

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-217

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	Nichols Property Group Ltd, Home Centre Properties Ltd, and London Realty Ltd
	Appellant
And	Dunedin City Council
	Respondent

Consent Memorandum

14 September 2020

Group 3a – Trade Related Zone	DCC appeal reference number 53 (Nichols Property Group and Others)
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Respondent's solicitors:

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May it please the Court

- 1 This consent memorandum relates to Nichols Property Group Ltd, Home Centre Properties Ltd, and London Realty Ltd appeal regarding the Commercial and Mixed Use Commercial Zone decisions provisions of the proposed Dunedin City Second Generation District Plan (**2GP**).
- 2 The Appellant (DCC reference number 53) sought the following relief:
 - (a) Rezone the Trade Related Zone as a Mixed Use Commercial Zone, and include Nichols Garden Centre in the zone.
 - (b) As an alternative to the first part of the relief in (a), amend the Trade Related Zone to provide for a range of commercial services and other activities.
 - (c) As an alternative to the second part of the relief in (a), include the Nichols Garden Centre within the Trade Related Zone.
- 3 Woolworths New Zealand Limited is a section 274 party to this appeal.
- 4 The parties have agreed the following amendments that are shown in Appendix A:
 - (a) Apply a new 'South Dunedin Large Format Zone' (SDLF) to the area shown in Appendix A;
 - (b) Rezone an area adjoining Hillside Road from Trade Related Zone to Principal Centre, as shown in Appendix A;
 - (c) Rezone 51 Timaru Street from Industrial to Trade Related, as shown in Appendix A;
 - (d) In the SDLF Zone, provide for the same suite of activities and rules as in the Trade Related Zone, with the exception of bulky goods and general retail greater than 750m² gross floor area, which are restricted discretionary activities in the SDLF. This involves:
 - (i) A new Policy 18.2.1.X in relation to effects of large format retail in the new SDLF Zone on the vibrancy and viability of the CBD and centres;
 - (ii) Amendments to activity status table 18.3.5;
 - (iii) New assessment rules under 18.10.2;
 - (iv) Consequential changes to Strategic Direction Policy 2.3.2.4, the Section 18 introduction, Section 1.4.2 abbreviations, performance standards sections 4 and 5, and policies, performance standards and assessment rules in section 18;

- (e) Amend the definition of trade related retail activity to clarify that it includes plants, trees and shrubs, and landscaping and garden supplies and ornaments;
- 5 This is a partial settlement of the appeal (DCC Reference number 53). The appeal reference points, topics and status of proceedings for the unresolved appeal points are as follows:
- (a) The requirement for all houses in the Hazard 3 (Coastal) overlay zone to be relocatable (section 3.11, *Natural Hazards Decision*), including definitions, policies and associated rules.
- 6 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 policy planner at Dunedin City Council.
- 7 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.

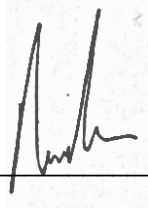
Orders sought

- 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 remaining parts of this appeal remain to be dealt with at a later date.
- 9 The parties agree that costs should lie where they fall and accordingly no order of costs is sought.

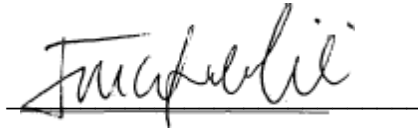
Dated this 14th day of September 2020



Bal Matheson
Counsel for the Appellant

A handwritten signature in black ink, appearing to read 'Nathan Laws', positioned above a horizontal line.

Nathan Laws
Counsel for the Respondent

A handwritten signature in black ink, appearing to read 'Joshua Leckie', positioned above a horizontal line.

Joshua Leckie
Counsel for Woolworths New Zealand Limited
Section 274 Party

Appendix A

Amend the definition of Trade Related Retail

Trade Related Retail

Retail where the predominant goods or services sold are:

- goods and materials used for the construction, repair, alteration and renovation of buildings (including building materials, painting, lighting, electrical and plumbing supplies)
- motorised-vehicle repairs
- plants, trees and shrubs, and landscaping and garden supplies and ornaments
- ~~landscaping~~; marine equipment
- motorised vehicles; and
- farm equipment or supplies.

