

REPORT FOR
THE CARISBROOK STADIUM TRUST
ON
PROPOSED COMMERCIAL ACTIVITY
RULES
FOR THE
SPECTATOR EVENTS AND EDUCATION ZONE

MAY 2008

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1.0.0 INTRODUCTION & CONCLUSIONS

1.1.0 Introduction

1.1.1 The Stadium proposal is a further initiative, following the notification of the Harbourside Zone, to enable non-traditional activities to redevelop or re-use land to the east of the broader Dunedin CBD, historically and currently used for industrial purposes.

1.1.2 This Report has been commissioned to consider and report on proposed Rule 27.5.1, that would govern retail and other commercial activities within the prospective new Spectator Events and Education Zone.

1.2.0 RMA Context

1.2.1 The relevant provisions of s32 are:

"(3) An evaluation must examine –

....

(b) whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.

(4) For the purposes of this examination, an evaluation must take into account

–

(a) the benefits and costs of policies, rules, or other methods;"

Sub-section (3)(b) requires that the proposed Rule be considered in the context of the relevant Objectives and Policies. These are listed in Topic 2.0.0, while the evaluations are included in Topic 3.0.0.

1.3.0 Section 32 Assessment

1.3.1 The cascading provisions of s32 require Rules that best give effect to Policies, which in turn seek to achieve the Objectives. This Report is only concerned with Objectives and Policies to the extent that they provide a clear and consistent context for the Rule at issue and Section 2.0.0 confirms that to be the case.

1.3.2 Insofar as the details of Proposed Rule 27.5.1 are concerned, its key provisions in relation to possible adverse distributional effects are those quoted in paragraph 2.0.3, other than sub-clause (i)(g)ii. Those provisions alone (without thresholds) would give effect to the relevant Policies and thereby achieve the relevant Objective, based on the kinds of foreseeable activity that would meet the wording of sub-clauses (i), (a) and (b).

1.3.3 However, it is recommended that the threshold sub-clause [(i)(g)ii)] and clause (i)(e) be amended, to:

- focus the threshold on retail activities and amend the caps accordingly;
- remove the arbitrary and unnecessary distinction, in the Rule, between food and beverage services and licensed premises;
- most appropriately utilise the available Definitions in the operative District Plan;
- avoid unnecessary inconsistencies as between the approach to retailing and food and beverage services (licensed or otherwise) as between this Change and Proposed Plan Change N° 3; and
- achieve the result required by s32(3)(b) in the form of the most appropriately formatted Rule.

Reasons for and details of the recommended form of the amended passages are explained in sub-topic 3.3.0. Notwithstanding the conclusion reached in paragraph 1.3.2, there are benefits (including clarification) in stipulating a retail threshold. Also, it could be called into play if qualifying permitted primary activities of an unexpected kind use the facilities.

1.3.4 As to the benefits and costs of the proposed Rule, these are reciprocal:

1. The primary benefit to emerge from Topic 3.0.0 is that even as it stands, Rule 27.5.1 gives effect to the relevant Policies and provides a fulsome response to the relevant Issue (see paragraph 2.0.1). This is to be preferred to theoretical alternatives which would be less effective in those respects.
2. That benefit can be enhanced by making amendments along the recommended lines summarised in paragraph 1.3.3. This would further marginalise less robust alternatives. Also, a rule less consistent with the general approach of the Plan in other similar circumstances would detract from the Plan as a well integrated and consistent document.
3. Given the collective thrust of the relevant Issue, Objective and Policies, the theoretical alternative of not having a rule would be inconsistent with the provisions of s32.

1.3.5 For the foregoing reasons, it is considered that a slightly amended version of Rule 27.5.1 would represent the most appropriate method of giving effect to the proposed Objective and Policies. That approach is supported accordingly.

2.0.0 THE PROPOSED PLAN CHANGE

2.0.1 The relevant cascading "higher order" provisions incorporated in the proposed Change are stated as follows:

"

Issue 27.1.5

The introduction of retail land uses associated with a stadium to the Logan Point area may create impacts on the vibrancy and vitality of the city centre.

Objective: 27.2.2

Policies: 27.3.3

....

Objective 27.2.2

The stadium and compatible land uses make a positive contribution to local and regional social, cultural and economic well-being.

Issue: 27.1.1, 27.1.3, 27.1.4, 27.1.5

Policies: 27.3.1-27.3.8

AERs: 27.7.1

....

Policy 27.3.1

Provide for activities in the Logan Point area that are directly related to the stadium and its operations.

Objective: 27.2.1, 27.2.2

Methods: 4.4.1

....

Policy 27.3.3

Retail activities associated with stadium operations are limited in scale.

Objective: 27.2.2

Methods: 4.4.1, 27.4.4

The establishment and success of a stadium will require the support of a range of associated and compatible land uses. Commercial and retail land uses are people-orientated activities that are provided for in the city centre. The unlimited provision of these type of land uses may have consequential impacts upon the vibrancy and vitality of the city centre.

