

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti 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 **Foodstuffs South Island Properties Limited**
ENV-2018-CHC-238

Appellant

Nichols Property Group Limited and others
ENV-2018-CHC-217

Appellant

And **Dunedin City Council**

Respondent

Affidavit of Emma Christmas

Affirmed 23 April 2021

Concerning appeals by: Foodstuffs New Zealand Limited; and
Nichols Property Group Limited and others

Group: 3

Topic: Commercial

Appeal points: DCC References 36, 53

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

- 1 I was a senior policy planner at Dunedin City Council, and I was involved with these appeals in that capacity.
- 2 I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014. This affidavit 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 was employed by Dunedin City Council as a policy planner and senior policy planner for eight years. During that time I 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.
- 4 I am currently a Senior Analyst at the Ministry for the Environment.

Introduction

- 5 This affidavit provides the rationale, and an assessment in terms of section 32AA of the Resource Management Act 1991 (**RMA** or **the Act**), of the changes agreed in the following consent memoranda:
 - (a) Foodstuffs South Island Properties Limited, dated 19 August 2020; and
 - (b) Nichols Property Group Ltd, Home Centre Properties Limited and London Realty Ltd, dated 14 September 2020.
- 6 The appeal by Foodstuffs South Island Properties Limited (Foodstuffs) sought to:
 - (a) Rezone 15 Midland Street and surrounding land ('the Midland Street land') from Industrial Zone to Trade Related Zone; or
 - (b) Make various policy and rule changes to provide for large scale food and beverage activity as a discretionary activity in the Industrial Zone.
- 7 The 'Midland Street land' is identified in a map in Appendix A of the submission and comprises land between Portsmouth Drive and Timaru Street, centred on Midland Street.

- 8 From mediation, Foodstuffs' primary concern related to the activities that could be undertaken on 15 Midland Street.
- 9 BP Oil New Zealand Limited and Others and Woolworths New Zealand Limited are s274 parties to the appeal.
- 10 The appeal by Nichols Property Group Ltd, Home Centres Properties Ltd and London Realty Ltd (Nichols) sought to:
 - (a) Rezone the Trade Related Zone as a Mixed Use Commercial Zone and include Nichols Garden Centre (51 Timaru Street) in the zone; or
 - (b) Amend the Trade Related Zone to provide for a range of commercial services and other activities, and include Nichols Garden Centre within the Trade Related Zone.
- 11 Woolworths New Zealand Limited are a s274 party to this appeal.
- 12 From mediation, Nichols' primary concerns were:
 - (a) Providing for bulky goods retail activity in the Trade Related Zone;
 - (b) Including Nichols Garden Centre within the Trade Related Zone; and
 - (c) Clarifying that garden centre activity is permitted in the Trade Related Zone.

Agreement reached

- 13 As outlined in the attached consent memoranda, agreement has been reached between the parties to make amendments that address the issues identified in paragraphs 7 and 11. This includes:
 - (a) Rezoning part of the Trade Related Zone on Andersons Bay Road to a new South Dunedin Large Format Zone (SDLF Zone). This zone incorporates all the provisions of the existing Trade Related Zone but provides for bulky goods retail and large scale retail. The changes include:
 - (i) Adding a new policy and assessment rule that requires that large scale general retail in the SDLF Zone does not have more than minor adverse effects on the vibrancy and viability of the CBD and centres; and
 - (ii) Consequential amendments to a number of plan provisions to include reference to the new SDLF zone;

- (b) Rezoning 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 Garden Centre (Nichols) at 51 Timaru Street, together with adjoining properties;
- (c) Rezoning a small area of Trade Related Zone along Hillside Road to Principal Centre, in effect extending the South Dunedin Principal Centre; and
- (d) Minor amendments to clarify that garden centres are part of trade related retail activity.

Scope

Rezoning to Trade Related Zone

14 Neither Foodstuffs' nor Nichols' appeals directly identify the full area proposed to be rezoned to Trade Related Zone as relief (47 Timaru Street was not identified). However, the parties have considered this matter and agree there is scope for the proposed change, for the following reasons:

- (a) Foodstuff's original submission stated at 9.1: *"Amend planning maps to rezone the block of land illustrated on Appendix A (dashed line) to Trade Related Zone. Note that the area to be rezoned may need to be increased beyond that shown if there are other activities in the vicinity that should be properly be included in the Trade Related zone rather than the Industry zone."* Appendix A identifies the area under appeal as: *"Indicative Area for rezoning from Industrial to Trade Related."*

- (b) The Foodstuffs appeal states:

"The appellant is appealing that part of the decision regarding the Commercial and Mixed Use Zones where the Respondent rejected the Appellants' submission to rezone an identified area of land abutting Midland Street (the Midland Street Land) from Industrial zone to Trade Related zone".