Add new abbreviation to Section 1.4.2 Abbreviations

S

SDLF

South Dunedin Large Format Zone

Amend Strategic Directions Policy 2.3.2.4

Manage the other existing low-amenity mixed commercial/industrial areas around Andersons Bay Road, Hillside Road and the outer edges of the central city through zones that only provide for commercial activities that are likely to be incompatible with the amenity expectations of the CBD and centres, or require larger sites than are available in the CBD and centres, including:

- a. for the Trade Related Zone providing for trade related retail mixed with yard-based retail and industrial activities, and large supermarkets; and
- b. for the CBD Edge Commercial Zones and South Dunedin Large Format Zone, provide for large format and bulky goods retail along with yard-based retail and industrial activities.

Amend 4.5.7.1 Number, Location and Design of Temporary Signs – General

4.5.7.1 General

- a. Temporary signs visible from a public place must meet all of the following performance standards;
- b. Temporary signs must not be illuminated (internally or externally), digital, or projected, except in:

- i. CBD, centres, PPH and SSYP zones outside pedestrian street frontage mapped areas and heritage precincts;
 - ii. CBD Edge Commercial, South Dunedin Large Format and Trade Related zones;...
- c. Temporary signs attached to buildings must:...
- i. ...
 - ii. ...
 - iii. if attached at an angle to the façade (including on a deck or verandah), must not protrude from the façade more than 1m, except for the following zones where signs must not protrude from the façade more than 1.5m (see Figure 4.5.7.1):
 - 1. CBD, centres, PPH and SSYP zones outside pedestrian street frontage mapped areas and heritage precincts;
 - 2. CBD Edge Commercial, South Dunedin Large Format and Trade Related zones;...

Amend Rule 4.5.7.2.e.iv Election signs

Maximum height above ground level		Location
iv.	8 metres	1. Trade Related Zone
		2. Industrial zones
		3. Dunedin International Airport Zone
		4. Port Zone
		5. Stadium Zone
		6. <u>South Dunedin Large Format Zone</u>

Amend Rule 4.5.7.2.f.iii Election signs

Signs attached to buildings		
Maximum height above ground level		Location
iii.	8 metres	1. CBD, centres, PPH and SSYP zones outside pedestrian street frontage mapped areas and heritage precincts
		2. CBD Edge Commercial Zone
		3. Trade Related Zone
		4. Industrial zones
		5. Dunedin Hospital Zone
		6. Dunedin International Airport Zone
		7. Edgar Centre Zone
		8. Otago Museum Zone
		9. Port Zone
		10. <u>South Dunedin Large Format Zone</u>

Amend Rule 5.5.3.5.c. Wind generators – small scale thresholds

c. The maximum rotor diameter of wind generators is:

i.	Rural and rural residential zones	6m
ii.	Industrial zones, Trade Related Zone, <u>South Dunedin Large Format Zone</u> and CBD Edge Commercial zones	No limit on rotor diameter
iii.	All other zones	1.5m

Amend 5.5.9.1 Setbacks for wind generators

Activity	1. Minimum setback from boundaries of any Residential, Recreation or CMU Zone (excluding the Trade Related Zone, <u>South Dunedin Large Format Zone</u> and the CBD Edge Commercial zones)	2. Minimum setback from road and site boundaries
i. Wind generators - small scale with a rotor diameter less than or equal to 1.5m	N/A	A distance equal to the height of the structure
ii. Wind generators - small scale with a rotor diameter exceeding 1.5m	100m	A distance equal to the height of the structure

a. ...

b. Setbacks in commercial and mixed use and major facility zones
Freestanding wind generators - small scale in the Trade Related Zone, South Dunedin Large Format Zone, the CBD Edge Commercial zones and all major facility zones must have a minimum setback as follows: ...

