

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA**

IN THE MATTER of the Resource Management Act 1991
AND of an appeal under the clause 14 of the First
Schedule of the Act
BETWEEN HEART OF DUNEDIN INCORPORATED
(ENV-2018-CHC-239)
Appellant
AND DUNEDIN CITY COUNCIL
Respondent

Environment Judge J E Borthwick – sitting alone pursuant to section 279 of the Act

In Chambers at Christchurch

Date of Consent Order: 26 May 2020

CONSENT ORDER

- A: Under section 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:
- (1) the appeal is allowed subject to the amended provisions marked in Annexure 1, attached to and forming part of this consent order; and
 - (2) the appeal is otherwise dismissed.
- B: Under section 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS



Introduction

[1] Heart of Dunedin Incorporated represent property and business owners in the Central Business District. They are concerned that the provision in the proposed District Plan for retail activities to occur as of right within the Warehouse Precinct Zone, will result in retail activity vacating the Central Business District and relocating to the Warehouse Precinct.

[2] The parties have settled on an agreement which fully determines the Heart of Dunedin's appeal and seek that the court give orders amending the proposed District Plan.¹

[3] The amendments are to reduce the type of retail activity that are permitted within the Warehouse Precinct Zone. While the City Council Policy Planner, Ms Emma Christmas acknowledges the amendments will shift slightly the balance of policy from facilitating the re-use of buildings on to protecting the vibrancy of the Central Business District, she says the proposed District Plan's provisions remain coherent.²

[4] The court will only make orders if it is satisfied it is appropriate to do so and where there is no relationship between the provision as proposed to be amended by consent orders and other appeals before the court. Ms Christmas and Dr Johnson have satisfied me that that the orders are appropriate. Moreover, there are no other appeals on related provisions (including higher order provisions), and so granting the relief sought by this order will not impact on the resolution of other proceedings.³

Other matters

[5] There are no s 274 parties to this appeal.⁴

[6] Dr Johnson has also assured the court that the proposed amendments are drafted in line with the 2GP drafting protocol set out in the *2GP Style Guide April 2019 – incorporating change made through 2GP decisions*.⁵

¹ Consent memorandum dated 29 November 2019; Registry email dated 11 and 14 May 2020; DCC memorandum dated 13 May 2020 and appellant memorandum dated 13 and 14 May 2020.

² Affidavit of E Christmas, at [28].

³ Affidavit of E Christmas, at [23]; affidavit of Dr Anna Louise Johnson, at [7].

⁴ Bindon Holdings Limited gave notice of an intention to become a party but later withdrew.

⁵ https://www.dunedin.govt.nz/_data/assets/pdf_file/0007/715867/2GP-Style-Guide.pdf, affidavit of Dr A L Johnson, at [9].



[7] For completeness, I record the parties' attestation that they are satisfied that all matters proposed for the court's endorsement fall within the court's jurisdiction and conform to relevant requirements and objectives of the RMA, including Part 2 and on that basis request that the amendments shown in strikethrough and underline in Annexure 1 are made.

[8] The parties agree that costs should lie where they fall and accordingly no order for costs is sought.⁶

Outcome

[9] All parties to the proceeding have executed the memorandum requesting the orders. Based on the information before me, I am satisfied pursuant to s 32AA of the Resource Management Act 1991, that the amendments proposed are the most appropriate way to achieve the relevant objectives. As the orders will promote the purpose of the Act I will make the orders sought.



J E Borthwick
Environment Judge

⁶ Consent memorandum, dated 26 November 2019, at [8].

Annexure 1

The amendments are as follows:

Amend definition of Retail:

The use of land and buildings for:

- the sale or hire of goods; or
- retail services, which are the provision of services including personal, household, financial, property or other services, where a front counter customer service is provided.

Amend definition of General Retail:

Any retail activity that is not otherwise defined as:

- food and beverage retail
- dairies
- service stations
- bulky goods retail
- yard based retail; or
- trade related retail.

General retail is a sub-activity of retail.

General retail - retail services is the component of general retail that is captured under the definition of retail services.

General retail - sale or hire of goods is the component of general retail that is sale or hire of goods.

