

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-255

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 **Woolworths New Zealand Limited**

Appellant

And **Dunedin City Council**

Respondent

Consent Memorandum

17 March 2021

Group 2a – CMU	DCC appeal reference numbers
Strategic Woolworths	78, 127, 130, 366 (Woolworths New Zealand Limited)

Respondent's solicitors:

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**anderson
lloyd.**

May it please the Court

- 1 This consent memorandum relates to four appeal points as follows:
 - (a) CMU Strategic – Woolworths appeal point 78 regarding how supermarket activity is provided for in the plan;
 - (b) CMU Strategic – Woolworths appeal point 127 regarding the zoning of 55 Gordon Road, Mosgiel;
 - (c) CMU Strategic – Woolworths appeal point 130 regarding the application of a secondary pedestrian street frontage mapped area at 43 Mailer Street; and
 - (d) CMU Strategic – Woolworths appeal point 366 regarding various performance standards that apply in pedestrian street frontage mapped areas.
- 2 The CMU Strategic – Woolworths appeal point 78 sought to add a new definition of supermarket; add a new policy under Objective 2.3.2 providing assessment guidance for out of centre commercial activities under a 'centres plus' approach; amend Policy 15.2.1.5 to refer to the new policy; and amend Rule 19.3.3 (Industrial zones activity status table) to provide for supermarkets as a discretionary activity in the industrial zones.
- 3 BP Oil New Zealand Limited and Others and Foodstuffs South Island Properties Limited are s274 parties to this appeal.
- 4 The CMU Strategic – Woolworths appeal point 127 sought to amend the planning maps by rezoning the properties at 47-49 (now 55) Gordon Road, Mosgiel, from General Residential 2 to Suburban Centre.
- 5 There are no s274 parties to this appeal.
- 6 The CMU Strategic – Woolworths appeal point 130 sought to amend the planning maps by removing the Secondary Pedestrian Street Frontage mapped area from 43 Mailer Street, Dunedin.
- 7 There are no s274 parties to this appeal.
- 8 The CMU Strategic – Woolworths appeal point 366 sought to amend Rule 18.6.8 (Location and screening of car parking), Rule 18.6.11 (Minimum glazing and building modulation) and Rule 18.6.16.1 (setbacks from road frontage) to exempt supermarkets from these standards.
- 9 Foodstuffs South Island Properties is a s274 party to this appeal.

- 10 The parties have agreed the following amendments that are shown in Appendix A:
- (a) A new strategic directions Policy 2.3.2.X that outlines relevant considerations in relation to maintaining a vibrant CBD and centres when rezoning a site to commercial and mixed use zone.
 - (b) A new strategic directions Policy 2.4.3.X that outlines relevant considerations in relation to amenity values when rezoning a site to CBD or centres zones.
 - (c) A replacement Policy 2.6.4.2 that provides a more complete list of relevant considerations when determining if an area of land is suitable for rezoning to a commercial and mixed use zone.
 - (d) Amendments to Assessment rule 18.9.6.6, assessment of performance standard contraventions along or adjacent to a pedestrian street frontage mapped area, to add additional guidance when considering resource consents.
- 11 The rationale for the changes, and the assessment of the changes in terms of section 32, is explained in an affidavit of Emma Christmas, a senior policy planner at Dunedin City Council.
- 12 This is a full settlement of this appeal, which resolves all appeal points with DCC reference numbers 78, 127, 130, 366 (noting that appeal points with DCC references 127 and 130 have not resulted in any changes to the 2GP).
- 13 Whether or not the making of orders on this agreement is contingent on settlement/determination of another appeals is addressed in the affidavit of Emma Christmas, a senior policy planner at Dunedin City Council.
- 14 DCC can confirm that there are no other appeals on the provisions being amended.
- 15 Ms Christmas identified that the following appeal could potentially impact on the Objective 2.3.2:
- (a) University of Otago (ENV-2018-CHC-270, DCC reference 198).
- 16 This appeal has been mediated and a signed consent memorandum will be filed jointly for resolution.
- 17 There is also a supporting affidavit of Dr Anna Louise Johnson, City Development Manager, Dunedin City Council, that considers alignment with, and impact of, any changes on the strategic directions' objectives and policies (section 2 objective

and policies); and the drafting of the proposed amendments to ensure alignment with the 2GP Style Guide. Dr Johnson confirms that the amendments proposed follow the DCC style guide.

Consent Orders sought

- 18 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 including any consequential change to plan numbering or layout to include these changes; and
 - (b) That the appeal be otherwise dismissed.
- 19 The parties agree that costs should lie where they fall and accordingly no order of costs is sought.

Dated this 17th day of March 2021



Counsel for Woolworths New Zealand Limited
Appellant



Michael Garbett
Counsel for the Respondent

the 2GP Style Guide. Dr Johnson confirms that the amendments proposed follow the DCC style guide.

