

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti Taiao o Aotearoa
Ōtautahi Rohe

Under	the Resource Management Act 1991 (RMA)
In the matter of	appeals under clause 14(1) of the First Schedule of the RMA in relation to the proposed Second Generation Dunedin City District Plan (2GP)
Between	Kaan's Properties 2017 Limited ENV-2018-CHC-286
	Port Otago Limited ENV-2018-CHC-246
	University of Otago ENV-2018-CHC-270
	Appellants
And	Dunedin City Council
	Respondent

Affidavit of Emma Christmas

Affirmed 26 March 2021

Concerning:

Group: 2b, Topic: HE rules – Kaan's, Appeal points DCC Reference 242 and 340

Group: 3a Topic: HE Zone – Port Otago, Appeal point DCC Reference 371

Group: 2c Topic: Campus, Appeal point DCC Reference 203

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**anderson
lloyd.**

I, **Emma Christmas** of Dunedin, Policy Planner, hereby solemnly and sincerely affirm:

- 1 I am a senior policy planner at Dunedin City Council.
- 2 I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014. This evidence has been prepared in accordance with it and I agree to comply with it. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.
- 3 I have been employed by Dunedin City Council as a policy planner / senior planner for eight years. During this time I have primarily worked on drafting the 2GP, assessing submissions, preparing and presenting s42A reports and working on the appeals. Prior to this, I was self-employed as a planner for 10 years, working mainly on consent applications. Prior to that I was Team Leader Consents at Environment Canterbury for five years. I am a certified independent hearings commissioner and a full member of the New Zealand Planning Institute.

Introduction

- 4 This affidavit provides the rationale, and an assessment in terms of section 32, of the changes agreed in following consent memoranda:
 - (a) Harbourside Edge Zone (Kaan's Properties Limited, signed 2 September 2020). DCC Reference numbers 242 and 340); and
 - (b) Commercial – Site Specific and Harbourside Edge Zone (Port Otago Limited and University of Otago, signed 13 August 2020). DCC Reference numbers 371 and 203.
- 5 This affidavit and the attached consent memoranda relate to the provisions and zoning of the Harbourside Edge (HE) Zone. The details of the appeals are included within the consent memoranda. In summary, the appeal by Kaan's Properties Limited (Kaan's) sought to:
 - (a) Amend rules relating to the height limit, notification of applications and activity status of new buildings in the Harbourside Edge Zone;
 - (b) Clarify the requirements around provision of a public walkway within the Harbourside Edge Zone;
 - (c) Enable additional commercial activities within the Harbourside Edge and Industrial zones; and

- (d) Delete the requirement for an esplanade strip to be provided on subdivision of properties along the harbour.
- 6 The following are s274 parties to the Kaan's appeal:
- (a) DCC Reference 242 - Otago Regional Council (oppose in part), and the University of Otago (support); and
 - (b) DCC Reference 340 – Liquigas Limited (oppose), Otago Regional Council (oppose in part).
- 7 The appeal by Port Otago Limited (Port Otago) sought to:
- (a) Rezone the land (formerly) occupied by warehouses on Fryatt Street on the northern side of Steamer Basin to Harbourside Zone.
- 8 Kāti Huirapa Rūnaka Ki Puketeraki and Te Rūnanga o Ōtākou (oppose), Otago Regional Council (oppose in part) and University of Otago (support) are s274 parties to this appeal.
- 9 The appeal by the University of Otago sought to:
- (a) Permit Campus activity in the Harbourside Edge Zone in Rule 18.3.4.
- 10 Port Otago Limited (support) is a sa274 party to this appeal.
- 11 From mediation, the key issues raised by the parties were:
- (a) Provision for additional commercial development in the HE Zone;
 - (b) Removal of the requirement to provide an esplanade strip upon subdivision of sites adjoining the Otago Harbour;
 - (c) Provision for campus activity in the HE Zone; and
 - (d) Inclusion of part of the southern side of Fryatt Street within the HE Zone.

Agreement reached

- 12 As outlined in the attached consent memoranda, agreement has been reached between the parties to make amendments that address the issues identified in paragraph 9. These include:
- (a) Providing for limited food and beverage retail activity within the HE Zone;

- (b) Extending the HE Zone to include part of the southern side of Fryatt Street, (currently zoned Industrial Port) and applying a Campus mapped area over this area. Within this Campus mapped area:
 - (i) Campus activity is a restricted discretionary activity (this is otherwise non-complying in the HE Zone);
 - (ii) Activities which may generate reverse sensitivity issues with the adjoining industrial area, or may result in large volumes of traffic, are restricted discretionary activities; and
 - (iii) The activity status of other activities is the same as in the remainder of the HE Zone.
- (c) Reducing the esplanade reserve width, which applies when sites adjoining the coast are subdivided, from 20m to 6m.

Assessment of other appeals

- 13 As part of my assessment of the appropriateness of this change, I have considered the mediated agreements reached on appeals, and the relief sought through appeals that have not yet been mediated, to understand whether there is overlap between different appeals on the same provisions in the plan.
- 14 There are no other appeals affecting the provisions being amended.

