In the Environment Court of New Zealand
Christchurch Registry

I Te Kōti Taiao O Aotearoa
Ōtautahi Rohe

Under	the Resource Management Act 1991 (**RMA**)
In the matter of	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	**Cavendish Chambers Limited** ENV-2018-CHC-231 **Nichols Property Group Limited & Others** ENV-2018-CHC-217 **Foodstuffs (South Island) Limited** ENV-2018-CHC-238 **Kaan's Properties 2017 Limited** ENV-2018-CHC-286 **Port Otago-Harbourside Edge** ENV-2018-CHC-246 **University of Otago** ENV-2018-CHC-270 Appellants
And	**Dunedin City Council** Respondent

Affidavit of Derek Richard Foy
Affirmed: 29 March 2021

Concerning:

Groups: 2, 3, 4

Topics: Trade Related Zone, Harbourside Edge Zone, Campus Zone provisions, Commercial zoning site-specific

Appeal points: DCC References 19, 36, 53, 185, 187, 198, 203, 242, 340, 371

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I, **Derek Foy** of Auckland, Associate Director of Market Economics, hereby solemnly and sincerely affirm:

1 I am an Associate Director of Market Economics Limited, an independent research consultancy in Auckland.

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 hold the qualifications of a BSc in Geography and an LLB from the University of Auckland. I have over 20 years consulting and project experience, working for commercial and public sector clients. I specialise in retail analysis, assessment of demand and markets, the form and function of urban economies, the preparation of forecasts, and evaluation of outcomes and effects.

4 I have applied these specialties in studies throughout New Zealand, across most sectors of the economy, notably assessments of retail, urban form, land demand, commercial and service demand, housing, tourism and local government.

5 I have worked for many Councils, assisting them with assessing and reviewing consent applications and providing input into development planning. My private sector clients include most of New Zealand's largest shopping centre operators, several national retail chains, residential land developers, infrastructure providers and industry bodies.

Introduction

6 This affidavit provides expert advice to support the rationale, and an assessment in terms of section 32, of the changes agreed in the attached consent memoranda:

(a) Nichols Property Group Limited, dated 14 September 2020;

(b) Foodstuffs South Island Properties Limited, dated 19 August 2020;

(c) Harbourside Edge Zone (Kaan's Properties 2017 Limited), dated 2 September 2020;

(d) Commercial - site specific and Harbourside Edge Zone (Port Otago Limited and University of Otago), dated 13 August 2020;

(e) University of Otago, dated 11 September 2020; and

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(f) Commercial zoning – site specific (Cavendish Chambers Limited), dated 13 August 2020.

7 The details of the appeals are included in the affidavits of Emma Christmas relating to these appeals.

8 This affidavit specifically addresses the effects on business land capacity and on the centres hierarchy of the following proposed changes, as outlined in the consent memoranda:

(a) Rezone part of the Trade Related Zone to a new South Dunedin Large Format Zone;

(b) Rezoning part of the Trade Related Zone (on Hillside Road) to Principal Centre Zone;

(c) Rezoning part of the Industrial Zone in Andersons Bay to Trade Related Zone;

(d) Provide for small scale food and beverage activity in the Harbourside Edge zone;

(e) Rezone part of the Industrial Zone at Fryatt Street to Harbourside Edge zone;

(f) Rezone part of the Campus Zone at Albany Street to Suburban Centre Zone;

(g) Provide for visitor accommodation, retail ancillary to industry and training and education activity in the Campus Zone; and

(h) Rezone part of 201 High Street, 205, 211 and 219 High Street from Inner City Residential to CBD Zone.

Summary

9 This assessment considers the overall impact on the availability of zoning of commercial and industrial land from the changes agreed.

10 The changes have the potential for both benefits and costs in terms of the plan's objectives. The following costs and benefits could arise:

(a) The addition of commercial land could lead to some adverse effects on centres' vibrancy by redistributing consumer activity or tenants. This could occur if tenants move out of existing centres into the new large format zone or campus zone, or disperse into newly zoned

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areas of CBD or other centres, or if shoppers change their shopping patterns with the addition of new supply.

(b) Conversely, the additional land could assist with the competitive operation of the market, lower rentals, provide for the needs of growth and make more business viable in the CBD and centres; and

(c) The loss of industrial land could reduce location options for industrial activities or increase cost of land.

