

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

Nichols Property Group Limited & Others
ENV-2018-CHC-217

Cavendish Chambers Limited
ENV-2018-CHC-231

Foodstuffs (South Island) Limited
ENV-2018-CHC-238

Port Otago Harbourside Edge
ENV-2018-CHC-246

Woolworths New Zealand Limited
ENV-2018-CHC-255

University of Otago
ENV-2018-CHC-270

Kaan's Properties 2017 Limited
ENV-2018-CHC-286

Appellants

And **Dunedin City Council**
Respondent

Memorandum of Counsel regarding CMU / Campus Bundle

23 April 2021

Respondent's solicitor:

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**anderson
lloyd.**

May it please the Court

- 1 This memorandum is filed on behalf of Dunedin City Council (**Council**) to explain this bundle of consent memoranda that are filed following Court-assisted mediation for Group 2 appeals.
- 2 In this instance Council submits eight consent memoranda to the Court for consideration to resolve the Commercial Mixed Use / Campus Topic.
- 3 Council requests that the Court consider and make determinations on the following attached consent memoranda in this order:
 - (a) Group 2a – CMU Strategic (Woolworths New Zealand Limited ENV-2018-CHC-255) dated 17 March 2021 (DCC Reference numbers 78, 127, 130 and 366);
 - (b) Commercial – Site Specific and Harbourside Edge Zone (Port Otago – Harbourside Edge ENV-2018-CHC-246; University of Otago ENV-2018-CHC-270) dated 26 March 2021 (DCC Reference numbers 203 and 371);
 - (c) Harbourside Edge Zone (Kaan's Properties 2017 Limited ENV-2018-CHC-286) dated 2 September 2020 (DCC Reference numbers 242 and 340);
 - (d) Commercial zoning – site specific (Cavendish Chambers Limited ENV-2018-CHC-231) dated 13 August 2020 (DCC Reference number 19);
 - (e) Group 3a – Trade Related Zone (Nichols Property Group Limited & Others ENV-2018-CHC-217) dated 14 September 2020 (DCC Reference number 53);
 - (f) Group 3a – Trade Related Zone (Foodstuffs (South Island) Limited ENV-2018-CHC-238) dated 19 August 2020 (DCC Reference number 36);
 - (g) Group 2c – Campus Zone provisions (University of Otago ENV-2018-CHC-270) dated 11 September 2020 (DCC Reference numbers 185, 187 and 198); and
 - (h) Campus Zone provisions (University of Otago ENV-2018-CHC-270) dated 12 August 2020 (DCC Reference numbers 190 and 196).
- 4 The appeals by Woolworths New Zealand Limited (**Woolworths**), Port Otago – Harbourside Edge (**Port Otago**), University of Otago (**University**),

Kaan's Properties 2017 Limited (**Kaan's**), Cavendish Chambers Limited (**Cavendish**), Foodstuffs (South Island) Limited (**Foodstuffs**), and Nichols Property Group Limited & Others (**Nichols**) relate to the Commercial and Mixed Use provisions of the 2GP, including strategic provisions, site specific commercial zoning, the Trade Related Zone, Harbourside Edge Zone, and pedestrian frontage performance standards. The appeal from the University also relates to the Campus Zone and includes related amendments to the Commercial and Mixed Use provisions. Accordingly the consent memoranda set out in paragraph 3 above should be considered together as a related group of appeals, and best in the order listed above.

Affidavits and Draft Orders

- 5 There are nine affidavits from the Council Planning staff and one affidavit from Derek Foy, Associate Director of Market Economics, filed with these consent memoranda, addressing the content of the proposed changes, the planning framework, section 32AA of the RMA, and the 2GP style guide. These are:
 - (a) Affidavit of Derek Richard Foy affirmed 29 March 2021 regarding the effects on business land capacity and on the centers hierarchy for the appeals by Nichols, Cavendish, Foodstuffs, Port Otago, University and Kaan's ENV-2018-CHC-217, 231, 238, 246, 270 and 286 (DCC Reference numbers 19, 36, 53, 185, 187, 198, 203, 242, 340 and 371). This is provided to address the combined effect of these agreed changes, and as an update to the evidence Mr Foy gave at the Council hearing on this topic;
 - (b) Affidavit of Emma Christmas affirmed 26 March 2021 regarding the appeal by Woolworths ENV-2018-CHC-255 (DCC Reference numbers 78, 127, 130 and 366);
 - (c) Affidavit of Dr Anna Johnson affirmed 12 April 2021 regarding the appeal by Woolworths ENV-2018-CHC-255 (DCC Reference numbers 78, 127, 130 and 366);
 - (d) Affidavit of Emma Christmas affirmed 26 March 2021 regarding the appeals by Port Otago, University, and Kaan's ENV-2018-CHC-246, 270 and 286 (DCC Reference numbers 203, 242, 340 and 371);
 - (e) Affidavit of Dr Anna Johnson affirmed 12 April 2021 regarding the appeals by Port Otago, University, and Kaan's ENV-2018-CHC-246, 270 and 286 (DCC Reference numbers 185, 187, 190, 196, 198, 203, 242, 340 and 371);