Scope

- 15 Chalmers Properties Limited (Chalmers) made submissions and further submissions to the 2GP. In February 2018 Kaan's Properties Limited purchased 6 and 11 Kitchener Street from Chalmers Properties and so became a successor in title to the Chalmers Properties' submissions related to these properties.
- 16 The appeal by Kaan's sought to add new provisions to encourage and enable the development of the properties at 6 Kitchener Street, including by amending activity status table 18.3 (activities in the CMU zones) so that various activities, including food and beverage retail, can be undertaken as a restricted discretionary activity.
- 17 The Kaan's appeal provided more detailed relief than the original submission but it appears to be within the umbrella of the broad relief sought by Chalmers, which sought to "amend Objective 2.3.1 to enable the use of land for economic and social prosperity, including mixed use commercial and industrial land".

- 18 The appeal also sought to delete the requirement for an esplanade strip to be provided on subdivision of the narrow properties along the harbour's edge.
- 19 The Port Otago appeal sought to rezone the Fryatt Street area as Harbourside Edge.
- 20 The University appeal sought to provide for Campus activity in the Harbourside Edge Zone.
- 21 The agreements reached are therefore anticipated by the various appeals.

Planning background

- 22 The Harbourside Edge (HE) Zone is a commercial and mixed use zone located close to Steamer Basin in the Otago Harbour (see map in **Annexure 1**). The plan provides for a transition from the existing industrial land use to a mixed use environment, enabling residential, restaurant and visitor accommodation and a limited amount of office activity. It is envisioned that the area will ultimately become a tourist destination. Investigations are currently underway into the feasibility of a hotel, conference centre and marine studies centre in Steamer Basin, both within the Harbourside Edge Zone and the adjoining Industrial Port Zone. The marine studies centre would be located on the north side of Steamer Basin, in the area sought to be rezoned to Harbourside Edge by Port Otago.
- 23 The zone is considered to be a high amenity zone, with controls on building design and on the types of land use activity that may establish.
- 24 The purpose of the zone is outlined in Policy 2.3.2.3 and reflected in Objective 18.2.1.h:

Policy 2.3.2.3 is:

Manage the mixed use areas around the edge of the CBD through zones and rules that provide for a compatible mix of activities that support rather than detract from the vibrancy and vitality of the CBD and centres (Warehouse Precinct Zone, Princes, Parry and Harrow Street Zone, Smith Street and York Place Zone and Harbourside Edge Zone), and that:

- a. ...
- b. for the Harbourside Edge Zone, allow for a transition toward a mixed use environment, with enhanced public connection to and along the coast, focused on residential, visitor accommodation, restaurant, and

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entertainment and exhibition and limited office activities alongside any existing port-related and industrial activities.

25 Objective 18.2.1 is:

Dunedin has a well-structured and economically and socially successful range of commercial and mixed use environments based on:

...

- h. an area around Birch and Kitchener Streets and the coast (HE Zone) which provides for the continuation of the existing environment characterised by industrial activity, while allowing for a transition toward a vibrant and attractive place to live, work and visit by also providing for conference, meeting and function, entertainment and exhibition, restaurant, visitor accommodation, training and education and residential activities.

Food and beverage retail

- 26 The 2GP provisions aim to focus retail activity in the CBD and centres, to maintain the vibrancy of those areas, recognising their importance as a focus for economic activity and social interaction. An exception is made for large scale food and beverage activity, which is enabled in the low amenity commercial zones outside the CBD (this does not include the HE Zone), and for dairies (defined as “a shop serving a local neighbourhood, which primarily sells milk, bread, beverages and other day-to-day convenience food; but which may also include the sales of lottery tickets and household consumables”), which are enabled in all commercial zones. The approach to managing retail activity is outlined in Objective 2.3.2 and Policy 2.3.2.2.

27 Objective 2.3.2:

Dunedin has a hierarchy of vibrant centres anchored around one Central Business District Zone (CBD), which provides a focus for economic and employment growth, driven by:

- a. attraction of businesses to these areas based on the high level of amenity and density of activity in the area;
- b. opportunities for social interaction, exchange of ideas and business cooperation;
- c. public investment in public amenities and other infrastructure in the CBD; and

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

28 Policy 2.3.2.2:

Maintain or enhance the density and productivity of economic activity in the CBD and centres through rules that restrict retail and office activities outside 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.

29 Policies 18.2.1.2, 18.2.1.3 and 18.2.1.4 in the Commercial and Mixed Use Zones section further reinforce this approach.

30 Policy 18.2.1.2:

Enable general retail and office activities in the CBD and centres zones and restrict their establishment in other commercial and mixed use zones in order to maintain the vibrancy of existing centres.

31 Policy 18.2.1.3:

Avoid retail and office activities in areas where they are not provided for unless:

- a.
- b. in the HE Zone, it is associated with port, industrial or marine related activities operating in the area; or...

32 Policy 18.2.1.4:

Provide for food and beverage retail:

- a. in the CBD and centres; and
- b. where 1500m² or more in gross floor area, in the CEC and TR zones.

33 These policies are implemented through activity status rules which generally make retail activities, including food and beverage activity, non-complying within the HE Zone. Dairies are permitted up to 200m² in gross floor area within the zone.

Campus activity

- 34 The 2GP categorises tertiary education activity into two activity types: training and education, and campus.
- 35 Campus activity includes training and education, research and various ancillary activities such as student support services, undertaken by the University of Otago or Otago Polytechnic within the Campus Zone.
- 36 Education activity outside the Campus Zone, including when provided by the University of Otago and Otago Polytechnic, is captured by training and education activity. However, this definition of this activity does not include all of the activities encompassed in the campus activity definition; for example, it does not include research or student support services.
- 37 Training and education activity undertaken by the University of Otago and Otago Polytechnic is provided for in the HE Zone. Policy 18.2.1.15 is:

Enable training and education in the CBD, all centres, CEC North Zone, and WP, PPH, SSYP and HE zones to enable tertiary (including the University of Otago and Otago Polytechnic) and specialist education providers.