- (c) In addition, it states:

"12.1 That the Midland Street Land be rezoned from Industrial Zone to Trade Related Zone;

12.2 In the alternative to the above, ...

12.3 *The Appellant also seeks such additional or consequential amendment to the 2GP as may be required to give effect to the intent of the appeal".*

(d) 47 Timaru Street is owned by Nichols Property Group Limited. Other potentially interested parties would have been sufficiently informed about the relief sought by Foodstuffs through the wording of the submission and appeal, and consequently no procedural unfairness would arise from rezoning land within this block.

15 Including 47 Timaru Street within the proposed rezoning area makes sense as it connects the two areas directly under appeal and avoids the creation of two disconnected 'spot zones'. I concur with the assessment above and consider there is scope to rezone 47 Timaru Street.

Rezoning to new South Dunedin Large Format Zone (SDLF) Zone and Principal Centre

16 Nichols appeal to "rezone the Trade Related Zone as a Mixed Use Commercial Zone" provides clear scope for these rezonings. Both the new SDLF and the Principal Centre Zone are types of commercial and mixed use zones.

Amendments to clarify that garden centres are part of trade related retail activity

17 The amendments to clarify that garden centre activity is part of trade related retail activity are consequential to including the Nichols Garden Centre site within the Trade Related Zone, as the status of garden centre activity within this zone is currently unclear.

Assessment of other appeals

18 As part of my assessment of the appropriateness of this change, I have considered whether there are other appeals on the provisions being amended or the area proposed to be rezoned, to understand whether there is overlap between different appeals on the same provisions in the plan.

19 Resolution of the Nichols appeal includes amendments to the performance standards and assessment rules, in particular Rule 18.6.5.2 (maximum and minimum height performance standard) and Rule 18.6.13.1 (number, location and design of ancillary signs) to add references to the new SDLF Zone. These rules are also amended through the appeal by the University of Otago (ENV-2018-CHC-270, DCC References 185, 187, 198). A consent memorandum signed by all parties to resolve the University appeal is filed

jointly and the amendments to rules 18.6.5.2 and 18.6.13.1 are shown together in Annexure A.

- 20 Amendments are proposed to Policy 18.2.1.4 and performance standard Rule 18.10.2, to add reference to the new SDLF Zone. Both these provisions are also amended as a result of the agreement reached on the Kaan's Properties 2017 appeal (ENV-2018-CHC-286, DCC References 242, 340) to amend provisions in the Harbourside Edge Zone. A consent memorandum signed by all parties to resolve the Kaan's appeal is filed jointly. The changes made through the two appeals are not in conflict. The changes are shown together in Annexure A.
- 21 For completeness, it should be noted that Woolworths New Zealand Limited (ENV-2018-CHC-255, DCC Reference 366) appealed to amend Rule 18.6.11 to exempt supermarkets from building glazing and modulation standards. This rule is amended by the Nichols appeal, to add a reference to the new SDLF Zone. A consent memorandum signed by parties is filed jointly to resolve the Woolworths appeal. No amendments are made to Rule 18.6.11 through the Woolworths appeal.
- 22 There are no other appeals concerning the provisions being amended by this appeal, nor appeals on the zoning of the area.

Planning background

The 2GP's approach to managing large scale retail and low amenity retail types

- 23 The 2GP provisions aim to focus retail activity in the CBD and centres, to maintain the vibrancy of those areas, recognising their importance as a focus for economic activity and social interaction¹. However, exceptions are made for retail types that cannot (or preferably should not) locate in the CBD due to their need for larger site sizes or having a built form that cannot meet the high amenity expectations in the CBD and centres. These retail activities are primarily provided for in the Trade Related Zone and CBD Edge Commercial Zones, as outlined in Policy 2.3.2.4:

Policy 2.3.2.4

Manage the other existing low-amenity mixed commercial/industrial areas around Andersons Bay Road, Hillside Road and the outer edges of the central city through zones that only provide for commercial activities that are likely to be incompatible with the amenity expectations of the CBD and

