

In the Environment Court of New Zealand
Christchurch Registry

I Mua | Te Kōti Taiao o Aotearoa
Ōtautahi Rohe

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	Kaan's Properties 2017 Limited ENV-2018-CHC-286 Appellant
And	Dunedin City Council Respondent

Consent memorandum – Harbourside Edge Zone

2 September 2020

Respondent's solicitors:

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**anderson
lloyd.**

May it please the Court

- 1 This consent memorandum relates to the Kaan's Properties 2017 Limited (**Kaan's Properties**) appeal regarding the Harbourside Edge Zone of the proposed Dunedin City Second Generation District Plan (**2GP**).
- 2 The Kaan's Properties appeal (DDC References 242 and 340) sought to:
 - (a) Provide for a maximum height of 20m in Harbourside Edge Zone and Harbourside Edge transition overlay zone in 18.6.17.1.
 - (b) Make it clear in rules 18.6.17.2, 3 and 4 that a public walkway is not required to be provided by a landowner seeking to establish structures or additions and alterations within the Harbourside Edge Zone.
 - (c) Delete the requirement for public notification of breaches of Rule 18.6.17.6.
 - (d) Delete the requirement at 18.3.6.5 for all new buildings, additions and alterations within the Harbourside Edge Zone to be a restricted discretionary activity.
 - (e) Insert new provisions to encourage and enable the development of 6 [assumed to be 11] Kitchener Street, including by amending the activity status table at 18.3 so that general retail, bulky goods retail and/or food and beverage retail can be undertaken as a restricted discretionary activity.
 - (f) Insert new provisions to encourage and enable the development of 6 Kitchener St, including by amending the activity status table at 19.3 so that:
 - (i) Retail activities that are ancillary to wholesale can be undertaken as a permitted activity.
 - (ii) Office activity can be undertaken in this block as a restricted discretionary activity.
 - (iii) Commercial activities can be undertaken as a restricted discretionary activity.
 - (g) Amend the policies applicable to the Harbourside Edge Zone, Harbourside Edge transition overlay and the Industrial zone as it applies to the block that contains 6 Kitchener Street to provide for a more permissive and enabling approach to new developments.



- (h) Such other deletions, amendments and additions to the 2GP that apply to the appellants properties which will create a more flexible and permissive planning framework to encourage investment and development in this area.
 - (i) Delete the requirement in 18.3.7 for an esplanade strip to be provided on subdivision of 11 Kitchener St and the adjoining narrow properties along the harbour.
- 3 University of Otago, Otago Regional Council, Liquigas Limited and Port Otago Limited are section 274 parties to this appeal.
- 4 The parties have agreed to the changes to the Plan set out in **Appendix A**.
- 5 The rationale for these changes, and the assessments in terms of section 32 of the RMA, is explained in an affidavit of Emma Christmas, a policy planner at Dunedin City Council.
- 6 The agreed changes shown in **Appendix A**:
 - (a) Provide for food and beverage activity 500m² or less as a restricted discretionary activity, and food and beverage activity between 500 and 750m² as a discretionary activity, in the Harbourside Edge Zone, through amendments to:
 - (i) Section 18.1 Introduction.
 - (ii) Policy 18.2.1.4.
 - (iii) Policy 18.2.1.12.
 - (iv) Activity status table 18.3.4.
 - (v) 18.10.2 Assessment of restricted discretionary land use activities.
 - (vi) 18.11.3 Assessment of discretionary land use activities.
 - (b) Amend Rule 10.3.1 to reduce the width of the esplanade reserve required in the Harbourside Edge Zone from 20m to 6m.
- 7 There is also a supporting affidavit of Dr Anna Louise Johnson, the City Development Manager at Dunedin City Council, that considers alignment with, and impact of, any changes on the strategic directions objectives and policies and the drafting of the proposed amendments to ensure alignment with the 2GP Style Guide. Dr Johnson considers that the amendments have been drafted to be in keeping with the 2GP Style Guide.



Orders sought

- 8 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.
- 9 The parties agree that costs should lie where they fall and accordingly no order of costs is sought.