Explanation

A large stadium in proximity to Dunedin's core tertiary institutions provides an opportunity for shared use of the facilities. Large-scale land uses, such as the establishment of a stadium, can make a significant contribution to both the local and the wider regional economy. Similarly, such a facility can make a contribution to the cultural and social well-being of the local and regional community.

Explanation

The stadium at Logan Point will be sustained by providing for compatible activities that make use of the buildings when they are not needed for their primary use of sporting and other events that attract large numbers of people.

Explanation

Retail activities are provided in specific people-oriented areas of the City. The provision of unlimited retail activity in the Logan Point area may have consequential effects on the sustainability of the city centre and other areas that provide for retail land uses as permitted activities."

2.0.2 The foregoing provisions, if adopted in these or closely equivalent terms, provide an appropriate rationale for Rules whereby retailing activities are constrained. The approach is broadly consistent with that adopted in relation to the Harbourside concept and does not prejudice the integrity or consistency of the Plan.

2.0.3 The proposed Rule that would give effect to the quoted Objectives and Policies is set out as follows:

"Rule 27.5.1 Permitted Activities

The following activities are permitted activities provided that they comply with the performance standards in Rule 27.5.2:

(i) *Within the Stadium Building Area, as shown on Plan 27.1:*

(a) *Exhibition and Spectator Event Activity*

(b) *Conference and Meeting Activity*

...

(e) *Licensed premises in conjunction with a permitted activity provided for by Rule 27.5.1 (a) and (b).*

(f) *Commercial Offices in conjunction with a permitted activity provided for by Rule 27.5.1 (a) to (b), provided that:*

i. *The office is complementary to that permitted activity.*

(g) *Retail Activity in conjunction with a permitted activity provided for by Rule 27.5.1 (a) to (b), provided that:*

i. *The retail activity is complementary to and an integral part of that permitted activity.*

ii. *The maximum gross floor area for all retail activities within the zone, including service areas for the sale of food and beverages, shall not exceed a combined total area of 3500 m² provided that no one separately tenantable space shall exceed 500 m²."*

2.0.4 Any proposed development of retail activities beyond the thresholds for permitted activities requires a resource consent as a full discretionary activity, with criteria that reinforce the relationship between (g) (a) and (b) in Rule 27.5.1. Retailing and Commercial Offices unrelated to activities (a) and (b) would be non-complying.

3.0.0 EVALUATION

3.1.0 Key Provisions

- 3.1.1 The key provisions of Rule 27.5.1, which recognise Issue 27.1.5 and best give effect to Objective 27.2.2 and Policies 27.3.1 and 27.3.3, are contained within the wording of permitted activities (e), (f) and (g) whereby retailing, commercial offices and licensed premises must operate "in conjunction with" the activities specified under (a) and (b). This would preclude the establishment of any permanent licensed or retail / food and beverage premises in the Spectator Events and Education Zone. These provisions are likely to be reinforced by the requirement for a "Master Plan". It would be inconsistent with the thrust of the proposed Change to incorporate provision for any separate, dedicated licensed or retail or office premises into that document. Premises within the four spectator stands could not possibly function as full-time commercial venues.
- 3.1.2 On p22 of Beca's AEE accompanying the application, likely utilisation of the Stadium is specified. Setting aside the projected usage / visitation by $\pm 1,000$ people as insufficient to justify any material opening of licensed or retail premises, the AEE prognosis is for usage on 21 days (mainly part-days) of a year, by an average of about 15,000 attendees, or fewer than half of the Stadium's proposed capacity. This is equivalent in patronage / attendance terms to about 9 capacity attendances a year. Even if that is regarded as a conservative projection, it suggests that licensed premises, other food and beverage services and qualifying retail activities (the latter two currently regarded for the purpose of the proposed Rule as retail activities) would at worst (in relation to trade competition potentials) be in operation for the equivalent of part of one day a month, to a near-capacity crowd. That prospect represents a very small percentage (probably around $1\frac{1}{2}$ - 2%) of normal annual retail and food and beverage trading hours, during which the extra competition would operate.
- 3.1.3 The level of prospective part-time competition for retail activities would be minor. Clause (g) i would limit permitted merchandise sales to goods associated with teams, sponsors and participating companies, in the form of branded or similar apparel or accessories, including equipment and sporting accessories pertaining to the dominant activity [provisions (a) and (b) of Rule 27.5.1].
- 3.1.4 Few, if any, of the attendees at sporting or non-sporting events would be primarily in the Stadium for retail purchasing purposes. The situation is not comparable with an irregular market event, or a one-off sales promotion from an out-of-town distributor. Those kinds of events mainly draw potential shoppers.