¹ See Objectives 2.3.2 and 2.4.3

centres, or require larger sites than are available in the CBD and centres, including:

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

- 24 This approach is reflected in Objective 18.2.1.g and policies 18.2.1.5 and 18.2.1.6 in the Commercial and Mixed Use Zones section.
- 25 Trade related retail, large scale food and beverage retail and industrial activity are among the activities permitted within the Trade Related Zone. Bulky goods retail and large format general retail are non-complying activities in the Trade Related zone (rules 18.3.5.3 and 18.3.5.12), and instead are provided for in the two CBD Edge Commercial zones (CEC zones). The difference in approach between these two zones is primarily due to proximity to the CBD. The CEC zones are on the edge of the CBD and are therefore more accessible (within walking distance of the CBD). The 2GP therefore encourages a broader range of activities to locate in these areas.

Areas to be rezoned

- 26 The proposed amendments make a number of changes to the zoning around the Trade Related Zone in South Dunedin. The Trade Related Zone is located along Andersons Bay Road between Kensington Avenue and Portobello Road, and extends along Hillside Road towards King Edward Street, opposite the South Dunedin Principal Centre Zone. The proposed amendments rezone:
- (a) The northern-most part of the Trade Related Zone, from Kensington Avenue to Macandrew Road, to SDLF Zone;
 - (b) The Hillside Road section of the Trade Related Zone to Principal Centre; and
 - (c) An area of industrial zoned land between Midland Street and Timaru Street, to Trade Related Zone.

Area to be zoned from Trade Related Zone to SDLF Zone

- 27 The area proposed to be rezoned to SDLF Zone is approximately 7.3 ha in area. The majority of the area is currently developed, or consented to be developed, with large scale retail (including food and beverage retail),

service stations and fast food outlets. There is relatively little land (approximately 1.45 ha) currently developed with trade related retail activities.

Area to be zoned from Industrial to Trade Related Zone

- 28 This area is part of a block located in a large area of industrially zoned land between Portsmouth Drive and Andersons Bay Road. The total area to be rezoned is approximately 3.5ha. Of this, approximately 1.2 ha is already used for well-established trade related retail or other commercial activities, including Nichols Garden Centre (51 Timaru Street). Nichols Garden Group Limited holds consent to operate a pet shop and café on the site as part of the garden centre operation. A further 0.8ha is the Foodstuffs site (15 Midland Street) consented for the development of a Raeward Fresh supermarket².

Area to be zoned from Trade Related to Principal Centre Zone

- 29 The area proposed to be rezoned Principal Centre extends along the south side of Hillside Road between Rankeilor Street and Braemar Street. The northern side of the road is already zoned Principal Centre. The rezoning adjoins, and will extend, the existing South Dunedin Principal Centre. Land uses in the area include takeaway restaurant, electrical and appliance retail, medical laboratory services, Plunket, TAB, clothing alterations shop and trade related retail activities.
- 30 Strategic direction Policy 2.6.2.4 outlines the criteria for rezoning a site to commercial and mixed zone. As a result of the Woolworth's appeal, amendments to this policy and the addition of new policies 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. This appeal has been mediated and a consent memorandum signed by all parties on 17 March 2021. That memorandum is jointly filed to resolve the appeal.

Garden centre activity

- 31 Garden centre activity is not specifically defined within the plan, although retail outlets that primarily sell landscaping goods or services are included in the trade related retail definition.

² Consents LUC-2015-354A and LUC-2015-354B

Trade Related Retail

Retail where the predominant goods or services sold are:

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

32 Trade related retail is permitted in the Trade Related Zone.

Decision background

33 The Hearings Panel considered the submissions from Foodstuffs and Nichols to rezone their sites in section 4.7.1.4 of its decision³, along with other submissions to zone a much broader area of land at Andersons Bay to Trade Related Zone and to allow commercial activities in the area to create a new mixed use zone. The Panel concluded that the area is not a commercial area. It accepted Council witnesses' opinion that loss of industrial land is a significant issue and that this central location has advantages for many industrial activities, including due to its excellent transport options, wide roads and low pedestrian count. The Panel considered that the potential for reverse sensitivity should not be dismissed, noting that standards in the industrial zone are lower for noise and other impacts⁴.

