

**In the Environment Court
at Christchurch**

In the Matter

of the Resource Management Act
1991

And

In the Matter

of an appeal under Clause 14(1),
Schedule 1 of the Act

Between

**WOOLWORTHS NEW ZEALAND
LIMITED**

Appellant

And

DUNEDIN CITY COUNCIL

Respondent

**Notice of Appeal by Woolworths New
Zealand Limited on a decision on the
Proposed Second Generation Dunedin
City District Plan**

Dated: 19 December 2018

To: The Registrar
Environment Court
Christchurch

Notice of Appeal

1. Woolworths New Zealand Limited (**Woolworths**) appeals against part of decisions of the Dunedin City Council (**Respondent**) on the Proposed Second Generation Dunedin City District Plan (**Proposed Plan**).
2. Woolworths made a submission and further submission on the Proposed Plan (under its former name Progressive Enterprises Limited).
3. Woolworths is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (**Act**).
4. Woolworths received notice of the Respondent's decisions on 7 November 2018.
5. The part of the decisions that Woolworths is appealing is:
 - (a) Commercial and Mixed Use Zones Decision Report (**Decision**).

Reasons for the Appeal

Background

6. Within Dunedin Woolworths operates 5 Countdown supermarkets and is the franchisor for a further 2 FreshChoice supermarkets. It currently employs around 360 people in Dunedin and as such its annual operational investment in the region is significant.
7. It is against this background that Woolworths made a submission and further submission on the Proposed Plan, and in particular the Commercial and Mixed Use Zone provisions.
8. The Decision on the Proposed Plan has failed to adequately address the key concerns raised by Woolworths in its submission and further submission.

Out of Zone Supermarkets

9. In particular, one of the key concerns of Woolworths was that the Proposed Plan as notified did not recognise or provide for appropriate out of zone supermarkets. While the Decision recognises that out of zone expansions may be appropriate, the amendments to the Strategic Directions Policies do not provide for appropriate stand alone out of centre developments being developed by way of a resource consent process. Accordingly, Woolworths seeks amendments to the Proposed Plan in accordance with the “centres plus” approach set out in its submission.
10. Additionally, as a consequence of the amendments sought to enable appropriate out of centre development, Woolworths seeks that supermarkets be a discretionary activity in the Industrial Zones rather than a non-complying activity.

Definition of ‘Supermarket’

11. Woolworths seeks the addition of a separate definition of “supermarket”. This is consistent with the approach taken by a number of other councils throughout New Zealand in their district plans and would recognise that there is a significant difference between stand alone supermarkets with specific operational and functional requirements and greengrocers and butchers (also included in the generic ‘food and beverage retail’ definition).

Bulk and Location of Supermarkets

12. As currently drafted the Proposed Plan fails to recognise and provide for the specific and operational requirements of supermarkets. The development of new supermarkets or the redevelopment of existing supermarkets would be unable to comply with the location and parking, minimum glazing and building modulation and setback requirements in the Proposed Plan. As such, Woolworths seeks amendments in relation to location and parking, minimum glazing and building modulation and setback requirements.

Countdown - Mosgiel

13. It is considered that the recently consented Countdown Supermarket at 47-49 Gordon Road, Mosgiel would be more appropriate rezoned Suburban Centre to recognise the consented supermarket rather than the current General

Residential 2 zoning. The Decision recognises that the requested zoning for the site may be appropriate but did not support the use of “spot zoning”. It is considered that this approach is not rational, and further, rezoning the site is appropriate as it is consistent with the approach taken with other supermarkets in the Dunedin area where the underlying zoning reflects the consented development.

Countdown – Mailer Street

14. Woolworths has a number of older supermarkets that are due for redevelopment, including the Countdown at 43 Mailer Street.
15. Accordingly, it is considered that the Secondary Frontage shown on the Planning Map on the Mailer Street frontage of 43 Mailer Street should be removed as it will restrict the redevelopment of the existing supermarket at that site.

General Reasons

16. Accordingly, through this appeal Woolworths wishes to ensure that the Proposed Plan appropriately recognises and provides for the development and redevelopment of supermarkets in a way that does not overly conflict with Council's centres policy and while ensuring any adverse effects are appropriately avoided, remedied or mitigated.
17. The general reasons for Woolworths' appeal are that the Decision on the Proposed Plan fails to appropriately or adequately recognise and provide for supermarkets, including in respect of the matters described above, in that the Decision:
 - (a) does not recognise or provide for the development of new supermarkets or redevelopment of existing supermarkets;
 - (b) imposes undue constraints on the legitimate and necessary activities of Woolworths;
 - (c) does not adequately recognise the locational, functional and operational requirements of the supermarkets;

- (d) fails to achieve the functions of the Respondent under section 31 of the Act in respect of the integrated management of the effects of the use and development of land and physical resources;
- (e) fails to meet the requirements of section 32;
- (f) does not represent an efficient use of land under section 7(a); and
- (g) fails to promote sustainable management of resources and will not achieve the purpose of the Act.

Relief Sought

18. Woolworths seeks the following relief subject to the general relief in paragraphs 18(f) and (g) below (noting the provisions referred to are those as shown in the decisions version of the Proposed Plan):

Section 1: Plan Overview and Introduction

- (a) That Section 1: Plan Overview and Introduction of the Proposed Plan is amended as follows:
 - (i) Add the following definition of supermarket to Rule 1.4.1:

“A retail shop where a comprehensive range of predominantly domestic supplies and convenience goods and services are sold for consumption or use off the premises and includes lotto shops and pharmacies located within such premises and where liquor licences are held for each premise.”

Section 2: Strategic Directions and Section 15: Residential Zones - Centres Plus Approach:

- (b) That Section 2: Strategic Directions and Section 15: Residential Zones of the Proposed Plan are amended to enable a “centres plus” approach as follows:
 - (i) Add a new Policy under Objective 2.3.2 in Section 2: Strategic Directions as follows:

“Policy x: To allow some out of centre commercial activities provided assessment criteria dealing with adverse effects on existing centres

and any traffic, social, economic and amenity effects are met. Such assessment criteria to include:

Supermarkets

An assessment of the effects of a supermarket shall be made considering the following:

(a) The extent to which the new activities would result in adverse effects on the commercial and community services and facilities of any existing or proposed business centre as a whole;

(b) The extent to which the overall availability and accessibility of commercial and community services and facilities will be maintained in any existing business centre;

(c) The extent to which the new activities would result in a significant adverse effect on the character, heritage and amenity values of any existing or proposed centre;

(d) The extent to which the benefits of a new development are able to directly or indirectly mitigate any adverse effects listed above;

(e) Any traffic, social, economic effects and any cumulative effects associated with the additional activity on any other area within the City;

(f) The extent to which alternative locations have been considered; and

(g) Whether the supermarket activity will result in the sustainable management of the land resource."

- (ii) As a consequential amendment as a result of the amendment to Section 2: Strategic Directions above, amend Policy 15.2.1.5 in Section 15: Residential Zones as follows:

"Avoid commercial activities other than those expressly provided for ~~from locating in residential zones~~ or contemplated by new Policy x and its associated assessment criteria, from locating in residential zones, unless: ..."

Section 18: Commercial and Mixed Use Zones

(c) That Section 18: Commercial and Mixed Use Zones of the Proposed Plan is amended as follows (or similar):

(i) Amend Rule 18.6.8 (Location and Screening of Car Parking) to add a new sub-clause 4 to read:

“4. Supermarkets are exempt from this rule.”

(ii) Amend Rule 18.6.11 (Minimum Glazing and Building Modulation) to add a new sub-clause 7 to read:

“7. This standard does not apply to supermarkets”

(iii) Amend Rule 18.6.16.1 (Setbacks) to add a new sub-clause (e) to read:

“(e) This standard does not apply to supermarkets”

Section 19: Industrial Zones

(d) That Section 19: Industrial Zones of the Proposed Plan is amended as follows:

(i) Amend Rule 19.3.3 (Land Use Activity Status Table) to provide for supermarkets as a discretionary activity.

Planning Map

(e) That the following amendments are made to the Planning Map:

(i) Rezone the properties at 47-49 Gordon Road, Mosgiel to Suburban Centre Zone as shown on the map **attached as Annexure A** (the properties are shown highlighted in yellow).

(ii) Remove the Secondary Frontage shown on the Planning Map on the Mailer Street frontage of 43 Mailer Street, shown as a light blue line on the map **attached as Annexure B**.

General Relief

(f) That the Proposed Plan be amended in a similar or such other way as may be appropriate to address the matters raised in this appeal; and

- (g) Any other similar, consequential, alternative, or other relief as is necessary to address the issues raised in this appeal or otherwise raised in Woolworths' submission and further submission.

Attached Documents

19. The following documents are **attached** to this notice:
- (a) a copy of the map showing the requested rezoning at 47-49 Gordon Road, Mosgiel (highlighted in yellow) (**Annexure A**);
 - (b) a copy of the map showing the requested secondary frontage (shown as a light blue line along the Mailer Street frontage) to be removed at 43 Mailer Street (**Annexure B**);
 - (c) a copy of Woolworths' submission (**Annexure C**);
 - (d) a copy of Woolworths' further submissions (**Annexure D**);
 - (e) the relevant parts of the Respondent's decisions (**Annexure E**); and
 - (f) a list of the names and addresses of the persons to be served with a copy of this notice of appeal (**Annexure F**).

Dated this 19th day of December 2018



Amanda Dewar

Counsel for Woolworths New Zealand Limited

Address for Service for the Appellant:

Lane Neave
 Level 4, 141 Cambridge Terrace
 PO Box 2331
 Christchurch 8140
 Phone: 03 364 6451
 Email: amanda.dewar@laneneave.co.nz

Contact person: Amanda Dewar

Advice to Recipients of Copy of Notice of Appeal

How to become a Party to Proceedings

You may be a party to the appeal if:

Within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and

Within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties in accordance with the requirements below.

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.

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

Service Requirements in Accordance with ENV-2018-CHC-206

Section 274 notices must be lodged with the court electronically by email to Christine.McKee@justice.govt.nz in accordance with the standard requirements set out in the Resource Management Act 1991 and the Resource Management (Forms, Fees, and Procedure) Regulations 2003.

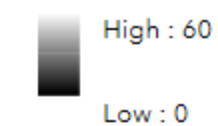
The requirement relating to the service of section 274 notices have been altered to the effect that:

- Section 274 notices must be served on the Council electronically by email to dppappeals@qldc.govt.nz and on the appellant to any email address provided in the notice of appeal;
- The requirement to lodge a signed original and one hard copy of any section 274 notices with the Court has been waived;
- The requirement for section 274 parties to serve their notice/form 33 on all other parties has been waived; and

- Service of section 274 notices on “all other parties” will be deemed to be effected to the Council uploading copies of section 274 notices onto its website as soon as possible (within two working days) after the section 274 notice is received.