- 38 Campus activity is non-complying in the HE Zone. This reflects the fact that the definition refers only to activity occurring in the Campus Zone, rather than an intent to prevent the University teaching in this area:

Campus definition:

The use of land and buildings by the University of Otago or the Otago Polytechnic, **in the Campus Zone**, for the provision of teaching, training, learning, and research. For the sake of clarity, this includes: ...

- 39 The fact that training and education activity does not provide for all of the activities encompassed by the campus activity definition (for example research or student support services) was of concern to the University in its appeal. Consequently, a new method has been agreed to provide for 'extensions' of the campus environment (and the full range of activities provided for under the campus activity definition) into areas outside the Campus Zone. This is achieved through use of a "Campus mapped area" overlay and amending the definition of campus activity to refer to the "*use of land and buildings by the University of Otago or the Otago Polytechnic, in the Campus Zone and campus mapped area ...*". These changes are included in a signed consent memorandum on a separate part of the

University's appeal (ENV-2018-CHC-270, DCC Reference numbers 185, 187 and 189), which is filed jointly.

- 40 This new 'Campus mapped area' is proposed to apply in the area to be rezoned to Harbourside Edge.

Rezoning Fryatt Street to Harbourside Edge Zone

- 41 The area proposed to be rezoned is shown in **Annexure 1**. It adjoins the existing Harbourside Edge Zone, continuing around Steamer Basin.
- 42 Strategic direction Policy 2.6.2.4 outlines the criteria for rezoning a site to commercial and mixed zone. As a result of an appeal by Woolworths New Zealand Limited (ENV-2018-CHC-255, DCC reference numbers 78, 127, 130, 366), amendments to this policy, and the addition of new policies 2.3.2.X, 2.4.3.X and 2.6.2.X are proposed to provide a better framework for considering commercial and mixed use rezoning decisions. This appeal has been mediated and a consent memorandum signed by all parties on 17 March 2021. This memorandum is jointly filed to resolve the appeal.

Access to the coast in the HE Zone

- 43 The objectives and policies relevant to providing and maintaining public access to the coast are Objective 10.2.4 and Policies 10.2.4.2 and 10.2.4.3.

- 44 Objective 10.2.4 is:

Subdivision and development activities maintain and enhance access to coastlines, water bodies and other parts of the natural environment, including for the purposes of gathering of food and mahika kai.

- 45 Policy 10.2.4.2:

Require, within the Harbourside Edge Zone, buildings to be set back an adequate distance from the coast or edge of the wharf to achieve uninterrupted pedestrian access.

- 46 Policy 10.2.4.3:

Require subdivision of land to enhance public access to the natural environment through:

- a. requiring an esplanade reserve or esplanade strip of an appropriate width and location adjacent to identified water bodies and the coast; and

- b. where practicable, providing opportunities for access in other areas where this will enhance recreational opportunities, particularly through connecting to and expanding the existing tracks network or utilising adjacent unformed legal roads.

47 This objective and policies are implemented in the HE Zone through:

- (a) the requirement that a public walkway must be provided on the full length of sites that adjoin the coast before any new building is occupied (Rule 18.6.17.3); and
- (b) the requirement that an esplanade reserve with a minimum width of 20m is applied along mean high water springs when sites are subdivided.

Decision background

Kaan's Properties Limited (DCC References 242 and 340)

- 48 Chalmers' submission on performance standards, policies and assessment rules relating to the Harbourside Edge Zone is discussed in section 4.2.2.1 of the Commercial and Mixed Use Decision Report¹. The Hearings Panel accepted the submission in part, making the performance standards more flexible, amending the activity status when some of the performance standards are contravened, and amending the associated notification provisions.
- 49 Chalmers' broad submission in respect of Objective 2.3.1 was only considered in relation to rezoning an area of industrial land to allow additional commercial activity (section 4.7.1.4 of the decision). The rezoning was rejected for site-specific reasons relating to the loss of industrial land, transport and reverse sensitivity issues. The decision appears to focus on what were the priority matters of concern to the submitter at the time of the hearing and does not specifically engage with the broader request with respect to amending Objective 2.3.1 (and its implementation through lower order plan provisions).
- 50 The Hearings Panel also decided to enable a limited amount of office activity within the Harbourside Edge Zone (section 4.2.1.2), to better reflect

¹ Commercial and Mixed Use Zones Decision of Hearings Panel. Proposed Second Generation Dunedin City District Plan (2GP) 7 November 2018. Section 4.2.2.1
https://www.dunedin.govt.nz/__data/assets/pdf_file/0005/716378/Commercial-and-Mixed-Use-Zones-Decision-Report.pdf

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the amount provided for under the operative plan provisions and having regard to evidence that there would be little risk of significant effects on the vibrancy of the CBD.

Port Otago Limited

- 51 Port Otago Limited's submission to rezone land on Fryatt Street, on the northern side of Steamer Basin, to Harbourside Zone was rejected by the Hearings Panel on the basis that additional Harbourside Edge land should become available only after the existing zoned area is developed (section 4.7.8.1 of the decision). In addition, they considered that there are significant issues around sensitive activities establishing adjacent to existing industrial activities and that any zoning change in this area should be implemented through a plan change, to allow full public participation.