- 3.1.5 The factors referred to in paragraphs 3.1.3 and 3.1.4 have the effect of greatly diminishing the competitive percentage derived in paragraph 3.1.2, especially in relation to true retailing. Whatever space proves feasible to sub-let for licensed premises and other food and beverage service activities during the operation of primary permitted activities will outweigh the extent of retail space that is feasibly open.
- 3.1.6 Having regard to the foregoing, it is considered that on an annualised basis, the amount of trade that would be diverted from licensed premises, other food and beverage services and retailers in the CBD, or elsewhere in the City, would be negligible in the case of retailing and de-minimis in the other activities. Part of the business achieved in the Stadium would, in any event, be attributable to the spending of attendees / spectators that would not otherwise be in Dunedin.
- 3.1.7 Insofar as commercial offices are concerned, it is difficult to see how any form of activity other than event administration could be involved. However, to the extent that this part of the Rule may be expected to facilitate provision of a ticket sales counter / office, it may pay to explicitly indicate that for the purpose of the Rule, commercial offices include ticketing facilities. Such a clarification would clearly have no efficiency or functional implications for Activity Areas.
- 3.1.8 It is therefore concluded that the provisions discussed above would, in their own right, address the concerns registered in Issue 27.1.5 and give suitable effect to Policies 27.3.1 and 27.3.3.

3.2.0 **The Retail Activity Threshold**

- 3.2.1 The retail activity thresholds of 500m² gfa per activity and 3,500m² gfa in total are considered to represent very generous allowances, given that licensed premises are not included in the category of "retail activity". It is considered highly unlikely that qualifying unlicensed food and beverage services and retailing outlets would trouble either threshold, even for capacity events, for reasons summarised in paragraph 3.1.7 above.
- 3.2.2 In that sense, the thresholds could be regarded as superfluous, given the preceding elements at (i) (a), (b) and the rest of clause (g) of Rule 27.5.1. However, their existence could be relevant if Rule (i) (a) permits an activity such as a trade fair. A major food and wine festival, for example, would arguably qualify as an exhibition, but would have a more direct retailing purpose than a pop concert or a rugby match. In such a case, some form of aggregate threshold sub-rule would come into its own. For that reason, the inclusion of part ii of clause (g) has a prospective purpose in relation to Policies 27.3.1 and 27.3.3, subject to the comments below.

3.3.0 **Consistency with the Plan**

- 3.3.1 The Plan defines "Licensed Premises" and "Retail Activity" as follows:

"Licensed Premises - means any land or buildings licensed under the Sale of Liquor Act 1989.

....

Retail Activity - means the direct sale or hire of goods to the public from any site, showroom, building or part of a building."

It also has definitions for "Commercial Activity" and "Restaurants":

"Commercial Activity - means the use of land and buildings for the display, offering, provision, sale or hire of goods, equipment or service and includes any Commercial Office or restaurant, and excludes service stations.

....

Restaurant Activity - means the use of land and buildings where food is prepared and sold to the public primarily for consumption on the premises and may include incidental sale of liquor and drinks. Cafes, tearooms and coffee bars are included. Part of the trade of the premises may be derived from the sale of food for consumption off the premises."

3.3.2 In the Activity Zones, Licensed Premises and Commercial Activities are permitted. Retail Activities and Restaurants are not mentioned, as they fall within the Commercial Activity definition, which approach is appropriate for dedicated central and local Activity Areas. However, the more specific definitions are or could be appropriately used in other Zones and have been used in the Harbourside Plan Change, where thresholds applying to "Retail Activity" expressly exclude restaurants, also the undefined activities "bars and cafés". The former are clearly "licensed premises" while the latter are included in the "Restaurant" definition. The point however, is that the Plan distinguishes retail activities from prepared food and beverage services, at least in part because their potential benefits and disbenefits, if enabled outside the Activity Areas, are not the same.

3.3.3 Proposed Rule 27.5.1 includes prepared food and beverage outlets with retailing, which is inconsistent, albeit not in a major way, with the approach of the Plan. Amending the Rule to a format such as that suggested below would however be more appropriate (having regard to s32) than the draft version. Suggested changes are:

1. Include the term "Restaurants" in Rule 27.5.1 clause (i) (e), along with Licensed Premises.
2. Delete all reference to food and beverages from clause (i) (g) ii and reduce the thresholds.

3.3.4 This form of amendment would have the further benefit of eliminating the possible perception that up to 3,500m² of retail activities could be accommodated. Whilst (for reasons discussed in sub-topic 3.1.0, in relation to the key constraining aspects

.../

of Rule 27.5.1) such a prospect is fanciful, the Rule would not inherently preclude it. A much lower threshold, for retail only, would also be more consistent with the other constraints (and the reasons for a threshold provision).

3.3.5 The alterations referred to in paragraphs 3.1.7 and 3.3.3 would result in Rule 27.5.1 clauses along these lines:

- (e) Licensed ~~P~~remises **and Restaurants**, in conjunction with a permitted activity provided for by Rule 27.5.1 (a) and (b).
- (f) Commercial Offices (**including ticketing facilities**) in conjunction with a permitted activity provided for by Rule 27.5.1 (a) to (b), provided that:
 - i. The office is complementary to that permitted activity.
- (g) Retail Activity in conjunction with a permitted activity provided for by Rule 27.5.1 (a) **and to** (b), provided that:
 - i. The retail activity is complementary to and an integral part of that permitted activity.
 - ii. The maximum gross floor area for all retail activities within the zone; ~~including service areas for the sale of food and beverages~~, shall not exceed a combined total area of **1500** ~~3500~~ m² provided that no one separately tenantable space shall exceed **300** ~~500~~ m².

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