**ANNEXURE A – Map showing the requested rezoning at 47-49 Gordon Road,
Mosgiel**

▼ Taieri Aerodrome Flight Fan Mapped Area



▼ Zones

▼ Residential

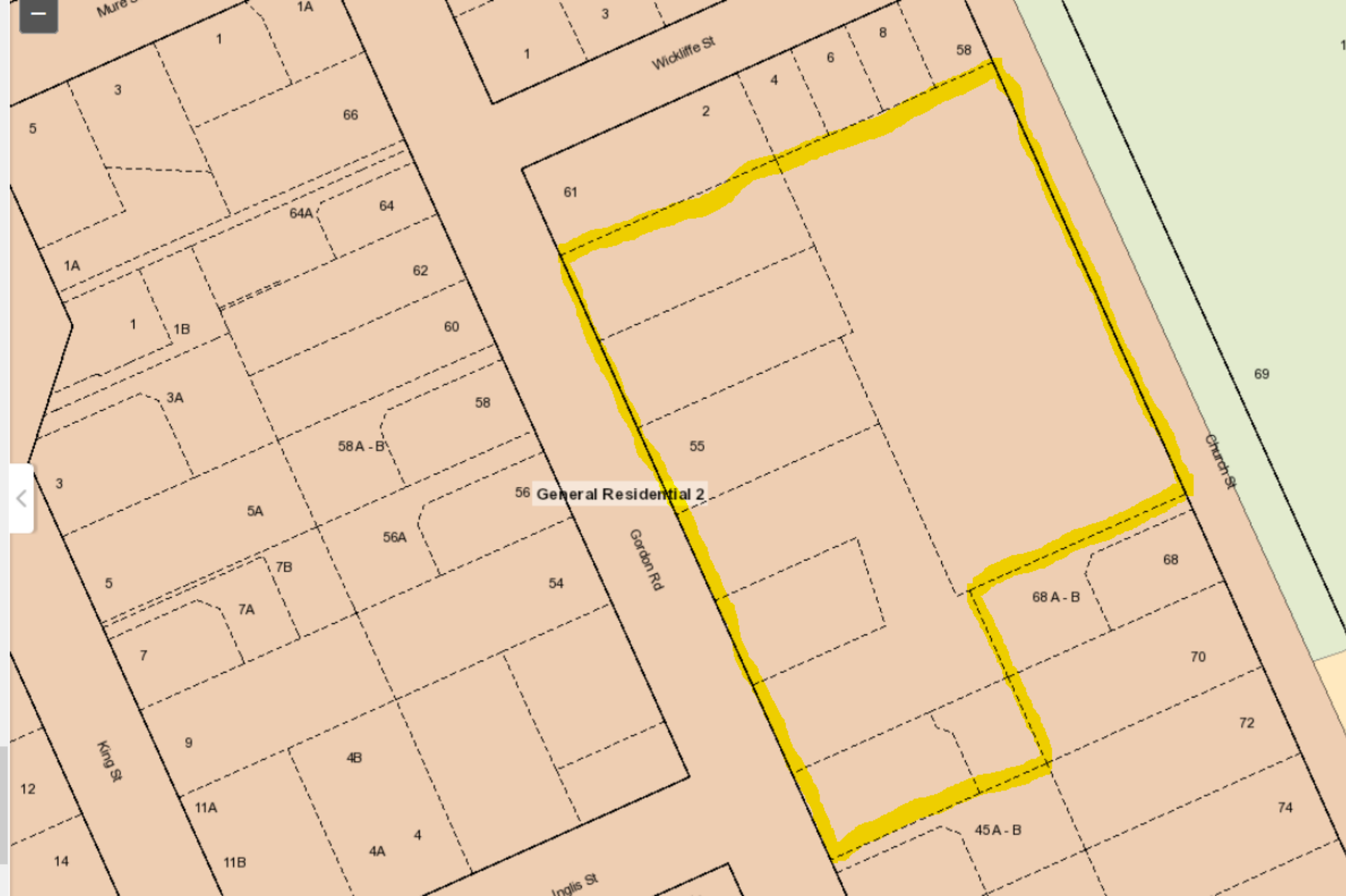
- General Residential 1
- General Residential 2
- Inner City Residential
- Large Lot Residential 1
- Large Lot Residential 2
- Low Density Residential
- Township and Settlement

▼ Commercial and Mixed Use

- Central Business District
- CBD Edge Commercial North
- CBD Edge Commercial South
- Harbourside Edge
- Princes, Parry and Harrow Street
- Smith Street and York Place
- Warehouse Precinct
- Centres
- Trade Related

▼ Industrial

- Industrial
- Industrial Port



ANNEXURE B – A copy of the map showing the requested secondary frontage to be removed at 43 Mailer Street

☒ No DCC Reticulated Wastewater



☒ Noise

☐ Airport Noise Inner Control

☐ Airport Noise Outer Control

☐ Port Noise Control

☐ Stadium Noise

☒ Parry Street East Height



☒ Pedestrian Street Frontage

☐ Primary Frontage

☐ Secondary Frontage

☒ Port Wood Exclusion



☒ Portobello Marine Science



☒ Princes, Parry and Harrow Street Height



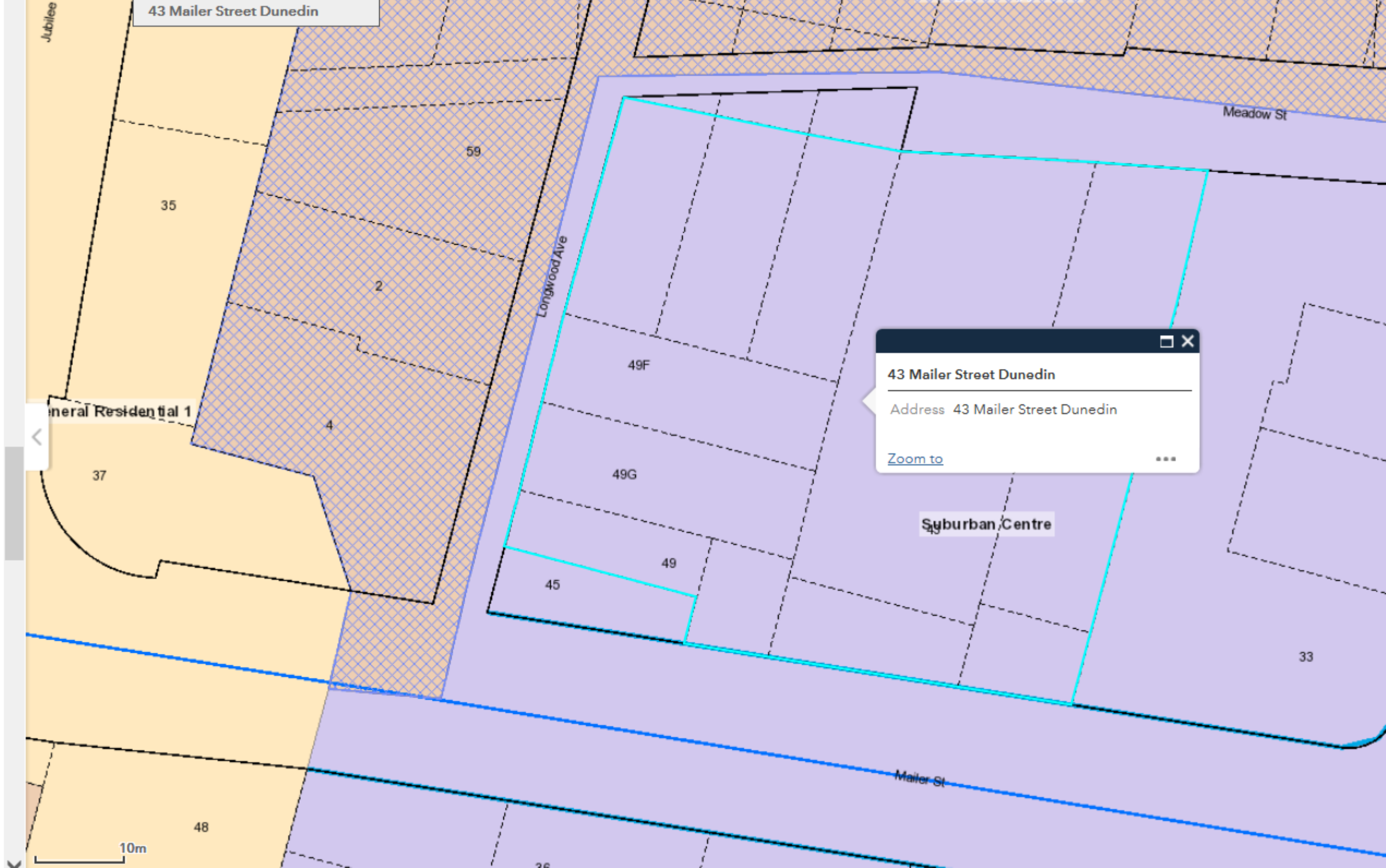
☒ Radio Transmitters



☒ Ravensbourne Height



☒ Road Classification Hierarchy



ANNEXURE C – Copy of Woolworths' Submission



THE PROPOSED
**SECOND
GENERATION
DISTRICT PLAN**

SUBMISSION FORM

This is a submission on the Proposed Second Generation Dunedin City District Plan (2GP) for Dunedin pursuant to Clause 6 of Schedule 1 of the Resource Management Act 1991

Once you have completed this form, include any supporting documentation and return to the Dunedin City Council.

MAKE YOUR SUBMISSION:

Online: www.2gp.dunedin.govt.nz

Email: planning@dcc.govt.nz

Post to: Submission on 2GP
Dunedin City Council
PO Box 5045
Moray Place
Dunedin 9058

Deliver to: DCC Customer Services Agency
Ground floor
Civic Centre
50 The Octagon
Dunedin

Please note that all submissions are public information. Your name, contact details and submission will be available to the public and the media. The DCC will only use your information for the purposes of this plan review process.

All submissions must be received before 5pm on Tuesday, 24 November 2015.

SUBMITTER DETAILS *Fields indicated by an asterisks (*) are mandatory.*

Full name of submitter or agent* **Michael Foster (on behalf of the submitter)**

Organisation (if submission on behalf of an organisation) **Progressive Enterprises Limited**

Address for service for submitter or agent* *Please provide an address where you would like correspondence sent to*

Email address **mike@zomac.co.nz**

Postal address* **P O Box 103, Whangaparaoa** Postcode* **0943**

Phone number* **09 428 2101** Mobile number **0274 722 798**

TRADE COMPETITION *Fields indicated by an asterisks (*) are mandatory.*

Please note: If you are a person who could gain an advantage in trade competition through your submission, your right to make a submission may be limited by clause 6(4), Schedule 1 of the Resource Management Act 1991.

Please tick one of the following*

I could ☐ could not ☒ gain an advantage in trade competition through this submission.

If you could gain an advantage in trade competition through this submission, please tick one of the following*

I am ☐ am not ☐ directly affected by an effect of the subject matter of the submission that:

(a) adversely affects the environment; and

(b) does not relate to trade competition or the effects of trade competition

HEARINGS *Fields indicated by an asterisks (*) are mandatory.*

Please tick one each of the following*

I would like ☒ would not like ☐ to be heard in support of my submission

If others submitters make a similar submission, I will ☒ will not ☐ consider presenting a joint case with them at a hearing

SUBMISSION DETAILS *Fields indicated by an asterisks (*) are mandatory.*

Please identify the specific provision(s) of the Proposed Second Generation Dunedin City District Plan that your submission relates to*.

Provision name and number (where applicable):

For example: Rule 15.5.2 Density

Please refer to the attached sheets

Section name (where applicable):

For example: the residential zones

Map layer name (where applicable):

For example: General Residential 1 Zone

Scheduled item number (where applicable):

For example: Reference #T147 - Scheduled Tree at 123 Smith Street

My submission is*

☐

I support the provision

☐

I oppose the provision

☐

I seek to have the above provision amended

Choose the most appropriate statement. If more than one applies, for example you support the provision in part but wish to have part amended (removed or changed), choose 'have the provision amended' and explain this in the 'decision I seek' field.

The decision I seek is that (please give precise details, such as suggested amended wording)*

Please refer to the attached sheets

Reasons for my views (you may attach supporting documents)*

Please refer to the attached sheets

Signature of submitter (or person authorised to sign on behalf of submitter)
(A signature is not required if you make your submission by electronic means.)

Date 24/11/15

Submission by Progressive Enterprises Limited
Submission Details

Provisions this submission relates to	Provision Name and Number	Section Name	My submission is	The Decision I seek is	Reasons for my views are
Definitions	Rule 1.5.1	Activity Definitions.	I seek to have the provision amended.	A definition of supermarket be included in rule 1.5.1 whereby supermarket means: 'A retail shop where a comprehensive range of predominantly domestic supplies and convenience goods and services are sold for consumption or use off the premises and includes lotto shops and pharmacies located within such premises and where liquor licences are held for each premise.'	1. The "food and beverage retail" definition is too wide, there is a significant difference between supermarket, greengrocers and butchers; 2. Supermarkets are stand-alone retail activities that have specific operational and functional characteristics; 3. Supermarket location is catchment driven; and 4. The definition proposed is an industry standard.
Strategic Directions	Objective 2.3.2 Centres Hierarchy.	Dunedin is Economically & Socially Prosperous.	I seek to have the provision amended.	That objective 2.3.2 be amended by adding a new policy 2.3.2.5 which states: 'To allow some out of centre commercial activities provided assessment criteria dealing with adverse effects on existing centres and any traffic, social, economic and amenity effects are satisfied. Such assessment criteria to include: Supermarkets An assessment of the effects of a supermarket shall be made considering the following: (a) The extent to which the new activities would result in adverse effects on the commercial and community services and facilities of any existing or proposed business centre as a whole; (b) The extent to which the overall	1. In certain circumstances supermarkets in residential or industrial zones, eg. Mosgiel, North Dunedin, improve equity of access and reduce travel requirements. 2. Supermarket location is catchment based and historic commercial centre locations may not be as relevant in the 21st Century. 3. The edge effects of supermarkets in out of centre zones throughout New Zealand have been proven to be manageable to the extent that any adverse effects are less than minor.

				availability and accessibility of commercial and community services and facilities will be maintained in any existing business centre; (c) The extent to which the new activities would result in a significant adverse effect on the character, heritage and amenity values of any existing or proposed centre; (d) The extent to which the benefits of a new development are able to directly or indirectly mitigate any adverse effects listed above; (e) Any traffic, social, economic effects and any cumulative effects associated with the additional activity on any other area within the City; (f) The extent to which alternative locations have been considered; and (g) Whether the supermarket activity will result in the sustainable management of the land resource.	
Transportation	Rules 6.3 to 6.13	Rules	I seek to have the provisions amended.	In principle Progressive supports the overall thrust of this section. The exception is the presumption that applications for resource consent for high traffic generating activities will be publicly notified. The word “will” should be changed to ‘may.’ Policy 15.2.1.5 be amended to read: ‘Avoid commercial activities, other than those expressly provided for or contemplated by new policy 2.3.2.5 and its associated assessment criteria, from locating’[unchanged].	It is quite possible that a supermarket (a high traffic generating activity) could be located on a site where any traffic effects can be shown to be less than minor and/or mitigatable. The presumption for public notification is no longer a part of the RMA.
15. Residential Zones	Rule 15.2 Objectives & Policies	Residential Zones	I seek to have the provisions amended.	As for the reasons for including a new policy under the centres hierarchy. This gives effect to an acknowledgement that supermarket activity is appropriate under certain circumstances in residential environments.	As for the reasons for including a new policy under the centres hierarchy. This gives effect to an acknowledgement that supermarket activity is appropriate under certain circumstances in residential environments.