34 The submission by Nichols to provide for a wider range of commercial activities in the Trade Related Zone is discussed in section 4.1.8.2 of the decision. The Panel rejected this submission, noting the broad acceptance by experts at the hearing of the 2GP's approach of concentrating retail activities in the CBD and zoned centres. The Panel accepted expert evidence on retail demand and supply that indicated that there was

³ 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

⁴ Section 4.7.1.4.5

sufficient commercially zoned land to provide for retail demand over the next 15 years. It considered that bulky goods retail is generally a 'destination' activity and the effect on the CBD and centres would be negative and could not be dealt with on a case by case basis through consent applications. Undermining the centres approach would have a significant impact on people and communities. The Panel also considered that allowing additional activities would reduce the land available for trade related retail, and this might result in pressure for these activities to establish in the industrial zones.

Consistency with higher order documents (section 75)

National Policy Statement for Urban Development 2020

- 35 The National Policy Statement for Urban Development 2020 (**NPS-UD**) came into effect on 20 August 2020. It recognises the national significance of having well-functioning urban environments and providing sufficient urban development capacity to meet the needs of the community. It requires that the DCC provides at least sufficient development capacity to meet expected demand for business land over the short, medium and long term⁵.
- 36 The requirements of the NPS-UD relating to providing sufficient development capacity are generally reflected in Objective 2.3.1 and Policy 2.3.1.4, and Objective 2.6.2 and Policy 2.6.2.4 of the 2GP. As discussed later in this affidavit, the agreed changes will assist in achieving these 2GP objectives and policies. Consequently, I consider that the changes will assist in giving effect to the NPS-UD.

Otago Regional Policy Statement (partially operative)

- 37 The partially operative Otago Regional Policy Statement (**OPRS**) includes objectives and policies focused on providing sufficient industrial and commercial land capacity, and protecting industrial land from incompatible activities. The following objectives and policies are relevant:

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.

⁵ Policy 2 and implementation section 3.3. Business land capacity for the long term does not need to be included in the district plan.

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; ...

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.

Policy 5.3.3 Industrial land

Manage the finite nature of land suitable and available for industrial activities, by all of the following:

- a) Providing specific areas to accommodate the effects of industrial activities;

- b) Providing a range of land suitable for different industrial activities, including land-extensive activities;
 - c) Restricting the establishment of activities in industrial areas that are likely to result in:
 - i. Reverse sensitivity effects; or
 - ii. Inefficient use of industrial land or infrastructure.
- 38 The focus of these policies is to provide sufficient commercial and industrial land for those activities, protect industrial land from incompatible activities, and ensure that the distribution of commercial activities is appropriate to ensure that the CBD and centres are protected.
- 39 These requirements are implemented through 2GP objectives 2.3.1 (protection of industrial land and reverse sensitivity issues), 2.3.2 and 2.4.3 (maintaining the vibrancy of the CBD and centres, and 2.6.2 (providing sufficient business land capacity), and their associated policies. Consistency with these provisions is discussed below.
- 40 In my view, the amendments give effect to the ORPS policies outlined above.

Section 32AA Assessment

Amendment to Objective 18.2.1

- 41 The proposed changes include a change to Objective 18.2.1, to describe the new SDLF Zone.
- 42 As discussed below, the new zone enables additional capacity for large format retail types, to rectify a potential shortage over the medium term. In this way, it assists in giving effect to the NPS-UD and so more appropriately achieves the purpose of the Act.

Assessment of proposed rezoning amendments

- 43 Three rezoning amendments are proposed: zoning an industrial area to Trade Related Zone, zoning part of the Trade Related Zone to a new SDLF Zone and rezoning part of the Trade Related Zone to Principal Centre.
- 44 There are three key objectives in the strategic directions that are relevant to zoning commercial and mixed land:
- Objective 2.3.2, which is focused on protecting the centres hierarchy;

- Objective 2.4.3, which is focused on the maintenance of the CBD as a vibrant, attractive and enjoyable space, supported by centres with high amenity values; and
- Objective 2.6.2, which is focused on providing sufficient urban land capacity.

45 Together, these objectives and their underlying policies seek to provide sufficient land for commercial activities in appropriate locations without adversely affecting the vibrancy of the CBD and existing centres.

46 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 2021 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.

47 As noted above, an agreement has been reached to amend Policy 2.6.2.4 and add a new policy. The agreed changes provide a more complete list of relevant considerations for rezoning decisions in new Policy 2.6.2.X. 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:~~

- ~~rezoning is necessary to meet a medium term (up to 10 year) shortage of capacity to meet demand in the intended customer catchment; and~~
- ~~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.