Consent Orders sought

- 18 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 including any consequential change to plan numbering or layout to include these changes; and
 - (b) That the appeal be otherwise dismissed.
- 19 The parties agree that costs should lie where they fall and accordingly no order of costs is sought.

Dated this day of March 2021

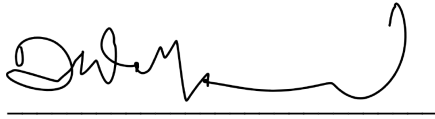
Counsel for Woolworths New Zealand Limited
Appellant



Michael Garbett
Counsel for the Respondent



Counsel for Foodstuffs South Island Properties Limited
Section 274 Party

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BP Oil New Zealand Limited and Others
Section 274 Party

Appendix A

New Policy 2.3.2.X

- a. Ensure any proposals to create new areas of commercial mixed use zoning do not detract from Objective 2.3.2 through an oversupply of commercial land or changes in agglomeration or co-location benefits in the CBD or existing centres.
- b. For proposals that create new suburban or neighbourhood centres, achieving (a) generally means:
 - 1. the centre will primarily provide for commercial activities focused on serving the day-to-day needs of residents in the intended catchment, such as dairies, food and beverage retail, pharmacies, restaurants, registered health practitioners, beauty salons and community activities;
 - 2. the centre, including where focused around a single food and beverage anchor activity, will provide for a diversity of independently run activities of the above types; and
 - 3. the centre not providing for retail types with an intended city-wide customer catchment such as large department stores and 'big box' general, bulky goods or trade related retail.

New Policy 2.4.3.X:

Ensure that all areas proposed to be rezoned as CBD or a centre zone achieve high amenity values both within the zone and on zone boundaries, and provide a safe, attractive and enjoyable space for people through an appropriate rule framework. For new centres, this is preferably outlined in a structure plan, that identifies:

- a. rules that manage the form and location of buildings and car parking to ensure convenient and safe passage for pedestrians and people arriving by public transport and active modes, with particular attention to the principles of Crime Prevention Through Environmental Design (CPTED);
- b. rules that ensure appropriate areas for outdoor seating and passive recreation;
- c. rules that ensure good amenity within open spaces;
- d. rules that manage amenity values on the boundaries with zones where there is an expectation of higher amenity, such as residential and schools zones; and
- e. rules that manage development to ensure a high amenity, active, pedestrian street frontage, for example through appropriate application of pedestrian street frontage mapped areas.

Policy 2.6.2.4

~~Identify areas for new commercial and mixed use zoning based on the following criteria:~~

- ~~a. rezoning is necessary to meet a medium term (up to 10 year) shortage of capacity to meet demand in the intended customer catchment; and~~
- ~~b. the new area will not detract from, and preferably support, Objective 2.4.3 (Vibrant CBD and centres).~~

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

Policy 2.6.2.X

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

- a. achieves Objective 2.3.2 and is consistent with Policy 2.3.2.X;
- b. achieves Objective 2.4.3 and is consistent with Policy 2.4.3.X;
- c. achieves Objective 2.3.1 and does not conflict with ensuring there is sufficient industrial land to meet projected demand of the intended catchment and provide choice, and by not increasing the potential for reverse sensitivity effects;
- d. achieves Objective 2.7.1;
- e. achieves Objective 2.7.2 by maintaining the safety and efficiency of the transport network for all road users and ensuring accessibility by a range of modes, including walking, cycling and public transport; and
- f. achieves Objective 2.2.4 by supporting the maintenance of a compact and accessible city.

Assessment rule 18.9.6.6

6. Along or adjacent to a secondary pedestrian street frontage mapped area: • Location of activities within pedestrian street frontage mapped areas • Pedestrian entrances • Minimum glazing and building modulation • Setback from road boundaries • Verandahs	a. Effects on streetscape amenity	Relevant objectives and policies: i. Objective 18.2.3 ii. Buildings provide a good level of pedestrian amenity by: (Policy 18.2.3.3). <u>General assessment guidance:</u> iii. <u>For applications that propose an alternative site layout for safety reasons, a CPTED¹ analysis should be provided by a suitably qualified expert to support that assessment.</u> Potential circumstances that may support a consent application include: iv. ... v. ... vi. ... vii. ... viii. <u>For retail activities, a CPTED analysis demonstrates that due to hours of carpark use a different site layout is necessary for safety reasons and the layout and site landscaping will still achieve a high standard of amenity and safety for pedestrians and people accessing activities by bicycle.</u> ix. <u>For food and beverage retail where store layout is constrained due to site size, shape or existing site or building layout, glazing along pedestrian frontages must be reduced for operational reasons, site constraints and layout efficiencies.</u> Conditions that may be imposed include: x. viii. Time limit on consent.
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¹ Note the plan already includes CPTED as a defined acronym CPTED (Crime prevention through environmental design)