

**BEFORE THE ENVIRONMENT COURT
CHRISTCHURCH REGISTRY
I MUA I TE KOOTI TAIAO O AOTEAROA
OTAUTAHU**

ENV-2018-CHC-

IN THE MATTER OF the Resource Management Act 1991 ('the Act')

AND

IN THE MATTER OF of an appeal under Clause 14(1) of Schedule 1 to the
Act

BETWEEN **FOODSTUFFS SOUTH ISLAND PROPERTIES
LIMITED**

Appellant

AND **DUNEDIN CITY COUNCIL**

Respondent

**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST DECISION ON
DUNEDIN SECOND GENERATION PLAN**

Date: 18 December 2018

EJS-122493-12-2-V6

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TO: The Registrar
Environment Court
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Name of appellant and details of decision

- 1 Foodstuffs South Island Limited (**the Appellant**).
- 2 This appeal is against the Second Generation Dunedin District Plan (**the 2GP**).
- 3 The Appellant is a person who made a submission on the 2GP.

Decision appealed against

- 4 This appeal is against part of a decision of the Dunedin City Council (**the Respondent**) on the 2GP.
- 5 The Appellant is a person who made a submission on the 2GP.

Trade competition

- 6 The Appellant is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.

Date of receipt of decision

- 7 The Appellant received notice of the decision on or about 7 November 2018.

Decision (or part) being appealed

- 8 The Appellant is appealing against that part of the decision regarding the Commercial and Mixed-Use Zones where the Respondent rejected the Appellant's submission to rezone an identified area of land abutting Midland Street (**the Midland Street Land**) from Industrial Zone to Trade Related Zone.
- 9 The Appellant also appeals, in the alternative, Industrial Zone objectives, policies and rules affecting large format food and beverage retail activities in the Industrial Zone to provide for these activities to be considered on their

merits pursuant to a discretionary consent application process in specified circumstances.

Reasons for the appeal

- 10 The reasons for the appeal are as follows:
 - 10.1 The Respondent erred in its determination that there was a sufficient supply of Trade Related Zone land provided by the 2GP to meet the foreseeable demand for such land over the next 10 years such that it was unnecessary to rezone the Midland Street Land from Industrial Zone to Trade Related Zone.
 - 10.2 The Respondent erred in its determination that removing the Midland Street Land from the Industrial Zone would result in an insufficient supply of Industrial Land near the Port and the City Centre to meet the foreseeable demand for such land over the next 10 years such that it was necessary to retain Industrial Zone over the Midland Street Land.
 - 10.3 The Respondent erred in its determination that rezoning the Midland Street Land to Trade Related Zone would cause adverse reverse sensitivity effects on existing industrial activities within the Industrial Zone.
 - 10.4 The Respondent erred in its determination that rezoning the Midland Street Land to Trade Related Zone would cause adverse effects on the transportation network.
 - 10.5 The Respondent erred in its determination by failing to give proper regard to the evidence for the Appellant that the proposed Trade Related Zone would encourage economic revitalisation of the Midland Street Land, and provide greater opportunity for innovation, increased economic activity and increased employment than can be realised from Industrial Zoning of that land.
 - 10.6 In addition to the above, the Respondent's decision declining to rezone the Midland Street Area to Trade Related Zone:
 - (a) Does not promote the sustainable management of natural and physical resources in accordance with section 5 and the relevant matters at sections 6 and 7 of the Act;

- (b) Is not based on an adequate and/or accurate section 32 evaluation and as a consequence the Respondent has failed to properly consider the costs and benefits of zoning the Midland Street Land to Trade Related Zone; and
- (c) Does not implement the National Policy Statement on Urban Development Capacity which requires local authorities to provide within their plans enough development capacity to ensure that demand can be met for different types of business land, and that such development capacity must be commercially feasible to develop, and plentiful enough to recognise that not all feasible development opportunities will be taken up.

11 The alternative relief below better meets the purpose of the Act and achieves a better outcome when evaluated under s32 of the Act than the Respondent's decision on the basis that the proposed amendments:

- (a) Provide flexibility to consider the merits of large format food and beverage retail activity as a discretionary rather than non-complying activity in the Industrial Zone (excluding the Industrial Port zone areas);
- (b) Recognise that due to their size requirements, large format food and beverage retail activities can have difficulty finding locations compatible within their intended catchment;
- (c) Recognise that large format food and beverage retail activity can be appropriate in the Industrial Zone in limited and circumscribed circumstances;
- (d) Do not undermine the zoning approach of the 2GP or the key reasons for restricting non-industrial activities in the Industrial Zone; and
- (e) Are consistent with and support the Respondent's decision to amend Strategic Direction Policy 2.3.2.2 to provide a limited exception to the centres hierarchy for retail activities where they are unlikely to contribute, or may detract from, the vibrancy of centres.