15. Residential Zones	Rules 15.6.12.5 & 15.6.12.6	Signs for Commercial Activities.	I seek to have the provisions amended.	1. Amendment to Rule 15.6.12.5 by the addition of a new sub-clause D: 'd. Supermarket Wall Signs – 80m² per supermarket wall.' 2. Amendment to Rule 15.6.12.6 by the addition of a new sub-clause D: 'd. Supermarket Free Standing Signs: (i) maximum height of 9m (ii) maximum width of 3.5m (iii) maximum 30m² per face.'	These changes will recognise the size of supermarket signage that has been consented by local authorities throughout New Zealand irrespective of supermarket location in the last 10 years.
Commercial & Mixed Use Zones	Rules 18.6.1(2) & 18.6.1(4)	Boundary & treatments & landscaping	I seek to have the provisions amended.	1. Rule 18.6.1(2) be amended to read: 'Have an average of one tree for every 10m of frontage.' 2. Rule 18.6.1(4) be amended to read: '... a minimum of 1m² of additional landscaped area must be provided for every 5 parking spaces.'	The landscaping requirements as currently drafted are considered to be excessive and should be modified to reflect the operational and functional requirements of supermarket carparks.
Commercial & Mixed Use Zones	Rule 18.6.9	Location & Screening of Carparking	I seek to have the provisions amended.	Rule 18.6.9 be amended by adding a new sub-clause 4 to read: '4. Supermarkets are exempt from this rule.'	Supermarkets for operational and functional reasons do not locate customer carparks within or behind a building. No existing Dunedin supermarket could comply with such a rule.
Commercial & Mixed Use Zones	Rule 18.6.12	Minimum Glazing & building Modulation	I seek to have the provisions amended.	Rule 18.6.12 be amended by adding a new sub-clause 5 to read: '5. This standard does not apply to supermarkets.'	Supermarkets for operational and functional reasons, in particular the protection of goods from sunlight penetration, are unable to comply with such a rule.
Commercial & Mixed Use Zones	Rules 18.6.14.3 & 18.6.14.6	Number, Location & Design of Signs	I seek to have the provisions amended.	1. Rule 18.6.14.3 be amended by adding a new sub-clause c to read: 'c. Supermarket Wall Signs – 80m² per supermarket wall.' 2. Rule 18.6.14.6(b) be amended by adding a new sub-clause to read: 'iv. Supermarket Free Standing Signs: a. Maximum height of 9m. b. Maximum width of 3.5m.'	These changes will recognise the size of supermarket signage that has been consented by local authorities throughout New Zealand irrespective of the supermarket location in the last 10 years.

Commercial & Mixed Use Zone	Rule 18.6.17	Setbacks	I seek to have the provisions amended.	c. Maximum 30m ² per face. Rule 18.6.17 be amended by adding a new sub-clause d to read: 'd. This standard does not apply to supermarkets.'	Supermarkets have specific operational and functional requirements and would be unable to comply with such a rule. No existing Dunedin supermarket is compliant with this rule as drafted.
Industrial Zones	Rule 19.3.3	Activity Status Table – Land Use Activities	I seek to have the provisions amended.	A new item 27 "Supermarkets" be added, where the activity status is Restricted Discretionary (RD) provided the assessment criteria set out in policy 2.3.2.5 are able to be satisfied.	This change supports the introduction of a new policy 2.3.2.5 set out above and the reasons for doing so.
Industrial Zones	Rules 19.4.5 & 19.5.7	Minimum Car Parking	I seek to have the provisions amended.	1. Rule 19.5.6 be amended by adding a new sub-clause 6A to read: '6A. Supermarkets – 1 parking space per 25m ² .' 2. Rule 19.5.7 be amended by adding a new sub-clause 2A to read: '2A. Supermarkets – 1 loading space to accommodate a B-Train.'	The inclusion of supermarkets as a Restricted Discretionary activity in the industrial zone requires a number of amendments to the rules as proposed. These amendments recognise the functional requirements of supermarket activity.
Industrial Zones	Rule 19.6.1	Boundary Treatments	I seek to have the provisions amended.	Rule 19.6.1(b) be amended to read: 'Have an average of one tree for every 10m of frontage.'	The landscaping requirements as currently drafted are considered to be excessive and should be modified to reflect the functional and reasonable requirements of supermarket car parks.
Industrial Zones	Rules 19.6.8.2 & 19.6.8.3	Number, Location & Design of Signs	I seek to have the provisions amended.	1. Rule 19.6.8.2 be amended by adding a new sub-clause F to read: 'F. Supermarket Wall Signs – 80m ² per supermarket wall.' 2. Rule 19.6.8.3 be amended by adding a new sub-clause E to read: 'E. Supermarket Free Standing Signs: (i) Maximum height of 9m. (ii) Maximum width of 3.5m. (iii) Maximum 30m ² per face.'	These changes will recognise the location and size of supermarket signage that has been consented by local authorities throughout New Zealand irrespective of supermarket location in the last 10 years.
Planning Map	279 Roslyn	Secondary Frontage	I oppose the provision.	The secondary frontage around 279 Highgate should be deleted.	This suburban centre is well established and there is no apparent planning logic for

Planning Map	43 Mailer Street	Primary & Secondary Frontages	I oppose the provisions.	Both frontage provisions around 43 Mailer Street should be deleted.	having a secondary frontage requirement. The existing suburban centre is overdue for redevelopment and it is premature to make any decision as to where or if there should be primary and secondary pedestrian frontages.
Planning Map	309 Cumberland Street	Secondary Frontage	I oppose the provision.	The Secondary Frontage around 309 Cumberland Street should be deleted.	The site has a well-established Countdown supermarket located on it and the secondary frontage requirement has no apparent planning logic to it.
Planning Map	47-49 Gordon Road, Mosgiel	St Marks School Notation.	I oppose the provision.	It is unclear whether the school notation has been removed. The school has long since relocated.	This matter requires clarification as the notation would appear to be a mapping error and should be removed.
Planning Map	47-49 Gordon Road, Mosgiel	General Residential 2 Zoning	I seek to have the zoning amended.	This is the site of the recently consented Countdown Supermarket and should be rezoned to "Suburban Centre".	Such a rezoning would appropriately recognise the consented stand-alone Countdown supermarket. Other existing / proposed supermarkets in the Dunedin area are appropriately zoned to recognise commercial activity.
General				Such other amendments as necessary to give effect to the foregoing amendments being sought.	

ANNEXURE D – Copy of Woolworths' Further Submission



THE PROPOSED
SECOND
GENERATION
DISTRICT PLAN

FURTHER SUBMISSION FORM

This is a further submission in support of, or in opposition to,
a submission on the Proposed Second Generation Dunedin
City District Plan (2GP) for Dunedin, pursuant to Clause 8 of
Schedule 1 of the Resource Management Act 1991.

MAKE YOUR FURTHER SUBMISSION BEFORE 5PM ON FRIDAY, 26 FEBRUARY 2016

Online: www.2gp.dunedin.govt.nz

Email: districtplan@dcc.govt.nz

Post to: Further Submission on 2GP
Dunedin City Council
PO Box 5045, Moray Place
Dunedin 9058

Deliver to: DCC Customer Services Agency
Ground floor
Civic Centre, 50 The Octagon
Dunedin

A copy of your further submission must be served on the original submitter within five working days after it is served on the local authority.

Please note that all further submissions are public information. Your name, contact details and submission will be available to the public and the media. The DCC will only use your information for the purposes of this plan review process.

FURTHER SUBMITTER DETAILS *Fields indicated by an asterisks (*) are mandatory.*

Full name of submitter*: PROGRESSIVE ENTERPRISES LTD (PEL)

Submitter organisation (if relevant): -

Agent name and organisation (if applicable): MIKE FOSTER- ZOMAC PLANNING SOLUTIONS LTD

Send correspondence to: ☐ Submitter ☒ Agent

Please select the address where you would like correspondence sent to using the tick box:

☒ Postal address* P O BOX 103, WHANGAPARAOA Postcode* 0932

☐ Email address mike@zomac.co.nz

Phone number* 094282101 Mobile number 0274722798

The RMA limits the people that can take part in this further submission process to the following categories.

Please select which category you belong to:*

☐ I am a person representing a relevant aspect of the public interest; or

☒ I am a person who has an interest in the proposal that is greater than the interest the general public has.

Specify grounds for saying that you come within the selected category:

PEL OWNS AND OPERATES A SIGNIFICANT NUMBER OF SUPERMARKETS IN DUNEDIN CITY.

HEARINGS

I would like ☒ would not like ☐ to be heard in support of my further submission

If others submitters make a similar submission, I will ☒ will not ☐ consider presenting a joint case with them at a hearing

FURTHER SUBMISSION DETAILS *Fields indicated by an asterisks (*) are mandatory.*

☒ I support ☐ I oppose (please tick one) the submission of*:
(original submitter's name and/or submission number)

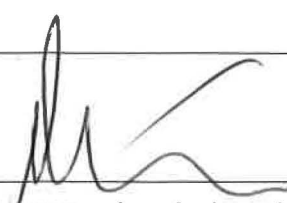
STRIDE PROPERTY LTD:NO.205

The particular parts of the submission I support (~~or oppose~~) are*:
(Specify submission point number or otherwise clearly indicate which parts of the original submission you support or oppose).
 205.2 WHICH SEEKS TO REMOVE 20% GLAZING REQUIREMENTS FOR OTHER STREET FRONTAGES

The reasons for my support (~~or opposition~~) are*:
 LARGE RETAIL DEVELOPMENTS SUCH AS SUPERMARKETS OF NECESSITY REQUIRE SOME BLANK WALLS AND UNNECESSARY GLAZING REQUIREMENTS CAN BE DIFFICULT TO IMPLEMENT.

I seek the following decision*: *(Explain if you wish the whole (or part [describe part]) of the submission allowed (or disallowed)).*

THAT SUBMISSION 205.2 BE ALLOWED.


 Signature of person making further submission
 (or person authorised to sign on behalf of person making further submission)
 (A signature is not required if you make your submission by electronic means.)

25/2/2016
 Date

FURTHER SUBMISSION DETAILS *Fields indicated by an asterisks (*) are mandatory.*

☒ I support ☐ I oppose (please tick one) the submission of*:
(original submitter's name and/or submission number)

HARVEY NORMAN PROPERTIES (NZ) LTD:NO.211

The particular parts of the submission I support (~~or oppose~~) are*:
(Specify submission point number or otherwise clearly indicate which parts of the original submission you support or oppose).

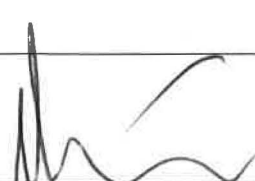
211.4 WHICH SEEKS TO REMOVE 20% GLAZING REQUIREMENTS FOR OTHER STREET FRONTAGES

The reasons for my support (~~or opposition~~) are*:

LARGE RETAIL DEVELOPMENTS SUCH AS SUPERMARKETS OF NECESSITY REQUIRE SOME BLANK WALLS AND UNNECESSARY GLAZING REQUIREMENTS CAN BE DIFFICULT TO IMPLEMENT.

I seek the following decision*: *(Explain if you wish the whole (or part [describe part]) of the submission allowed (or disallowed)).*

THAT SUBMISSION 211.4 BE ALLOWED.