Policy 2.6.2.4

- 48 Policy 2.6.2.4 requires that sufficient business land capacity is provided, and rezoning proposals are supported where necessary.
- 49 A Business Land Capacity Assessment was undertaken by DCC in 2019⁶, 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.

⁶ Business Land Capacity Assessment Dunedin City, March 2019. N. Stocker, Dunedin City Council.

Rezoning Trade Related Zone to SDLF Zone

- 50 The Trade Related Zone is intended to provide primarily for trade related retail, although as noted earlier, a significant proportion of the area to be rezoned is already developed with other activities, including bulky goods and large scale general retail. The rezoning to SDLF increases the land available for bulky goods and large scale general retail, and potentially decreases the land available for trade related retail⁷.
- 51 Trade related retail is also permitted in the CBD, centres, CEC, Warehouse Precinct (WP) and Princes Parry and Harrow Street (PPH) zones⁸. However, due to generally greater land requirements, need for car parking, and a built form that does not fit requirements within the higher amenity parts of the CBD, centres and WP Zone, trade related retail activity tends to locate within the Trade Related, CEC and PPH zones.
- 52 Bulky goods retail and large scale general retail have a narrower range of potential locations, being provided for only in the CBD, centres, WP and CEC zones. For the same reasons as described above, the majority of these activity types are currently located in the CEC zones, which border the central city to the north and south.
- 53 The vacancy rate of Dunedin's commercial land was assessed prior to completion of the Business Land Capacity Assessment. Both the CEC and WP zones, where large scale retail is most likely to locate, both had very low vacancy rates of 2.1%. This indicates market pressure for space. Choice and competition contribute to a 'well-functioning urban environment' as outlined in Policy 1 of the NPS-UD. Anecdotal evidence from developers within the city, in my opinion, is that it is currently extremely difficult to find suitable sites for large scale and bulky goods retail types in the zones that provide for them, and that existing demand for such sites cannot be met.

⁷ Trade related retail activity is permitted in the SDLF Zone; however, additional bulky goods or large format general retail moving into the area may displace existing trade related retail activities.

⁸ The Warehouse Precinct Zone and Princes, Parry and Harrow Street zones are both located on the central city fringe. The Warehouse Precinct Zone is a high pedestrian amenity zone, with a significant number of scheduled heritage buildings (commercial and industrial). This zone provides for a mix of residential and commercial activities, as well as limited retail and office activity in scheduled heritage buildings. There is significant redevelopment of heritage buildings, and the development of a high amenity, pedestrian focused destination environment. The Princes, Parry and Harrow Street Zone provides for provides for a mix of inner-city residential living, training and education, visitor accommodation, industrial, trade and yard based retail activities.

The CEC zones (CEC-North and CEC-South) are low amenity zones which provide for large food and beverage, bulky good, trade related and yard related retail, together with industry. The CEC-North zone additionally provides for office activity, due to its location closer to the CBD, and is the site of the new Dunedin hospital.

That is, there is a shortage of capacity in the short term that is not reflected in the 2019 Business Land Capacity Assessment.

- 54 As noted earlier, the Business Land Capacity assessment will be reviewed in 2022. A precautionary approach to ensure sufficient supply and choice for land users, and provide competition within the commercial land market for large scale retail and bulky goods retail, requires the provision of more space for these retail types prior to this review. Providing additional land where these activities can locate is therefore reasonable and this change can be supported.
- 55 Providing for these activities in this area may result in existing trade related retail in the area being displaced, because land values and lease costs will increase. The area currently occupied by trade related retail activities is approximately 1.45 ha. This is roughly equivalent to the area that will be available for new trade related activities resulting from the rezoning of industrial land between Midland and Teviot streets, as discussed below.

Rezoning Industrial land to Trade Related

- 56 The proposed rezoning of part of the industrial area to Trade Related Zone will provide a relatively small amount of additional trade related retail capacity. The majority of the rezoning area is already developed with trade related retail activities or is the site of a consented new supermarket, and so is already effectively being used for commercial activities. The remaining area is approximately 1.4 ha. This will assist in offsetting the reduction in available land that may result for trade related retail activities if (as anticipated) there is an increase in bulky goods and large scale general retail activities in the new SDLF Zone.