University of Otago

- 52 The Hearings Panels rejected² the University of Otago's submission to permit Campus activity in the Harbourside Edge Zone, instead amending the definition of 'training and education activity' to include campus activities outside the Campus Zone. Training and education is a permitted activity in the Harbourside Edge Zone (section 4.7.5.2 of the decision).

Consistency with higher order document (s75)

National Policy Statement for Urban Development 2020

- 53 The National Policy Statement for Urban Development 2020 (**NPS-UD**) came into effect on 20 August 2020, replacing the National Policy Statement on Urban Development Capacity (**NPS-UDC**). It recognises the national significance of having well-functioning urban environments and providing sufficient urban development capacity to meet the needs of the community. It requires that the DCC provide at least sufficient development capacity to meet expected demand for business land over the short, medium and long term³.
- 54 The requirements of the NPS-UD relating to providing sufficient business land capacity over the medium term are reflected in Objective 2.3.1 and Policy 2.3.1.4, and Objective 2.6.2 and Policy 2.6.2.4 of the 2GP. These are discussed later in this affidavit.

³ Policy 2 and implementation section 3.3. Business land capacity for the long term does not need to be included in the district plan.

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- 55 As discussed below, the agreed changes will assist in achieving these 2GP objectives and policies. Consequently, I consider that the changes will assist in giving effect to the NPS-UD.

Otago Regional Policy Statement (partially operative)

- 56 The Otago Regional Policy Statement (**OPRS**) includes the following relevant objectives and policies in relation to commercial and industrial activities:

Objective 4.5

Urban growth and development is well designed, occurs in a strategic and coordinated way, and integrates effectively with adjoining urban and rural environments.

Policy 4.5.1 Providing for urban growth and development

Provide for urban growth and development in a strategic and co-ordinated way, including by:

- a) Ensuring future urban growth areas are in accordance with any future development strategy for that district.
- b) Monitoring supply and demand of residential, commercial and industrial zoned land;
- c) Ensuring that there is sufficient housing and business land development capacity available in Otago;
- d) ...
- g) Ensuring efficient use of land;
- h) Restricting urban growth and development to areas that avoid reverse sensitivity effects unless those effects can be adequately managed; ...

Objective 5.3

Sufficient land is managed and protected for economic production.

Policy 5.3.2

Manage the distribution of commercial activities by:

- a) Enabling a wide variety of commercial, social and cultural activities in central business districts, and town and commercial centres;
- b) Enabling smaller commercial centres to service local community needs;
- c) Restricting commercial activities outside of a) and b) when such activities are likely to undermine the vibrancy and viability of those centres;
- d) Encouraging the adaptive reuse of existing buildings.

Policy 5.3.3 Industrial land

Manage the finite nature of land suitable and available for industrial activities, by all of the following:

- a) Providing specific areas to accommodate the effects of industrial activities;
- b) Providing a range of land suitable for different industrial activities, including land-extensive activities;
- c) Restricting the establishment of activities in industrial areas that are likely to result in:
 - i. Reverse sensitivity effects; or
 - ii. Inefficient use of industrial land or infrastructure.

- 57 The focus of these policies is to provide sufficient commercial and industrial land for those activities, protect industrial land from incompatible activities, and ensure that the distribution of commercial activities is appropriate to ensure that the CBD and centres are protected.
- 58 These requirements are implemented through 2GP Objectives 2.3.1 (protection of industrial land and reverse sensitivity issues), 2.3.2 and 2.4.3 (maintaining the vibrancy of the CBD and centres, and 2.6.2 (providing sufficient business land capacity), and their associated policies. Consistency with these provisions is discussed below. The amendments will assist in ensuring the success of the Harbourside Edge as a vibrant area for residents and tourists, and are not likely to significantly affect the vibrancy and vitality of the CBD and centres.
- 59 The proposed rezoning will be at the expense of industrial zoned land; however, as discussed below, sufficient industrial land will remain for the city's needs. The rezoning may also have the potential to increase reverse sensitivity effects on nearby industrial activities. The proposed amendments manage this effect.

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- 60 In my view, the amendments give effect to the ORPS policies outlined above.
- 61 In relation to public access along the coast, the ORPS contains the following provisions:

Objective 5.1

Public access to areas of value to the community is maintained or enhanced.

Policy 5.1.1

Maintain or enhance public access to the natural environment, including to the coast, lakes, rivers and their margins, and where possible areas of cultural or historic significance, unless restricting access is necessary for one or more of the following:

- a) Protecting public health and safety;
 - b) Protecting the natural heritage and ecosystem values of sensitive natural areas or habitats;
 - c) Protecting identified sites and values associated with historic heritage or cultural significance to Kāi Tahu;
 - d) Ensuring a level of security consistent with the operational requirements of a lawfully established activity.
- 62 This policy is implemented through 2GP Objective 10.2.4 and its associated policies. The amendments ensure that public access is maintained, while ensuring that the esplanade reserve requirements are appropriate for the local situation.

Section 32AA Assessment

Inclusion of Fryatt Street in the HE Zone

- 63 There are two key objectives in the strategic directions that are relevant to zoning new commercial and mixed land (where that land is not a centre):
- Objective 2.3.2, which is focused on protecting the centres hierarchy; and
 - Objective 2.6.2, which is focused on urban land capacity.