Dated this 2nd day of September 2020



Warren Moffat
Kaan's Properties 2017 Limited
Counsel for the Appellant



Michael Garbett/Georgia Cassidy
Counsel for the Respondent

Phil Page/Derek McLachlan
University of Otago
Section 274 Party

Orders sought

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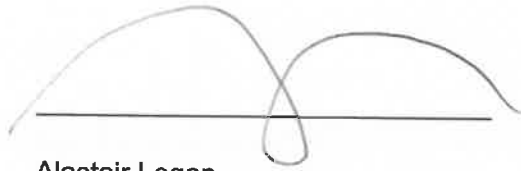
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Warren Moffat
Kaan's Properties 2017 Limited
Counsel for the Appellant

Michael Garbett/Georgia Cassidy
Counsel for the Respondent



Phil Page/Derek McLachlan
University of Otago
Section 274 Party

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Alastair Logan
Otago Regional Council
Section 274 Party

Patrick Senior/Rachel Devine
Liquigas Limited
Section 274 Party

Alastair Logan
Otago Regional Council
Section 274 Party



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Liquigas Limited
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Appendix A

Rule 10.3.1 Esplanade reserves and strips performance standard

1. Subdivision activities along the mark of mean high water springs of the sea must provide an esplanade reserve with a minimum width of as follows:
 - a. ~~along the mark of mean high water springs of the sea~~ 6m in the Harbourside Edge Zone; and
 - b. 20m in all other locations.
2. ~~b. Subdivision activities~~ along the bank of the following rivers, creeks and streams must provide an esplanade reserve with a minimum width of 20m:
 - i. Frasers Creek;
 - ii. ...

3. ~~2. ...~~

(renumber subsequent clauses)

Section 18.1 Introduction

The Harbourside Edge Zone encompasses an area adjoining Birch Street and Kitchener Street and extends to the waterfront. The zone provides for the continuation of the existing industry, while allowing for a transition toward a more mixed use environment by also providing for conference, meeting and function, entertainment and exhibition, restaurant, training and education, visitor accommodation, small scale food and beverage and residential activities and a limited amount of office activity. In order to ensure an attractive place to live, work, and visit, new buildings within the HE Zone will be required, through a restricted discretionary resource consent process, to be designed and located to provide a high level of amenity. In addition, a performance standard requires the provision of public pedestrian access to and along the coast.

Policy 18.2.1.4

Provide for food and beverage retail:

- a. in the CBD and centres;
- b. where 500m² or less in gross floor area, in the HE Zone; and
- c. ~~b. where 1500m² or more in gross floor area, in the CEC and TR zones.~~

Policy 18.2.1.12

Only allow food and beverage retail in the WP, HE and PPH zones where the activity is of a size, and designed in a manner, to cater to people living or working locally or using the area for recreational purposes ~~service the local area and not operate as a destination retailer for other parts of the city.~~

Activity status table 18.3.4 (land use activities in the CBD Edge and mixed use zones)

Commercial activities		Activity status				Performance standards
		a. WP	b. PPH	c. SSYP	d. HE	
2.	Ancillary licensed premises	Same activity status as underlying activity				
3.	Bulky goods retail	P	NC	NC	NC	i. Minimum car parking ii. Minimum vehicle loading
4.	Conference, meeting and function	P	NC	NC	P	i. Minimum car parking
5.	Commercial advertising	NC	NC	NC	NC	
6.	Dairies	P	P	P	P	i. Maximum gross floor area of dairies
7.	Entertainment and exhibition	P	NC	NC	P	i. Minimum car parking
X.	Food and beverage retail <u>500m² or less in gross floor area</u>	<u>D</u>	<u>D</u>	<u>NC</u>	<u>RD</u>	
Y.	Food and beverage retail <u>more than 500m² in gross floor area but no more than 750m² in gross floor area</u>	<u>D</u>	<u>D</u>	<u>NC</u>	<u>D</u>	
8.	All other food and beverage retail	D	D	NC	NC	

(consequential renumbering of rows required)



Rule 18.10.2 Assessment of restricted discretionary land use activities

18.10.2 Assessment of restricted discretionary land use activities			
Activity		Matters of discretion	Guidance on the assessment of resource consents
7.	Food and beverage retail 500m ² or less in gross floor area (HE)	Effects on safety and efficiency of the transport network	See Rule 6.11
		Effects on accessibility	See Rule 6.11

Rule 18.11.3 Assessment of discretionary land use activities

Activity		Guidance on the assessment of resource consents
3.	- Food and beverage retail (WP and PPH) - Food and beverage retail more than 500m² in gross floor area but no more than 750m² in gross floor area (HE)	Relevant objectives and policies (priority considerations): - Objective 18.2.1 - Food and beverage retail in the WP, <u>HE</u> and PPH zones is of a size, and designed in a manner, to <u>cater to people living or working locally or using the area for recreational purposes</u> serve the local area and not operate as a destination retailer for other parts of the city. (Policy 18.2.1.12).