11 However, overall the agreed changes to zoning, and changes to activities provided for within certain zones, all relate to relatively small geographic areas in the context of the total area zoned CBD, centre and industrial across Dunedin City, and all have particular characteristics that distinguish them from other locations. Therefore, the magnitude of any of the costs or benefits above is likely to be minor.

12 It is my opinion that the changes proposed are appropriate given the characteristics of each appeal area, and that overall the changes are appropriate to meet the economic aspects of objectives and policies in the 2GP and assist Council giving effect to its obligations under the National Policy Statement on Urban Development 2020 (NPS-UD) and Otago Regional Policy Statement (ORPS).

Background

13 My involvement in these appeals to date is as follows.

14 In 2013 my company undertook a literature review and peer review to identify the adequacy of the evidence base to support the preferred option for management of retail and commercial office distribution in the 2GP.

15 I then prepared a report[1] that assessed Dunedin City's current (in 2014) retail and office activity, projected future demand growth in those sectors and drew conclusions as to the adequacy of current supply based on current and future demand. I updated that assessment in 2015, culminating in an updated version of the report dated August 2015.

16 I then prepared a statement of evidence dated 19 July 2016 which responded to submissions to the 2GP primarily in respect of making further provision for office and retail activities in locations not anticipated in the 2GP. That evidence relied on my earlier assessments, as described above.

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[1] "Retail and Office Demand Second Generation Plan Demand Assessment", Market Economics Ltd, January 2014

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I attended the 2GP hearing to present my evidence and answer questions from the panel on 3 August 2016.

17 I then prepared three supplementary statements of evidence. The first of those (1 August 2016) responded to matters raised in evidence that had been lodged by 1 August 2016, but after my primary evidence (dated 19 July 2016). The second (10 August 2016) responded to evidence lodged by some submitters who were granted an extension to the 1 August deadline. The third (1 November 2016) was limited to a response to a question from the regarding the appropriate activity status for restaurants (cafes) in the Trade Related Zone.

18 I then attended (by videolink) and answered questions from the panel at Council's right of reply at the 2GP hearing on 30 November 2016.

19 In March 2017 I undertook expert conferencing with Fraser Colegrave, the economics witness for Foodstuffs South Island, culminating in a Joint Witness Statement dated 21 March 2017.

20 More recently I attended (by videolink) mediation with Nichols Property Group Ltd on 19 August 2020.

21 In relation to each appeal / proposed change, my advice was as follows:

(a) Foodstuffs (rezoning part of the Industrial Zone at Andersons Bay to Trade Related Zone "TRZ"): In my EIC I stated that applying a TRZ to the 7ha (net) land area requested would potentially result in a significant change to the type of activities located there, and have adverse effects on the supply of industrial land. I reconfirmed that position in my second supplementary statement in response to Mr Colegrave's evidence.

(b) Nichols (rezoning TRZ to new South Dunedin Large Format "SDLF" zone and Principal Centre): In my EIC I disagreed with the submission that the proposed TRZ did not adequately reflect the types of activities in the Andersons Bay Road TRZ, and that a Mixed Use Zone would better recognise those activities. My conclusion was that a new mixed use zoning was not necessary to accommodate market growth, and would be likely to have adverse effects on the CBD and other centres. A second submission point was that Bulky Goods and large format General Retail should both be permitted activities in the South Dunedin TRZ. I disagreed with that point because of the very large area concerned, and stated that the significant potential for retail to establish there would be contrary to the 2GP's objectives, and the large area (28.2ha gross) of TRZ could significantly change how the

City's retail environment is structured and would function, in a way that is not anticipated by the 2GP.

(c) University (Campus Zone provisions and rezoning to suburban centre): I did not address submissions relating to changed provisions in the Campus Zone in my contribution to the hearings.

(d) Kaans appeal (provision for food and beverage retail in the Harbourside Edge zone): I did not in 2GP hearings address the issue of providing for food and beverage retail in the Harbourside Edge zone.