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64 The policies sitting under these objectives that are relevant to zoning new commercial and mixed use land have been amended in response to the Woolworths. Together the provisions seek to provide sufficient land for commercial activities, in appropriate locations, without adversely affecting the vibrancy of the CBD and existing centres.

65 Objective 2.6.2 is subject to a minor amendment through Variation 2 of the 2GP, to ensure consistency with the NPS-UD. The variation was notified on 3 February 2021. The amended wording is:

Dunedin provides sufficient, feasible, development capacity (as intensification opportunities and zoned urban land) in the most appropriate locations to at least meet the demand over the medium term (up to 10 years), while sustainably managing urban expansion in a way that maintains a compact city with resilient townships as outlined in Objective 2.2.4 and policies 2.2.4.1 to 2.2.4.3.

66 As noted above, an agreement has been reached to amend Policy 2.6.2.4 and add a new policy 2.6.2.X. New Policy 2.6.2.X provides a more complete list of relevant considerations for rezoning decisions. This includes reference to Objective 2.3.2. The amended Policy 2.6.2.4 and new Policy 2.6.2.X are:

Policy 2.6.2.4

~~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).~~

Ensure sufficient, plan-enabled business land development capacity is provided by regularly monitoring capacity and demand for the various types of commercial and industrial land necessary to meet the medium-term demand projections for commercial and industrial activities, and initiating or supporting a plan change (rezoning proposal) to add new commercial and mixed use zoning where necessary.

Policy 2.6.2.X

Apply new commercial and mixed use zoning only where the change to the plan is appropriate to achieve the objectives of the plan, particularly because it:

- a. achieves Objective 2.3.2 and is consistent with Policy 2.3.2.X;

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- b. achieves Objective 2.4.3 and is consistent with Policy 2.4.3.X;
 - c. achieves Objective 2.3.1 and does not conflict with ensuring there is sufficient industrial land to meet projected demand of the intended catchment and provide choice, and by not increasing the potential for reverse sensitivity effects;
 - d. achieves Objective 2.7.1;
 - e. achieves Objective 2.7.2 by maintaining the safety and efficiency of the transport network for all road users and ensuring accessibility by a range of modes, including walking, cycling and public transport; and
 - f. achieves Objective 2.2.4 by supporting the maintenance of a compact and accessible city.
- 67 Policy 2.6.2.4 requires that rezoning proposals are supported where additional commercial land is required to meet the medium term demand projections.
- 68 A Business Land Capacity Assessment was undertaken by DCC in 2019⁴, which assessed that there is sufficient capacity for office and retail activities for the medium and long term. However, the economic projections used to estimate demand for business land outlined above were based (in addition to other factors) on population projections from 2017 that have since been superseded. The most recent population projections (2020) are significantly higher, which may translate to a greater demand for business land than estimated in the Business Land Capacity Assessment. The impact would be greater for sectors that are more influenced by population (e.g. retail, health and education), than sectors that are more influenced by external forces (e.g. export-based industry). The Business Land Capacity assessment is planned to be reviewed in 2022.
- 69 The primary driver for rezoning this land to HE Zone, is to provide for the University's proposed marine studies centre. The marine studies centre is part of the proposed waterfront development around Steamer Basin. Land elsewhere within the basin has been identified for other potential development activities (e.g. a hotel, conference centre). In the event that the marine studies centre does not proceed, or does not require all the land, commercial activities could develop in the rezoned area. While there is no identified need for additional commercial land in this area, it is likely that demand will exceed that originally assumed and providing additional commercial land is a conservative response.

⁴ Business Land Capacity Assessment Dunedin City, March 2019. N. Stocker, Dunedin City Council.

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Policy 2.6.2.X

- 70 Policy 2.6.2.X identifies relevant objectives that must be considered in zoning decisions. The appropriateness of the proposed rezoning is discussed in relation to each clause of the policy.

Impacts on the CBD and centres (2.6.2.X.a)

- 71 Policy 2.6.2.4.b.ii.1 refers to Objective 2.3.2. This is:

Dunedin has a hierarchy of vibrant centres anchored around one Central Business District Zone (CBD), which provides a focus for economic and employment growth, driven by:

- a. attraction of businesses to these areas based on the high level of amenity and density of activity in the area;
- b. opportunities for social interaction, exchange of ideas and business cooperation;
- c. public investment in public amenities and other infrastructure in the CBD; and
- d. opportunities for agglomeration benefits from the co-location of activities.

- 72 The Woolworth's appeal adds a new policy under this objective that addresses rezoning proposals:

Policy 2.3.2.X

- a. Ensure any proposals to create new areas of commercial mixed use zoning do not detract from Objective 2.3.2 through an oversupply of commercial land or changes in agglomeration or co-location benefits in the CBD or existing centres.
- b. ...

- 73 The new area to be zoned (excluding roads) is small (~ 8,500m²), in a narrow strip alongside Steamer Basin. It is currently vacant. It is likely that all, or the majority of the site, will be used for development of the University's marine studies centre. This would have no impact on the vibrancy of the CBD.

- 74 If the marine studies centre does not eventuate, and commercial activities develop, new residential and commercial activities would contribute to the vibrancy of this area, which is a natural extension of the current Harbourside

Edge Zone, by increasing the number of people living or visiting there. Mr Foy's evidence is that, due to the small area involved and the likely gradual development of commercial activities in the rezoned area over time, there would be no significant adverse effects on the vibrancy of the CBD and centres.