Relief sought

12 The Appellant seeks the following relief:

12.1 That the Midland Street Land be rezoned from Industrial Zone to Trade Related Zone;

12.2 In the alternative to the above,

(a) Insert new Policy 19.2.1.XX as follows:

Only allow large format food and beverage retail activity as provided in 19.3.3 activity status table to locate in Industrial Zones (excluding the Industrial Port zone areas) where:

- a. The activity will not detract from the vibrancy and functioning of the centres hierarchy;
- b. The activity does not significantly affect the supply of industrial land for industrial activities;
- c. The location is appropriate for the proposed activity having regard to:
 - i. The potential for reverse sensitivity effects on permitted activities;
 - ii. The extent of any adverse effects from vehicle movements; and
 - iii. The extent of any adverse effects on street parking supply.

(b) And amend Policy 19.2.1.10 as follows:

Avoid retail activity (excluding retail ancillary to industry, yard based retail activities and large format food and beverage retail activity as provided in 19.3.3 activity status table that satisfies Policy 19.2.2.1.XX) due to its high potential to be a significant competing use of land primarily zoned for industrial or port uses, unless it would have significant positive effects on the successful operation of surrounding industrial or port activities.

- (c) Amend 19.3.3 Activity status table – land use activities as follows (or other similar wording):

<i>Commercial activities</i>		<i>Activity status</i>		<i>Performance standards</i>
		<i>b. Ind</i>	<i>a.Ind Port</i>	
<i>X</i>	<i>Food and beverage retail activity 3000m² or more in gross floor area</i>	<i>D</i>	<i>NC</i>	

- 12.3 The Appellant also seeks such additional or consequential amendment to the 2GP as may be required to give effect to the intent of this appeal.

Mediation

- 13 Pursuant to section 268 of the Act the Appellant considers that the topics of this appeal are amenable to mediation and seeks the assistance of the Environment Court appointed Commissioner in that regard.

Attached documents

- 14 The following documents are attached to this notice:
- (a) a copy of the submission made by the Appellant and its attached appendices which provide a diagram of the Midland Street Land;
 - (b) a copy of the relevant part of the decision; and
 - (c) a list of names and addresses of persons to be served with a copy of this notice.
- 15 Recipients of this notice may obtain a copy of the above documents, on request, from the Appellant.

DATED this 18th day of December 2018



Chris Fowler
Counsel for the Appellant

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Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or further submission on the matter of this appeal.

To become a party to the appeal, you must –

- (a) 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
- (b) within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

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).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the Appellant's submission or the part of the decision appealed. These documents may be obtained, on request, from the Appellant.

Advice

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

ATTACHMENT 1

SUBMISSION ON PROPOSED SECOND GENERATION DUNEDIN DISTRICT PLAN

To: Dunedin City Council
planning@dcc.govt.nz

Submitter: FOODSTUFFS SOUTH ISLAND PROPERTIES LIMITED

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SUBMISSION ON PROPOSED SECOND GENERATION DUNEDIN DISTRICT PLAN

Name of submitter

- 1 Foodstuffs South Island Properties Limited.

Trade competition

- 2 The submitter could not gain an advantage in trade competition through this submission.

Hearings

- 3 The submitter does wish to be heard in support of this submission.
- 4 If others make a similar submission, the submitter will consider presenting a joint case with them at the hearing.

Specific provisions

- 5 This submission relates to the following parts of the Proposed Second Generation Dunedin District Plan ("the Proposed Plan"):
 - (a) **Chapter 19: Industrial zone, specifically:**
 - (i) Planning Maps which propose to zone the submitter's property at 15 Midland Street (and surrounding land) as Industrial zone
 - (b) **Chapter 18: Commercial and Mixed Use zones, specifically:**
 - (i) Planning Maps which proposes to zone the area around Andersons Bay Road to Trade Related zone
 - (ii) Policy 18.2.1.6
 - (c) **Chapter 1: Plan Overview and Introduction, specifically:**
 - (i) 1.5.1 Activity definitions; definition of "Food and beverage retail"
 - (d) **Chapter 18: Commercial and Mixed Use zones, specifically:**
 - (i) 18.3.5 Activity status table – land use activities Trade Related zone and CBD Edge Commercial zone.

Response to specific provisions

- 6 The submitter strongly opposes the specific provisions identified at 5(a) above.
- 7 The submitter supports the specific provisions identified at 5(b) above.
- 8 The submitter is opposed to the specific provisions identified at 5(c) and 5(d) above and seeks amendment to these provisions of the Proposed Plan.

Decisions sought

- 9 The submitter seeks the following decision:
- 9.1 In relation to Chapter 19: Industry zones and Planning Maps:
- (a) Amend Planning Maps to rezone the block of land illustrated on **Appendix A** (dashed line) to **Trade Related zone**. Note that the area to be rezoned may need to be increased beyond that shown if there are other activities in the vicinity that should properly be included in the Trade Related zone rather than the Industry zone
- 9.2 In relation to Chapter 1, Plan Overview and Introduction, amend Rule 1.5.1 Activity definitions by amending the definition of "Food and beverage retail" by inserting the following additional text -
- This definition includes any ancillary warehousing and storage facilities.*
- 9.3 In relation to Chapter 18: Commercial and Mixed Use zones:
- (a) Amend 18.3.5 Activity status table – land use activities Trade Related zone and CBD Edge Commercial zone as follows (or other similar wording):