 Signature of person making further submission
 (or person authorised to sign on behalf of person making further submission)
(A signature is not required if you make your submission by electronic means.)

25/2/2016
 Date

FURTHER SUBMISSION DETAILS *Fields indicated by an asterisks (*) are mandatory.*

☒ I support ☐ I oppose (please tick one) the submission of*:
(original submitter's name and/or submission number)

PROPERTY COUNCIL NEW ZEALAND:NO.317

The particular parts of the submission I support (~~or oppose~~) are*:
(Specify submission point number or otherwise clearly indicate which parts of the original submission you support or oppose).

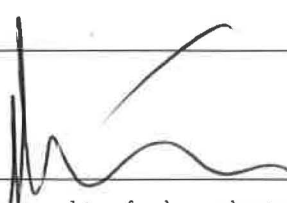
317.63 WHICH SEEKS TO REPLACE THE BUSINESS ZONES IN ANDERSONS BAY /SOUTH DUNEDIN WITH A MIXED USE COMMERCIAL ZONE.

The reasons for my support (~~or opposition~~) are*:

THAT THERE IS CONSIDERABLE PLANNING MERIT IN THE SUBMITTER REQUEST. THIS ANDERSONS BAY ROAD AREA IN PARTICULAR IS A BROAD MIX OF COMMERCIAL ACTIVITY SUCH AS LARGE FORMAT RETAIL, BULKY GOODS RETAIL AND SUPERMARKETS.

I seek the following decision*: *(Explain if you wish the whole (or part [describe part]) of the submission allowed (or disallowed)).*

THAT SUBMISSION 317.63 BE ALLOWED.


 Signature of person making further submission
 (or person authorised to sign on behalf of person making further submission)
(A signature is not required if you make your submission by electronic means.)

25/2/2016
 Date

FURTHER SUBMISSION DETAILS *Fields indicated by an asterisks (*) are mandatory.*

☒ I support ☐ I oppose (please tick one) the submission of*:
(original submitter's name and/or submission number)

FOODSTUFFS SOUTH ISLAND PROPERTIES LTD :NO.713

The particular parts of the submission I support (~~or oppose~~) are*:
(Specify submission point number or otherwise clearly indicate which parts of the original submission you support or oppose).
 713.6 WHICH SEEKS TO ADD 'CAFES ASSOCIATED WITH PERMITTED ACTIVITIES' TO RULE 18.3.5 ACTIVITY STATUS TABLE.

The reasons for my support (~~or opposition~~) are*:
 THAT A NUMBER OF 21ST CENTURY COUNTDOWN SUPERMARKETS NOW HAVE CAFES EMBEDDED IN THEM FOR THE BENEFIT OF CUSTOMERS. THE SUBMITTOR'S REQUEST IS THEREFORE STRONGLY SUPPORTED.

I seek the following decision*: *(Explain if you wish the whole (or part [describe part]) of the submission allowed (or disallowed)).*

THAT SUBMISSION 713.6 BE ALLOWED.

Signature of person making further submission
 (or person authorised to sign on behalf of person making further submission)
(A signature is not required if you make your submission by electronic means.)

25/2/2016
 Date

FURTHER SUBMISSION DETAILS *Fields indicated by an asterisks (*) are mandatory.*

☒ I support ☐ I oppose (please tick one) the submission of*:
(original submitter's name and/or submission number)

CHALMERS PROPERTIES LTD :NO.749

The particular parts of the submission I support (~~or oppose~~) are*:
(Specify submission point number or otherwise clearly indicate which parts of the original submission you support or oppose).
 749.1 WHICH SEEKS TO REPLACE THE TRADE RELATED ZONE IN ANDERSONS BAY WITH AN ANDERSONS BAY MIXED USE COMMERCIAL ZONE.

The reasons for my support (~~or opposition~~) are*:
 THAT THERE IS CONSIDERABLE PLANNING MERIT IN THE SUBMITTER REQUEST. THIS ANDERSONS BAY AREA IS A BROAD MIX OF COMMERCIAL ACTIVITY SUCH AS LARGE FORMAT RETAIL, BULKY GOODS RETAIL AND SUPERMARKETS..

I seek the following decision*: *(Explain if you wish the whole (or part [describe part]) of the submission allowed (or disallowed)).*

THAT SUBMISSION 749.1 BE ALLOWED.

Signature of person making further submission
 (or person authorised to sign on behalf of person making further submission)
(A signature is not required if you make your submission by electronic means.)

25/2/2016
 Date

FURTHER SUBMISSION DETAILS *Fields indicated by an asterisks (*) are mandatory.*

☒ I support ☐ I oppose (please tick one) the submission of*:
(original submitter's name and/or submission number)

NZ TRANSPORT AGENCY :NO.881

The particular parts of the submission I support (~~or oppose~~) are*:
(Specify submission point number or otherwise clearly indicate which parts of the original submission you support or oppose).

881.1 WHICH SEEKS TO ADD A NEW PLAN SECTION WITH ALL DEFINITIONS AND GLOSSARY OF TERMS IN IT.

The reasons for my support (~~or opposition~~) are*:

THAT THE SUBMITTER REQUEST HAS CONSIDERABLE PLANNING MERIT AND WILL MAKE THE PLAN EASIER TO NAVIGATE.

I seek the following decision*: *(Explain if you wish the whole (or part [describe part]) of the submission allowed (or disallowed)).*

THAT SUBMISSION 881.1 BE ALLOWED.

Signature of person making further submission
 (or person authorised to sign on behalf of person making further submission)
(A signature is not required if you make your submission by electronic means.)

25/2/2016
 Date

FURTHER SUBMISSION DETAILS *Fields indicated by an asterisks (*) are mandatory.*

☒ I support ☐ I oppose (please tick one) the submission of*:
(original submitter's name and/or submission number)

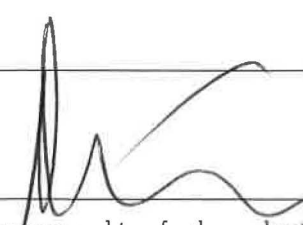
NZ TRANSPORT AGENCY :NO.881

The particular parts of the submission I support (~~or oppose~~) are*:
(Specify submission point number or otherwise clearly indicate which parts of the original submission you support or oppose).
 881.88 WHICH SEEKS TO DELETE RULE 6.6.3.2(B) AND AMEND THE WORDING OF RULE 6.6.3.2(A).

The reasons for my support (~~or opposition~~) are*:
 THAT THERE NEEDS TO BE CONSISTENCY WITH THE GUIDANCE PROVIDED BY AUSTROADS 'GUIDE TO ROAD DESIGN PART 4A:
 UNSIGNALISED AND SIGNALISED INTERSECTIONS.

I seek the following decision*: *(Explain if you wish the whole (or part [describe part]) of the submission allowed (or disallowed)).*

THAT SUBMISSION 881.88 BE ALLOWED.


 Signature of person making further submission
 (or person authorised to sign on behalf of person making further submission)
(A signature is not required if you make your submission by electronic means.)

25/2/2016
 Date

FURTHER SUBMISSION DETAILS *Fields indicated by an asterisks (*) are mandatory.*

☒ I support ☐ I oppose (please tick one) the submission of*:
(original submitter's name and/or submission number)

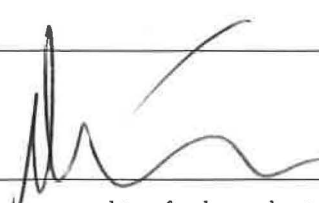
NICHOLS PROPERTY GROUP LTD:NO.271

The particular parts of the submission I support (~~or oppose~~) are*:
(Specify submission point number or otherwise clearly indicate which parts of the original submission you support or oppose).
 271.2 WHICH SEEKS TO REPLACE THE TRADE RELATED ZONE IN ANDERSONS BAY WITH 'ANDERSON'S BAY ROAD MIXED USE COMMERCIAL ZONE' (ABR)

The reasons for my support (~~or opposition~~) are*:
 THAT THERE IS CONSIDERABLE PLANNING MERIT IN THE SUBMITTER REQUEST. THIS ANDERSONS BAY ROAD AREA IS A BROAD MIX OF COMMERCIAL ACTIVITY SUCH AS LARGE FORMAT RETAIL, BULKY GOODS RETAIL AND SUPERMARKETS.

I seek the following decision*: *(Explain if you wish the whole (or part [describe part]) of the submission allowed (or disallowed)).*

THAT SUBMISSION 271.2 BE ALLOWED.



 Signature of person making further submission
 (or person authorised to sign on behalf of person making further submission)
 (A signature is not required if you make your submission by electronic means.)

25/2/2016

 Date

FURTHER SUBMISSION DETAILS *Fields indicated by an asterisks (*) are mandatory.*

☒ I support ☐ I oppose (please tick one) the submission of*:
(original submitter's name and/or submission number)

NICHOLS PROPERTY GROUP LTD :NO.271

The particular parts of the submission I support (~~or oppose~~) are*:
(Specify submission point number or otherwise clearly indicate which parts of the original submission you support or oppose).
 271.5 WHICH SEEKS TO DELETE PERFORMANCE STANDARDS 18.6.1.1, 2, 3 AND 4.

The reasons for my support (~~or opposition~~) are*:
 (A) THAT THESE PERFORMANCE STANDARDS ARE TOO PRESCRIPTIVE AND DIFFICULT TO COMPLY WITH, AND
 (B) PEL'S PRIMARY SUBMISSION ALSO SEEKS AMENDMENTS TO THESE STANDARDS.

I seek the following decision*: *(Explain if you wish the whole (or part [describe part]) of the submission allowed (or disallowed)).*

THAT SUBMISSION 271.5 BE ALLOWED TO THE EXTENT THAT IS CONSISTENT WITH PEL'S SUBMISSION 877.6 AND 877.34.

Signature of person making further submission
 (or person authorised to sign on behalf of person making further submission)
(A signature is not required if you make your submission by electronic means.)

25/2/2016
 Date

FURTHER SUBMISSION DETAILS *Fields indicated by an asterisks (*) are mandatory.*

☒ I support ☐ I oppose (please tick one) the submission of*:
(original submitter's name and/or submission number)

OTAGO LAND GROUP LTD:NO.551

The particular parts of the submission I support (~~or oppose~~) are*:
(Specify submission point number or otherwise clearly indicate which parts of the original submission you support or oppose).

551.1 WHICH SEEKS TO REPLACE THE TRADE RELATED ZONE IN ANDERSONS BAY WITH 'ANDERSON'S BAY ROAD MIXED USE COMMERCIAL ZONE' (ABR)

The reasons for my support (~~or opposition~~) are*:

THAT THERE IS CONSIDERABLE PLANNING MERIT IN THE SUBMITTER REQUEST. THIS ANDERSONS BAY ROAD AREA IS A BROAD MIX OF COMMERCIAL ACTIVITY SUCH AS LARGE FORMAT RETAIL, BULKY GOODS RETAIL AND SUPERMARKETS.

I seek the following decision*: *(Explain if you wish the whole (or part [describe part]) of the submission allowed (or disallowed)).*

THAT SUBMISSION 551.1 BE ALLOWED.


 Signature of person making further submission
 (or person authorised to sign on behalf of person making further submission)
(A signature is not required if you make your submission by electronic means.)

25/2/2016
 Date

FURTHER SUBMISSION DETAILS *Fields indicated by an asterisks (*) are mandatory.*

☒ I support ☐ I oppose (please tick one) the submission of*:
(original submitter's name and/or submission number)

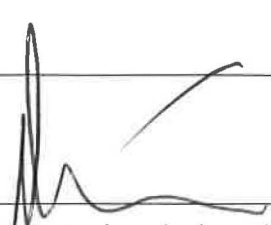
OTAGO LAND GROUP LTD :NO.551

The particular parts of the submission I support (~~or oppose~~) are*:
(Specify submission point number or otherwise clearly indicate which parts of the original submission you support or oppose).
 551.6 WHICH SEEKS TO DELETE PERFORMANCE STANDARDS 18.6.1.1, 2, 3 AND 4.

The reasons for my support (~~or opposition~~) are*:
 (A) THAT THESE PERFORMANCE STANDARDS ARE TOO PRESCRIPTIVE AND DIFFICULT TO COMPLY WITH, AND
 (B) PEL'S PRIMARY SUBMISSION ALSO SEEKS AMENDMENTS TO THESE STANDARDS.

I seek the following decision*: *(Explain if you wish the whole (or part [describe part]) of the submission allowed (or disallowed)).*

THAT SUBMISSION 551.6 BE ALLOWED TO THE EXTENT THAT IS CONSISTENT WITH PEL'S SUBMISSION 877.6 AND 877.34.