Pedestrian amenity values (2.6.2.X.b)

- 75 Objective 2.4.3 is concerned with ensuring high pedestrian amenity values in the CBD and centres and is not directly relevant to the HE Zone. High pedestrian amenity is also an objective in the Harbourside Edge Zone, through Objective 18.2.3 and Policy 18.2.3.4. These are implemented through rules requiring consent for all new buildings and structures in the zone, and specific Harbourside Edge performance standards (Rule 18.6.17). These provisions will apply to the newly zoned area, ensuring that Objective 18.2.3 is achieved.

Impact on important land and facilities - Industrial land capacity (2.6.2.X.c)

- 76 Objective 2.3.1 is:

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

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

- 77 Policy 2.3.1.4 is:

Identify land strategically important for industrial activities, including near the Harbour and key transport routes, and use industrial zoning and rules to protect industrial activities from incompatible or competing land uses in these areas, in particular retail (other than yard-based retail) and residential activities.

- 78 The Business Land Capacity Assessment assessed an available floorspace for industrial use in Dunedin of 177,500m²⁵. The additional floorspace requirements for industrial activities over the medium term (to 2028) were assessed at 38,300m²⁶, with demand dropping over the long term. While the unanticipated increased rate of population growth will likely have some impact on increased demand for industrial land, particularly in relation to industry or yard based retail linked to new building activity, there will still be a surplus of industrial land overall for medium and long term use.
- 79 Policy 2.3.1.4 identifies the strategic importance of land adjacent to the harbour and key transport routes for industrial use. The importance of this land for some industry types was highlighted in an Industrial Land Needs Study report by CPG New Zealand⁷. That report identified easy access to transport infrastructure (including the port and arterial road network) as being highly rated in interviews with a number of industry leaders. However, in a broader survey of industrial businesses, access to state highways and arterial roads was rated as only 3 out of 5 in relative importance (1 being the highest, 5 being the lowest), and proximity to the Port of Otago as 5 (lowest relative importance). Understandably, the rating given was highly variable depending on industry type and size responding to the survey.
- 80 The Business Land Capacity Assessment included a multi-criteria analysis (**MCA**) of the feasibility of development of different industrial locations in Dunedin for different industry types, using criteria derived from the CPG report. The highest scoring area was the Port industrial area, and therefore this industrial area is the most important area to protect in terms of Policy 2.3.1.4.
- 81 The proposed rezoning will remove some high scoring land from industrial use. However, there will remain a significant quantity of industrial land capacity that scores well in the MCA. The area of land to be rezoned is approximately 8,500m²; equivalent to a floorspace for industrial use of 1,660m²⁸. There is 25,200m² floorspace of feasible industrial land capacity that scored 6.5 or more⁹.

Business Land Capacity Assessment Dunedin City, March 2019. N. Stocker, Dunedin City Council. This figure includes capacity for industrial activities in the commercial and mixed use zones.

⁵ Business Land Capacity Assessment Dunedin City, March 2019. N. Stocker, Dunedin City Council.

⁷ CPG New Zealand Limited. Industrial Land Needs Study, March 2011.

⁸ Based on the current average floorspace ratio for 2GP industrial zoned land of 20%.

⁹ Business Land Capacity Assessment Dunedin City March 2019.

- 82 Cumulatively, with industrial land proposed to be rezoned under the Foodstuffs South Island Properties Limited appeal (ENV-2018-CHC-239), which is filed jointly, the total loss of industrial land capacity is 6,160m². There is an overall industrial land floorspace capacity of 177,500m², and a projected demand of up to 38,300m² over the long term. Rezoning the land will not conflict with ensuring there is sufficient industrial land to meet projected demand. Overall, I am satisfied that there will be sufficient industrial land available to meet future demand.

Reverse sensitivity (Policy 2.6.2.X.c)

- 83 Objective 18.2.2 requires that the potential for conflict between activities in the commercial and mixed zones and adjoining zones is minimised as far as practicable. To ensure this objective is achieved, a new Policy 18.2.2.X is proposed, requiring that specific activities that may result in reverse sensitivity effects are only allowed where the potential for reserve sensitivity is avoided, or if avoidance is not practicable, adequately mitigated. The activities of concern (e.g. residential, visitor accommodation) are proposed to be restricted discretionary activities in the rezoned area, with reverse sensitivity effects listed as a matter of discretion. I note that none of the neighbouring industrial landowners or operators submitted on the zoning of the land in this area.
- 84 In my view, inclusion of this policy will ensure that effects on reverse sensitivity can be appropriately managed.

Efficient and effective operation of public infrastructure (Policy 2.6.2.X.d, e)

- 85 Objective 2.7.1 is:

Public infrastructure networks operate efficiently and effectively and have the least possible long term cost burden on the public.

- 86 Objective 2.7.2 is:

The multi-modal land transport network, including connections between land, air and sea transport networks operates safely and efficiently for all road users.

- 87 The proposed rezoning has been discussed with DCC's 3 Waters staff and no concerns in relation to the efficient and effective provision of infrastructure have been raised.
- 88 In relation to effects on the transport network, activities which may generate large volumes of traffic are proposed to be restricted discretionary in the rezoned area, with discretion over effects on the safety and efficiency of the

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transport network. Additional pedestrian facilities and traffic calming measures may be required in future and could be considered as part of a future consent application.

