

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-239

Under	the Resource Management Act 1991 (RMA)
In the matter of	an 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	The Heart of Dunedin Incorporated Appellant
And	Dunedin City Council Respondent

Affidavit of Emma Christmas

Affirmed 28 November 2019

Respondent's solicitors:

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**anderson
lloyd.**

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

- 1 I am a 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 for six 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.

Background and issues of concern

- 4 Heart of Dunedin lodged appeal ENV-2018-CHC-239 seeking to: "Amend the activity status for general retail in a scheduled heritage building so that it is not permitted in the Warehouse Precinct Zone".
- 5 There are no section 274 parties to the appeal.
- 6 In their appeal, Heart of Dunedin state that there are significant vacancies in the Central Business District, and that the proposed plan will likely result in retail activity relocating from the CBD to the Warehouse Precinct, with the potential for adverse effects being more than minor.

Planning background

- 7 Objectives 2.4.2, 2.4.3, 2.3.2, 13.2.1 and 18.2.1¹ seek to achieve two potentially competing outcomes, namely maintaining the vibrancy of the CBD and centres, and protection (including by encouraging re-use) of scheduled heritage buildings.
- 8 Allowing a greater range of activities in scheduled heritage buildings increases the likelihood that a commercially viable use can be found for them, and so makes any redevelopment (which generally includes earthquake strengthening) more likely to be feasible. Through their re-use, the buildings are retained and are more likely to be maintained into the future.

¹ See para [33] of this affidavit.

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- 9 Conversely, allowing general retail and office to expand outside the CBD and centres can diminish the benefits that arise from concentrating retail and office activities together, including maintaining high occupancy rates with positive benefits for pedestrian amenity and social interaction, and maintaining a sense of social and economic wellbeing.
- 10 The 2GP seeks to balance these objectives by providing for general retail and office activities in scheduled heritage buildings in two commercial and mixed use zones that sit on the fringe of the CBD (the Warehouse Precinct and Smith Street and York Place zones) that have a number of scheduled heritage buildings.
- 11 Policies 2.4.2.3, 13.2.1.9, 2.3.2.2 and 18.2.1.3 outline this approach.

Policy 2.4.2.3

Encourage adaptive re-use of heritage buildings through rules that:

- a. *enable a wider range of activities to be undertaken in scheduled heritage buildings in the Warehouse Precinct and the Smith Street and York Place zones); ...*

Policy 13.2.1.9

Provide for general retail in scheduled heritage buildings in the Warehouse Precinct Zone and offices in scheduled heritage buildings in the Smith Street and York Place and Warehouse Precinct zones, in order to maximise the potential opportunities for adaptive re-use of heritage buildings in these areas.

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.*

Policy 18.2.1.3

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

- a. *it is an ancillary and secondary component of a retail or office activity that is undertaken in a scheduled heritage building as provided for by Policy 13.2.1.9 on the same or adjacent site; or*

- 12 In the 2GP, general retail (a sub activity of retail activity) in a scheduled heritage building in the Warehouse Precinct Zone, is permitted under Rule 18.3.4.9.a. Other general retail in a building less than 1,500m² in gross floor area is a non-complying activity under Rule 18.3.4.10.a. General retail 1,500m² in gross floor area or greater is a permitted activity in any building.
- 13 I note that Policy 18.2.1.3 is intended to capture ancillary activities that are part of a retail activity in a scheduled heritage building, but that are not themselves within the scheduled heritage building (for example, ancillary storage in a separate building on the site). However, the policy wording is not very clear and an amendment will be made through a future plan change process.

Mediation and agreement reached

- 14 Mediation for Group 1 – Non-Strategic (Retail in the Warehouse Precinct topic) took place on the 15th of August 2019. Both parties were in attendance. As a result of mediation and subsequent correspondence, the parties agreed to reduce the type of retail activity that could establish as a permitted activity in the Warehouse Precinct Zone, as explained below.
- 15 Retail activity is currently defined as having two components: 'retail services' and 'sale and hire of goods'. Retail activity also has a number of sub-activities, including general retail. The parties have agreed that retail services that are part of general retail activity (referred to as 'General retail - retail services' in the proposed amendments) will be permitted in scheduled heritage buildings in the Warehouse Precinct. The sale and hire of goods aspect of general retail activity ('General retail – sale or hire of goods'), will be non-complying. To achieve this, amendments are required to the definitions of retail and general retail, the activity status table Rule 18.3.4, and a new definition of retail services is added.
- 16 The amendments are as follows:

Amend definition of Retail:

The use of land and buildings for:

- the sale or hire of goods; or
- retail services, which are the provision of services including personal, household, financial, property or other services, where a front counter customer service is provided.

Amend definition of General Retail:

Any retail activity that is not otherwise defined as:

- food and beverage retail

- dairies
- service stations
- bulky goods retail
- yard based retail; or
- trade related retail.

General retail is a sub-activity of retail.

General retail - retail services is the component of general retail that is captured under the definition of retail services.