 Signature of person making further submission
 (or person authorised to sign on behalf of person making further submission)
(A signature is not required if you make your submission by electronic means.)

25 | 2 | 2016
 Date

ANNEXURES E – Copies of the Relevant Parts of the Decisions



SECOND GENERATION DISTRICT PLAN

Commercial and Mixed-Use Zones Decision of Hearings Panel

**Proposed Second Generation Dunedin City
District Plan (2GP)**

7 November 2018

- greengrocers

Food and beverage retail is a sub-activity of retail."

436. In the CBD and centres zones food and beverage retail is a permitted activity. In the Warehouse Precinct and PPH zones they are discretionary. In the SSYP and Harbourside Edge zones it is non-complying. In the Trade Related and CEC zones, food and beverage retail less than 1500m² in gross floor area is non-complying, and that greater than 1500m² is permitted. The s42A Report explained that this provision is specifically designed to cater for larger supermarkets in these zones.
437. Food and beverage retail is non-complying in the residential and industrial zones.

4.3.1 Submissions overview

438. Various submissions were made on the management of supermarkets. Although the issue touched upon several zones of the 2GP, given these submissions predominantly relate to the CMU section, they are dealt with here.
439. *Progressive Enterprises Ltd* (OS887) submitted to relax the provisions around supermarkets. In particular they sought to:
- define supermarkets separately, so that they are no longer included in the definition of food and beverage retail (OS877.38)
 - add or amend performance standards relating to signage and boundary treatments. These are discussed later in this report
 - add a new Strategic Direction policy specifically providing for supermarkets away from commercial centres and detailing appropriate assessment criteria (OS877.2), with a consequential change to Policy 15.2.1.5 (OS877.4)
 - provide for supermarkets as a restricted discretionary activity in Industrial zones (OS877.11). This submission was opposed by the *Oil Companies* (FS2487.79). Associated submissions include amendments to performance standards in the Industrial section relating to car parking (OS877.12), vehicle loading (OS877.13), boundary treatments (OS877.14), signage (OS877.15).
440. Four additional submissions were also received:
- the *Construction Industry and Developers Association* sought to amend the activity status for "food and beverage retail" in the HE (OS997.108), SSYP (OS997.57), CEC and Trade Related zones (OS997.65), as part of a large range of activities they sought to change from non-complying to discretionary
 - *Oamaru Property Limited* (OS652.10) supported Rule 18.3.4 (land use in CEC Zone, permitting food and beverage retail $\geq 1,500\text{m}^2$)
 - *Foodstuffs* sought to amend the definition of 'food and beverage retail' to provide for ancillary warehousing and storage (OS713.1)
 - *Foodstuffs* sought to amend Rule 18.3.5 to permit ancillary offices and staff facilities (OS713.3).

4.3.2 Request for a new supermarket definition

441. *Progressive Enterprises Ltd* (OS877.38) considered that the definition of food and beverage retail was too wide, and sought a new definition of 'supermarket'. The submitter considered that there was a significant difference between supermarkets, greengrocers and butchers. It proposed a new definition for supermarkets as follows:

"A retail shop where a comprehensive range of predominantly domestic supplies and convenience goods and services are sold for consumption or use of the premises and includes lotto shops and pharmacies located within such premises and where liquor licences are held for each premise."

442. The Reporting Officer accepted that large supermarkets have different characteristics and operational requirements to smaller Food and Beverage Retail and noted that this distinction is recognised in the provision for large scale Food and Beverage Retail (i.e. supermarkets over 1500m²) in the Trade Related Zone. However, she could not distinguish between smaller supermarkets and larger food and beverage retail outlets such as Veggie Boys and Mad Butcher, as they appear to be of an equivalent size and to have similar operational needs to a small supermarket (s42A Report, section 5.5.16, p. 107). Consequently, she did not see a need to treat supermarkets differently from other food and beverage retail, and recommended that this aspect of the submission be rejected (s42A Report, section 5.5.16, p. 107).
443. She further noted that the proposed definition includes pharmacies within the definition, which in the 2GP are treated as a General Retail activity and are only a permitted activity in the CBD and centres. In her opinion, allowing such retail operations as part of supermarket activity could draw these businesses and their customers away from the centres. This would be inappropriate in terms of the 2GP's objectives related to maintain the vibrancy and viability of centres.
444. In respect of lotto outlets, the Reporting Officer noted that these were commonly found in supermarkets. They were classed in the 2GP as a General Retail activity, and provision for them could be made in the definitions for Food and Beverage Retail and Dairies (s42A Report, section 5.5.16, p. 107).
445. Mr Foster gave expert planning evidence for *Progressive* and stated that the definition being sought was an accepted industry standard included in plans throughout New Zealand. Mr Tansley gave economic evidence for *Progressive* supporting the inclusion of pharmacies in supermarkets. He commented that pharmacies can be described as convenience outlets, and apart from prescription drugs, there is considerable overlap between the products sold and those sold in supermarkets. In his view, competition between them "finds its own level" and does not need RMA intervention (Statement of Evidence for *Progressive*, p. 12).

4.3.2.1 Decisions and reasons

446. We do not consider that there is a need for a separate definition of 'supermarket' and reject *Progressive's* submission. The 2GP has an unusually complicated, but precise, way of distinguishing between activities for various RMA reasons - "nested tables" - and we accept the Reporting Officer's advice that defining supermarkets would create more anomalies than it would solve. The anomalies raised by submitters can be resolved more easily, if appropriate, as discussed below.
447. Turning first to the inclusion of pharmacies within supermarkets, we agree with the Reporting Officer that where these are not in the CBD or centres, they have the potential to draw business away from these centres, contrary to the objectives and policies related to maintaining vibrant and viable centres.
448. However, as the Reporting Officer noted, lottery sales are different. They are an established part of all supermarkets, and we agree that amending the definition of food and beverage retail and dairies to specifically include this is appropriate. We therefore accept in part the submission of *Progressive Enterprises Ltd* (OS877.38) insofar as this amendment gives partial relief to their request. We have amended the definition of food and beverage retail and dairies accordingly. These are shown in Appendix 1 (see submission reference CMU877.38).
449. However, overall, we reject the submission to have a separate definition for supermarkets as we agree with the Reporting Officer that it is difficult to distinguish between a small supermarket (like a Four Square) and other shops like Veggie Boys or Mad Butchers, which focus on one type of product but which also have a range of other

products. Administering more than one definition would be less efficient. We also agree there was no evidence of different effects to indicate that a different set of definitions was required.

4.3.3 Out-of-centre development

450. *Progressive Enterprises* (OS877.2) sought to amend Objective 2.3.2 (centres hierarchy) by adding a new policy allowing supermarkets to locate outside centres, provided certain assessment criteria were satisfied. The approach was described by *Progressive* as being a "centres plus" approach. The policy requested was as follows:

"To allow some out of centre commercial activities provided assessment criteria dealing with adverse effects on existing centres and any traffic, social, economic and amenity effects are satisfied. Such assessment criteria to include:

Supermarkets

An assessment of the effects of a supermarket shall be made considering the following:

- (a) The extent to which the new activities would result in adverse effects on the commercial and community services and facilities of any existing or proposed business centre as a whole;*
- (b) The extent to which the overall availability and accessibility of commercial and community services and facilities will be maintained in any existing business centre;*
- (c) The extent to which the new activities would result in a significant adverse effect on the character, heritage and amenity values of any existing or proposed centre;*
- (d) The extent to which the benefits of a new development are able to directly or indirectly mitigate any adverse effects listed above;*
- (e) Any traffic, social, economic effects and any cumulative effects associated with the additional activity on any other area within the City;*
- (f) The extent to which alternative locations have been considered; and*
- (g) Whether the supermarket activity will result in the sustainable management of the land resource."*

451. A consequential change was also sought, to Policy 15.2.1.5, as follows:

"Avoid commercial activities other than those expressly provided for ~~from locating in residential zones or contemplated by new Policy x and its associated~~ assessment criteria, from locating in residential zones, unless: ..." [remainder unchanged].

452. The submitter provided a list of matters for the new strategic direction policy to be satisfied (listed in s42A, section 5.5.16, p. 107).
453. The Reporting Officer believed that the proposed policy did not provide a good test for a non-complying activity, in that it did not state what outcome was sought, i.e. what effects were acceptable (s42A Report, section 5.5.16, p. 109).
454. Additionally, Mr Munro, who provided urban design expert evidence for the DCC, noted that in almost any scenario supermarkets are not appropriate in residential areas and can give rise to significant amenity and traffic effects in environments that are intended to provide quiet and attractive living environments. These effects are undesirable and he strongly preferred that supermarkets locate in Centres (Statement of Evidence for the DCC, para 50).
455. The Reporting Officer referred to the report by M.E. Spatial (2015) which considered the available and projected demand for space for various retail activities. The analysis showed that in 2031 there is predicted to be significant levels of available space in Dunedin centres to cater for demand and it is not necessary to make additional land available in any centre over the timeframe of the 2GP (M.E. Spatial, pp. 39-40). However, she did acknowledge that due to site size requirements large supermarkets

may have difficulty finding an in-centre location compatible with their intended catchment.

456. She also drew our attention to Policy 15.2.1.5, which provides a set of considerations to support a non-complying commercial activity in a residential zone, if that activity was located and designed to support a well-integrated expansion of a centre that is at, or close to, capacity. She felt that this policy did provide some policy support for out-of-zone supermarkets, particularly where they were needed in growing residential areas.
457. She recommended that no change be made to the current policies regarding out-of-centre supermarkets.
458. Through Ms Amanda Dewar's legal submissions at the hearing *Progressive* submitted that "in light of Mr Foster's evidence ...discretionary activity status is appropriate in this instance" (legal submissions for *Progressive*, para 25).
459. The explanation and reasons given for *Progressive's* suggested approach, as outlined in statements by Mr Tansley, Mr Foster and the legal submissions, included:
- an emphasis on ensuring that out-of-centre supermarkets do not undermine the strong centres based approach (which is supported by *Progressive*). Out-of-centre development under the policy would be "the exception rather than the rule" (Mr Foster's Statement of Evidence for *Progressive*, para 13);
 - there is a need to provide for these exceptions, as future proposals outside the adopted zoning and rules are likely to arise over the lifetime of the plan (Mr Tansley's Statement of Evidence for *Progressive*, para 10);
 - supermarkets are (suburban) catchment driven and this approach provides some locational flexibility on a catchment basis. Supermarkets need to be located as close as possible to where their customers live or work (Mr Foster's Statement of Evidence for *Progressive*, para 13);
 - there is insufficient space in some centres (e.g. North Dunedin) to provide for a new supermarket (Mr Foster's Statement of Evidence for *Progressives*, para 23);
 - the policy would ensure that any potential adverse effects of out-of-centre development are appropriately controlled through a consent process (Mr Tansley's Statement of Evidence for *Progressives*, para 34);
 - the proposed approach matches the approach taken by the Environment Court in Auckland's North Shore (see *St Lukes Group Ltd v North Shore City Council* [2001] NZRMA 412 (EnvC)) (legal submissions for *Progressive*, para 29); and
 - the approach is not inconsistent with the RPS requirement to avoid unplanned extensions of commercial activities that have significant effects on a CBD (legal submissions for *Progressive*, para 32).
460. The Reporting Officer acknowledged in her Revised Recommendations that more policy support was required for out-of-zone supermarkets where true exceptions applied, both in terms of creation of new centres, and to provide better support for Policy 15.2.1.5 in the strategic directions. She suggested amendments to Strategic Policy 2.3.2.2 to manage this (Revised Recommendations Summary, p.12).
461. These changes:
- provided a cross reference to Policy 15.2.1.5 in relation to expansion of centres
 - encouraged proposals for the creation of new centres or out-of-centre commercial development to be considered through a plan change process;

- included a test allowing supermarkets outside the CMU zones where necessary to meet catchment growth and where there are no practicable options to locate in a centre in the same catchment
 - included a test ensuring there is a demonstrated need for additional zoned land, and adverse effects on the distribution, function, viability and amenity of existing centres are avoided.
462. We were concerned to understand what impact Dunedin's relatively low growth rate meant for Mr Tansley's criticism of the 2GP's centres hierarchy. In response, Mr Tansley advised that regardless of the low growth, an exception was required, the door needed to be left open to consider other things.
463. We note as well that *Mr Robert Wyber* (OS394.2), as part of a broad submission to improve the wording of the strategic directions (which we deal with in the Plan Overview decision report), specifically sought improvements to Policy 2.3.2.2, which he found difficult to understand (even as an experienced planner).