- 89 I am satisfied that the proposed amendments will achieve Objectives 2.7.1 and 2.7.2.

Compact city (Policy 2.6.2.4.b.X.f)

- 90 Objective 2.2.4 is:

Dunedin stays a compact and accessible city with resilient townships based on sustainably managed urban expansion. Urban expansion only occurs if required and in the most appropriate form and locations.

- 91 The rezoning does not result in expansion of Dunedin city, but is a refocussing of activities provided for in a small part of the inner city. In my view, the rezoning will achieve this objective.

Conclusion on rezoning

- 92 Overall, I conclude that rezoning the land is consistent with Policy 2.6.2.X and will ensure that the plan's objectives, as identified above, will be achieved. In reaching this conclusion I have considered the positive benefits to the vitality of the Harbourside Edge Zone through enabling the proposed marine studies centre and thereby increasing the number of people working in and visiting the area.

Provision for campus activity within the Fryatt Street extension to HE Zone

- 93 As noted earlier, training and education activity is currently provided for in the HE Zone. However, campus activity is a broader activity, including aspects such as research and student support services. It is proposed to provide for campus activity in this area through use of the new Campus mapped area overlay and changes to the campus activity definition discussed in paragraph 38.
- 94 The University's interest in the HE Zone is limited to the proposed extension along Fryatt Street, which is the proposed location of the new marine studies centre. While the marine studies centre could be considered in part as training and education activity, the broader definition of campus activity allows for the full range of University activities to be undertaken on the site.
- 95 The key Objectives are 2.3.1 (in relation to the operation and efficient and effective development of the University), 2.3.2 (vibrant CBD and centres) and 18.2.1 (successful range of commercial and mixed use environments).

Providing for campus activity in this mapped area will support the efficient and effective development of the University, through facilitating development of the new marine studies centres. It will not affect the vibrancy of the CBD and centres, but will add to the vibrancy of the HE Zone through increasing the number of people coming to the area to work and study. It is therefore a more appropriate way to achieve Objective 2.3.2, Policy 2.3.2.3 and Objective 18.2.1.

Provision for food and beverage retail activity in the HE Zone

- 96 The amendments provide for small scale (500m² gross floor area or less) food and beverage activity in the Harbourside Edge Zone as a restricted discretionary activity, with discretion restricted to effects on transport matters; and food and beverage activity up to 750m² gross floor area as a discretionary activity.
- 97 The relevant 2GP objectives (2.3.2 and 18.2.1) and the associated policies aim to focus activities that contribute to the vibrancy of an area, in particular smaller scale retail and office activities, to the CBD and centres, with limited provision for them in other commercial zones. As noted above, the Harbourside Edge Zone provides for a transition to a mixed use zone, providing for residential activity and a focus on visitor attractions. There is currently no provision for food and beverage retail within the zone apart from dairies, which primarily provide convenience food rather than a full range of groceries. Providing for small scale food and beverage activity will enable residents to obtain a wider range of groceries than typically provided by a dairy. It would also enable specialist or boutique food and beverage retailers (for example a delicatessen, fish market or boutique wine shop) to contribute to the tourist offering in the area.
- 98 While specialist or boutique food and beverage may draw people from the wider city and could be located in the CBD or a centre, for reasons outlined in Mr Foy's affidavit, it is not anticipated that there would be any significant adverse effects on the vibrancy and vitality of the CBD and other centres. Rather, it is expected that such activity in the HE Zone will increase the area's attractiveness to both residents and visitors, and this will outweigh any potential effects on the CBD and centres.
- 99 Larger food and beverage retail (500 – 750m² gross floor area) is a fully discretionary activity allowing explicit consideration of whether these larger outlets are appropriately sized and designed to ensure they are catering to those living and working in the area or visiting for recreation, and will not result in adverse effects on the CBD and centres hierarchy.

100 I conclude that the amendments, through supporting development of the HE Zone with anticipated minor effects on the CBD and centres, will more appropriately achieve Objectives 2.3.2 and 18.2.1 than the current provisions.

101 Objective 6.2.3 is:

Land use, development and subdivision activities maintain the safety and efficiency of the transport network for all travel modes and its affordability to the public.

102 The matters of discretion for food and beverage activity agreed by the parties include effects on the safety and efficiency of the transport network and effects on accessibility. The zone encompasses a road classified as 'strategic', so a minimum vehicle loading performance standard has been applied, as generally applies for commercial activities that may locate on this road type.

103 The relevant assessment rule for consideration of effects on the safety and efficiency of the transport network (Ruler 6.11.2.1) explicitly refers to both effects on the safety and efficiency of the network, and its affordability to the public. The ability to consider these matters through the consent process will ensure that Objective 6.2.3 is achieved.

Access to the coast

104 The proposed changes clarify that an esplanade reserve must be provided upon subdivision only where a site adjoins the coast, and reduces the required esplanade reserve width in the HE Zone from 20m to 6m.

105 The requirement to provide an esplanade reserve of 20m width is not appropriate in this location as sites are narrow (typically 30 - 40m wide), and this would severely limit the use of the remainder of the site. A width of 6m allows for the required public walkway and ensures that this land will be maintained for public access.