<i>Commercial activities</i>		<i>Activity status</i>		<i>Performance standards</i>
		<i>b. CEC</i>	<i>a. TR</i>	
<i>10</i>	<i>Office (not including offices provided by 11 below)</i>	<i>NC</i>	<i>NC</i>	
<i>11</i>	<i>Offices and staff facilities ancillary to permitted activities</i>	<i>P</i>	<i>P</i>	<i>Any ancillary office shall occupy no more than 500 m² or 30% of the gross floor area of all buildings on the site, whichever is the lesser</i>
<i>13</i>	<i>Restaurants (not</i>	<i>D</i>	<i>D</i>	

	<i>including cafes provided by 14 below)</i>			
14	<i>Cafes associated with permitted activities</i>	<i>P</i>	<i>P</i>	<i>Any associated cafe shall occupy no more than 220 m² or 15 % of the gross floor area of all buildings on the same site, whichever is the lesser</i>

- 9.4 Any additional or consequential amendments, deletions, or additions that are necessary or appropriate to give effect to the intent of this submission.

Reasons for submission

Chapter 19: Industrial zone – Planning Maps

- 10 The submitter owns or has an interest in the land at 15 Midland Street, Dunedin, ("the submitter's property") shown on **Appendix B**. The submitter has owned this property for several years. The site contains a 3842 m² building which presents as a typical industrial warehouse with a series of interconnecting cantilevered rooves. The submitter's property has a history of wholesaling and supporting retail from the site (most recently as Rattray's wholesale limited) however the property is presently underutilised and not operating at its full potential.
- 11 The submitter's property is currently zoned Industrial 1. The Industrial 1 zone covers a large area of this part of the City. Under the Proposed Plan it will be zoned Industry zone. The submitter is strongly **opposed** to this zoning for the reasons set out below.
- 12 The submitter has spent considerable resources planning for comprehensive redevelopment of the submitter's property. This redevelopment of the submitter's property is intended to provide a mixed use development including food and beverage retail in the form of a Raeward Fresh market plus mezzanine office/administration area, including a dedicated warehousing and storage area and associated cafe within the existing building occupying approximately 1800 m² gross floor area. The remainder and majority of the building's floor area (1,472 m²) will be retained. This area operates in conjunction with a distribution centre that is also owned by the submitter and is located on an adjoining property at 21 Midland Street, as shown on **Appendix B**.
- 13 The proposed redevelopment involves changing the use of the site from solely a food distribution warehouse operation to a combination of complementary retailing of fresh produce, an associated café and on-going warehousing and storage

activity. Both the retail and warehousing/distribution operations on the site share a common association, that is the wholesaling and distribution of food products. The proposed redevelopment will ensure the utilisation and economic life of the building is maximised.

- 14 The Industrial 1 zone in the operative plan has become inconsistent with the mix of land uses that have established over time and is no longer appropriate for this area of the City. This has been recognised in part by the rezoning of land in the Andersons Bay Road area from Industrial 1 (Operative Plan) to Trade Related zone in the Proposed Plan. The Trade Related zone provides for a limited range of retail activities as well as continuing to support industrial land uses.
- 15 This new zone is supported by the submitter however it is considered that the Trade Related zone should be extended to include the land in the vicinity of the submitter's property for the reasons discussed below.
- 16 The proposed Industry zoning of the submitter's property and land in the vicinity is a reflection of historical zoning that bears little relationship with activities that now exist on the ground. Insufficient consideration has been given to whether industrial zoning still remains appropriate for this area. In particular, the proposed Industry zoning ignores the development that currently exists in this area. This is illustrated in **Appendix B**, which provides an overview of the current uses of the land in and around this part of Dunedin.
- 17 The aerial photo illustrates the varied mixed-use and commercial nature of established business/activities in the immediate vicinity of the submitter's property including; Placemakers; Alexanders Marketing Ltd; Anchor Milk Otago Ltd; Trents Wholesalers; Kitchens for Less; ProSouth IT Solutions; in2Learning Education Centre; Big Chill Distribution (refrigerated transportation); A.B. Automatics; Dunedin Timber Market; Mega Mitre 10; Viridian Glass; Fat Boys 2006 (fast food); Advance Clean (cleaning supplies); Gilberts Fine Food (retail/warehouse); Aburns Glass.
- 18 The area surrounded by a yellow dotted line (which the submitter considers to be the primary area that should be rezoned), is similar in character to the area near Andersons Bay Road that has been re-zoned from Industrial 1 zone in the operative plan to Trade Related zone in the Proposed Plan.
- 19 The nature and range of land use activities established in the vicinity of the submitter's property is not materially different from the area proposed to be zoned Trade Related. The submitter considers that there is no basis for recognising the changes in the area around Andersons Bay Road and not the area in the vicinity of the submitter's property. This approach is inconsistent, inequitable and will lead to

inefficient use of land in this area of the City.