4.3.3.1 Decisions and reasons

464. We do not accept that "centres plus" is actually an alternative strategy to the 2GP's "centres" approach. The provisions recommended by Progressive seem to us to be just a watering down of the centres approach, to enable supermarket developments almost anywhere. The assessment criteria are broad and potentially subjective, and we do not believe the Auckland situation has much relevance to Dunedin.
465. We do accept however that there may be situations where supermarket expansions or new developments could be appropriate outside the zones identified for them in the 2GP. These situations include where an existing centre has insufficient land or where major new residential development requires services. To that extent the submissions are accepted in part.
466. In our view, there is benefit in separating the policy direction for resource consent applications from that for plan changes to rezone an area commercial, and to include a hierarchy of the preferred locations for commercial activity.
467. We have made the following amendments to implement this decision: (see Appendix 1, attributed to CMU 877.2):
- amended Strategic Direction Policy 2.3.2.2 to focus on the situation where out-of-zone activity is applied for through resource consent, connect this to existing Policy 15.2.1.5, and make general improvements to its readability to address the concerns of Mr Wyber, as follows:

"Maintain or enhance the density and productivity of economic activity in the CBD and centres , in order to provide sufficient supply for the projected needs for retail and office development for a 15 year period, while avoiding over supply, and decentralisation of these activities and location outside of centres, unless they are unlikely to contribute to, or may detract from, the vibrancy of centres through a zoning and rules that restrict the distribution of retail and office activity outside of these areas unless:

 - a. they are unlikely to contribute to, or may detract from, the vibrancy of centres; or*
 - b. as provided for under Policy 18.2.1.3 or 15.2.1.5."*
 - added a new Strategic Direction Policy 2.6.3.5, to guide future plan changes for rezoning land to commercial and mixed use:

"Identify areas for new commercial and mixed-use zoning based on the following criteria:

- a. rezoning is necessary to meet a medium term (up to 10 year) shortage of capacity to meet demand in the intended customer catchment; and
- b. the new area will not detract from, and preferably support, Objective 2.4.3 (Vibrant CBD and centres)"

- added a new Strategic Direction Policy 2.6.3.6, to encourage use of the plan change process for new commercial centres:

"Encourage any proposal for the creation or expansion of a centre to be considered through a plan change process unless it represents a minor extension to a centre in accordance with Policy 15.2.1.5."

- add additional assessment guidance to assessment Rule 15.12.3.3 (assessment of non-complying commercial activities):

"General assessment guidance

In assessing the effects on the vibrancy and functioning of the centres hierarchy, Council will also consider effects on the economic feasibility of any redevelopment necessary to maintain the vibrancy and attractiveness of those centres."

4.3.4 Provision for supermarkets in the Industrial Zone

468. *Progressive* sought to provide for supermarkets as a restricted discretionary activity in Industrial zones in order to provide locational flexibility (OS877.11). Associated submissions include amendments to performance standards in the Industrial section relating to car parking (OS877.12), vehicle loading (OS877.13), boundary treatments (OS877.14) and signage (OS877.15).
469. This approach was closely tied to *Progressive's* submissions to amend Objective 2.3.2 to provide for out-of-centre development, which we have discussed in Section 4.3.3 above.
470. The submission was opposed by the *Oil Companies* (FS2487.79) as supermarkets attract a large number of people, thus creating the potential for reverse sensitivity issues and public health and safety concerns.

4.3.4.1 Decisions and reasons

471. We have addressed the issue of appropriate assessment criteria for out-of-centre development in Section 4.3.3. Issues relating to industrial land are discussed in our decision report on the Industrial topic. Two key conclusions in relation to this request to provide for supermarkets in Industrial zones were firstly that there is a limited supply of industrially zoned land to meet the range of activities permitted in those zones, and secondly that Industrial zones are not intended to necessarily provide amenity standards needed by activities drawing in members of the public. We are not persuaded that there is a real possibility that it would be appropriate to put those considerations aside in order to facilitate a new supermarket.
472. We therefore reject *Progressive's* submission to make supermarkets restricted discretionary in industrial zones and its associated submissions to amend performance standards. We consider that non-complying activity status sets an appropriately high threshold, given supermarkets in the Industrial Zone are not appropriate in terms of the objectives of that zone, and given the potential for significant effects on the zone and loss of industrial land. Industrial locations also present poor travel options for

people if they wish or need to travel by modes other than by car, and therefore is not appropriate in terms of Objective 2.2.2.g

4.3.5 Activity status of food and beverage retail in CMU zones

473. *The Construction Industry and Developers Association's (CIDA)* broad submission touched on the activity status for "food and beverage retail" in the HE (OS997.108), SSYP (OS997.57), CEC (OS997.65) and Trade Related zones (OS997.74), as part of a large range of activities they sought to change from non-complying to discretionary. The reason given for this broad request was that the 2GP does not provide enough flexibility for activities and development in a financially viable way. We note that *CIDA* did not appear at the CMU hearing.
474. The Reporting Officer noted that each commercial zone identified in the 2GP has a different mix of activities provided for, reflecting the different types of commercial (and other) uses that have developed in each area over time, site specific factors such as ease of vehicle access and pedestrian amenity, built form, site size and the preferred amenity outcomes for particular sites (s42A Report, section 5.5.16, pp. 110-111).
475. The SSYP zone has a high proportion of residential use, with supermarkets nearby in the CBD Zone. The Harbourside Edge Zone is intended to provide a mixed-use environment with high amenity values. Dairies (which are permitted) are expected to provide the day-to-day needs for the local residents in both zones. Large supermarkets would be unlikely to meet the character and amenity expectations of these zones.
476. The CEC and Trade Related zones provide for specific categories of high traffic generating activities. Allowing small scale food and beverage activity may result in an increase in smaller speciality food retailers, such as butchers and greengrocers, which could, and should, be located within the centres in order to support their viability and vibrancy (s42A Report, section 5.5.16, p. 111).

4.3.5.1 Decisions and reasons

477. We note we have made general comments about *CIDA's* submission that the plan should be more flexible and that non-complying activities generally should be amended to discretionary in Section 4.1.2 of this decision.
478. In respect of food and beverage retail specifically, we consider that retaining non-complying activity status is appropriate for the reasons outlined by the Reporting Officer.

4.3.6 Ancillary activities

479. *Foodstuffs South Island Properties Ltd* (OS713.1) submitted that it was not clear whether the gross floor area specified for food and beverage activity includes the storage and warehousing area required to support the retail activity, and sought to add: "This definition includes any ancillary warehousing and storage facilities" to the definition of food and beverage retail.
480. The submitter considered that it would be nonsensical if these components were not counted when calculating whether a proposal is permitted under this rule, as both are required for food and beverage retail activities.
481. The Reporting Officer agreed that there was a lack of clarity in terms of what activities comprise 'food and beverage retail', and recommended adding a note after the Activity definitions heading highlighting that warehousing and other functions that form a normal ancillary part of the operation of the activity are included within the activity definitions (Section 42A Report, section 5.1.4, p. 31).
482. In a separate submission, *Foodstuffs* also sought (OS713.3) to permit ancillary offices and staff facilities within the Trade Related Zone. They noted that the lack of provision for these may have been an oversight, as the definition of 'industry' specifically includes such facilities. Office activities are currently non-complying.

613. We have considered the concerns raised about the various elements of the standards. While they are, like many standards, somewhat arbitrary there is plenty of scope with standards like this for good design. For example, while we accept Mr Knott's point that a complying landscape design could block views into a carpark, we would not expect any responsible designer to do that. Alternatives to meeting any of the standards can be sought as a restricted discretionary activity, and given the clear guidance on what the landscaping is intended to achieve, we are satisfied that good design will not be unnecessarily constrained.
614. We accept that service stations have particular traffic layout requirements - in particular wide entrances and exits. The rule is not based on the total length of frontage however, so this simply means service stations have a lesser frontage where the rule applies. As in the case of supermarkets, in areas where landscaping is required, there is scope within the rule for design to meet the needs of service stations, and further variation can be approved as a restricted discretionary activity.
615. Mr Knott questioned the requirement for additional landscaping based on the number of carparks because he envisaged this leading to very wide perimeter landscaping. We gather the intention is that this planting would be primarily within big carparks rather than around the perimeter. Ideally the rule would require this, but there is no scope to make that change.
616. We also note a minor correction we have made to Rule 18.6.1.1, to refer to 'road boundary' rather than 'street frontage boundary' as this is the terminology generally used in the Plan. We make these changes under cl 16. They are shown in Appendix 1.

4.6.5 Rule 18.6.9 Location and screening of car parking

617. *Progressive Enterprises* (OS877.7) sought to exempt supermarkets from the location and screening of car parking performance standard (Rule 18.6.9), for operational and functional reasons, as it considered no existing Dunedin supermarket could comply with the rule.
618. The Reporting Officer noted that Rule 18.6.9 only applies within primary pedestrian frontage areas or heritage precincts. These apply to the CBD and Centres zones, and aim to retain a high standard of pedestrian amenity. The rule ties in with the setbacks performance standard (Rule 18.6.17.1) that requires that buildings must be built to within 400mm of the road boundary along primary pedestrian frontages, for the entire length of the frontage. It also links to the location performance standard (Rule 18.5.4.1) which requires activities with high public interaction on the ground floor. She saw no reason why supermarkets locating within these areas should not meet these requirements, as all other businesses must.
619. She also noted that during plan consultation, *Progressive* provided a copy of the North Shore Provisions of the Auckland District Plan (Section 15A Urban Design Code), as a recommended approach to car parking standards. These provisions are detailed in the s42A Report and the Reporting Officer was of the opinion that the proposed 2GP provisions aim to achieve similar outcomes, through rules 18.6.17.1 and 18.6.9 (s42A Report, section 5.7.14, p. 171).
620. Mr Knott expanded on *Progressive's* submission in his pre-circulated evidence, stating that requiring a car park to be located behind a supermarket building would result in crime and security concerns, would not meet operational requirements, which could lead to a store underperforming. The operational requirements referred to include the need to have a large car park, safe routes for delivery vehicles, and large service areas (usually at the rear). *Progressive* also seek parking in view of the store entrance (statement of Evidence for *Progressive*, pp. 5-7, & 15).
621. Mr Foster disagreed with the Reporting Officer's comments that the proposed 2GP provisions reflect the North Shore landscaping provisions, as the Council had made very arbitrary use of the proposed 'primary pedestrian street' and 'secondary street frontage' controls. Mr Foster considered that the rule should be re-drafted to more closely match the North Shore requirements for 'town centre edges' because, as a general rule,

supermarkets seek to locate at the edge of centres, not in the middle of a main street. He considered that the Mosgiel Countdown supermarket delivers an attractive and vibrant footpath interface, while at the same time recognising the functional and operational requirements for a successful supermarket.

622. *Progressive* also called evidence from a retail expert, Mr Tansley, on the interaction between customer parking and patronage activity for supermarkets, suggesting that supermarket parking other than in full view of the street was only a feasible option in larger retail or comprehensive development complexes (usually in CBD or inner-city locations). More generally, the regular 'chore' nature of supermarket shopping was minimised by simple, convenient parking around the supermarket lobby (Statement of Evidence, p. 13).

4.6.5.1 Decisions and reasons

623. We reject the submission to exempt supermarkets from Rule 18.6.9.1. We consider it important that a high standard of pedestrian amenity is maintained within primary pedestrian frontage areas and heritage precincts. It must be emphasised that these are the only places where Rule 18.6.9 applies. The evidence from the submitter appeared to be referring to supermarkets generally.
624. We note that very similar provisions are part of North Shore plan's Urban Design Code, and apply to large developments with the aim of ensuring the development is an integral part of the centre and relates in a positive manner to the streetscape.
625. The explanation to the Code states that for new supermarkets, a building set back from the road with parking in front is only appropriate in those locations where, having regard to the context of the site, the continuity of built edge, pedestrian shelter and streetscape character are of lesser concern (Appendix 1 to Mr Foster's evidence, p15A-24). Car parking should be located away from the street frontage wherever practicable (Appendix 1 to Mr Foster's evidence, p. 15A-26). Some exceptions existing for supermarkets at 'town centre edges' and on particular streets.
626. We note that (acknowledging that we did not receive a detailed explanation or interpretation of the rules) the North Shore provisions appear to be similar to the approach promulgated in the 2GP, whereby streets are treated according to their importance to pedestrian amenity (similar to the 2GP's primary and secondary pedestrian frontage approach). Developments are required to address the street (including building up to the street boundary (clause (n) of the provisions), except where located at the edge of a town centre, or in what we assume are less significant streets.