(e) Port Otago appeal (rezoning to Harbourside Edge): In my EIC I stated the commercial activities enabled under the Harbourside Edge zone would be appropriate in that location, although are also appropriate in the CBD, where they are predominantly located now. Enabling them in the HE Zone would potentially draw some of those activities away from the CBD, to its detriment, and contrary to objectives in the 2GP. For those reasons I recommended that the proposal to apply a Harbourside Edge zoning on the Fryatt St land be declined. I restated that position in my first supplementary statement, adding that given Dunedin's projected modest economic growth that a Harbourside Edge zoning may be appropriate there in the future, however that the most appropriate zoning in the 2GP is Industrial Port.

(f) Cavendish appeal (rezoning to CBD Zone): I did not in the 2GP hearings address the site specific zoning that is the subject of this appeal.

22 Since my 2014 report and its 2015 update were completed, there has been additional assessment of retail and business capacity in Dunedin that is relevant to the current appeals. The population projections now used for Dunedin City Council's business land modelling are significantly higher than they were at the time of my earlier assessment, part of a national trend for current growth projections to have increased from those issued soon after the 2013 Census. Those higher population projections in Dunedin would be likely to translate into greater demand for business land than previously estimated, particularly for sectors that are more strongly linked to population size (e.g. retail, health and education), although to a lesser extent for sectors that are more influenced by external forces (e.g. export-based industry).

23 I note that the current (2020) Statistics NZ estimate of Dunedin City's population is 134,100 people, and is part of a series that shows that growth between 2013 and 2018 was 7,700 people, which is 70% higher than had

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been anticipated by the high growth scenario Statistics NZ projections.[2] The effect of that higher than expected growth is that the current Dunedin population is estimated to now (2021) be a level that was not projected (by Statistics NZ) to be reached until around 2030.[3]

24 I understand that Council will soon be procuring new economic projections to inform the next business land capacity assessment and future development strategy, although those projections and the assessment relying on them are not yet available. I would expect those projections to reflect the current higher baseline population and greater demand for retail activities.

Section 32AA Assessment

25 In the following paragraphs I outline my views in relation to the following matters that are within my area of expertise and which I consider to be relevant in terms of s74 and s75, with particular consideration of the provisions in the NPS-UD, ORPS and the requirements of s32 with respect to the objectives and policies of the 2GP, particularly those of most relevance, which are discussed in the affidavit of Ms Christmas.

26 I first consider the impact of each proposed change independently, then all changes cumulatively.

Foodstuff appeal (new Trade Related zoning)

27 The Foodstuffs appeal sought to rezone 15 Midland Street and surrounding land ("the Midland Street land") from Industrial Zone to Trade Related Zone. An agreement has now been reached between the parties to rezone an area of industrial zoned land between Midland and Teviot streets in Andersons Bay to Trade Related Zone. This includes both the Foodstuffs site at 15 Midland Street and the Nichols site at 51 Timaru Street, together with adjoining properties, a total area of 3.5ha.[4]

28 In her affidavit, Ms Christmas notes that about 34% of the Midland Street land is already being used for well-established trade related retail or other commercial activities. I agree with Ms Christmas that it is reasonable to assume that that 34% of the Midland Street land (1.2ha) is effectively already lost to industrial use. I also agree that the other 66% (2.3ha)

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[2] Those running off a 2013 Census base, where Statistics NZ's high growth projection was for an additional 4,580 people between 2013 and 2018.

[3] Under the medium growth scenario applied in my earlier assessments.

[4] From affidavit of Ms Christmas concerning appeals by Nichols and Foodstuffs, paragraph 27

therefore represents the loss of industrial zoned land as a result of the rezoning.

29 In my opinion a loss of industrial land of that scale is a small loss in the context of the total area of industrial zoned land in Dunedin, and agree with Ms Christmas' conclusion that rezoning the land will not conflict with ensuring there is sufficient industrial land to meet projected demand. That loss of industrial land is much reduced from the scale that would have resulted from the earlier Foodstuffs submission that I recommended declining. The large decrease in scale is the main reason for my change in recommendation about the appropriateness of the change.

30 In the joint witness statement Mr Colegrave and I agreed that there was no potential for adverse distributional effects on centres as a result of potential redevelopment on the Midland Street land. I continue to hold that opinion, especially now given the even more limit scale of development that could occur due to the consented and established retail activities there.