Amend Section 18.1.1 Introduction

18.1.1.9 South Dunedin Large Format Zone (SDLF)

The SDLF Zone adjoins the South Dunedin principal centre zone and extends along the western side of Andersons Bay Road. This area provides for large format and bulky goods retail activities, in addition to the range of activities provided for in the adjoining Trade Related Zone, as these activities are likely to be incompatible with the amenity expectations of the CBD and the adjoining Principal Centre and often require larger sites than available in these locations.

Amend Objective 18.2.1

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

- e. an area south of the CBD (CEC – South Zone) and an area which adjoins the principal centre zone in South Dunedin (SDLF zone) and extends along the western side of Andersons Bay Rd, which provides for high trip generators, large format general retail and bulky goods retail which are likely to be incompatible with the amenity expectations of the CBD or adjoining principal centre zone and which may require larger sites than available in the CBD or adjoining centre; ...

Add New Policy 18.1.2.X and amend policies 18.1.2.4, 18.2.1.5 and 18.2.1.6

Policy 18.2.1.4	Provide for food and beverage retail: a. in the CBD and centres; and b. where 1500m² or more in gross floor area, in the CEC, <u>SDLF</u> and TR zones.
Policy 18.2.1.5	Provide for bulky goods retail and large format retail in the CEC, <u>SDLF</u> and WP zones in recognition that often these activities require larger sites than are available in the CBD and centres.
Policy 18.2.1.6	Provide for trade related retail and yard based retail to locate in the TR, PPH, and CEC <u>and SDLF</u> zones in recognition that often these activities require a built form that cannot meet the requirements within the CBD and centres, and their location in these areas is unlikely to detract from the vibrancy and vitality of the CBD and centres.
Policy <u>18.2.1.X</u>	<u>Only allow general retail 750m² or more in the SDLF Zone where any adverse effects on the vibrancy and viability of the CBD and centres are no more than minor.</u>

Amend Policy 18.2.2.6

Avoid early childhood education and residential activities in the CEC South, SDLF Zone and TR zones, and visitor accommodation in the SDLF and TR Zones unless the potential for reverse sensitivity is insignificant.

Amend 18.3.2. Activity Status Introduction legend

Other Commercial Zones	
TR	Trade Related Zone
CEC-N	CBD Edge Commercial North Zone
CEC-S	CBD Edge Commercial South Zone
<u>SDLF</u>	<u>South Dunedin Large Format Zone</u>

Amend activity status table 18.3.5:

Commercial activities		Activity status				Performance standards
		a. CEC - North	b. CEC - South	<u>SDLF</u>	c. TR	
2.	Ancillary licensed premises	Same activity status as underlying activity				
3	Bulky goods retail	P	P	<u>RD</u>	NC	i. Minimum car parking ii. Minimum vehicle loading
4.	Conference, meeting and function	NC	NC	<u>NC</u>	NC	
5.	Commercial advertising	NC	NC	<u>NC</u>	NC	
6.	Dairies	P	P	<u>P</u>	P	i. Maximum gross floor area of dairies
7.	Entertainment and exhibition	NC	NC	<u>NC</u>	NC	

8.	Food and beverage retail less than 1500m ² in gross floor area	NC	NC	<u>NC</u>	NC	
9.	Food and beverage retail 1500m ² or more in gross floor area	P	P	<u>P</u>	P	i. Minimum car parking ii. Minimum vehicle loading
10.	Office	P	NC	<u>NC</u>	NC	
11.	General retail less than 750m ² in gross floor area	NC	NC	<u>NC</u>	NC	
12.	General retail 750m ² or more in gross floor area	P	RD	<u>RD</u>	NC	i. Minimum car parking ii. Minimum vehicle loading
13.	Restaurants ancillary to trade related retail	D	D	<u>D</u>	P	i. Maximum gross floor area of restaurants in the Trade Related Zone <u>and South Dunedin Large Format Zone</u> ii. Location of ancillary restaurants in the Trade Related Zone <u>and South Dunedin Large Format Zone</u>