- 20 If the zoning remains in place there will be sites that have not yet been fully developed that will be left underutilised due to inappropriate and unnecessary zone rules. The Industry zone removes any flexibility for changes or expansions to the commercial activities that currently exist unless such development meets very narrow criteria specified in the Industry zone rules, which are even more stringent than the Industrial 1 zone rules contained in the Operative Plan. These rules stymie redevelopment of land in this area and will undermine investment made to date, and deter future investment in this area.
- 21 There is no direct discussion in any of the supporting documents as to why industrial zoning has been proposed in this location. However, there is some general discussion about the need to avoid office and retail activities from establishing in industrial areas. The key reasons given for this are:
- (a) To ensure sufficient industrial land remains available for industrial use;
 - (b) To avoid industrial activities being unduly constrained by the co-location of compatible non-industrial activities; and
 - (c) To support the Central Business District (the CBD).
- 22 While the validity of these concerns may be questionable, they are simply not relevant to the submitter's property and the surrounding land. This is not a situation of an isolated commercial development in an otherwise industrial area that is taking up otherwise valuable industrial land and causing a conflict between activities. The area is no longer exclusively industrial in nature and there are already a wide range of non-industrial commercial activities established in this area. The reasons for restricting development in industrial areas are therefore not relevant in this location.
- 23 In relation to the impact of continuing development in this area on the CBD, the proposed plan has already recognised that it is appropriate to re-zone land in the Andersons Bay Area to Trade Related and what is here proposed is only a modest extension of that zone to an immediately adjacent area that shares similar land use characteristics. Including this additional area in the Trade Related zone will have no material effect on the future viability and vibrancy of the CBD.
- 24 For all the above reasons, the submitter is **strongly** opposed to the proposed Industry zone of its property and the surrounding area. It seeks that the **Planning Maps** be amended to rezone its land and several other properties in the immediate vicinity to Trade Related zone. The proposed change to the zoning is illustrated on **Appendix A**, which is based on mix-use commercial activity that currently exists

and will establish a cohesive and confined Trade Related zone for this area. Note that the area to be rezoned may need to be increased beyond that shown if there are other activities in the vicinity that should properly be included in the Trade Related zone rather than the Industry zone.

Chapter 18: Commercial and Mixed Use zones

- 25 On the basis that the zoning of the submitter's property is amended from Industry to Trade Related, the submitter seeks changes to the rules for Trade Related zone to provide more flexibility for development and ensure the creation of a successful trade related commercial area in this part of the City.
- 26 The changes set out below are directed towards achieving reduced reliance on resource consent process and the extent and prescriptiveness of land use controls by creating a rule package that is more enabling than which currently exists.

Rule 18.3.5 Activity status table

- 27 The Activity status table at Rule 18.3.5 also does not allow for offices and staff facilities ancillary to permitted activities to occur as of right in the Trade Related zone. This may have been overlooked in the drafting of the rules for this new zone. It is noted that the definition of "Industry" at Rule 1.5.1 specifically includes any ancillary offices and staff facilities.
- 28 The Proposed Plan currently requires non-complying resource consent to establish offices in the Trade Related zone. This is unduly restrictive because many existing and new businesses within this zone will require office space and staff facilities to operate successfully. This issue can be addressed by including a new performance standard in Activity status table at Rule 18.3.5 to expressly provide for ancillary offices and staff facilities, subject to quite stringent size limitations to avoid competition with the CBD and other Centres in the City. A consequential amendment is required to amend performance standard 10 regarding "Office" to exclude ancillary offices.
- 29 The Activity status table at Rule 18.3.5 also does not allow for the establishment of cafes in the Trade Related zone except through a discretionary resource consent process. This is because cafes are included in the definition of "Restaurants" and restaurants are a discretionary activity in the Trade Related zone (refer performance standard 13).
- 30 This may simply be an oversight. Cafes are often incorporated into larger trade related stores (Mitre 10 Mega, Bunnings) and supermarkets (both of which are anticipated within the Trade Related zone) as an associated activity to complement the primary activity that is occurring on the site. For example, it is not uncommon

for cafes to be established as part of redevelopment of a site or existing buildings for larger format retail activities.

- 31 The potential adverse effects of cafes in this zone can be managed by a new performance standard that limits cafes to activities associated with the primary permitted activity on the site and through use of quite stringent size restrictions. These measures ensure the purpose of the café is to provide for visitors to the primary trade related activity on the site and will reduce competition with cafes in the CBD or other Centres in the City. A consequential amendment is required to amend performance standard 13 regarding “restaurants” to exclude cafes from this standard.

Chapter 1, Plan Overview and Introduction, amend Rule 1.5.1 Activity definitions

- 32 The Trade Related performance standard at Rule 18.3.5 (9) provides for food and beverage retail as a permitted activity. However it is not entirely clear whether the gross floor area threshold figure of 1,500 m² includes storage and warehousing area required to support the retail activity. It would be nonsensical if both components of the activity were not counted when calculating whether a proposal is permitted under this rule because both component parts are required to successfully establish and operate food and beverage retail activities.
- 33 It is considered this uncertainty can be removed by amending the definition of “Food and beverage retail” at Rule 1.5.1 of the Proposed Plan to specifically include ancillary warehousing and storage facilities.