31 For those reasons, the agreed zone change would assist Council giving effect to its obligations under the NPS-UD in respect of commercial land, and would not materially adversely affect its obligations in respect of industrial land. For the same reasons, I agree with Ms Christmas' assessment that the proposed amendments would also give effect to the ORPS and be appropriate to achieve the plan's objectives.

Nichols appeal (rezoning Trade Related Zone to new SDLF Zone and Principal Centre)

32 The Nichols appeal sought to change 28.2ha of TRZ in South Dunedin to a Mixed Use zone. An agreement has now been reached between the parties to rezone a small part of that TRZ (7.3ha) south-west of Andersons Bay Road from TRZ to SDLF. That area is already occupied by three notable large format retailers (The Warehouse, Torpedo 7 sports store and Countdown supermarket), and consent has been issued for a Kmart to occupy the former Smiths City premises on Anderson Bay Road. Together those large format retailers occupy some 5.0ha of the 7.3ha in the proposed SDLF Zone. Other activities in the proposed new SLDF Zone include food and beverage services (McDonalds, Cheesecake Shop, Dominos Pizza, Wendy's, Burger King), a gas appliances store, gasworks museum, car yard, automotive workshop, a service station and a tool shop.

33 In my evidence to the 2GP hearings panel I stated that from my assessment the then proposed mixed use zoning was not necessary to accommodate market growth, and would be likely to have adverse effects on the CBD and other centres. The very large area, and large amount of industrial activities

that might convert to retail uses, was a significant reason for my position. An agreement has now been reached between the parties to rezone a much smaller part of the TRZ to enable large format retail uses, and that area is dominated by extant large format retail activities.

34 The consequence of that reduction in area, and the dominance within that area of large format retail uses, is that there is very limited potential for the now proposed SDLF Zone to generate adverse retail distribution effects on Dunedin's centres. Of the 2.3ha that is not already occupied by or consented for large format retail activities, 1.7ha is already occupied by existing activities that in my opinion would be likely to remain in situ, including 0.8ha of fast food restaurants and a service station). The balance of 0.6ha is a very small amount of land to support large format retail, and is fragmented across multiple sites, all of which limits the additional retail which might establish in that zone and the distribution effects that might be generated as a result.

35 Given that landscape of existing activities, I agree with Ms Christmas' conclusion that the new policy and assessment rule would be sufficient to ensure that additional large scale retail in the SDLF zone would not have more than minor adverse effects on the vibrancy and viability of the CBD and centres and therefore the zone change would still achieve the plan's objectives.

36 An agreement has also been reached between the parties to rezone properties on the south side of Hillside Road opposite Pak n Save (between Rankeilor and Braemar Streets) from TRZ to Principal Centre, a total land area of around 3,390m^2 (0.3ha). That area contains a number of relatively small sites with smaller footprint activities (compared to most sites in the rest of the Andersons Bay TRZ) with a range of activities typically found in centre and edge of centre locations, including a medical laboratory, automotive workshop, air conditioning service business, furniture and appliances stores, a glazier, pizza restaurant, TAB and a tailor.

37 I have not previously assessed the merits of this proposed change, although did assess a similar request in my primary evidence.[5] That other change was similar in that it was a similar land area, was also adjacent to the principal centre and contained a similar range of activities. My assessment of that submission was that it would be more likely to generate positive rather than negative effects on the South Dunedin centre.

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[5] Relating to submission 866, by Harbourough Properties Ltd, relating to land at the corner of Macandrew and Reid Roads

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38 In my opinion, the expansion of the Principal Centre Zone area agreed by the parties would also generate positive rather than negative effects for the South Dunedin Principal Centre. While existing activities will not necessarily immediately change as a result of the agreed zoning change, it will become easier for them to eventually become tenanted by core centre-type activities, such as are present along King Edward St. That gradual transition will increase the floorspace supply of the centre, and do so in a logical location along the Hillside Road entrance to the Principal Centre Zone from the north and east in a way that will over time improve the built form and attractiveness of the centre. In my opinion the agreed change to Principal Centre zone would therefore have positive effects on the South Dunedin Principal Centre, and would not have more than minor adverse effects on the vibrancy and viability of the CBD or any other centre.