14.	Restaurants ancillary to food and beverage retail 1,500m ² or more in gross floor area	D	D	<u>D</u>	P	i. Maximum gross floor area of restaurants in the Trade Related Zone <u>and South Dunedin Large Format Zone</u> ii. Location of ancillary restaurants in the Trade Related Zone <u>and South Dunedin Large Format Zone</u>
15.	All other restaurants	D	D	<u>D</u>	D	
16.	Restaurant - drive through	RD	RD	<u>RD</u>	RD	
17.	Retail ancillary to industry	P	P	<u>P</u>	P	i. Maximum gross floor area of retail ancillary to industry
18.	Service stations	RD	RD	<u>RD</u>	RD	i. Service station standards ii. Minimum car parking
19.	Stand-alone car parking	P	P	<u>P</u>	P	
20.	Trade related retail	P	P	<u>P</u>	P	i. Minimum car parking ii. Minimum vehicle loading

21.	Visitor accommodation	P	D	<u>D</u>	NC	i. Minimum car parking ii. Minimum vehicle loading
22.	Yard based retail	P	P	<u>P</u>	P	i. Minimum car parking
Community activities		a. CEC - North	b. CEC - South	<u>x.</u> <u>SDLF</u>	c. TR	Performance standards
23.	Early childhood education	D	NC	<u>NC</u>	NC	
24.	Community and leisure - small scale	P	P	<u>P</u>	P	i. Minimum car parking
25.	Community and leisure - large scale	P	P	<u>P</u>	P	i. Minimum car parking
26.	Conservation	P	P	<u>P</u>	P	
27.	Sport and recreation	P	P	<u>P</u>	P	i. Minimum car parking
28.	All activities in the residential activities category	D	NC	<u>NC</u>	NC	
Industrial activities		a. CEC - North	b. CEC - South	<u>x.</u> <u>SDLF</u>	c. TR	Performance standards
29.	All activities in the industrial activities category	P	P	<u>P</u>	P	i. Minimum car parking ii. Minimum vehicle loading
Major facility activities		a. CEC - North	b. CEC - South	<u>x.</u> <u>SDLF</u>	c. TR	Performance standards
30.	Emergency services	P	P	<u>P</u>	P	1. Minimum car parking
31.	Hospital	RD	NC	<u>NC</u>	NC	

32.	All other activities in the major facility activities category	NC	NC	<u>NC</u>	NC	
Rural activities		a. CEC - North	b. CEC - South	<u>x.</u> <u>SDLF</u>	c. TR	Performance standards
33.	All activities in the rural activities category	NC	NC	<u>NC</u>	NC	

Amend Rule 18.5.4.4 Location of ancillary restaurants in the Trade Related Zone

18.5.4.4 Location of ancillary restaurants in the Trade Related Zone and South Dunedin Large Format Zone

- a. For restaurants ancillary ...

Amend Rule 18.5.5.5 Maximum gross floor area of restaurants in the Trade Related Zone

Maximum gross floor area of restaurants in the Trade Related Zone and South Dunedin Large Format Zone

- a. The maximum gross floor area of restaurants ancillary to food and beverage retail 1,500m² or more in gross floor area, or to trade related retail, in the Trade Related Zone and South Dunedin Large Format Zone is 100m².
- b. ...

Amend 18.5.7 Minimum vehicle loading

X.	<u>South Dunedin Large Format Zone</u>	i. <u>Trade related retail</u> ii. <u>Food and beverage retail (1500m² or more in gross floor area)</u> iii. <u>Industry</u> iv. <u>Bulky goods retail</u> v. <u>General Retail 750m² or greater in gross floor area</u>	1. <u>On sites which gain direct vehicular access to a strategic road, arterial road or urban high density corridor, with a gross floor area of 500m² or more: 1 loading space to accommodate an 8m rigid truck (See Appendix 6B, Figure 6B.10)</u> 2. <u>Activities with a gross floor area of less than 1000m²: 1 loading space to accommodate an 8m rigid truck (See Appendix 6B, Figure 6B.10)</u> 3. <u>Activities with a gross floor area of 1000m² or more: 1 loading space to accommodate an B Train Truck (See Appendix 6B, Figure 6B.11)</u>
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Amend Rule 18.6.5.2.a Maximum and minimum height

Zone/Centre	1. Minimum height of buildings (above ground level)	2. Minimum number of storeys for buildings (above ground level)	3. Maximum height of buildings and structures (above ground level)	4. Maximum number of storeys for buildings (above ground)
vi. <u>Trade Related and South Dunedin Large Format Zones</u>	—	—	16m	—

Amend Rule 18.6.11 Minimum Glazing and Building Modulation

- ...
- This standard does not apply to scheduled heritage buildings or within the Trade Related and South Dunedin Large Format Zones.