4.6.6 Rule 18.6.6.1: Height in relation to boundary

627. Rule 18.6.6.1 (Height in relation to boundary) reads:

- a. *"New buildings and additions and alterations to buildings must not protrude through a plane (see Figure 18.6D) raising at an angle of 45 degrees measured from a point:*
 - i. *3m above ground level at the side or rear boundary with an Inner City Residential or General Residential 2 Zone;*
 - ii. *2.5m above ground level at the side or rear boundary with all other residential zones or the Recreation Zone;*
 - iii. *except:*
 - 1. *where new buildings or additions and alterations are built to a common wall, any part of a building where the height and angle of the roofline are the same as the adjoining building, may protrude through the height in relation to boundary plane.*

the inward, or store side, of the footpath and not opposite it, to ensure unobstructed access for all pedestrians including those with disabilities and those pushing children's strollers.

- 734. The Reporting Officer drew attention to section 5.2 of the Council's *Commercial Use of Footpaths Policy 2012*, which states that "portable signs shall be outside the premises to which they relate, in close proximity to the kerb and, where appropriate, in line with other permanent obstructions on the footpath, e.g. lamp standards, rubbish receptacles" (s42A Report, section 5.7.17, p. 180).
- 735. The Reporting Officer also noted that NZTA's *Pedestrian Planning and Design Guide* states that where portable signs are used for displaying advertising signs and boards "there should be no interference, obstruction or hazard for pedestrians". The NZTA's *Road Traffic Standard RTS 14 - Guidelines for facilities for blind and vision impaired pedestrians 2015* states that while advertising signs on the footpath should be avoided if possible, where they are permitted they "shall be located away from the continuous accessible path of travel, i.e. on the kerb edge".
- 736. The Reporting Officer noted that signs adjacent to buildings, on the opposite side of the footpath to lamp posts, traffic signs etcetera, appeared to create an even narrower through-route. As this was contrary to both NZTA's standard and the DCC's footpath policy, she reserved her recommendation until having heard the submitter.
- 737. The *Disabled Persons Assembly Dunedin and Districts* were represented by Mr Chris Ford, who gave evidence that the fewer sandwich board signs on the footpath the better. In response to a question about the reasoning behind the submission, Mr Ford responded that he would need to seek further information from the person who had raised the issue.

4.6.9.4.1 Decisions and reasons

- 738. We reject the submission from the *Disabled Persons Assembly Dunedin and Districts*. While we are sympathetic to the need to avoid signage that can impede the passage of wheelchairs, we note that the proposed amendment conflicts with the DCC bylaw and with the NZTA standard, and that no strong evidence was presented at the hearing to justify amending the rule.

4.6.10 Rule 18.6.17 Setbacks

- 739. The setbacks performance standard (Rule 18.6.17) details the setback requirements from road boundaries, residential and recreation zoned sites, scheduled trees, coast and water bodies, and the national grid.

4.6.10.1 Supermarkets

- 740. *Progressive Enterprises Ltd* (OS877.10) sought to exempt supermarkets from the setbacks from road boundaries performance standard (Rule 18.6.17.1), which details the setback requirements for buildings along primary and secondary pedestrian frontage areas. The submitter noted that supermarkets have specific operational and functional requirements and would be unable to comply with such a rule.
- 741. Mr Christos advised that traditionally supermarkets are of a scale where they tend to be dominant, although there is a move away from this in higher density urban environments where they are often better integrated. Mr Christos noted that central to any building integrating with the existing urban form is reducing the negative effects of car parking and blank façades along street boundaries. He considered that the proposed performance standard is appropriate to encourage a better built form with regards to the traditional supermarket model (statement of Evidence for the DCC, p. 11).
- 742. The Reporting Officer noted that existing supermarkets in Dunedin that are within a primary or secondary pedestrian street frontage and are built to the road boundary include Pak'n'Save South Dunedin, New World North Dunedin, Four Square Caversham,

Four Square Port Chalmers, Countdown Mosgiel, and On The Spot Waikouaiti. On this basis, she observed that the operational requirements could therefore not be insurmountable (s42A Report, section 5.7.18, p. 182).

743. The Reporting Officer recommended no change to the rule.
744. *Progressive's* legal counsel Ms Dewar and Mr Leckie submitted that the rule was one of several urban design-related rules which unnecessarily constrained *Progressive's* ability to redevelop its existing sites, or develop new sites, without creating operational and functional issues.
745. Mr Foster, called by *Progressive* to give planning evidence, refuted comments in the s42A Report, suggesting that some of the examples of supermarkets built to the road boundary were "small, relatively old stores of a very traditional style" (Statement of Evidence for *Progressive*, p. 10).
746. Mr Knott, *Progressive's* urban design expert, suggested that the setback rule would make it almost impossible for *Progressive* to redevelop some of their existing sites, and did not agree with Mr Christos' view that it is not possible to create an attractive and vibrant interface with footpaths if parking is given priority. He suggested that it was more likely that an appropriate design response which also provides for *Progressive's* operational requirements was more likely if a site is planned holistically and not artificially constrained by such rules (Statement of Evidence for *Progressive*, p.12).
747. Mr Munro tabled an additional statement of evidence for the *DCC* on supermarket design at the hearing, and referred to two examples of supermarket development with street frontage provisions, which in his opinion were superior to Mr Knott's "more basic 'box'". In Mr Munro's opinion the success of these two developments was due to their developers' willingness to engage with the specific urban design requirements. Finally, Mr Munro made the point that given the size of supermarket development a consenting process is likely to be engaged regardless of urban design rules, and therefore their imposition cannot be seen as creating a need for a consent process. Rather, they prioritise policies and assessment matters (Statement of Evidence tabled at hearing for *DCC*, paras. 1.9 to 1.14).

4.6.10.1.1 Decisions and reasons

748. We reject the submission from *Progressive Enterprises Ltd* (OS877.10) to exempt supermarkets from the setback from road boundaries performance standard (Rule 18.6.17.1).
749. The evidence did not persuade us that the rule would seriously impede development and redevelopment of supermarkets. We consider the standard is an appropriate mechanism to encourage better built form, including for supermarkets.

4.6.10.2 Setback from boundary of residential or recreation zone

750. *Michael Ovens* (OS740.7) sought to remove the setbacks Rule 18.6.17.2, which requires new buildings and additions and alterations to buildings to be set back 3m from the boundaries of residential or recreation zones, due to the unnecessary and onerous nature of the standard.
751. Mr Christos' evidence was that the proposed standard offers a minimum separation to deal with negative effects of shading and bulk, and that Rule 18.6.17.2 should be retained as a basic requirement (Statement of Evidence for the *DCC*, p. 11).
752. The Reporting Officer advised that the intent of the setback standard is to manage reverse sensitivity effects and effects on the residential or recreational amenity. She noted that the standard only applies when a site adjoins a residential or recreation zone, and that the majority of sites in the commercial areas will not be affected. She added that the setback is greater than that which applies within the residential zones, due to the different nature, and bulk and location, of activity likely to be occurring within the commercial areas (s42A Report, section 5.7.18, p. 183).

753. The Reporting Officer considered that it was appropriate that resource consent be required where a smaller setback is sought, in order to ensure that in order to ensure that these effects are acceptable.
754. *Mr Michael Owens* appeared at the hearing and suggested that no consideration had been given to matters such as the topography and sun-orientation of properties, together with acoustic requirements imposed on commercial sites, and that in a number of locations the issues the rule sought to address did not exist. Examples were provided.
755. *Mr Owens* suggested that the situation was exacerbated by the requirement for "...each zone to take-on each other's 'height in relation to boundary' rule", and also noted that the setback requirement clashed with the requirement to build across the entire length of the road frontage in the CBD (Rule 18.6.17.1.a). He considered the effect of the rule was a significant reduction in the development potential of some sites, and would not resolve any potential shading effects on the residential areas but would increase residential shading effects on commercial sites. He suggested this was not acceptable and the rule should be deleted.
756. We note that *Mr Owens* raised the same concern about duplication in the Residential Hearing, and in response we have amended the residential height in relation to boundary rule (Rule 15.6.7.1.a) so that residential development on the CMU boundary is not required to comply with the CMU height in relation to boundary rule (see Residential Decision Report). In addition, we have removed the rule wording which repeats the residential and recreation zone wording and replaced it with a statement that the rules in those zones apply. This simplifies the rule and avoids unnecessary repetition (see section 4.6.6).
757. The Reporting Officer responded that the Commercial Zone was to the south or east of the Residential Zone in *Mr Owens'* examples. She noted that the rule applies to all Commercial and Mixed-Use zones and centres, and that there will be situations where the Commercial Zone is to the north or west of the Residential Zone. She advised that the rule also manages privacy, and observed that if there were no effects, resource consent would be obtained easily.
758. With regard to *Mr Owens'* observation that the setback rule clashed with the full width frontage requirement, the Reporting Officer noted in her Revised Recommendations that an amendment to Rule 18.6.17.1.a was required to add an exception to ensure that Rule 18.6.17.2 took precedence. Suggested wording was provided.

4.6.10.2.1 *Decisions and reasons*

759. We reject the submission from *Michael Owens* (OS740.7) and retain this setbacks performance standard (Rule 18.6.17.2) without amendment. We consider that the rule is necessary to manage reverse sensitivity effects and effects on the amenity of residential properties and recreation areas, and consider it appropriate that resource consent be required where a smaller setback is sought in order to ensure that these effects are assessed. We note also that the rule will apply to a relatively small number of properties.
760. We agree with *Mr Owens* that there is a clash between the setback rule and the requirement to build across the entire length of the road frontage, and have amended Rule 18.6.17.1.a to add an exception clause to note that Rule 18.6.17.2 applies to boundaries adjoining a residential or recreation zoned site (refer Appendix 1, submission point CMU OS740.7).

4.6.11 Rule 18.6.12 Minimum Glazing and Building Modulation

761. The minimum glazing and building modulation performance standard (Rule 18.6.12) specifies the minimum glazing and building modulation requirements for the parts of a new building, or additions and alterations to a building, that face, and are visible from street frontages. The rule does not apply to scheduled heritage buildings or within the Trade Related Zone.

762. *Progressive Enterprises* (OS877.8) sought an exemption from the rule for supermarkets, stating that, for operational and functional reasons, and in particular the protection of goods from sunlight, supermarkets are unable to comply with such a rule.
763. *Stride Property Limited* (OS205.2) and *Harvey Norman Properties Limited* (OS211.4), supported by *Progressive Enterprises* (FS2051.1 and FS2051.2) requested the removal of the 20% minimum glazing requirement for 'other street frontages' as they did not consider it necessary or appropriate for new development to be subject to glazing controls.
764. Mr Christos believed the primary pedestrian street frontage glazing requirement is reasonable considering most existing frontages within the central city and primary pedestrian frontage areas currently have at least 60% glazing at the street (Statement of Evidence for the DCC, p. 9).
765. Mr Ian Munro gave evidence for the DCC on the importance of the interface between quality public spaces and private development. He noted that the way in which development integrates with streets and open spaces can significantly affect the extent to which pedestrians wish to use them.
766. Mr Munro considered that the incorporation of urban design and amenity controls into commercial centres was essential to the centres-based approach in Dunedin. With regard to supermarkets and department stores, he observed that in the 2GP, the use of street frontage typologies helps focus the distribution of these activities and their layout to ensure that, in particular along main streets, large scale uses can integrate in a way that can still achieve relevant pedestrian amenity considerations (Statement of Evidence for the DCC, p. 8).
767. The Reporting Officer noted that there are no minimum glazing requirements for 'other' street frontages. In these areas, there is a choice between 20% glazing or building modulation elements at a maximum of 20m intervals. The outcome sought by *Harvey Norman* and *Stride* is therefore already in place (s42A Report, section 5.7.20, p. 188).
768. The Reporting Officer noted that glazing had been raised in consultation with *Progressive Enterprises* prior to notification of the 2GP. Supermarkets need a light source to best display produce that is the correct colour, intensity, brightness and constancy, and natural light does not meet these criteria. *Progressive Enterprises* had indicated that methods to increase natural light access into supermarkets were regularly re-assessed, and the internal floor layout of the supermarkets had changed significantly. In particular, locating the check-out area close to the front of the store had enabled the inclusion of extensive front glazing associated with customer entry / exit to the supermarket.
769. The Reporting Officer considered that the earlier feedback from *Progressive Enterprises* suggested it was possible to have glazing along the street frontage, and she believed that the performance standard provides a good starting point to encourage appropriate design to meet both the supermarket's needs and the amenity expectations of the centres. She observed that traditional food retailers, such as butchers and fishmongers, typically use the front window to display produce and attract customers. She recommended that Rule 18.6.12 be retained as notified.
770. Mr Richard Knott, called by *Progressive*, spoke in some detail about good practice urban design in relation to the functional and operational requirements of supermarkets. These often limit the ability for the frontage to compliment street space. He suggested the rules relating to minimum glazing and building modulation were not appropriate to a supermarket, and that it was more likely that an appropriate design response would result if a site was planned holistically, and not artificially constrained by those requirements (Statement of Evidence for *Progressive*, p. 5).
771. Mr Munro provided examples at the hearing of two recent supermarket developments in Auckland, one of which (a New World in North Shore) had glazing and a high level of design quality on three sides. The second, a Countdown in Waitakere, had a row of 'sleeving' shops in front of the supermarket facing the parking area. This demonstrated

that quality design solutions were possible (Statement of Summary given at Hearing, p. 3).