University appeal (Campus Zone provisions and rezoning to Suburban Centre)

39 I have not previously addressed any possible changed provisions in the Campus Zone. The change requested, and agreed to between the parties is to:

(a) Amend the campus and training and education activity definitions to provide for additional activities ancillary to campus activity (sale of learning materials and student support services);

(b) Provide for training and education activity as a permitted activity in the Campus Zone;

(c) Provide for retail ancillary to industrial activity as a permitted within the Campus Zone;

(d) Provide for visitor accommodation as a restricted discretionary activity in the Campus Zone;

(e) Rezone part of the Campus Zone to Suburban Centre.

40 I have reviewed Ms Christmas' assessment of the requested changes, and respond as follows.

41 I agree that the proposed changes to the definitions of campus and campus affiliated office activity, and provision for training and education and ancillary retail activities, better reflect the range of activity occurring on the campus, by including additional activities that are ancillary to campus activity (such as sale of learning materials and student support services).

In my opinion the proposed changes to activity statuses[6] better reflect the types of activities occurring on campus, and required for the normal, efficient operation of the University, as explained in the affidavit of Ms Christmas, and are therefore appropriate.

42 Those changes would not have more than minor adverse effects on the vibrancy and viability of the CBD or any other centre because of the limited extent of the activities changed, and the limited commercial viability of those activities within the Campus zone, other than to support the operation of the University. In my opinion it is unlikely that any activities subject to that change would seek to establish within the Campus other to support Campus activities, because the Campus does not generally function in a way that seeks to attract non-University users onto its grounds.

43 The agreement also includes a proposed extension of the Suburban Centre Zone into part of the University occupied by the buildings that contain the student union complex and a range of other activities.[7] That complex contains a large amount of floorspace over multiple levels, and is dominated by physical spaces purpose built for University activities.

44 The library building occupies most of the area rezoned as part of the Suburban Centre Zone, and is large and relatively new (dating from 2003). The Student Union building is also substantial, although older. In my opinion there is very little likelihood of redevelopment of those buildings in the proposed centre zone, and there is very little risk that the agreed change to Suburban Centre zoning will result in any proliferation of centre type activities. Rather, I would expect that the core University functions that occupy most of the space in those buildings would remain, and the new centre zoning would improve access to a very limited range of retail goods and services for the student population.

45 The existing Suburban Centre Zone generally operates to provide convenient access to retail goods and services to staff, students and visitors to the University. Because of the location of the proposed extension to the Suburban Centre Zone within the University campus, the small geographic size of the extension, and the relatively poor accessibility for consumers not already visiting the campus for other purposes, I consider it unlikely that the extension would attract consumers not based on campus. For those based

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[6] for training and education (to permitted), retail ancillary to industrial activity (to permitted), and visitor accommodation, training and education (to restricted discretionary)

[7] Careers Advisory, library, IT support, de Beer gallery, student learning centre, print shop and assorted other office based activities.

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on campus, the extension would have the positive effect of improving access to centre activities.

46 For those reasons it is my opinion that the proposed Suburban Centre zoning would not give rise to more than minor adverse effects on the vibrancy and viability of the CBD or any other centre. Instead, the centre would provide for efficient access to a limited range of retail goods and services for University students and employees. I agree with Ms Christmas' assessment that the proposed rezoning is consistent with Policy 2.3.2.X, and will achieve Objective 2.3.2.

Kaan's Properties appeal (provision for food and beverage retail in Harbourside Edge Zone)

47 I have not previously addressed specifically the issue of providing for food and beverage retail in the Harbourside Edge Zone ("HE Zone"), although did address submissions relating to the HE Zone that sought to provide for office space there,[8]

48 The change agreed to between the parties is to provide for limited food and beverage retail activity within the HE Zone. Food and beverage retail of less than 500m^2 gross floor area would be restricted discretionary and activities 500-750m^2 would be fully discretionary. Policy guidance for assessing discretionary activities directs that the activity should be of a size and designed to cater to people living or working locally or using the area for recreational purposes.

49 As explained in the affidavit of Ms Christmas, the HE Zone is intended to facilitate transition from existing industrial land uses to a mixed use environment, so that the area will eventually become a tourist destination. Ms Christmas also notes that there is currently no provision for food and beverage retail within the zone apart from dairies.