Dated 24 November 2015



Chris Fowler

Counsel for and on behalf of Foodstuffs South Island Properties Limited

ATTACHMENT 2

4.7.1.3 Chinese Gardens

846. Although not raised by submitters, we note what appears to be a mapping error, in that part of the Chinese Gardens site at 39 Queens Gardens is zoned Industrial, with the remainder CBD. Given the use of the site, we consider it appropriate that the entire site is zoned CBD.
847. There is scope to do this under the *Property Council* submission (OS317.62) to rezone industrial land to CMU, as outlined above (Section 4.7.1.1).

4.7.1.4 Andersons Bay and South Dunedin Industrial areas

848. A number of similar submissions were received specifically in relation to the Andersons Bay and the wider South Dunedin industrial areas. The focus of these submissions was to rezone this area as Trade Related Zone, or allow trade related activity in this industrial area, through creation of a new mixed-use zone.
849. *The Property Council* (OS317.59) and *Chalmers Properties* (OS749.1, OS749.17, OS749.29, OS749.36 and FS2321.3) both sought to combine the Andersons Bay Industrial Zone with the Trade Related Zone to make a new Commercial and Mixed-Use Zone. The zone would provide for industrial activities and either all activities permitted within the Trade Related Zone (in effect an expansion of the Trade Related Zone - *Property Council* submission), or just trade related retail (*Chalmers Properties* submission).
850. Alternatively, the *Property Council* also sought to combine the Trade Related Zone with all industrially zoned land in South Dunedin to form a new Commercial and Mixed-Use Zone (OS317.63).
851. *Chalmers Properties* submitted that it had observed demand for mixed use commercial / industrial land, as business needs have changed from heavy to light industry, trade supplies and technology-based industry.
852. Similarly, the *Property Council* considered the requested changes would allow flexibility and enable more land to be developed for a variety of commercial uses, alongside industrial activities.
853. *Foodstuffs South Island Properties Ltd* (OS713.10, OS713.9) sought to retain the Trade Related Zone and extend it to include the blocks between Turakina Road, Portsmouth Drive and a block south of Midland Street. This area currently has a range of land uses, including a Trent's cash and carry wholesaler (owned and operated by *Foodstuffs*), a vacant site for which *Foodstuffs* has resource consent to build and operate a Raeward Fresh store, Turners car auction, Placemakers and a mix of smaller primarily industrial and commercial operations.
854. *Foodstuffs* submitted that the historical industrial zoning bears little relationship to the activities that exist there now, and insufficient consideration has been given as to whether this remains an appropriate zoning.
855. Following the initial part of the hearing, expert caucusing was undertaken between Mr Colegrave (for *Foodstuffs*) and Mr Foy for the Council. In the agreed statement resulting from this process, *Foodstuffs* outlined some alternative proposals on a no prejudice basis, where a smaller area of land would be rezoned, the smallest area comprising 2.4 ha of land along Midland Street. This is discussed below as part of the evidence (Joint Witness Statement of Mr Fraser Colegrave for *Foodstuffs* and Mr Derek Foy for *DCC*).
856. *Otago Land Group* (OS551.1) and *Nichols Property Group and others* (OS271.2) sought to rename the Trade Related Zone the 'Andersons Bay Mixed Use Commercial Zone'. The zone would provide for "appropriate retail, commercial and service activity including trade related retail, large format and bulky goods retail, yard based retail and large supermarkets". *Nichols* (OS271.2) sought to expand this new zone to include 51 Teviot Street, the site of Nichols Garden Centre. Both submitters considered that the area was now a mixed use commercial centre, with appropriate characteristics for

activities that are not a good fit in a CBD area. *Foodstuffs* submitted that the historical industrial zoning bears little relationship to the activities that exist there now, and insufficient consideration has been given as to whether this remains an appropriate zoning.

- 857. These submissions were variously supported by *Minaret Properties Ltd* (FS2036), *Progressive Enterprises Ltd* (FS2051), *Oakwood Properties Ltd* (FS2067), *Otago Land Group* (FS2149), *MM Group One Ltd* (FS2405), *Calder Stewart Development Ltd* (FS2430), and *Kenton Investments Ltd* (FS2445), for similar reasons to the primary submitters.
- 858. The submissions were opposed by *Z Energy Ltd* (FS2336.1) and *BP Oil NZ Ltd* (FS2488.1) on the basis of uncertainty, as no plan provisions (objectives, policies, rules) had been identified.
- 859. *McKeown Group* (OS895.1) wished to retain the industrial zoning over 36 Orari Street.

4.7.1.4.1 Evidence heard

- 860. We heard evidence from the *DCC*, *Chalmers Properties* and *Foodstuffs* on planning, economic effects and transport issues. Legal submissions were also given by *Foodstuffs* and *Chalmers Property*, but these were in the nature of summarising the issues, rather than dealing with any legal questions. We note that we have previously considered evidence in relation to the quantum of industrial land, and the effects of loss of industrial land and encroachment of other activities (section 3.2.3). The evidence below relates specifically to the Andersons Bay situation.

