taking into account the impacts of management of one resource on the values of another or on the environment.*

Policy 1.1.2 - provide for the economic wellbeing of Otago’s people and communities by enabling the use and development of natural and physical resources only if the adverse effects of those activities on the environment can be managed to give effect to the objectives and policies of the Regional Policy Statement.

- (d) The imposition of the Buffer Area and the accompanying provisions is inconsistent with various objectives and policies in the proposed 2GP, including:

Objective 2.3.2 – Centres hierarchy – Dunedin has a hierarchy of vibrant centres anchored around one CBD zone which provides a focus for economic and employment growth drive by:

(a) *attraction of businesses to these areas based on the high level of amenity and density of activity in the area;*

(b) *opportunities for social interaction, exchange of ideas and business cooperation;*

...

(d) opportunities for agglomeration benefits from the co-location of activities.

Policy 18.2.1.1 – Provide for a wide range of commercial, residential and community activities in the CBD and all centres zones in order to encourage economically and socially vibrant and viable centres.

Objective 2.6.1 – There is a range of housing choices in Dunedin that provides for the community's needs and supports social wellbeing.

Objective 9.2.2 – Land use, development and subdivision activities maintain or enhance people's health and safety.

7 Harvey Norman seek the following relief:

(a) Removal of the Buffer Area from the Site in its entirety.

8 The following documents are attached to this notice:

(a) A copy of Harvey Norman's submission.

(b) A copy of the relevant decision.

(c) A list of names and addresses of persons to be served with a copy of this notice.

DATED this 18th day of December 2018



L J Semple on behalf of the Appellant

Advice to recipients of copy of notice of appeal*How to become a party to proceedings*

If you wish to be a party to the appeal, you must lodge a notice in form 33 with the Environment Court within 15 working days after the period for lodging a notice of appeal ends.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

Appendix 1