50 To achieve objectives in the 2GP of both allowing the HE Zone to transition to a mixed use environment (Objective 18.2.1) and ensure centres remain vibrant (Objective 2.3.2), it will be necessary to manage development of the HE Zone so as to detract from existing centres. That was a core concern of the response to HE Zone submissions in my primary evidence, and remains a concern in this statement.

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[8] Otago Regional Council (submission 908) and Chalmers Properties Ltd (submission 749). I understand that Kaan's Properties now own some of the Harbourside Edge Zone land formerly owned by Chalmers Properties

51 In order to support the intended transition of the HE Zone, some provision of food and beverage activities (other than just dairies) in the area will be important. In the absence of such provision, redevelopment of the area and the introduction of new permitted activities will be less attractive because food and beverage activities are a core part of facilitating social interaction, as well as providing for the physical needs of the population. For that reason alone I support some provision of food and beverage activity in the HE Zone.

52 The core issue then becomes what is an appropriate scale of provision in order to avoid adverse effects on centres. The HE Zone is about 5ha gross land area (including some roads) and could accommodate very significant presence of food and beverage activity. The proposed restrictions on that activity (a maximum limit of 500m^2 for restricted discretionary activities, and the policy direction to manage the scale of activities to ensure they are focused on catering to people living or working locally or using the area for recreational purposes) would go some way to mitigating the risk of adverse effects on centres of new food and beverage activity establishing in the area.

53 In my opinion the predominantly industrial nature of the HE Zone now will limit the attractiveness of the area for food and beverages activities for some time, probably a large part of the life of the 2GP. As redevelopment of the area proceeds and the transition to a mixed use area advances, the attractiveness of the area for food and beverage businesses will increase, although that will occur gradually over at least the next decade. It will also be moderated by the stricter rules around building and site design that apply in this zone, which would limit the opportunities for large scale car-oriented activities. Because food and beverage spend is discretionary to an extent (consumers can choose to eat out more, etc.) attractive new offerings of food and beverage activity can increase the size of the market, and that is something that might occur in the HE Zone given it is envisaged to become a high amenity, attractive location.

54 The most recent population estimates available indicate that population growth since the 2013 Census has been much greater than expected, and that indicates demand for additional HE Zone space greater than assessed in my 2015 report and referred to in my primary evidence.

55 That gradual increase in non-industrial activities, and food and beverage activity in particular, together with the proposed restrictions (customer type and venue size) as well as existing built form standards and greater base population, will together in my opinion be sufficient to both avoid any

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significant adverse effects on the vibrancy and vitality of the CBD and other centres and to support the transition of the HE Zone to a mixed use area.

56 For those reasons I agree that the change agreed to between the parties to provide for limited food and beverage retail activity within the HE Zone is appropriate from an economics perspective.

Port Otago appeal (rezoning to Harbourside Edge)

57 The agreement between the parties is to extend the HE Zone to include part of the southern side of Fryatt Street, (currently zoned Industrial Port), an area of about 0.85ha.

58 The proposed rezoning of that land from Industrial Port to HE Zone gives rise to two potential effects that require my response. First is the potential that the increased size of the HE Zone would potentially give rise to different effects on centres. Second, the change that would result from a loss of industrial zoned land.

59 The small area of land involved and the dimensions of the land means that the magnitude of both types of effects will be very limited. The area would enable development of buildings no more than 20m deep, although extending along over 300m of harbourside land. The net developable area and building footprint yield (estimated by Ms Christmas to be around 1,660m^2, in paragraph 81 of her affidavit) would be very small in the context of the Dunedin's industrial land supply. Ms Christmas notes that there is a projected surplus of industrial land overall for medium and long term use, and I agree with her assessment that the small area proposed to be changed will not conflict with ensuring there is sufficient industrial land to meet projected demand. The change will therefore not be inconsistent with Council's obligations to provide adequate industrial land under the NPS-UD or with objectives and policies in the 2GP (e.g. Objective 2.3.1 and Policy 2.3.1.4).

60 In relation to the potential effects on centres, the increase in HE Zone as a result of the agreement would be small, and as discussed above in relation to the agreement relating to provision for food and beverage space in the HE Zone, any conversion of current uses on the Fryatt Street land to commercial activities will be gradual, spreading any effects over probably most of the life of the 2GP (at least). That would mean any changes would have limited if any effect on the vibrancy and vitality of the CBD and other centres, given that population growth over the same period is likely to support more commercial activities.

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61 In my second supplementary statement I did note the risk that if the HE Zone was to be too large, it may be difficult to achieve a critical mass of activities in any part of the zone, to the detriment of the zone in its entirety. I favoured an incremental release of land as opposed to a single tranche as has resulted from the 2GP. I now hold fewer concerns about that issue due to the stronger population growth that is expected, although the ongoing effects of Covid-19 on the tourism industry indicate that it is likely to be some time before the HE Zone accommodates a widespread range of mixed uses.

62 Ms Christmas notes that part of the Fryatt St part of the HE Zone is proposed to be occupied by a marine studies centre (on 0.45ha[9]). I am also aware of both a proposed 10 dwelling apartment complex at the north-western end of Fryatt Street. While none of those potential developments are yet confirmed, they indicate to me that there is an emerging attractiveness of the area for redevelopment, and that a range of uses are likely to eventuate. Those factors help to assuage my earlier concerns about development timing.

63 Overall I agree that the change agreed to between the parties is appropriate from an economics perspective, and I agree with Ms Christmas' conclusion that rezoning the land is a more appropriate way of ensuring that the plan's objectives.

Cavendish appeal (rezoning to CBD Zone)

64 I have not previously assessed the potential economic effects of the proposed rezoning of 201, 205, 211 and 219 High Street to CBD Zone. I did assess the potential for expansion of the CBD Zone into the site occupied by Harvey Norman (the corner of Rattray and Maclaggan Streets).

65 In response to the Harvey Norman submission[10] I concluded that a CBD zoning was appropriate given adjacency to the CBD and the retail activity conducted there. I further noted that because the site was fully developed and tenanted there was no real likelihood of adverse effects on the CBD of applying a CBD Zone instead of the originally proposed CBD Edge Commercial Zone.

66 My position is the same for the proposed inclusion of the High Street properties in the CBD Zone. Those properties are fully developed and tenanted, and there is little chance of redevelopment of those properties as

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[9] From Pacifecon Building Intelligence Database

[10] Submission 211

three of the four sites have scheduled heritage buildings, and all are located in the High Street Residential Heritage Precinct, as stated by Ms Christmas.[11] For that reason, the proposed change would not have more than minor adverse effects on the vibrancy and viability of the CBD or any other centre.

Cumulative impacts: Loss of Industrial land

67 There are two main potential economics effects that will arise from the proposed zoning changes assessed in this affidavit, a loss of industrial land and an effect on centres. Having assessed the potential effects of each agreement in isolation, I now assess the cumulative effects that would arise if all of the proposed zone changes that I have assessed in the agreements were to be made.

68 The agreements that would result in a loss of industrial land arise from the Foodstuffs appeal and the Port Otago appeal. The Foodstuffs appeal would change 3.5ha from Industrial Zone to TRZ, and the Port Otago appeals would change 0.85ha from Industrial Port to HE Zone. The total loss of industrial zoned land if both agreed changes were to proceed would be 4.35ha. Of that 4.35ha, only 3.15ha is used by industrial activities now, or is vacant. The other 1.2ha is used by non-industrial activities which could reasonably be expected to remain in place, even without a zone change.

69 The aggregate area across both of the two appeal sites that is used by industrial activities now (3.15ha) is only 0.85ha more than the 2.3ha used by industrial activities in the Midland Street land (Foodstuffs). That additional 0.85ha is not enough to change the conclusions I reached above in relation to the Foodstuffs appeal alone. That conclusion was that the loss of that relatively small quantum of land from industrial supply would not materially adversely affect Council's NPS-UD obligations in respect of industrial land, given the conclusion from the most recent Council Business Land Capacity Assessment that found there is a clear surplus of industrial land overall for medium and long term use.

Cumulative impacts: Effects on centres

70 All of the agreements[12] could potentially result in some effects on Dunedin's CBD or other centres, because all are more enabling of retail of food and beverages activity, both of which are core centre activities.