4.7.1.4.2 Planning evidence

- 861. The Reporting Officer noted the main difference between the Industrial and the Trade Related zones is the ability to undertake trade related retail and large-scale supermarket activity. In addition, drive-through restaurants are a restricted discretionary rather than non-complying (s42A Report, section 5.9.13, p. 284).
- 862. She drew our attention to a survey of current land uses in the Andersons Bay Industrial Zone (an updated version of which was presented in the Officer's opening statement). This showed that approximately 60% of the area is used for industrial activities. This included technology-based activities referred to by *Chalmers*, and many of the businesses highlighted in the *Foodstuffs'* submission. An additional 16% of the land area is used for other permitted activities or is vacant land. Trade related retail makes up 15% of the land area, and consists of large sites occupied by Bunnings, Placemakers and Carters, along with a handful of small retail outlets. General retail makes up only 0.26% of the area. In the Reporting Officer's opinion this shows that while there is a mix of uses, the area is not the commercial centre the submitters suggest (Opening Statement / Supplementary Evidence for CMU Hearing, para 45 and appendix 2).
- 863. Ms O'Callahan, called by *Chalmers Properties*, also presented a land use survey of the area, which showed that "approximately 50% of the area is used for mixed use or non-industrial activities." Retail ancillary to industrial uses was identified as contributing to the mixed-use character of the area, and that this lead to similar traffic effects with Trade Related Retail. While acknowledging that there was no commercial centre, her evidence was that the range of activities, including retail, meant that the area had a mixed-use character, rather than an industrial character.
- 864. The Reporting Officer, in her opening statement, noted that the differences in the assessment appeared to be due to Ms O Callahan classifying activities "with an obvious trade retail component" entirely into the trade related retail category, as she considered that trade related retail activities have the same effects as industrial activities with ancillary retail (Opening Statement / Supplementary Evidence for CMU Hearing, para 45).
- 865. Conversely, the Reporting Officer had classified most of these activities as industrial on the basis that they are industrial activities with a small retail component. She had assumed the retail component fell below the 10% permitted ancillary retail provision

as no resource consents have been granted for these sites. That is, 90% of the areas of these sites have an industrial use.

866. The Reporting Officer referred to recent resource consents for commercial activities in the area, noting that a number have been granted non-notified in recent years, with the effects considered to be minor. These included consents for Nichols' redevelopment of a pet shop and café, Bunnings Warehouse, and a variety of smaller trade related retail and other commercial developments. In relation to cumulative effects, the decision-maker's conclusion had typically been:
- "The cumulative effects of the existing activity in the area are presently not significant. The effects from this proposal are not expected to add to the existing effects such that the cumulative effects are more than minor. Future applications for activity in the area, beyond that permitted 'as-of-right' by the District Plan, will be assessed as and when they arise and the potential for cumulative effects considered again at that time." (e.g. LUC- 2012-210, 2014-368, 2008-228).
867. In the Reporting Officer's view, this demonstrated the difficulty of assessing applications on a case-by-case basis and the need for strong policies and rules to prevent further erosion of this area. The Industrial section of the 2GP contains a number of strong policies seeking to retain industrial land for industry given its overall strategic importance (s42A Report, section 5.9.13, p. 286).
868. Her recommendation was to reject the submissions seeking to broaden the uses in the Andersons Bay Industrial Zone.
869. Conversely, Ms O'Callahan concluded that those decisions indicated the Council was not significantly concerned with increasing the variety of use in the area. She made a further point that this indicated the industrial zoning was outdated, and requiring mixed use development to obtain a resource consent process was inefficient (Statement of Evidence for *Chalmers Properties Limited and Port Otago Limited*, paras 27 & 28).
870. Additionally, the Reporting Officer was of the opinion that the strategic objectives did not support increasing the flexibility of the zoning in Andersons Bay.
871. The Reporting Officer reiterated the importance of the Andersons Bay industrial land. Although there may be an overall surplus of industrial land across the city, this ignored the qualities of the Andersons Bay area which make it particularly attractive to industry. Taking data from a Colliers International report, she noted that rents for industrial land are highest in the inner-city area (this includes Anderson Bay), followed by Kaikorai, then Mosgiel (Opening Statement/Supplementary Evidence for CMU Hearing, paras 39.a., 42 and 43).
872. Finally, with regard to the appropriateness of the Trade Related Retail Zone's name, the Reporting Officer had no problem with changing it to the 'Andersons Bay Mixed Use Zone' or similar.
873. Mr Allan, an expert planner called by *Foodstuffs*, considered that the limited range of additional activities permitted under a trade related zoning would be complementary to existing businesses in the area. Mr Allan was of the opinion that reverse sensitivity issues were unlikely to arise, as evidenced by the Raeward Fresh decision, where reverse sensitivity effects were discounted (Statement of Evidence for *Foodstuffs*, para 34 - 35).
874. Mr Allan also considered that the type of development the relief would enable would not detract from the centres approach. He concluded by highlighting the benefits of the relief sought (providing for otherwise incompatible development and reduced consenting costs), and its concordance with the various statutory considerations (Statement of Evidence for *Foodstuffs*, para 91).
875. In response to our questions about the proposed rezoning in effect 'breaking up' the industrial land, Mr Allan responded that the Turners and Placemakers retail operations were compatible; however, he accepted there were a number of iterations of the subject

land available. He believed that the risk of disconnection was more imaginary than real given the compatibility and interplay between the zones.