Amend Rule 18.6.13.1.b Number, Location and Design of Ancillary Signs – General

- b. Signs related to restaurants ancillary to food and beverage retail 1,500m² or more in gross floor area, or trade related retail, in the Trade Related and South Dunedin Large Format Zzones must not be externally facing (i.e. must not be visible from a public place).

Amend Rule 18.6.13.5.e Portable freestanding signs on footpaths

- e. In the Trade Related and South Dunedin Large Format Zzones, portable signs on footpaths are not allowed.

Amend Rule 18.6.13.6.b.ii Freestanding signs

- ii. In Trade Related and South Dunedin Large Format Zzones (see Figure 18.6.13.6B):
...

Amend the title of Figure 18.6.13.6B: Signs in the Trade Related Zone

Figure 18.6.13.6B: Signs in the Trade Related and South Dunedin Large Format Zzones

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
2.	- Restaurants drive-through (CEC - North, CEC - South, TR, SDLF) - Service stations (CEC - North, CEC - South, TR, SDLF, Centres, PPH)	a. Effects on residential amenity	<i>Relevant objectives and policies:</i> i. Objective 18.2.2 ii. Significant adverse effects on the amenity of existing residential activities are avoided or mitigated as far as practicable (Policy 18.2.2.4).
		b. Effects on the safety and efficiency of the transport network	See Rule 6.11

X.	• <u>Bulky goods retail (SDLF)</u> • <u>General retail 750m² or greater in gross floor area (SDLF)</u>	<u>a. Effects on accessibility</u> <u>b. Effects on the safety and efficiency of the transport network</u>	<u>See Rule 6.11</u>
Y.	<u>General retail 750m² or greater in gross floor area (SDLF)</u>	<u>a. Effects on the vibrancy and viability of the CBD and centres.</u>	<i>Relevant objectives and policies:</i> a. <u>Objective 18.2.1</u> b. <u>Large format retail in the SDLF Zone has no more than minor adverse effects on the vibrancy and viability of the CBD and centres (Policy 18.2.1.X).</u>

Amend Rule 18.11.3 Assessment of discretionary land use activities

18.11.3 Assessment of discretionary land use activities		
Activity	Guidance on the assessment of resource consents	
2. Restaurants (PPH, SSYP, CEC, TR ₁ <u>SDLF</u>)	<i>Relevant objectives and policies (priority considerations):</i> a. Objective 18.2.1 b. The activity is not of a scale or nature that is more appropriate to locate in the CBD, centres, WP or HE because: ... i. it is unlikely to contribute to the vibrancy and vitality of those zones; and ii. it has specific operational requirements that do not fit with those locations (Policy 18.2.1.17). <i>Potential circumstances that may support a consent application:</i> c. The restaurant is a take-away only restaurant that requires easily accessible short term parking.	

Amend Rule 18.12.3 Assessment of non-complying land use activities

18.12.3 Assessment of non-complying land use activities		
Activity		Guidance on the assessment of resource consents
6.	Conference, meeting and function, entertainment and exhibition (PPH, SSYP, CEC, TR, <u>SDLF</u>)	<i>Relevant objectives and policies (priority considerations):</i> a. Objective 18.2.1, Policy 18.2.1.16
7.	- Early childhood education and residential activities (CEC – South, <u>SDLF</u> and TR) - Visitor accommodation (TR, <u>SDLF</u>)	<i>Relevant objectives and policies (priority considerations):</i> a. Objective 18.2.2, Policy 18.2.2.6

Amend planning map as shown below:

