

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 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 **Woolworths New Zealand Limited**

Appellant

And **Dunedin City Council**

Respondent

Affidavit of Emma Christmas

Affirmed *26 March 2021*

Concerning: Appeals by Woolworths New Zealand Limited
Group: 2a
Topic: CMU Strategic
Appeal Point DCC References 78, 127, 130 and 366

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lloyd.**

I, **Emma Christmas** of Dunedin, Senior Policy Planner, hereby solemnly and sincerely affirm:

- 1 I am a senior policy planner at Dunedin City Council.
- 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 have been employed by Dunedin City Council as a policy planner or senior policy planner for eight years. During this time I have primarily worked on drafting the 2GP, assessing submissions, preparing and presenting s42A reports and working on the appeals. Prior to this, I was self-employed as a planner for 10 years, working mainly on consent applications. Prior to that I was Team Leader Consents at Environment Canterbury for five years. I am a certified independent hearings commissioner and a full member of the New Zealand Planning Institute.

Introduction

- 4 This affidavit relates to the appeal by Woolworths New Zealand Limited (Woolworths) (DCC Reference numbers 78, 127, 130 and 366).
- 5 Woolworths' appeal seeks to (in summary):
 - (a) Add a new definition of supermarket (appeal point 78);
 - (b) Add a new policy under Objective 2.3.2 to allow some out of centre commercial activities; and amend Policy 15.2.1.5 to refer to the new policy (appeal point 78);
 - (c) Add exemptions for supermarkets from various built form performance standards (location and screening of car parking, minimum glazing requirements and setbacks from road boundaries) (appeal points 78 and 366);
 - (d) Provide for supermarkets as a discretionary activity in the industrial zones (appeal point 78);
 - (e) Rezone 47 - 49 Gordon Road, Mosgiel, to Suburban Centre Zone (appeal point 127); and
 - (f) Remove the Secondary Pedestrian Street Frontage mapped area from 43 Mailer Street, Dunedin (appeal point 130).

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- 6 From mediation, I understand that the main issues of concern to Woolworths are:
- (a) To ensure there is an appropriate pathway for considering new supermarkets in non-commercial environments (particularly residential zones); and
 - (b) Ensuring that operational needs can be considered when particular built form performance standards cannot be met.
- 7 This is a narrower set of issues than those in the original appeal. The issues were refined by the appellant during informal discussions and my evidence below relates only to this narrower set of issues. The agreement relating to these issues resolves all appeal points (DCC reference numbers 78, 127, 130, 366). Resolution of appeal points 127 and 130 have not resulted in any changes to the 2GP).
- 8 There are two s274 parties to this appeal: BP Oil New Zealand Limited and Others oppose DCC reference number 78, and Foodstuffs New Zealand Limited support DCC reference numbers 78 and 366.

Agreement reached

- 9 As outlined in the attached consent memorandum, agreement has been reached to address the issues outlined in paragraph 6. These changes include:
- (a) Amendments to strategic direction policies relating to zoning new commercial and mixed use land; and
 - (b) Amendments to assessment guidance for contravention of some performance standards. The amendments focus on the need to consider operational needs and effects on safety.

Assessment of other appeals

- 10 As part of my assessment of the appropriateness of this change, I have considered whether there are other appeals on the provisions affected by these amendments, to understand whether there is overlap between different appeals on the same provisions in the plan.
- 11 There are no other appeals on the provisions being amended.

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Planning background

Strategic policies guiding rezoning

12 There are three key objectives in the strategic directions that are relevant to zoning new centres:

- (a) Objective 2.3.2, which sits under the theme of 'Dunedin is Economically and Socially Prosperous' and is focused on protecting the CBD and centres hierarchy;
- (b) Objective 2.4.3, which sits under the theme 'Dunedin is a memorable city with a distinctive built and natural character' and is focused on the maintenance of the CBD as a strong, vibrant, attractive and enjoyable space, supported by centres with high amenity values; and
- (c) Objective 2.6.2, which sits under the theme 'Dunedin has quality housing choices and adequate urban land supply' and is focused on urban land capacity.

13 Objective 2.3.2 is:

Dunedin has a hierarchy of vibrant centres anchored around one Central Business District Zone (CBD), which provides a focus for economic and employment growth, driven by:

- a. attraction of businesses to these areas based on the high level of amenity and density of activity in the area;
- b. opportunities for social interaction, exchange of ideas and business cooperation;
- c. public investment in public amenities and other infrastructure in the CBD; and
- d. opportunities for agglomeration benefits from the co-location of activities.

14 Policy 2.3.2.2 is relevant to consent applications for retail and office activity outside the CBD and centres. It reads:

Maintain or enhance the density and productivity of economic activity in the CBD and centres through rules that restrict retail and office activities outside these areas unless:

- a. they are unlikely to contribute to, or may detract from, the vibrancy of centres; or

b. as provided for under Policy 18.2.1.3 or 15.2.1.5.

15 There are currently no policies under Objective 2.3.2 that outline criteria in relation to zoning decisions.

16 Objective 2.4.3 is:

Dunedin's Central Business District is a strong, vibrant, attractive and enjoyable space that is renowned nationally and internationally for providing the highest level of pedestrian experience that attracts visitors, residents and businesses to Dunedin. It is supported by a hierarchy of attractive urban and rural centres.

17 There are currently no policies under Objective 2.4.3 that outline relevant criteria in relation to zoning decisions.

18 Objective 2.6.2 is concerned with provision of sufficient housing and business land capacity. A minor amendment to this policy is proposed through Variation 2 of the 2GP, to ensure consistency with the National Policy Statement on Urban Development (**NPS-UD**). The variation was notified on 3 February 2021 and submissions closed on 4 March. At the time of writing it is not known whether there are any submissions opposing this change. The proposed amended wording is:

Dunedin provides sufficient, feasible, development capacity (as intensification opportunities and zoned urban land) in the most appropriate locations to at least meet the demand over the medium term (up to 10 years), while sustainably managing urban expansion in a way that maintains a compact city with resilient townships as outlined in Objective 2.2.4 and policies 2.2.4.1 to 2.2.4.3.

19 Policy 2.6.2.4 outlines the criteria for new commercial and mixed use zoning:

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).

20 Policy 2.6.2.5 is:

Encourage any proposal for the creation or expansion of a centre to be considered through a plan change process unless it represents a minor extension to a centre in accordance with Policy 15.2.1.5.

21 The Court has previously requested that if changes are proposed to higher order provisions, the implementing rules should be noted. Changes are proposed to Policy 2.6.2.4. There are no lower order provisions in the management sections that directly relate to Policy 2.6.2.4, as this policy is intended to be used for the assessment of zoning areas to CMU zoning.

Amenity considerations in pedestrian frontage mapped areas

22 The relevant objectives for ensuring a high level of amenity in the CBD and centres are objectives 2.4.1 and 2.4.3. Objective 2.4.1 is:

The elements of the environment that contribute to residents' and visitors' aesthetic appreciation for and enjoyment of the city are protected and enhanced. These include: ...

e. the amenity and aesthetic coherence of different environments; and
...

23 Objective 2.4.3 has been detailed earlier.

24 Resolution of the appeal focusses on development performance standards that apply in secondary pedestrian frontage mapped areas. Pedestrian frontage mapped areas apply in the CBD, centres and Warehouse Precinct zones and their purpose is explained in Policy 2.4.3.1, as follows:

Identify key pedestrian routes and include these in a mapped primary pedestrian street frontage mapped area or secondary pedestrian street frontage mapped area. In these areas use rules to control development and land use at street level to ensure a public-private interface that supports a high level of pedestrian amenity and accessibility in centres.

25 Relevant performance standards include Rule 18.6.11 – Minimum glazing and building modulation, and Rule 18.6.16.1 – Setbacks from road boundaries, amongst others.

26 The relevant objective in the Commercial and Mixed Use zones section in relation to urban design outcomes in pedestrian street frontages is Objective 18.2.3:

Land use and development maintains or enhances the amenity of the streetscape, including the visual and environmental amenity for pedestrians along identified pedestrian street frontage mapped areas.

- 27 The relevant policy for buildings in secondary pedestrian street frontages is Policy 18.2.3.3:

Require buildings in a secondary pedestrian street frontage mapped area to provide a good level of pedestrian amenity by:

- a. providing a regular frontage of buildings along the street, with limited interruptions for vehicle accesses;
 - b. providing a clear and direct visual connection between the street and the building interior;
 - c. providing an architecturally interesting façade and human scale design, through building modulation and consistent alignment of windows; and
 - d. providing shelter for pedestrians at pedestrian entrances.
- 28 Contravention of performance standards applying in pedestrian street frontage mapped areas are generally restricted discretionary activities. The relevant assessment rules are 18.9.6.4 to 18.9.6.7, in particular (for development performance standards in secondary pedestrian frontages) 18.9.6.6.

Decision Background

- 29 In its decision, the 2GP Commercial and Mixed Use Zones Hearings Panel rejected the parts of the Woolworths' (then *Progressive Enterprises*) submission that have been appealed for the following reasons¹:

- (a) Submission to add a new definition for supermarket: Defining supermarkets would create anomalies in the way the 2GP distinguishes between various activities. The panel considered that it is difficult to distinguish between small supermarkets and similarly sized food and beverage shops such as butchers or greengrocers in terms of effects².

¹ Commercial and Mixed-Use Zones Decision of Hearings Panel Proposed Second Generation Dunedin City District Plan (2GP) 7 November 2018.

https://www.dunedin.govt.nz/data/assets/pdf_file/0005/716378/Commercial-and-Mixed-Use-Zones-Decision-Report.pdf

² Section 4.3.2.1 of the decision

- (b) Amendments to objectives and policies to provide for out-of-centre development: The panel was concerned about 'watering down' the 2GP's centres approach and considered the submitter's proposed policy criteria to be too broad and of limited relevance to Dunedin. However, the panel considered there was benefit in separating the policy direction for resource consent applications from policy guidance for plan changes to rezone an area to commercial and mixed use, and to include a hierarchy of the preferred locations for commercial activity. Amendments were made to Policy 2.3.2.2, including moving some content to two new policies, numbered 2.6.2.4 and 2.6.2.5 in the decisions version. In addition, general assessment guidance for assessment of non-complying commercial activities in residential zones (15.13.3.3.d) was added³.
- (c) Exemption for supermarkets from performance standards: In relation to the location and screening of car parking, the panel considered that it was important to maintain a high level of pedestrian amenity within primary pedestrian frontage areas and heritage precincts⁴. In relation to the setbacks from road boundaries performance standard, the panel did not agree that the rule would seriously impede development and redevelopment of supermarkets. It considered that the standard was an appropriate mechanism to encourage better built form, including for supermarkets⁵. In relation to minimum glazing requirements, the panel considered that the performance standard would encourage appropriate design that meets both the supermarket's needs and the amenity expectations of the centres⁶.
- (d) Provide for supermarkets in Industrial zones: The panel determined that there was a limited supply of industrial land to meet the range of activities permitted in industrial zones, and those zones do not provide the amenity standards needed by commercial activities to draw in members of the public. It did not consider it appropriate to put those considerations aside in order to facilitate supermarket development in these zones⁷.

³ Section 4.3.3.1 of decision

⁴ Section 4.6.5.1 of decision

⁵ Section 4.6.10.1.1 of the decision

⁶ Section 4.6.11.1 of decision

⁷ Section 4.3.4.1 of decision

Consistency with higher order documents (section 75)

National Policy Statement for Urban Development 2020

- 30 The requirements of the National Policy Statement on Urban Development 2020 (**NPS-UD**) relating to providing sufficient business land capacity over the medium term are reflected in Objective 2.6.2 and Policy 2.6.2.4 of the 2GP.
- 31 Changes are proposed to Policy 2.6.2.4. How the changes achieve Objective 2.6.2 is discussed below. In my view, the changes made give effect to the NPS-UD by better reflecting the NPS-UD requirements to provide sufficient business land capacity.

Otago Regional Policy Statement (partially operative)

- 32 The Otago Regional Policy Statement (**OPRS**) includes the following relevant objectives and policies:

Objective 4.5

Urban growth and development is well designed, occurs in a strategic and coordinated way, and integrates effectively with adjoining urban and rural environments.

Policy 4.5.1 Providing for urban growth and development

Provide for urban growth and development in a strategic and co-ordinated way, including by:

- a) Ensuring future urban growth areas are in accordance with any future development strategy for that district.
- b) Monitoring supply and demand of residential, commercial and industrial zoned land;
- c) Ensuring that there is sufficient housing and business land development capacity available in Otago;
- ...
- g) Ensuring efficient use of land;
- h) Restricting urban growth and development to areas that avoid reverse sensitivity effects unless those effects can be adequately managed; ...

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Policy 4.5.3 Urban design

Design new urban development with regard to:

- a) A resilient, safe and healthy community;
- b) A built form that relates well to its surrounding environment;
- c) Reducing risk from natural hazards;
- d) Good access and connectivity within and between communities;
- e) A sense of cohesion and recognition of community values;
- f) Recognition and celebration of physical and cultural identity, and the historic heritage values of a place;
- g) Areas where people can live, work and play;
- h) A diverse range of housing, commercial, industrial and service activities;
- i) A diverse range of social and cultural opportunities.

Objective 5.3

Sufficient land is managed and protected for economic production.

Policy 5.3.2

Manage the distribution of commercial activities by:

- a) Enabling a wide variety of commercial, social and cultural activities in central business districts, and town and commercial centres;
- b) Enabling smaller commercial centres to service local community needs;
- c) Restricting commercial activities outside of a) and b) when such activities are likely to undermine the vibrancy and viability of those centres;
- d) Encouraging the adaptive reuse of existing buildings.

- 33 The focus of these objectives and policies is to provide sufficient business land for commercial activities, to focus those activities in centres and to ensure good urban design outcomes. They are implemented through the 2GP objectives 2.3.2, 2.4.3 and 2.6.2 and their associated policies. The

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proposed amendments will assist in more effectively achieving these 2GP objectives, and in my view, the changes give effect to the RPS provisions outlined above.

Section 32AA Assessment

Assessment of changes to strategic direction policies relating to zoning land to a commercial and mixed use zone

- 34 The new and amended policies discussed below are part of the package of changes addressing the issue raised in the appeal that the strategic directions do not adequately provide for new centres / out-of-centre commercial developments. While the appeal sought that such developments were made through a resource consent process, at mediation parties agreed that these were more appropriately considered through a plan change process to add or extend areas of commercial and mixed use zoning. This is consistent with the approach outlined in Policy 2.6.2.5 (*"Encourage any proposal for the creation or expansion of a centre to be considered through a plan change process unless it represents a minor extension to a centre in accordance with Policy 15.2.1.5"*).
- 35 The 2GP contains comprehensive policy guidance on rezoning new residential and rural residential areas; however, the policy guidance on the assessment of proposals to rezone land to commercial and mixed use is limited. This omission was highlighted through this appeal, and the changes proposed provide a comprehensive set of policies for rezoning that reflect the key objectives of the plan. In my opinion, these changes will better achieve these objectives by providing greater policy guidance on rezoning areas to commercial and mixed use zoning, including new centres or expansions of existing areas. This is discussed in more detail below in relation to the key objectives relevant to rezoning land to commercial and mixed use, objectives 2.3.2, 2.4.3 and 2.6.2.
- 36 I consider that there is scope for this suite of policy changes as a result of the request for amendments that enable appropriate out-of-centre commercial development. The relief sought included a new strategic direction policy under Objective 2.3.2, as well as related changes to residential and industrial zone provisions. The policy proposed in the appeal included consideration of a broad range of criteria, including effects on the commercial and community services and amenity values of existing centres and other areas of the city. The proposed amendments include similar criteria in a suite of new inter-related zoning policies. As a package, these policies address the concern around lack of support in the plan for new out-of-centre developments.

New Policy 2.3.2.X

- 37 Objective 2.3.2 outlines the city's desire to maintain a single economically strong CBD, supported by vibrant centres. Policies under this objective aim to protect this centres hierarchy. These policies outline how land use rules will achieve the objective, but there is no policy that speaks directly to plan changes to rezone new centres. The agreed amendments add a new policy, Policy 2.3.2.X, which outlines relevant considerations in relation to rezoning.
- 38 Policy 2.3.2.X is:
- 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.
- 39 Clause (a) applies to all commercial mixed use zone types, including Trade Related and CBD Edge Commercial (CEC) zoning, the zones which are primarily focused on low amenity and 'big box' type retail. It seeks to avoid an over-supply of new commercial land, thus maintaining the density of commercial activity in the CBD and centres, ensuring that agglomeration and co-location benefits in existing centres are maintained and the vibrancy and attractiveness of the CBD and centres are not diminished, for example by a significant number of vacant shops or low value tenants, which can be an effect of over-supply.

- 40 Clause (b) relates only to proposals for new (or expanded) suburban or neighbourhood centres, which like the CBD, are higher amenity centres that form focal points for commercial and social activity for neighbourhoods and suburbs. In addition to the issue of concern in (a), for these types of zones, the policy is also concerned with ensuring that these centres can perform that broader social/community function through providing an appropriate type and mix of activities to support those outcomes.
- 41 The specialised function and role of centres is covered in Objective 2.4.3, Policy 2.4.3.4 (discussed below) and Objective 2.3.2 and Policy 2.3.2.1.
- 42 Requiring that each new suburban or neighbourhood centre provide for a range of activities will avoid the creation of single large-scale retail types, which would not be appropriate to enable to Objective 2.3.2 or 2.4.3 to be achieved.
- 43 The requirements and restrictions on activity type outlined in clauses (b)(1) and (b)(3) are implemented through existing activity status rules⁸. If necessary, the outcome expressed in (b)(2) could be made through area/centre specific rules (e.g. structure plan rules) as part of the plan change process to zone the new centre.
- 44 In my opinion, the new policy will more effectively achieve objectives 2.3.2 and 2.4.3 through providing better guidance for developing and assessing plan change proposals, in order to maintain the vibrancy of the CBD and centres.

New Policy 2.4.3.X

- 45 As discussed above, Objective 2.4.3 is focused on the maintenance of the CBD as a strong, vibrant, attractive and enjoyable space, supported by centres with high amenity values. Under this objective are a range of policies that discuss the methods in the plan used to maintain amenity and character. However, as with Objective 2.3.2, there are no policies that speak directly to how to apply these methods during plan changes for rezoning. New Policy 2.4.3.X focusses on the need to consider, at the time of a plan change, methods that may be required to ensure high amenity values within the new or expanded centre in order to achieve an accessible, attractive and enjoyable space as well as manage boundary effects between the centre zone and adjoining zones. It reads:

⁸ Activity status table 18.3.3.

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.

46 The broad scope for this change has been outlined above. It is considered that a comprehensive suite of provisions guiding the plan change process for new CBD and centre zoning cannot be achieved without guidance on consideration of amenity values. Consideration of the effects of new commercial development on the amenity values in existing centres were also specifically included within the proposed new policy wording in Woolworth's appeal.