876. Ms Devlin, representing *Nichols and others*, argued in submissions tabled at the hearing that the Trade Related Zone name does not reflect the activity mix in the Andersons Bay area. She also noted that the reason the Nichols garden centre was included within the Trade Related Zone was that garden centres are becoming more mixed use as retailing trends change. While a traditional garden centre is permitted within the Industrial Zone, the zoning needs to be more enabling to allow future growth and development as retailing trends change.
877. In response to questions from the Panel, Ms Devlin advised of difficulties in attracting industrial use tenants to the area given the volume of industrial land in Dunedin.

4.7.1.4.3 Economic

878. Mr Foy's primary evidence noted that as the Andersons Bay area was around 52 ha gross, this would provide a large redevelopment capacity, estimated to be 150-200,000m² of floorspace, assuming single level 35% site coverage. While not all of this space would be redeveloped into commercial uses, especially in the life of the 2GP, this would be a significant increase in development capacity for activities such as trade related retail (Statement of Evidence for *DCC*, para. 7.4).
879. In his opinion, simply increasing the range of activities in the area would not necessarily lead to growth, and could potentially result in industrial activities being 'squeezed out' as land prices increase, given non-industrial activity can usually afford to pay more, and also due to reverse sensitivity issues. Over time, the increase in other uses would effectively result in the loss of industrial land. Given the limited amount of vacant industrial land in urban Dunedin, this could result in industrial activities having to compromise on location with associated adverse productivity effects.
880. Secondly, permitting non-industrial activities would have adverse effects on other parts of Dunedin, by attracting some of those activities away from other locations. Mr Foy did accept, however, that given trade related retail is most commonly found outside centres, in practice this effect is likely to be minor (Statement of Evidence for *DCC*, para. 7.4).
881. Mr Foy's evidence was that *Nichol's* site is approximately 0.9ha, and consequently the impact on centres of activities on that site will be negligible, purely by virtue of its size. However, that is not, a sound reason to support the requested rezoning of the site, as the potential for cumulative effects of many such *ad hoc* developments should also be considered (Statement of Evidence for *DCC*, para. 12.7).
882. Mr Foy also noted that some of the activities on the site (e.g. garden centre and landscaping yard) are yard-based retail activities under the 2GP, and permitted in the Industrial Zone. There is therefore no need to rezone the site to provide for these activities. The only effect would be to recognise the pet store and café, which were established via a resource consent (Statement of Evidence for *DCC*, para. 12.8).
883. In response to *Foodstuffs'* submission, Mr Foy's opinion was that rezoning this area would potentially result in a significant change to the type of activities located there, and a gradual reduction in the industrial focus of the area. The potential result of that would be that over time the area would become more like Andersons Bay Road, with adverse effects on the supply of industrial land (Statement of Evidence for *DCC*, para. 12.7).
884. Mr Colegrave was called by *Foodstuffs*. His evidence was that a more enabling approach was required to address what he described as an oversupply of industrial land. His opinion was that the level of retail activity sought by *Foodstuffs* would not have a significant impact on any centre, due to the relatively low level of floorspace enabled by the proposal, and the nature of retail activity likely to be attracted would not directly compete with existing centres (Statement of Evidence for *Foodstuffs*, para. 21).

885. As referred to earlier, Mr Foy and Mr Colegrave undertook expert caucusing in respect of *Foodstuffs'* submission. They agreed that the requested rezoning would not have significant retail distribution effects. They did not agree on the significance of the loss of industrial land, with Mr Foy concerned about the strategically important location of the land in the middle of the industrial area, and potential severance of the industrial zone into two smaller discontinuous parts. The key effects arising from that severance, in Mr Foy's opinion, would be to change (to varying degrees) how people and goods move within the area, how businesses in the area transact with each other, and likely ongoing pressure for conversion of neighbouring land to non-industrial uses. All of those effects would be contrary to the 2GP's objectives for industrial land, such as the protection of industrial zoned land for industrial activities, and providing industrial areas near the central city to take advantage of economies of scale and connectivity (Joint Witness Statement of Mr Fraser Colegrave for *Foodstuffs* and Mr Derek Foy for *DCC*).
886. Mr Colegrave considered that Mr Foy significantly overstated the magnitude and relevance of this effect, particularly given that the 2GP itself creates separate areas of industrial land that are significantly smaller than would result from the relief sought (Joint Witness Statement of Mr Fraser Colegrave for *Foodstuffs* and Mr Derek Foy for *DCC*).
887. The evidence of Mr Butcher, called by *Chalmers Properties Limited*, was that any possible loss of industry from a reduction in industrial land would not be significant, given the reasonable supply of vacant industrial land, Dunedin's steady decline in manufacturing activity, that the area already has 40% non-industrial use (based on their methodology for analysis), and that if industrial use is outbid by a different use then this tends to indicate that the different use has greater economic benefits for Dunedin. Hence the loss of land to industry does not necessarily reduce the total level of employment in Dunedin because it may permit expansion of non-industrial uses (Statement of Evidence for *Chalmers Properties*, para 9.5).
888. In respect of reverse sensitivity effects, Mr Butcher opined that this is unlikely to be a problem and can be dealt with through rules or covenants on titles.
889. Mr Butcher's final point was that regulation is only justified where the benefits exceed the costs. Given the area has a 15% coverage of trade related retail, which would have had to undergo a resource consent process, and that no consents have been refused in the past 10 years, regulation is arguably disproportionate and trade related retail should be permitted (Statement of Evidence for *Chalmers Properties*, para 12).

