

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 appeal 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

Consent Memorandum

26 November 2019

Respondent's solicitors:

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**anderson
lloyd.**

May it please the Court

- 1 This consent memorandum relates to the Heart of Dunedin appeal 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".
- 2 There are no section 274 parties to the appeal.
- 3 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.
- 4 The parties have agreed to changes to definitions, land use activity status table and a consequential change to Policy 13.2.1.9. These are shown in **Appendix A**.
- 5 The rationale for the changes, and assessment of the changes in terms of section 32, is explained in an affidavit of Emma Christmas, a policy planner at Dunedin City Council, and supporting affidavit of Dr Anna Louise Johnson the City Development Manager, Dunedin City Council.
- 6 Other than the amendments shown in Appendix A, there is no impact on any higher order policies, objectives or strategic directions.

Directions sought

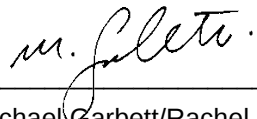
- 7 The parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to relevant requirements and objectives of the RMA, including Part 2 and request:
 - (a) That the amendments shown in strikethrough and underline in **Appendix A** are made; and
 - (b) That the appeal be otherwise dismissed.
- 8 The parties agree that costs should lie where they fall and accordingly no order of costs is sought.

Dated this 26th day of November 2019



Solicitor for Applicant.

Heart of Dunedin Incorporated
Appellant

A handwritten signature in black ink, appearing to read "m. Garbett", is positioned above a horizontal line.

Michael Garbett/Rachel Brooking
Counsel for the Respondent

Appendix A

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.

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 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 (<u>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</u>)
	Trade related retail
	Yard based retail
Service stations	Self-service fuel stations
Stand-alone car parking	
Visitor accommodation	Campgrounds

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 scheduled building and less than 1500m² in gross floor area	NC	NC	NC	NC	
11. 10	General retail not in a scheduled building and 1500m ² or more in gross floor area	P	NC	NC	NC	i. Minimum car parking ii. Minimum vehicle loading
11	<u>All other general retail</u>	<u>NC</u>	<u>NC</u>	<u>NC</u>	<u>NC</u>	

A consequential change is required to Policy 13.2.1.9.

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.

A consequential change is required to Policy 18.2.1.3.

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
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A consequential change is required to Section 18.1.1.3 Warehouse Precinct zone description.

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.

A consequential change is required Rule 18.5.7.1 Minimum vehicle loading.

18.5.7.1 Minimum vehicle loading

c. Warehouse Precinct Zone	i. General retail – <u>retail services</u> (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 1500m² 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).
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A consequential change is required Rule 18.4.5 Notification

18.4 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.