

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-231

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**

Appellant

And **Dunedin City Council**

Respondent

Affidavit of Emma Christmas

Affirmed 26 March 2021

Concerning:

Group: 4a

Topic: High St zoning - Cavendish

Appeal points: DCC Reference 19

Respondent's solicitors:

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**anderson
lloyd.**

I, **Emma Christmas** of Dunedin, 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 planner / senior 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 provides the rationale, and an assessment in terms of section 32, of the changes agreed in the attached consent memorandum:
 - (a) Commercial zoning – site specific (Cavendish Chambers Limited, dated 13 August 2020)
- 5 The appeal by Cavendish Chambers Limited (Cavendish) sought to:
 - (a) Rezone part of 201, 205, 211 and 219 High Street from Inner City Residential Zone to Central Business District Zone.
- 6 From mediation, I understand that Cavendish's primary concerns are that the current Inner City Residential zoning of these properties is inappropriate given their commercial usage and their location adjacent to existing Central Business District Zone (CBD) zoned land.
- 7 Agreement has been reached between the parties to:
 - (a) Rezone the residential zoned part of 201 High Street, and 205, 211 and 219 High Street, from Inner City Residential to CBD Zone; and
 - (b) Make a consequential change to the heritage precinct provisions. The area to be rezoned is within the High Street Residential Heritage Precinct and a minor amendment to the description of the precinct

(Appendix A2) is proposed to reflect that part of the precinct will be commercially zoned.

- 8 There are no s274 parties to this appeal.

Assessment of other appeals

- 9 As part of my assessment of the appropriateness of this change, I have considered the mediated agreements reached on appeals, and the relief sought through appeals that have not yet been mediated, to understand whether there is overlap between different appeals on the same provisions in the plan.
- 10 There are no other appeals on the zoning of these sites or the 2GP provisions that are amended.

Scope

- 11 The proposal to rezone part of 201, 205, 211 and 219 to CBD Zone is clearly within the scope of the appeal. The amendment to Appendix A2 (description of the heritage precinct) is consequential on the rezoning.
- 12 During the consideration of the appeal it was noticed that there a minor error in the introduction of Section 13 (Heritage), in relation to restriction of the colour palette in commercial heritage precincts. This has been amended in the signed consent memorandum, but it is arguably not within the scope of the appeal. If the Court prefers, this change could be made by the Council later as a Schedule 1 Clause 16 change.

Planning background

- 13 The sites are adjacent to each other at the eastern (lower) end of High Street, adjoining land zoned CBD. 201 High Street is split zoned, with part being zoned Inner City Residential and part CBD Zone.

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- 14 The sites are within the High Street Residential Heritage Precinct, which extends up High Street. This heritage precinct overlay zone imposes additional consenting requirements on development activities, in particular for new buildings and demolition of, and alterations and additions to, character-contributing buildings. Rules outlining the status of activities in heritage precincts are included within the management zones sections (rules 15.3.4.6 to 15.3.4.12 in the Residential section). Objectives, policies performance standards and assessment rules applying to heritage precincts are included in Section 13. The values and characteristics of the heritage precincts are outlined in Appendix A2.
- 15 For completeness, three of the buildings in the area to be rezoned are scheduled heritage buildings. Development activities affecting these buildings are subject to controls in the plan in Section 13. The plan imposes separate requirements in relation to scheduled heritage buildings and heritage precincts. The proposed changes have no effect on the scheduled heritage buildings provisions and do not affect the protection of these buildings in any way.
- 16 The area is also within an archaeological alert layer. This does not impose any additional planning requirements but advises of possible archaeological remains in the area. The proposed changes do not affect these provisions.
- 17 Strategic direction Policy 2.6.2.4 outlines the criteria for rezoning a site to commercial and mixed zone. As a result of an appeal by Woolworths New Zealand Limited (ENV-2018-CHC-255, DCC reference numbers 78, 127, 130, 366), amendments to this policy, and the addition of new policies

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2.3.2.X, 2.4.3.X and 2.6.2.X are proposed to provide a better framework for considering commercial and mixed use rezoning decisions. The Woolworths' appeal has been mediated and a consent memorandum signed by all parties on 17 March 2021. This memorandum is jointly filed to resolve the appeal.