4.6.11.1 Decisions and reasons

772. We reject the submission from *Progressive Enterprises* (OS877.8) to exempt supermarkets from the minimum glazing and building modulation performance standard (Rule 18.6.12).
773. In coming to this decision, we accepted the evidence presented by Mr Ian Munro, and agreed with the Reporting Officer that the performance standard will encourage appropriate design, that meets both the supermarket's needs and the amenity expectations of the centres.
774. We note that the outcome sought by *Stride Property Limited* (OS205.2) and *Harvey Norman Properties Limited* (OS211.4) in respect of amending Rule 18.6.12 to remove the 20% minimum glazing requirement for 'other street frontages', is already in place.

4.6.12 St Clair Neighbourhood Destination Centre

775. St Clair Neighbourhood Destination Centre is the block encompassed by Esplanade, Beach Street, Bedford Street and Forbury Road. It has a primary pedestrian frontage on each street frontage.
776. *Moi Bien Investments Ltd* (OS826) made several submissions in relation to the St Clair Neighbourhood Destination Zone seeking to remove or amend various performance standards. The reasons given were that the development framework is too restrictive, does not recognise the area's mixed commercial, dwelling and visitor accommodation characteristics, and does not promote sustainable management.
777. The submissions were to delete the following rules and amend the height performance standard – Height in Centres zones (Rule 18.6.6.2.g) to provide for 4 storeys or 16m (OS826.15):
- Rule 18.5.4.1 – Location of activities within pedestrian street frontages (OS826.13)
 - Rule 18.6.1 – Boundary treatments (OS826.4)
 - Rule 18.6.4 – Fence height and design (OS826.6)
 - Rule 18.6.12 – Minimum glazing and building modulation (OS826.8)
 - Rule 18.6.17 – Setbacks (OS826.7)
 - Rule 18.6.19 – Verandahs (OS826.16)
778. Mr Allan Cubitt appeared at the hearing, noting that *Moi Bien* owned 11 Bedford Street and other businesses within the block. His main concern was in relation to the setback rule. His preference was to maintain a setback along (the north facing) Bedford Street of 7 to 8m, to allow sunshine for outdoor dining.

4.6.12.1 Rule 18.5.4.1– Location of activities within pedestrian street frontages

779. This rule limits permitted activities on the ground floor of buildings facing the street within a primary pedestrian street frontage.
780. Mr Christos considered it important to retain commercial/retail activity on the ground level within centres to encourage street vibrancy and activity. Residential activity at street level, where privacy and controlled entrances shape the interface, make this difficult to achieve (Statement of Evidence for DCC, p. 4).
781. The Reporting Officer considered there may be circumstances when ground floor residential uses were appropriate; however, this was best considered through the resource consent process (s42A Report, section 5.7.3, p. 145). She recommended that the rule was retained.

4.7.4.1 47-49 Gordon Road, Mosgiel (Countdown Supermarket)

940. *Progressive Enterprises Ltd* (OS877.20) sought to rezone 47-49 Gordon Road, which has recently been developed for a new Countdown Supermarket, from General Residential 2 to Suburban Centre.
941. The Reporting Officer noted that this option was considered prior to the notification of the 2GP; however, there was insufficient time to undertake appropriate consultation to progress it. She considered that the idea has merit but requires further consideration about the zoning of sites between the Countdown supermarket and the Principal Centre further north. Given that the supermarket has a resource consent, there is no urgency to resolve the zoning. It would be more appropriate to consider the zoning of Gordon Road holistically following full consultation. She recommended that the submission be declined, but that the DCC undertakes to look at the zoning of this area in the near future (s42A Report, section 5.9.6, p. 240).
942. *Progressive Enterprises* called Michael Foster, an expert planner, to give evidence. He stated that the rezoning of the Countdown site to suburban centre zone is entirely appropriate. He noted that Gordon Road does not service a quiet and purely residential environment, and that the relief sought was site specific and would not annul the conditions of the submitter's resource consent (Statement of Evidence for *Progressive*, paras 24, 37).
943. *Progressive Enterprises*' tabled legal submissions which submitted that the 2GP process is an appropriate time for the rezoning to be undertaken, and that the site could be rezoned without compromising the potential for rezoning other neighbouring properties in the long term (Legal Submissions for *Progressive*, p. 13).

4.7.4.1.1 Decisions and reasons

944. We reject *Progressive's* submission to rezone 47-49 Gordon Road Principal Centre, for the reasons outlined by the Reporting Officer. While we are not disputing that the requested zoning for the site may be appropriate, we do not, in general, support the use of 'spot zoning' to recognise site specific consented activities, and do not believe this is an effective or efficient way to apply zoning. We agree with the Reporting Officer that a preferable method for zoning, and determining effective rules to apply in different zones, is to undertake a thorough analysis of the area, including consultation with the community, to determine a logical extension to the Mosgiel principal centre if required. We note that the consented supermarket is able to operate under existing use rights.

4.7.4.2 314 Highgate

945. *Almatoka Ltd* (OS980.1) sought to rezone 314 Highgate from General Residential 1 to the adjacent Suburban Centre Zone, submitting that the property would be better aligned with activities within the Suburban Centre Zone, that the proposed Suburban Centre boundaries have been established on an *ad hoc* basis, and have been set based on the relevant titles with no particular account taken of size and depth. The subject property, when combined with the property immediately adjoining, is no greater than other properties located within the block.
946. *Almatoka* counsel, Mr Sam Guest, tabled concept drawings for residential development of the site. Mr Guest highlighted the vacant site's uniqueness and that it could accommodate commercial or multi-unit residential development. He also noted that the submitter now sought General Residential 2 zoning rather than Suburban Centre.
947. The Reporting Officer had recommended rejecting the submission to rezone to Suburban Centre, on the basis of lack of frontage to Highgate (Section 42A Report, section 5.9.6, p. 240). In light of the amended request, she recommended rezoning to GR2 Zone. She considered this was within scope, as there would be no one prejudiced by this alternative, as all activities permitted within the GR2 Zone are also permitted in the Suburban Centre Zone and the applicable performance standards are more restrictive in the GR2 Zone (Revised Recommendations, p. 1).

Street), to ensure minimal reduction of existing amenity in the future (Statement of Evidence, pedestrian street frontages, for DCC, p. 7).

1092. The Reporting Officer accepted that a secondary pedestrian street frontage was appropriate at (s42A Report, section 5.8.3, p. 200).

4.8.2.2.1 Decision and reasons

1093. We note our decision to rezone these sites CBD (see Section 4.1.9.1). As a consequence of that we must consider whether it is appropriate to apply a pedestrian frontage to the site, as most of the CBD Zone has either a primary or secondary pedestrian frontage. Based on Mr Christos' evidence, we consider that a secondary pedestrian frontage on 180 Rattray Street, part of 20 Maclaggan Street and part of 35 Maclaggan Street is appropriate. We therefore reject the submissions of *Stride* and *Harvey Norman* to not have pedestrian frontages on 35 Maclaggan Street and the corner of Rattray and Maclaggan streets.

4.8.2.3 Green Island

1094. *Z Energy Ltd* (OS313.2) opposed the secondary pedestrian frontage over their property at 185 Main South Road, Green Island, and the sites to the east occupied by the Green Island Bowling Club and Tennis Club (183 and 183a Main South Road). The submitter also sought that a Primary Pedestrian Street Frontage mapped area was not applied to the area (OS313.10).
1095. Mr Christos gave evidence that the sites are unlikely to be incorporated into the centre due to the lack of intensity of activity and built form, and the curvature of the road. He therefore considered that a secondary pedestrian frontage was not warranted on either side of the road, and in addition, the primary pedestrian frontage should be removed up to Jenkins Street on the south side of the road, and up to and including 187A Main South Road on the north side of the road (Statement of Evidence, pedestrian street frontages, for DCC, p. 5).
1096. The Reporting Officer recommended accepting the submission, but questioned whether there is scope to remove the primary pedestrian frontage from adjoining properties (Section 42A Report, section 5.8.2, p. 196).

4.8.2.3.1 Decision and reasons

1097. We accept the submission by *Z Energy* to remove the frontage from the Green Island service station (185 Main South Road).
1098. We further remove the primary and secondary pedestrian frontages from Main South Road, Green Island, east of Jenkins Street on the south side of the road, and east of and including 187A Main South Road on the north side of the road, as there is no prejudice against those property owners as a result of the removal (CMU 313.2).

4.8.2.4 Mornington

1099. *Progressive Enterprises* (OS877.17) opposed the primary pedestrian street frontage mapped area around 43 Mailer Street (the site of the Mornington Countdown), on the grounds that the existing Suburban Centre is overdue for development and it is premature to decide where or if a pedestrian frontage is appropriate.
1100. Mr Christos noted the proposed General Residential 2 zoning for the surrounding area, and the anticipated increase in residential density, which will support the vibrancy of the centre. He considered that a secondary pedestrian frontage is warranted, to ensure a suitable pedestrian environment and built form (Statement of Evidence, pedestrian street frontages, p. 4-5).
1101. The Reporting Officer recommended accepting the submission in part and replacing the area's primary pedestrian frontage with a secondary frontage (s42A Report, section 5.8.2, p. 197).

4.8.2.4.1 Decision and reasons

1102. We accept in part the submission by *Progressive* to remove the pedestrian frontage from 43 Mailer Street, by replacing the primary frontage with a secondary frontage, as recommended by the Council's urban designer.

4.8.2.5 Roslyn

1103. *Progressive Enterprises Ltd* (OS877.16) requested the removal of the Secondary Pedestrian Street Frontage from 279 Highgate, Roslyn (site of the Roslyn Fresh Choice supermarket), as the Suburban Centre is well established and there is no apparent planning logic for having a secondary frontage requirement.
1104. Mr Christos considered the area had a unique character and recommended rejecting the submission as it is possible that development will occur at the site. The frontage ensures future changes are carried out in a way that enhances amenity (Statement of Evidence, pedestrian street frontages, p. 6).
1105. The Reporting Officer recommended retaining the pedestrian frontage (s42A Report, section 5.8.3, p. 201).

4.8.2.5.1 Decision and reasons

1106. We reject *Progressive's* submission in relation to removing the pedestrian frontage from 279 Highgate in Roslyn, for the reasons given by Mr Christos.

4.8.2.6 Cumberland Street

1107. *Progressive Enterprises Ltd* (OS877.18) requested the removal of the secondary pedestrian street frontage from 309 Cumberland Street (site of the Countdown Central supermarket). The submitter considered there is no apparent planning logic for having a secondary frontage requirement on an established supermarket site.
1108. *Progressive Enterprises* clarified in evidence that their concern was only with the Cumberland Street part of the frontage. The Reporting Officer noted in her Revised Recommendations that the Cumberland St mapping only covers the access to an alleyway at the rear of the supermarket, and that this appeared to be in error and could be removed (s42A Report, section 5.8.3, p. 202).

4.8.2.6.1 Decision and reasons

1109. We accept in part the submission by *Progressive's* submission to remove the pedestrian frontage from 309 Cumberland Street, for the reasons outlined above.

4.9 Definitions

4.9.1 Retail activity

1110. The *New Zealand Racing Board* (OS66.5), sought to amend reference to TAB venues in the definition of 'retail services' and 'retail', to 'Totalisator Agency Board (TAB)' venues or alternatively, 'authorised sports betting agencies', to ensure clarity in how this activity may be managed.
1111. The Reporting Officer considered that betting outlets were known as TABs and therefore it was appropriate to retain the term (s42A Report, section 5.1.1, p. 25).
1112. The New Zealand Racing Board did not appear.

4.9.1.1 Decisions and reasons

ANNEXURE F – Parties to be Served with Appeal

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