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[11] Paragraph 33 of her affidavit

[12] That is, the appeals by Foodstuffs, Nichols, the University, Kaan's Properties, Port Otago and Cavendish

71 The agreements relate to three different proposed zones, each of which will have different types of effects on centres, due to the activity status of each retail type in each place:

(a) The Foodstuffs agreement relates to the creation of a TRZ, and would enable 1.36ha more TRZ-type retail activity than is already located within the Midland Street land;

(b) The Nichols agreement would create a new SDLF Zone (7.9ha), of which 5ha is already occupied by large format uses. A second part of the agreement would increase the size of the South Dunedin Principal Centre by 0.3ha;

(c) The University agreement relates to about 1.3ha of land, and would expand the existing Albany Street Suburban Centre by that amount;

(d) The Kaan's Properties agreement would change the activity status of food and beverage retail within the HE Zone, an area of around 5ha;

(e) The Port Otago agreement would increase the size of the HE Zone by some 0.85ha; and

(f) The Cavendish agreement would increase the size of the CBD Zone by 0.085ha.

72 To summarise, the five types of zone in which retail or food and beverages activities would be more enabled are the TRZ, a new SDLF Zone, the Suburban Centre Zone, the CBD Zone and HE Zone. While there is some functional overlap between the zones, they exist to provide for different aspects of the community's needs:

(a) The TRZ is a trade-focused zone;

(b) The SDLF would provide for large format retail activities;

(c) The South Dunedin Principal Centre and Suburban Centres are hubs for social and economic activity for suburban communities;

(d) The CBD is the regional centre for Dunedin; and

(e) The HE Zone provides for the continuation of existing industry, while allowing for a transition toward mixed uses (residential, accommodation, education, office, etc.).

73 An additional 1.74ha of centre zoned space is proposed in the agreements. In my opinion it is unlikely that any of the Nichols (South Dunedin Principal

Centre), Cavendish (CBD) or University (Suburban Centre) agreements would result in any material increase in centre activity within the agreement area due to the fact that all areas are already substantially developed and occupied by existing uses that are unlikely to change (e.g. the University library and the office activities on High Street). Together the three agreements would have no more than minor effects on the operation and integrity of Dunedin's centres network and the vital and vibrant functioning of centres, including the CBD.

74 The three other proposed changes do not create new centre zones (expanded TRZ, new SDLF, HE Zone) but would potentially contribute to cumulative effects on centres. However, because those other changes relate to a narrow range of activities and across a small geographic area, the total cumulative effects on centres will be less than minor. To recap the effects of each agreement:

(a) The new TRZ (Foodstuffs) is largely already consented for or occupied by retail activities, and from my assessment only around 1.36ha could accommodate new TRZ or other retail activities. The rules in the TRZ limit the types of retail activities to those not typically found in centres, and the trade competition effects of new retail developing in the Midland Street land would be predominantly limited to non-centre businesses, and so the retail distribution effects on centres would be very limited.

(b) The new SDLF (Nichols) is largely occupied by large format retail activities now, and from my assessment around 0.8ha of land where any redevelopment for new retail activity might occur, although that is split across different sites that would make accommodation of large new FLR buildings challenging. Further, that is a very small amount of land for LFR, and would accommodate indicatively only 2,000-3,000m^2 of retail floorspace, and hence very limited additional capacity for new LFR activities.

(c) Changes to the HE Zone under the agreements (Kaan's and Port Otago) would result in nearly 6ha being available to accommodate food and beverage activities, as restricted discretionary activities (when 500m^2 or less gross floor area), and discretionary activities (when 500-750m^2 floor area). Food and beverage activities are important in centres, however only a small part of the 6ha would be developed for food and beverages, and together with the built form restrictions and the policy guidance that that supply is intended only to serve people using the HE Zone for other purposes indicates that

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food and beverage activities there should be relatively self-sustaining, and not reliant on drawing spend away from other destinations.

75 Considering all of the proposed changes, it is my opinion that even when considering the potential cumulative effect of land use change provided for through all of the agreements on Dunedin's centres , the changes agreed are appropriate in terms of the 2GP's objectives and will give effect to the NPS-UD.

Affirmed at Auckland

By **Derek Richard Foy**)
this 29 day of March 2021)
before me:) ....

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A Solicitor of the High Court of New Zealand

Yiming Shao
Solicitor
Auckland