New Principal Centre zoning

- 57 There is no evidence that there is a shortage of Principal Centre zoned land in South Dunedin. However, the area to be rezoned is small (~3,300m²), and this change avoids a small, isolated area of Trade Related Retail Zone. Given its location adjacent and directly opposite to the existing Principal Centre Zone, Principal Centre is a more logical zone than SDLF Zone. General retail activities have taken place in this area in the recent past (e.g. Dowsons shoes).

Policy 2.6.2.X

- 58 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 (Policy 2.6.2.X.a)

59 Policy 2.6.2.X.a refers to Objective 2.3.2. This 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.

60 The Woolworth's appeal adds a new policy (Policy 2.3.2.X) under this objective, to address rezoning proposals. This 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. ...

61 Policy 2.3.2.4 outlines the purpose of the Trade Related Zone and (through amendments as part of the appeal) the purpose of the new SDLF Zone. This policy acknowledges that the low-amenity commercial environment outside the central city and centres, including around Andersons Bay Road, provides a location for commercial activities including trade related retail, large format and bulky goods retail, that for various reasons cannot locate in the CBD and centres. In doing so, the 2GP has determined that providing for the functional needs of these activities outside the CBD and centres outweighs any potential retail distribution effects on the CBD. Bulky goods retail and large scale general retail are provided for in the low amenity CEC zones. This amendment extends the possible locations for these activities to include part of the (adjoining) Trade Related Zone (through rezoning to SDLF Zone).

62 I also note that there is a matter of discretion in relation to large scale general retail activity that provides for explicit consideration of effects on the vibrancy and vitality of the CBD and centres. This is discussed further

in paragraph 92 below. This provides an additional safeguard in relation to this activity.

- 63 For the area that is being zoned from Industrial to Trade Related, the impact on the CBD of allowing trade related activity was considered in a joint witness statement between economics experts Fraser Colegrave and Derek Foy, presented as evidence to the 2GP commercial and mixed use hearing⁹. In it, both experts agreed that rezoning this land to Trade Related Zone would not have significant retail distribution effects¹⁰.
- 64 In relation to the new area of Principal Centre zoning, a number of the tenancies in this area already reflect those typically found in centres. This area is small (~0.35 ha). Mr Foy's evidence is that that this zone change will have no more than minor effects on the vibrancy of the CBD or existing centres.
- 65 Overall, I conclude that there will be no significant effects on the vibrancy of the CBD and existing centres resulting from an oversupply of commercial land or changes in agglomeration or co-location benefits, and that Objective 2.3.2 will be achieved.

Pedestrian amenity values (2.6.2.X.b)

- 66 Objective 2.4.3 and new Policy 2.4.3.X are concerned with ensuring high pedestrian amenity values in the CBD and centres. It is not relevant for zoning new trade related or SDLF land, but is relevant to the proposed rezoning to Principal Centre Zone.
- 67 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,

⁹ 2GP: Foodstuffs South Island – Joint Witness Statement on Economic Issues, 21 March 2017
<https://2gp.dunedin.govt.nz/2gp/documents/hearings/commercial/DOP-122493-4-566-1%20Joint%20witness%20statement.pdf>

Note that three options were considered for rezoning in the joint witness statement, all of which include land between Portsmouth Drive and Timaru Street. None of these options matches exactly the area being proposed for rezoning in the attached consent memorandum, but the options are of a similar scale to the current proposal.

¹⁰ Retail distribution effects are described in the evidence of Mr Colegrave to the 2GP hearings as follows: "[retail distribution effects] may arise if a new store or centre reduces the turnover of existing stores so severely that it causes the centres of which they form part to also decline significantly overall". Before the Dunedin Second Generation Plan Independent Hearings Panel Evidence of Fraser James Colegrave on behalf of Foodstuffs South Island Property Limited. 2 August 2016.

residents and businesses to Dunedin. It is supported by a hierarchy of attractive urban and rural centres.

68 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.

69 Land use and development performance standards that apply within the CBD and centres zones ensure that high levels of pedestrian amenity are obtained. 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 to both land use and development activities (built form). I have taken advice from DCC Urban Design staff in relation to the need for pedestrian frontage. That advice is that the area to be rezoned does not have high pedestrian activity and has a different built form to other parts of the South Dunedin Principal Centre. Rezoning the area without a pedestrian frontage, as proposed, would have no adverse effects on the centre's functioning, character and streetscape values.

Impact on industrial land supply and industrial activities (reverse sensitivity)
(2.6.2.X.c)

70 Policy 2.6.2.X.c is that the zoning: “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”.

71 This is relevant to the rezoning of the industrial land between Midland and Teviot Streets.

72 Objective 2.3.1 is:

Land, facilities and infrastructure that are important for economic productivity and social well-being, which include industrial areas, major facilities, key transportation routes, network utilities; and productive rural land:

- a. are protected from less productive competing uses or incompatible uses, including activities that may give rise to reverse sensitivity; and
- b. in the case of facilities and infrastructure, are able to be operated, maintained, upgraded and, where appropriate, developed efficiently and effectively.

Policy 2.3.1.4 is:

Identify land strategically important for industrial activities, including near the Harbour and key transport routes, and use industrial zoning and rules to protect industrial activities from incompatible or competing land uses in these areas, in particular retail (other than yard-based retail) and residential activities.

73 The Business Land Capacity Assessment (2019) assessed the floorspace capacity for industrial use in Dunedin to be 177,500m²¹¹. The demand for additional floorspace for industrial activities over the medium term (to 2028) was projected to be 38,300m²¹², with demand dropping over the long term. While the unanticipated increased rate of population growth will likely have some impact on increased demand for industrial land, particularly in relation to industry or yard based retail linked to new building activity, there will still

¹¹ Business Land Capacity Assessment Dunedin City March 2019. This figure includes capacity for industrial activities in the commercial and mixed use zones.

¹² Business Land Capacity Assessment Dunedin City March 2019.

likely be adequate capacity for industrial floorspace overall for medium and long term use.

- 74 Policy 2.3.1.4 identifies the strategic importance of land adjacent to the harbour and key transport routes for industrial use. The importance of this land for some industry types was highlighted in an Industrial Land Needs Study report by CPG New Zealand¹³. That report identified easy access to transport infrastructure (including the port and arterial road network) as being highly rated in interviews with a number of industry leaders. However, in a broader survey of industrial businesses, access to state highways and arterial roads was rated as only 3 out of 5 in relative importance (1 being the highest, 5 being the lowest), and proximity to the Port of Otago as 5 (lowest relative importance). Understandably, the rating given was highly variable depending on industry type and size responding to the survey.
- 75 The Business Land Capacity Assessment included a multi-criteria analysis (MCA) of the feasibility of development of different industrial locations in Dunedin for different industry types, using criteria derived from the CPG report. While the Portsmouth Drive area scored relatively highly, the highest scoring area was the Port industrial area. The relative importance for different areas also varied by industry type. Construction is the industry type that is predicted to have the greatest growth in employee numbers, and therefore floorspace requirements, over the long term in Dunedin. For construction activities, the Portsmouth Drive area ranked 5th out of 15 industrial areas in terms of feasibility of development.
- 76 The proposed rezoning will remove some relatively high scoring land from the industrial zone, which is likely to lead to it not being used for industrial activity due to increased land values and lease costs. However, there will remain a significant quantity of land that scores well in the MCA. Within the land that scored 6.5 or more¹⁴, there is an estimated capacity for 25,200m² of floorspace. The area of land to be rezoned is approximately 3.5 ha. Of this, approximately 1.2 ha is already being used for well-established trade related retail or other commercial activities and was not included in the calculation of industrial land capacity¹⁵. The remaining area (~2.3 ha) has been estimated to have 4,500m² of industrial floorspace capacity¹⁶. This represents the extent of the loss of industrial floorspace capacity as a result

¹³ CPG New Zealand Limited. Industrial Land Needs Study, March 2011.

¹⁴ Business Land Capacity Assessment Dunedin City March 2019.

¹⁵ Nichols Garden Centre, Radcliffe electrical (which occupies a new, purpose built building), Pro South IT Solutions and In2learning Education Centre

¹⁶ Based on the current average floorspace ratio for 2GP industrial zoned land of 20%.

of the rezoning. I also note that over one third of this area is consented for use as a supermarket. This area is also effectively already lost to industrial use.

- 77 Cumulatively, with industrial land proposed to be rezoned under the Port Otago appeal (ENV-2018-CHC-246), which is filed jointly, the total loss of industrial land capacity is 6,160m². There is an overall industrial land floorspace capacity of 177,500m², and a projected demand of up to 38,300m² over the long term. Rezoning the land will not conflict with ensuring there is sufficient industrial land to meet projected demand. Overall, I am satisfied that there will be sufficient industrial land available to meet future demand.