General retail - sale or hire of goods is the component of general retail that is sale or hire of goods.

Amend nested table 1.3.2 Land Use activities

Commercial Activities Category

Activities	Sub-activities
Ancillary licensed premises	
Commercial advertising	Tourism advertising
Conference, meeting and function	
Entertainment and exhibition	
Office {Note - appeal for addition of new sub-activity for airport office}	Registered health practitioners
	Training and education
	Veterinary services
	Campus-affiliated office
Restaurants	
Restaurant - drive through	
Retail	Bulky goods retail
	Dairies
	Food and beverage retail
	General retail (note that this activity is managed in the Warehouse Precinct Zone as two sub-components - general retail – retail services and general retail - sale or hire of goods)
	Trade related retail
	Yard based retail
Service stations	Self-service fuel stations
Stand-alone car parking	

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Activities	Sub-activities
Visitor accommodation	Campgrounds

New definition of retail services:

The use of land and buildings where the primary activity is not the sale of goods but instead is the provision of services (including personal, household, financial, property or other services), where a front counter customer service is provided. Activities that are primarily retail services but include ancillary sales of goods (for example hair salons that sell hair products) are considered to be retail services as long as the percentage of the gross floor area of the activity that is used for sale of goods is no more than 30%.

Examples of retail services are banks, health and beauty salons, visitor information centres, travel agents and TAB venues.

For the sake of clarity, this definition excludes the following activities, which are considered to be sale or hire of goods:

- pharmacies
- telecommunication/ mobile phone shops; and
- retail services where 30% or more of the gross floor area is used for the sale of goods.

Retail services are managed as a separate component of general retail ('general retail – retail services') in the Warehouse Precinct Zone only.

Amend Rule 18.3.4 Land use activity status table:

Commercial activities		Activity status				Performance standards
		a. WP	b. PPH	c. SSYP	d. HE	
9.	General retail - <u>retail services</u> in a scheduled heritage building	P	NC	NC	NC	i. Minimum car parking ii. Minimum vehicle loading
10.	General retail not in a	NC	NC	NC	NC	

	scheduled building and less than 1500m² in gross floor area					
44. <u>10</u>	General retail not in a scheduled building and 1500m² or more in gross floor area	P	NC	NC	NC	i. Minimum car parking ii. Minimum vehicle loading
<u>11</u>	<u>All other general retail</u>	<u>NC</u>	<u>NC</u>	<u>NC</u>	<u>NC</u>	

- 17 A number of consequential changes are required, as shown below.

Policy 13.2.1.9

Provide for general retail - retail services in scheduled heritage buildings in the Warehouse Precinct Zone and offices in scheduled heritage buildings in the Smith Street and York Place and Warehouse Precinct zones, in order to maximise the potential opportunities for adaptive re-use of heritage buildings in these areas.

Policy 18.2.1.3

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

- a. it is an ancillary and secondary component of a general retail – retail services or office activity that is undertaken in a scheduled heritage building as provided for by Policy 13.2.1.9 on the same or adjacent site; or
....

18.1.1.3 Warehouse Precinct Zone (WP)

The Warehouse Precinct Zone adjoins the southern part of the CBD Zone and is bounded by Queens Gardens, Bond Street, Police Street and Cumberland Street. The zone provides for a mix of inner city living, visitor accommodation, conference, meeting and function, entertainment and exhibition, light industrial, restaurant and bulky goods and trade related retail activity. General retail – retail services and

office activity is also provided for, if it occurs in scheduled heritage buildings, in order to encourage their restoration.

Rule 18.5.7.1 Minimum vehicle loading

c.	Warehouse Precinct Zone	i. General retail – retail services (in a scheduled heritage building)	1. On sites which gain direct vehicular access to a strategic road, arterial road or urban high density corridor or have a gross floor area of 500m ² or more: 1 loading space to accommodate an 8m rigid truck (See Appendix 6B, Figure 6B.10)
		ii. General retail (not in a scheduled heritage building and 1500m ² or more in gross floor area)	
		iii. Trade related retail	
		iv. Visitor accommodation	2. Visitor accommodation based on guest rooms (e.g. hotels) for 50 or more guest rooms: 1 loading space to accommodate the turning circle of a coach (See Appendix 6B, Figure 6B.12)
		v. Bulky goods retail	3. Activities with a gross floor area of less than 1000m ² : 1 loading space to accommodate an 8m rigid truck (See Appendix 6B, Figure 6B.10); 4. Activities with a gross floor area of 1000m ² or more: 1 loading space to accommodate a B Train Truck (See Appendix 6B, Figure 6B.11).

Rule 18.4.5 Notification

5. With respect to sections 95D(b) and 95E(2)(a) of the RMA, Council will not consider general retail – retail services as a permitted activity in scheduled heritage buildings as part of the permitted baseline in considering the effects of discretionary or non-complying activities in the Warehouse Precinct Zone.

- 18 No consequential changes are required to assessment rules, Strategic Directions objectives and policies or other plan provisions.

Assessment of other appeals

- 19 As part of my assessment of the appropriateness of this change, I have considered whether there are other appeals on the provisions affected by these amendments, to understand whether there is overlap between different appeals on the same provisions in the plan.
- 20 There are no appeals on the definitions or retail or general retail.
- 21 There are no other appeals on rule 18.3.4.9.a - 18.3.4.11.a. Kaan's Properties 2017 Ltd has appealed rules 18.3.4.10.d and 18.3.4.11.d, which relate to the activity status of general retail activities in the Harbourside Edge Zone. The amendments agreed to for the Heart of Dunedin appeal do not affect the activity status in the Harbourside Edge Zone.
- 22 There are no appeals on Policy 13.2.1.9.
- 23 I consider this agreement does not affect other appeal points.

Consistency with higher order documents (section 75)

Otago Regional Policy Statement (partially operative)

- 24 The Otago Regional Policy Statement (**OPRS**) includes the following relevant policies:
- 25 Policy 1.1.1, which is to: *"Provide for the economic wellbeing of Otago's people and communities by enabling the resilient and sustainable use and development of natural and physical resources"*.
- 26 Policy 5.2.3, which is to: *"Protect and enhance places and areas of historic heritage, by all of the following: ... h) Enabling adaptive reuse or upgrade of historic heritage places and areas where historic heritage values can be maintained"*.
- 27 Policy 5.3.2, which is to:
- 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.

- 28 These policies are implemented by the objectives and policies in the 2GP outlined above. While the proposed amendments change the balance slightly away from facilitating re-use of buildings to protection of the vibrancy of the CBD, the 2GP provisions continue to be consistent with these policies.

Section 32AA Assessment

- 29 The relevant 2GP objectives are:

Objective 2.4.2

Dunedin's heritage is central to its identity and is protected and celebrated as a core value of the city, through the heritage conservation and retention of important heritage items, and the maintenance and active use of built heritage.

Objective 13.2.1

Scheduled heritage buildings and structures are protected.

Objective 2.4.3

Dunedin's Central Business District is a strong, vibrant, attractive and enjoyable space that is renowned nationally and internationally for providing the highest level of pedestrian experience that attracts visitors, residents and businesses to Dunedin. It is supported by a hierarchy of attractive urban and rural centres.

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.*

Objective 18.2.1

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

- a. the CBD, which is the focus for employment, retail, entertainment, leisure, visitor accommodation, and arts and culture activities;*
- b. vibrant and viable principal centre, suburban and rural centre zones, which provide hubs for social and economic activity for rural, suburban and principal communities;*

- 30 As discussed earlier, the 2GP seeks to balance the objectives for protecting the CBD and encouraging adaptive reuse of heritage buildings through provision for office and retail activity in the Warehouse Precinct and Smith Street and York Place zones. Council's assessment at the time of notification was that due to a number of constraints for developing retail in the Warehouse Precinct zone, including the limitations posed by the buildings themselves and the disadvantages of not being in the retail centre of Dunedin, the impact on the CBD of allowing retail in scheduled heritage buildings was likely to be limited. I maintain that an approach of allowing retail activities in scheduled heritage buildings in these zones would achieve an appropriate balance.
- 31 However, I acknowledge the submitter's concern in relation to the potential for businesses to relocate from the CBD, given the on-going pressures on the retail sector from broader societal and economic changes. Reducing the range of businesses that can establish in the Warehouse Precinct Zone by excluding those that are the primary drivers of vibrancy in the CBD moves the balance slightly in favour of protecting the CBD. This is a more precautionary approach to ensuring that the CBD is not impacted by development elsewhere while still providing opportunities for the re-use of the scheduled buildings. I agree that the amendments are appropriate and will achieve the objectives identified above.

Relationship to objectives and policies and appeals on those objectives and policies

- 32 For completeness, I have assessed the appeals on the related policies and objectives and strategic directions to ensure no appeals are likely to change the policy framework in a way that would change the above assessment.
- 33 Of the objectives and policies listed above, the following are under appeal, all by the University of Otago:
- Objective 2.3.2
 - Policy 2.3.2.1
 - Policy 2.4.2.3
- 34 The appeal relates firstly to the University's desire for the Campus Zone to be identified as a centre in Objective 2.3.2 (and consequentially in Policy 2.3.2.1); and secondly, to enable a wider range of activities to be undertaken in scheduled heritage buildings in the Campus Zone (Policy 2.4.2.3).

35 If the relief sought in the University's appeal is granted, there would be no impact on the amendments proposed for the Heart of Dunedin appeal (or vice versa), therefore in my opinion these matters can be considered independently.

Affirmed at Dunedin)

By **Emma Christmas**)

this 28th day of November 2019)

before me:)

Emma Christmas
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Ashleigh Mitchell-Craig
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A Solicitor of the High Court of New Zealand

Ashleigh Nicole Mitchell-Craig
Solicitor
Dunedin