47 High amenity values are a core feature of the CBD and centres, as outlined in Objective 2.4.3, and are amongst the drivers of vibrancy (and therefore economic success) of these areas, as identified in Objective 2.3.2. While the policy contains a level of detail that may not be anticipated from reading the appeal, the matters in the policy generally reflect existing 2GP objectives and policies in relation to consideration of amenity values, for example policies 2.4.1.5, 2.4.3.1, Objective 18.2.3 and Policy 18.2.3.1.

48 In my view, the addition of new Policy 2.4.3.X will more appropriately achieve both Objective 2.4.3 and 2.3.2 through ensuring that the design of the new centre explicitly considers amenity values within the centre and in adjoining zones.

Amendments to Policy 2.6.2.4 and new Policy 2.6.2.X

49 Objective 2.6.2 is focused on providing sufficient urban land capacity. Under this objective, Policy 2.6.2.4 (as currently drafted) outlines the criteria for rezoning areas to commercial and mixed use zoning, but refers only to Objective 2.4.3. A number of other objectives, such as those concerned with protecting industrial land, ensuring efficient and cost effective public infrastructure, safe and efficient transport networks and maintenance of the compact city, are also relevant in making zoning decisions. The appeal has highlighted this gap and the agreed changes aim to provide a fuller list of relevant considerations for determining the suitability of land for rezoning.

50 Policy 2.6.2.4 is replaced with two policies: a reworded Policy 2.6.2.4 and Policy 2.6.2.X, as follows:

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.

- 51 As noted earlier, there is scope for these changes as part of the proposed package of policies that better address how proposals for new out-of-centre commercial development are assessed.
- 52 Amended Policy 2.6.2.4 reflects clause (a) of the decisions version of the policy. It has been reworded to better reflect the NPS-UD requirement to undertake monitoring and respond by providing provide sufficient business land capacity⁹.
- 53 New Policy 2.6.2.X expands on the decisions version clause (b) and refers to a fuller list of relevant objectives that must be considered in zoning decisions. This approach is consistent with the approach taken in policies 2.6.2.1 and 2.6.1.5, which outline the relevant criteria for zoning land to residential and rural residential zoning respectively. I note that the objectives referred to should be considered at present; the new policy simply draws attention to them as the most relevant objectives, and so provides a comprehensive policy guiding consideration of new commercially zoned areas.
- 54 In my view, the new policies will better achieve Objective 2.6.2 by improving consistency with the NPS-UD and by drawing attention to the most relevant strategic objectives and policies to be considered during zoning decisions. This should assist in ensuring that the most appropriate locations are rezoned and that other relevant objectives, which could potentially otherwise be overlooked in rezoning decisions, are met.

Changes to assessment guidance for contravention of performance standards in secondary pedestrian frontage mapped areas

- 55 Changes are proposed to the assessment guidance in 18.9.6.6 (assessment of restricted discretionary contravention of performance standards¹⁰ applying in secondary pedestrian street frontage mapped areas) to provide guidance, including potential circumstances that may support a consent application, where these standards cannot be met due

⁹ Policy 2 of the NPS-UD

¹⁰ The performance standards are: location of activities, pedestrian entrances, minimum glazing and building modulation, setback from road boundary and verandahs

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to operational need or safety concerns. The relevant standards include location of activities and minimum glazing.

56 Scope for these changes is provided through the request to exempt supermarkets from standards relating to location and screening of car parking, minimum glazing and building modulation and setbacks. While no exemptions have been made for supermarkets, the guidance will assist in providing support for obtaining resource consent for supermarkets, where for operational reasons these standards cannot be met.

57 The relevant objective is Objective 18.2.3 (which flows from strategic directions Objective 2.4.3 and Policy 2.4.3.1). The amendments do not change the policies or rules under Objective 18.2.3.