Reverse sensitivity (Policy 2.6.2.X.c)

- 78 The extension of commercial land into the industrially zoned area may have the potential to increase reverse sensitivity effects on nearby industrial activities. However, activities that might be most likely to cause an effect through an increase in domestic traffic and people into the area – a supermarket and a busy garden centre, are already either established or consented in the area. The proposed rezoning will be unlikely to result in significant additional reverse sensitivity effects.

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

- 79 Objective 2.7.1 is:

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

- 80 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.

- 81 The proposed rezonings have been discussed with the DCC 3 Waters staff, who have raised no concerns.

- 82 In relation to the rezoning of the industrial area, DCC Transport planning staff advise that some upgrades to pedestrian facilities and local intersections may be required to ensure pedestrian safety and the safe and efficient functioning of the road network. These can be achieved at a relatively low cost and will be addressed as required through consent conditions for new land uses that develop in the zone. Where upgrades are

required as a result of the cumulative impact of new activities, these could be funded through the DCC's development contribution policy.

- 83 In relation to the new SDLF and Principal Centre Zone, the provisions provide for an assessment of effects on the safety and efficiency of the transport network to be undertaken at the time of consent application for high trip generating activities.
- 84 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)

- 85 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.

- 86 The proposed rezonings will not expand Dunedin's boundaries, but rather allow increased flexibility in terms of which retail activities can locate in these specific locations. In my view, the rezonings will achieve this objective.

Conclusion on rezoning

- 87 Overall, I conclude that the proposed rezonings are consistent with Policy 2.6.2.X. The new SDLF Zone increase the area of land available for large format retail activities, and so provide additional market choice for these retail types.
- 88 The new Trade Related zoned area will offset the potential loss of sites for trade related retail activities from the new SDLF zoning, while still ensuring sufficient industrial land remains. It is therefore a more appropriate way of achieving Objective 2.6.2 than the existing industrial zoning.

Assessment of new SDLF Zone provisions

- 89 Planning provisions in the new SDLF Zone reflect those in the existing Trade Related Zone, with the addition of large scale general retail and bulky goods retail as restricted discretionary activities. Discretion is restricted to effects on the safety and efficiency of the transport network and effects on accessibility, and for large scale general retail, effects on the vibrancy and viability of the CBD and centres.

90 The relevant objective for impacts on transport network is Objective 6.2.3:

Land use, development and subdivision activities maintain the safety and efficiency of the transport network for all travel modes and its affordability to the public.

91 Requiring consent for these activities (which will generally be high trip generating activities) in order to assess impacts on the transport network is appropriate and will ensure this objective is achieved.

92 Management of retail activities to ensure that the vibrancy of the CBD and centres is maintained is well expressed in the 2GP's objectives and policies, and has been outlined earlier. While large format retail is acknowledged as having functional needs that make its location in the CBD and centres problematic (see Policy 2.3.2.4 above), a residual concern remained between parties about expanding the locations in which large scale general retail could establish and the potential future forms of large scale general retail (e.g. market-style retail developments, which might act as significant drawcards away from the CBD). This additional assessment rule allows consideration of those potential effects on a case by case basis and ensures that Objective 2.3.2 is achieved.

Clarification of activity status of garden centres

93 The amendment proposed is minor in nature and does not change the intended activity status of garden centres. It simply clarifies that trade related retail includes garden centre type activity and so improves plan usability. No further s32 assessment has been undertaken.

Relationship to objectives and policies and appeals on those objectives and policies

94 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.

95 Objective 2.3.2 is appealed by the University of Otago (ENV-2018-CHC-270, DCC Reference 198). The appeal relates to the University's desire for the Campus Zone to be identified as a centre in Objective 2.3.2. A consent memorandum has been signed by all parties and is filed jointly to resolve this appeal. No change to Objective 2.3.2 is proposed.

96 Also noted earlier, Policy 2.6.2.4 has been amended in response to the appeal by Woolworths New Zealand Limited. This appeal also resulted in new policies 2.3.2.X, 2.4.3.X and 2.6.2.X. A signed consent memorandum

is jointly filed to resolve the Woolworths appeal. The assessment above is based on the new policy framework.

97 There are no other relevant appeals.

Affirmed at Dunedin)

By **Emma Christmas**)

this 23rd day of April 2021)

before me:)

Emma Christmas



A Solicitor of the High Court of New Zealand

Kimberly Wong
Solicitor
Dunedin