4.7.1.4.4 Transport

890. Mr Fisher, DCC Transport Planner / Engineer, provided evidence on the transport implications of increasing commercial development within the Anderson's Bay industrial area.
891. Mr Fisher noted that the DCC currently receives complaints about congestion in the area, and this is predicted to increase. The area's poor safety for pedestrians was noted, especially the wide roads, which although appropriate for freight movement, make crossing difficult for pedestrians. In his opinion, additional commercial development would likely add to network pressure, and additional Trade Related Retail activity would likely increase pedestrian numbers who would need supporting with signalised intersections and refuges. This would impact on freight movements and network efficiency (Statement of Evidence for *DCC*, p. 10).
892. Mr Fisher's recommendation was that the submissions could not be supported from a transport perspective.
893. Mr Durdin, a transport engineer called by *Foodstuffs*, agreed that *Foodstuffs'* proposal would increase traffic over the current Industrial Zone; however, this did not mean that there would be adverse effects on the network. For example, Mr Durdin's modelling showed that developing the entire area as trade related retail would result in an increase in average delay at the Andersons Bay / Midland Street intersection of 5 secs (from 31 to 36 seconds) (Statement of Evidence for *Foodstuffs*, p. 4).

- 894. Mr Durdin also considered that providing for some high traffic generating activities outside centres is preferable given the difficulty of integrating these activities successfully into some centres. He therefore considered that the proposal supported the 2GP's centres policy.
- 895. He considered rezoning the area Trade Related would not materially affect the ability of industrial development to access the Port or southern motorway (Statement of Evidence for *Foodstuffs*, p. 9).
- 896. Mr Durdin did not agree with Mr Fisher's safety concerns, and was of the opinion that there were no current or future road safety related reasons to suggest the relief sought could not be supported. Additionally, there was the potential to enhance pedestrian safety through curb extensions, median strips and the like (Statement of Evidence for *Foodstuffs*, p. 11).

4.7.1.4.5 Decisions and reasons

- 897. We reject the submissions to rezone the Andersons Bay industrial area as either Trade Related Zone, or a mixed-use zone where trade related retail is provided for.
- 898. It is not a commercial area, although it is correct that the Council has approved a number of resource consents permitting alternative uses for the area. Having considered those however, it does seem that oversight through a consent process has ensured that the impact of these changes has been proportionate and appropriate. Development has largely been warehouse type development, which is easily convertible to industry use
- 899. As discussed in our Industrial decision report, we accept the Council witnesses' opinion that the loss of industrial land is a significant issue. Relatively central locations like this have advantages for many of the activities included in the broad definition of industrial activities. The land use activities in this particular area are changing with market forces so there is pressure to push the boundaries of what is permitted. This makes it important to have clear distinctions about is permitted, and in particular to manage retail activities carefully because they have a tendency to intensify to something more than what is permitted.
- 900. We are not persuaded that potential for reverse sensitivity can be dismissed. Although most of the nearby industrial activities do not appear to be generating significant adverse effects on amenity, the Industrial Zones do set lower standards for noise and other impacts.
- 901. The area has excellent transport options for industry. We accept that the area has a heavy traffic bypass, wide roads, low pedestrian counts, as well as being close to the port and rail which make the location attractive for industrial activities. The evidence on the likely effect of rezoning on transport safety and efficiency was conflicting; this appears to depend on what assumptions are made about the nature of likely activities
- 902. We do not accept that the spot zoning proposed by the *Foodstuffs* is good planning practice.

4.7.2 Central Business District Zone

4.7.2.1 21 Frederick Street

- 903. *Niblick Trust* (OS929.5) sought to change the zoning of the northern part of 21 Frederick Street from Campus Zone to CBD Zone. This site fronts both George Street (an alleyway next to Capers café) and Frederick Street (Tokyo Express / The Fix). The parts of the site fronting the street are zoned CBD, while the central (northern) part is zoned Campus. The zoning is the same as in the operative District Plan.
- 904. The submission stated that the land zoned Campus is not needed by the University, having been offered to them as part of the Dental School redevelopment. As a consequence, the site is now effectively an 'island', as it will not be developed for

ATTACHMENT 3: List of names and addresses of persons to be served with a copy of this Notice of Appeal

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