106 In my view, the amendments are a more appropriate way of achieving Objective 10.2.4 in this location.

Effect of any appeals on relevant objectives and policies

107 For completeness, I have considered the mediated agreements reached on appeals, and the relief sought through appeals that have not yet been mediated, to assess whether any agreed or potential changes to objectives and policies could change the policy framework in a way that would change my s32AA assessment.

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- 108 The appeal by Nichols Property Group Limited and others (ENV-2018-CHC-217, DCC Reference 53) touches on Objective 18.2.1. This appeal has been mediated and a signed consent memorandum is jointly filed to resolve this appeal. The agreement amends clause (e) of 18.2.1, which is concerned with the low amenity area to the south of the CBD. There is no change to Objective 18.2.1.d or h, which refer to the Harbourside Edge Zone. This amendment therefore has no impact on my s32 assessment.
- 109 There are no other outstanding appeals, and no mediated agreements, that seek to amend provisions that would affect my s32 assessment.

Affirmed at Dunedin

By **Emma Christmas**)
this 26 day of March 2021)
before me:)

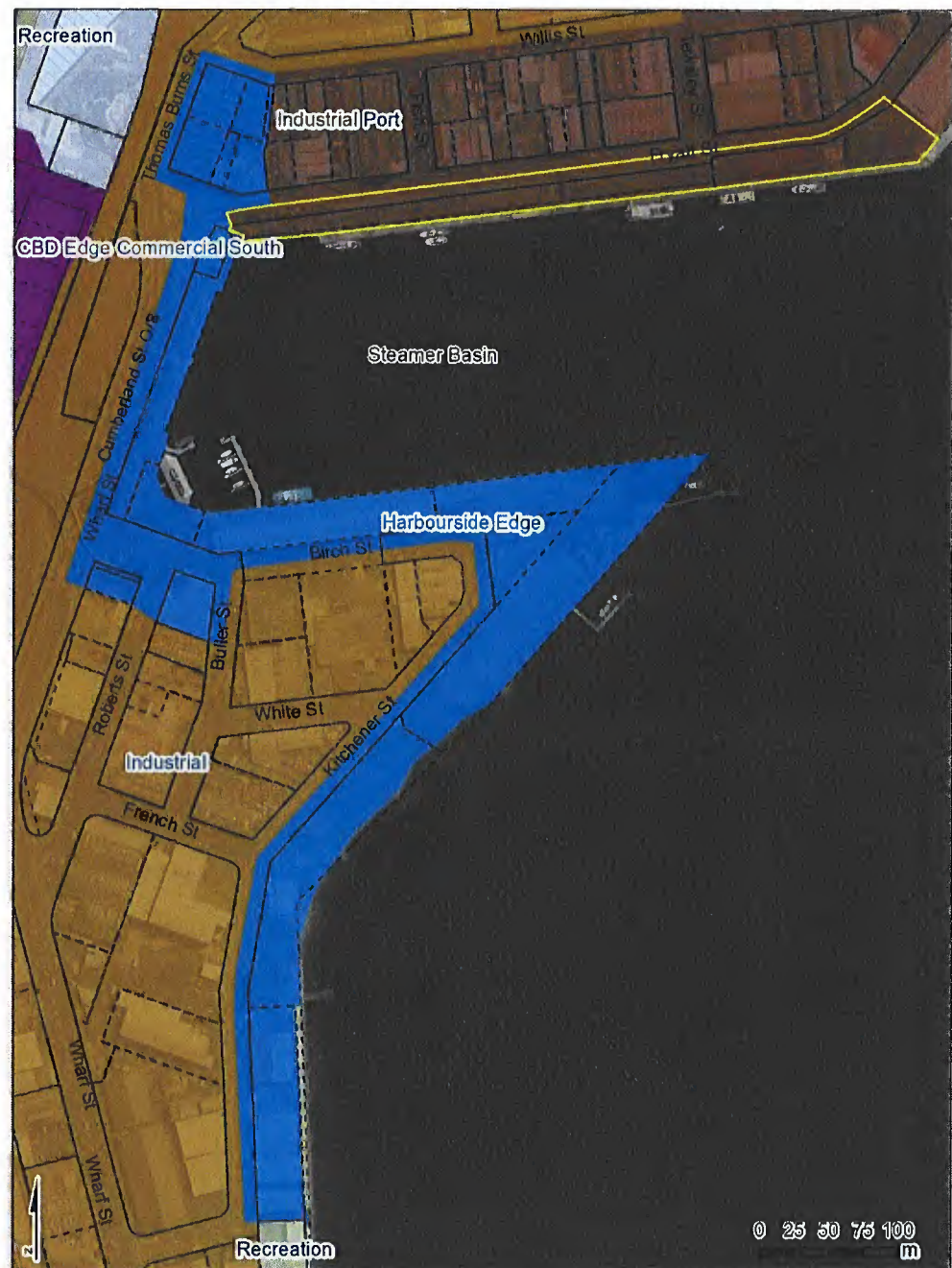
Emma Christmas



A Solicitor of the High Court of New Zealand

Peter Benjamin Williams
Solicitor
Dunedin

Annexure 1



Area Sought To Be Rezoned

EXHIBIT NOTE

This is the annexure marked "1" referred to in the within affidavit of **Emma Christmas** and sworn/affirmed at Dunedin this **26** day of **March** 2021 before me:

Signature: 
A Solicitor of The High Court of New Zealand
(Solicitor to sign part on Exhibit)

Peter Benjamin Williams
Solicitor
Dunedin