58 Objective 18.2.3 is:

Land use and development maintains or enhances the amenity of the streetscape, including the visual and environmental amenity for pedestrians along identified *pedestrian street frontage mapped areas*.

59 In secondary frontage mapped areas, performance standards (relevantly for this appeal) require that buildings are built to the street frontage for 60% of the length of the road boundary¹¹, and that 30% of the ground floor facing the street frontage is glazed.¹² In the case of supermarkets, which are frequently open extended hours into the night, requiring the building to be at the front of the site and the car parking at the side or rear may not, in some cases, be consistent with crime prevention through environmental design (CPTED) principles. Where safety is a factor in site layout, changes to Rule 18.9.6.6 provide for consideration of this in the processing of the consent, provided '*the layout and site landscaping will still achieve a high standard of amenity and safety for pedestrians and people accessing activities by bicycle*' (Rule 18.9.6.6.a.viii). This ensures that Objective 18.2.3 will continue to be met.

60 In relation to requirements for minimum glazing, the changes proposed provide for consideration of a contravention of this standard for food and beverage retail where store layout is constrained due to site size, shape or existing site or building layout, meaning that glazing must be reduced for operational reasons, site constraints or layout efficiencies. While this may result in poorer amenity outcomes, it recognises the operational constraints

¹¹ Rule 18.6.16.1.b

¹² Rule 18.6.11.1.b.i

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faced by food and beverage retailers in particular, as outlined in the evidence of Richard Knott¹³ at the Commercial and Mixed Use Hearing.

- 61 The Policy 18.2.3.3 requirements to 'provid[e] a clear and direct visual connection between the street and the building interior' and 'provid[e] an architecturally interesting façade and human scale design, through building modulation and consistent alignment of windows' still apply and will guide the decision maker to an appropriate balance between ensuring high amenity values and providing for the operational needs of the activity. This conflict also needs to be considered in relation to the 2GP's strong policy direction to maintain a strong vibrant CBD and centres as discussed above¹⁴. Retail activity is encouraged in these environments as it the concentration of retail in the CBD and centres that creates vibrancy and agglomeration benefits. Supermarkets are a key anchor tenant to encourage people into centres and are also important tenants on the edges of the CBD. Therefore, while some supermarkets, due to site constraints and/or operational requirements, may struggle to meet all the building and site design goals for identified secondary pedestrian frontages, their presence can also be critical to attracting people into centres. They therefore they need to be facilitated in order to meet Objective 2.3.2.
- 62 Consequently, while the amendments may not be the most appropriate way to meet Objective 18.2.3 when this objective is considered in isolation, they are the most appropriate way to achieve the plan's objectives as a whole.

Effects of any appeals on relevant objectives and policies

- 63 For completeness, I have assessed the appeals on the related policies and objectives and strategic directions to ensure no appeals are likely to change the policy framework in a way that would change the above assessment.
- 64 Objective 2.3.2 was appealed by the University of Otago (ENV-2018-CHC-270, DCC Reference number 198). This appeal related to the University's desire for the Campus Zone to be identified as a centre in Objective 2.3.2. This appeal has been mediated and a consent memorandum signed by all parties on 11 September 2020. The agreement changes do **not** change Objective 2.3.2. This memorandum is jointly filed to resolve the appeal.
- 65 There are no other outstanding appeals, and no mediated agreements, that seek to amend provisions that would affect my s32 assessment.

¹³ Statement of evidence of Richard Knott on behalf of Progressive Enterprises Limited. 29 July 2016.

¹⁴ See Objectives 2.3.2, 2.4.3 and associated policies

66 Overall, I support the Court approving the proposed changes to the 2GP to resolve this appeal.

Affirmed at Dunedin)
By **Emma Christmas**)
this 26 day of March 2021)
before me:)

Emma Christmas

Peter Benjamin Williams
A Solicitor of the High Court of New Zealand

Peter Benjamin Williams
Solicitor
Dunedin