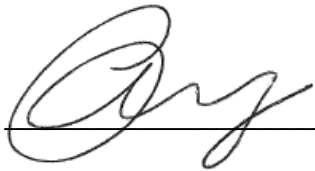
- (f) Affidavit of Emma Christmas affirmed 26 March 2021 regarding the appeal by Cavendish ENV-2018-CHC-231 (DCC Reference number 19);
 - (g) Affidavit of Emma Christmas affirmed 23 April 2021 regarding the appeal by Foodstuffs and Nichols ENV-2018-CHC-217 and 238 (DCC Reference numbers 36 and 53);
 - (h) Affidavit of Dr Anna Johnson affirmed 12 April 2021 regarding the appeal by Foodstuffs and Nichols ENV-2018-CHC-217 and 238 (DCC Reference numbers 36 and 53);
 - (i) Affidavit of Emma Christmas affirmed 26 March 2021 regarding the appeal by University ENV-2018-CHC-270 (DCC Reference numbers 185, 187 and 198); and
 - (j) Affidavit of Sarah Hickey affirmed 12 April 2021 regarding the appeal by University ENV-2018-CHC-270 (DCC Reference numbers 190 and 196).
- 6 The affidavits from the planners, Emma Christmas and Sarah Hickey, provide background on the relevant 2GP planning framework and any policy direction from higher order documents (RPS or NPS) where relevant, the decision of the Hearings Panel and reasons, the scope for the changes in some cases, and provide an evaluation as required under section 32AA of the RMA.
- 7 The affidavits from Dr Anna Johnson (City Development Manager) address:
- (a) How the changes align with and impact the strategic objectives and policies (objectives and policies in Section 2 Strategic Directions) and the impact of any changes on the vertical and horizontal alignment of provisions in the 2GP; and
 - (b) Whether the changes are drafted in accordance with the 2GP style guide. In some cases, a brief summary of the relationship between changes in different consent memoranda is included where the changes inter-relate.
- 8 Also filed is a single draft order dealing with all appeals together. This attaches a single Appendix 1 that contains the relief sought in these memoranda in one place. It is respectfully requested that these consent memoranda are considered, and the orders sought are made, to resolve these appeals on this topic.

- 9 Due to the number of documents in this Bundle, attached at **Annexure A** is a table which correlates the consent memoranda and affidavits set out in this memorandum of counsel with the reference numbers and descriptions of the documents filed with the Court.

Track change version

- 10 It is also pointed out that there is a track change version of the 2GP in PDF showing those changes in context available for the Court on the DCC's 2GP Appeals Information webpage¹.

Dated this 23rd of April 2021

A handwritten signature in black ink, appearing to be 'G. Cassidy', is written over a horizontal line.

Michael Garbett/Georgia Cassidy
Counsel for the Respondent

¹ <https://www.dunedin.govt.nz/council/district-plan/2nd-generation-district-plan/appeals-information>

Annexure A: Table

Description of documents in the memorandum of counsel	Description of documents as filed (i.e. filing name)
Consent memoranda	
Group 2a – CMU Strategic (Woolworths New Zealand Limited ENV-2018-CHC-255) dated 17 March 2021 (DCC Reference numbers 78, 127, 130 and 366)	1. ENV-2018-CHC-255 - Consent Memorandum (signed)
Commercial – Site Specific and Harbourside Edge Zone (Port Otago – Harbourside Edge ENV-2018-CHC-246; University of Otago ENV-2018-CHC-270) dated 26 March 2021 (DCC Reference numbers 203 and 371)	2. ENV-2018-CHC-246 and 270 – Consent Memorandum (signed)
Harbourside Edge Zone (Kaan's Properties 2017 Limited ENV-2018-CHC-286) dated 2 September 2020 (DCC Reference numbers 242 and 340)	3. ENV-2018-CHC-286 - Consent Memorandum (signed)
Commercial zoning – site specific (Cavendish Chambers Limited ENV-2018-CHC-231) dated 13 August 2020 (DCC Reference number 19)	4. ENV-2018-CHC-231 - Consent Memorandum (signed)
Group 3a – Trade Related Zone (Nichols Property Group Limited & Others ENV-2018-CHC-217) dated 14 September 2020 (DCC Reference number 53)	5. ENV-2018-CHC-217 - Consent Memorandum (signed)
Group 3a – Trade Related Zone (Foodstuffs (South Island) Limited ENV-2018-CHC-238) dated 19 August 2020 (DCC Reference number 36)	6. ENV-2018-CHC-238 - Consent Memorandum (signed)
Group 2c – Campus Zone provisions (University of Otago ENV-2018-CHC-270) dated 11 September 2020 (DCC Reference numbers 185, 187 and 198)	7. ENV-2018-CHC-270 - Consent Memorandum (signed)
Campus Zone provisions (University of Otago ENV-2018-CHC-270) dated 12 August 2020 (DCC Reference numbers 190 and 196)	8. ENV-2018-CHC-270 - Consent Memorandum (signed)

Affidavits	
Affidavit of Derek Richard Foy affirmed 29 March 2021 regarding the effects on business land capacity and on the centers hierarchy for the appeals by Nichols, Cavendish, Foodstuffs, Port Otago, University and Kaan's ENV-2018-CHC-217, 231, 238, 246, 270 and 286 (DCC Reference numbers 19, 36, 53, 185, 187, 198, 203, 242, 340 and 371)	9. ENV-2018-CHC-217, 231, 238, 246, 270 and 286 - Affidavit of D Foy (signed)
Affidavit of Emma Christmas affirmed 26 March 2021 regarding the appeal by Woolworths ENV-2018-CHC-255 (DCC Reference numbers 78, 127, 130 and 366)	10. ENV-2018-CHC-255 - Affidavit of E Christmas (signed)
Affidavit of Dr Anna Johnson affirmed 12 April 2021 regarding the appeal by Woolworths ENV-2018-CHC-255 (DCC Reference numbers 78, 127, 130 and 366)	11. ENV-2018-CHC-255 - Affidavit of A Johnson (signed)
Affidavit of Emma Christmas affirmed 26 March 2021 regarding the appeals by Port Otago, University, and Kaan's ENV-2018-CHC-246, 270 and 286 (DCC Reference numbers 203, 242, 340 and 371)	12. ENV-2018-CHC-246, 270 and 286 - Affidavit of E Christmas (signed)
Affidavit of Dr Anna Johnson affirmed 12 April 2021 regarding the appeals by Port Otago, University, and Kaan's ENV-2018-CHC-246, 270 and 286 (DCC Reference numbers 185, 187, 190, 196, 198, 203, 242, 340 and 371)	13. ENV-2018-CHC-246, 270 and 286 - Affidavit of A Johnson (signed)
Affidavit of Emma Christmas affirmed 26 March 2021 regarding the appeal by Cavendish ENV-2018-CHC-231 (DCC Reference number 19)	14. ENV-2018-CHC-231 - Affidavit of E Christmas (signed)
Affidavit of Emma Christmas affirmed 23 April 2021 regarding the appeal by Foodstuffs and Nichols ENV-2018-CHC-217 and 238 (DCC Reference numbers 36 and 53)	15. ENV-2018-CHC-217 and 238 – Affidavit of E Christmas (signed)
Affidavit of Dr Anna Johnson affirmed 12 April 2021 regarding the appeal by	16. ENV-2018-CHC-217 and 238 - Affidavit of A Johnson (signed)

Foodstuffs and Nichols ENV-2018-CHC-217 and 238 (DCC Reference numbers 36 and 53)	
Affidavit of Emma Christmas affirmed 26 March 2021 regarding the appeal by University ENV-2018-CHC-270 (DCC Reference numbers 185, 187 and 198)	17. ENV-2018-CHC-270 - Affidavit of E Christmas (signed)
Affidavit of Sarah Hickey affirmed 12 April 2021 regarding the appeal by University ENV-2018-CHC-270 (DCC Reference numbers 190 and 196)	18. ENV-2018-CHC-270 - Affidavit of S Hickey (signed)