Decision background

- 18 The Hearing Panel in the Commercial and Mixed Use Decision report¹ (section 4.7.2.2) rejected the submission of Cavendish Chambers Ltd (Council submission number OS86.1).
- 19 The Hearing Panel's reasons included:
- (a) There was evidence of an oversupply of retail and office space in the CBD and so they took a cautious approach to considering requests to increase the area of the CBD and other zones that provide for office and retail activities;
 - (b) They did not receive any evidence that rezoning this area is required to provide for existing activities or that it was the most appropriate zoning for this area; and
 - (c) They considered that further commercial activities are best considered through the resource consent process.

Consistency with higher order document (s75)

National Policy Statement for Urban Development 2020

- 20 The requirements of the National Policy Statement on Urban Development 2020 (**NPS-UD**) relating to providing sufficient commercial business land capacity over the medium term are reflected in Objective 2.6.2 and Policy 2.6.2.4 of the 2GP.
- 21 As discussed below, the agreed changes will assist in achieving these 2GP provisions. Consequently, I consider that the changes will assist in giving effect to the NPS-UD.

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

- 22 The Otago Regional Policy Statement (**OPRS**) includes the following relevant objectives and policies in relation to commercial and industrial activities:

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;
- d) ...
- 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; ...

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.

- 23 The focus of these objectives and policies is to provide sufficient business land for commercial activities and to focus those activities in centres. They are implemented through the 2GP objectives and policies, in particular objectives 2.3.1, 2.3.2 and 2.6.2 and their associated policies. Consistency with these provisions is discussed below. The proposed amendments will provide additional opportunity for commercial activities to establish in the affected area.
- 24 In my view, the rezoning is consistent with the ORPS policies outlined above.

Section 32AA Assessment

- 25 There are three key objectives in the strategic directions that are relevant to zoning new areas of CBD:
- Objective 2.3.2, which is focused on protecting the centres hierarchy;
 - Objective 2.4.3, which is focused on ensuring high pedestrian amenity values in the CBD and centres; and
 - Objective 2.6.2, which is focused on urban land capacity. Policies under this objective outline the criteria for new zoning, including links to other relevant strategic objectives.
- 26 The policies sitting under these objectives are proposed to be amended in response to the Woolworths appeal. Together, the provisions seek to provide sufficient land for commercial activities in appropriate locations, without adversely affecting the vibrancy of the CBD and existing centres.
- 27 Objective 2.6.2 is subject to a minor amendment through Variation 2 of the 2GP, to ensure consistency with the NPS-UD. The variation was notified on 3 February and submissions closed on 4 March. At the time of writing, it is not known if any submissions were received on this change. The 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.
- 28 As noted above, an agreement has been reached to amend Policy 2.6.2.4 and add a new policy 2.6.2.X. New Policy 2.6.2.X provides a more complete list of relevant considerations for rezoning decisions. This includes

reference to objectives 2.3.2 and 2.4.3 noted above. The amended Policy 2.6.2.4 and new Policy 2.6.2.X are:

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.

- 29 Policy 2.6.2.4 requires that rezoning proposals are supported where additional commercial land is required to meet the medium term demand projections.

- 30 A Business Land Capacity Assessment was undertaken by DCC in 2019², which assessed that there is sufficient capacity for office and retail activities for the medium and long term. However, the economic projections used to estimate demand for business land outlined above were based (in addition to other factors) on population projections from 2017 that have since been superseded. The most recent population projections (2020) are significantly higher, which may translate to a greater demand for business land than estimated in the Business Land Capacity Assessment. The impact would be greater for sectors that are more influenced by population (e.g. retail, health and education), than sectors that are more influenced by external forces (e.g. export-based industry). The Business Land Capacity assessment is planned to be reviewed in 2022.
- 31 The area to be rezoned is very small (0.2 ha) and is already largely developed with commercial activities (a mortgage broker, legal chambers, real estate agent and consultant engineers). Only one site, 201 High Street, appears to be used for residential purposes. The potential for additional commercial development is therefore very limited. This is compounded by the fact that three of the four existing buildings are scheduled heritage buildings, meaning that consent to demolish them for redevelopment (for example to maximise floorspace) would require a non-complying resource consent. In practice, therefore, the rezoning reflects the existing commercial development in place and will add very little new business land capacity.
- 32 Policy 2.6.2.X identifies relevant objectives that must be considered in zoning decisions. The appropriateness of the proposed rezoning is discussed in relation to each clause of the policy.

Impacts on the CBD and centres (2.6.2.X.a)

- 33 Policy 2.6.2.X.a refers to Objective 2.3.2 and Policy 2.3.2.X.
- 34 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;

² Business Land Capacity Assessment Dunedin City, March 2019. N. Stocker, Dunedin City Council.

- c. public investment in public amenities and other infrastructure in the CBD; and
- d. opportunities for agglomeration benefits from the co-location of activities.

35 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. ...

36 As discussed above, the rezoning will in practice add very little additional land for business use. Instead, it formalises an area currently used for commercial activities. Given this, in my opinion there will no more than minor effects on the CBD and existing centres in terms of an oversupply of commercial land, and Objective 2.3.2 will be achieved.

Pedestrian amenity values (2.6.2.X.b)

37 Policy 2.6.2.X.b refers to Objective 2.4.3 and Policy 2.4.3.X. These are concerned with ensuring high pedestrian amenity values in the CBD and centres.

38 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.

39 New Policy 2.4.3.X is:

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.

40 Land use and development performance standards that apply within the CBD and centres zones ensure that high levels of pedestrian amenity are maintained. Key pedestrian routes, where DCC wish to have the highest pedestrian amenity values, are identified as primary or secondary pedestrian frontage mapped areas, and specific performance standards apply. The area has been assessed and is not considered to be a key pedestrian route and therefore does not require a primary or secondary pedestrian frontage mapped area. The rules and performance standards that apply outside the pedestrian frontage mapped areas will be sufficient to ensure high amenity values are maintained, and no additional rules are required.

41 I also note that additional development rules apply to the sites, as they are located within a heritage precinct. These are aimed at maintaining heritage streetscape character.

42 Consequently, I consider that Objective 2.4.3 will be achieved.

Impact on important land and facilities (2.6.2.X.c)

43 Objective 2.3.1 requires that land, facilities and infrastructure that are important for economic productivity and social well-being are protected from less productive competing uses or incompatible uses, including activities that may give rise to reverse sensitivity.

44 There will be no impact on land identified in the 2GP as being important for economic productivity or social well-being (for example industrial and major facility zoned land). No reverse sensitivity issues are anticipated to arise from the rezoning.

Efficient and effective operation of public infrastructure (Policy 2.6.2.X.d,e)

45 Objective 2.7.1 is:

Public infrastructure networks operate efficiently and effectively and have the least possible long term cost burden on the public.

46 Objective 2.7.2 is:

The multi-modal land transport network, including connections between land, air and sea transport networks operates safely and efficiently for all road users.

47 In order to assess the proposed amendments against these objectives I consulted with DCC 3 Waters and Transport staff. Based on their advice I conclude that there are no concerns with regards to the matters covered in these objectives.

48 I am satisfied that the proposed amendments will achieve Objectives 2.7.1 and 2.7.2.

Compact city (Policy 2.6.2.X.f)

49 Objective 2.2.4 is:

Dunedin stays a compact and accessible city with resilient townships based on sustainably managed urban expansion. Urban expansion only occurs if required and in the most appropriate form and locations.

50 The proposed rezoning will not expand Dunedin's boundaries. It will formalise a small area of existing commercial activity on the edge of the current CBD. In my view, the rezoning is consistent with this objective.

Conclusion on rezoning

51 Overall, I conclude that rezoning the land is consistent with Policy 2.6.2.X, and will ensure that the plan's objectives, as identified above, will be achieved.

Changes to heritage precinct provisions

52 The changes to the heritage precinct provisions are consequential on the rezoning and include minor amendments to the introduction to the Heritage section, and to the description of the High Street Residential Heritage Precinct, to reflect that part of the precinct will be commercially zoned. The changes will not change the heritage protection afforded to any of the buildings within the rezoned area, and will not affect how the relevant heritage precinct objectives (Objectives 2.4.2 and 13.2.3) are achieved.

Effect of any appeals on relevant objectives and policies

- 53 For completeness, I have considered the mediated agreements reached on appeals, and the relief sought through appeals that have not yet been mediated, to assess whether any agreed or potential changes to objectives and policies could change the policy framework in a way that would change my s32AA assessment.
- 54 There are no other outstanding appeals, and no mediated agreements, that seek to amend provisions that would affect my s32 assessment.
- 55 Overall, I support the proposed changes agreed to resolve this appeal.

Affirmed at Dunedin

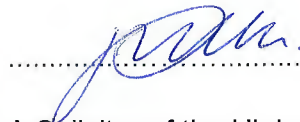
By **Emma Christmas**
this 26 day of March 2021
before me:

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A Solicitor of the High Court of New Zealand

Peter Benjamin Williams
Solicitor
Dunedin