New definition of retail services:

The use of land and buildings where the primary activity is not the sale of goods but instead is the provision of services (including personal, household, financial, property or other services), where a front counter customer service is provided. Activities that are primarily retail services but include ancillary sales of goods (for example hair salons that sell hair products) are considered to be retail services as long as the percentage of the gross floor area of the activity that is used for sale of goods is no more than 30%.

Examples of retail services are banks, health and beauty salons, visitor information centres, travel agents and TAB venues.

For the sake of clarity, this definition excludes the following activities, which are considered to be sale or hire of goods:



• pharmacies

• telecommunication/ mobile phone shops; and

• retail services where 30% or more of the gross floor area is used for the sale of goods.

Retail services are managed as a separate component of general retail ('general retail – retail services') in the Warehouse Precinct Zone only.

Amend nested table 1.3.2 Land Use activities

Commercial Activities Category

Activities	Sub-activities
Ancillary licensed premises	
Commercial advertising	Tourism advertising
Conference, meeting and function	
Entertainment and exhibition	
Office {Note - appeal for addition of new sub-activity for airport office}	Registered health practitioners
	Training and education
	Veterinary services
	Campus-affiliated office
Restaurants	
Restaurant - drive through	
Retail	Bulky goods retail
	Dairies
	Food and beverage retail
	General retail (<u>note that this activity is managed in the Warehouse Precinct Zone as two sub-components - general retail – retail services and general retail - sale or hire of goods</u>)
	Trade related retail
	Yard based retail
Service stations	Self-service fuel stations
Stand-alone car parking	
Visitor accommodation	Campgrounds



Amend Rule 18.3.4 Land use activity status table:

Commercial activities		Activity status				Performance standards
		a. WP	b. PPH	c. SSYP	d. HE	
9.	General retail - <u>retail services in a scheduled heritage building</u>	P	NC	NC	NC	i. Minimum car parking ii. Minimum vehicle loading
10.	General retail not in a scheduled building and less than 1500m² in gross floor area	NC	NC	NC	NC	
44. <u>10</u>	General retail not in a scheduled building and 1500m² or more in gross floor area	P	NC	NC	NC	i. Minimum car parking ii. Minimum vehicle loading
<u>11</u>	<u>All other general retail</u>	<u>NC</u>	<u>NC</u>	<u>NC</u>	<u>NC</u>	

A consequential change is required to Policy 13.2.1.9.

Policy 13.2.1.9

Provide for general retail - retail services in scheduled heritage buildings in the Warehouse Precinct Zone and offices in scheduled heritage buildings in the Smith Street and York Place and Warehouse Precinct zones, in order to maximise the potential opportunities for adaptive re-use of heritage buildings in these areas.

A consequential change is required to Policy 18.2.1.3.



Policy 18.2.1.3

Avoid retail and office activities in areas where they are not provided for unless:

- a. it is an ancillary and secondary component of a general retail – retail services or office activity that is undertaken in a scheduled heritage building as provided for by Policy 13.2.1.9 on the same or adjacent site; or
-

A consequential change is required to Section 18.1.1.3 Warehouse Precinct zone description.

18.1.1.3 Warehouse Precinct Zone (WP)

The Warehouse Precinct Zone adjoins the southern part of the CBD Zone and is bounded by Queens Gardens, Bond Street, Police Street and Cumberland Street. The zone provides for a mix of inner city living, visitor accommodation, conference, meeting and function, entertainment and exhibition, light industrial, restaurant and bulky goods and trade related retail activity. General retail – retail services and office activity is also provided for, if it occurs in scheduled heritage buildings, in order to encourage their restoration.

A consequential change is required Rule 18.5.7.1 Minimum vehicle loading

18.5.7.1 Minimum vehicle loading

c. Warehouse Precinct Zone	i. <u>General retail – retail services</u> (in a scheduled heritage building)	1. On sites which gain direct vehicular access to a strategic road, arterial road or urban high density corridor or have a gross floor area of 500m ² or more: 1 loading space to accommodate an 8m rigid truck (See Appendix 6B, Figure 6B.10)
	ii. General retail (not in a scheduled heritage building and 1500m ² or more in gross floor area)	
	iii. Trade related retail	
	iv. Visitor accommodation	2. Visitor accommodation based on guest rooms (e.g. hotels) for 50 or more guest rooms: 1 loading space to accommodate the turning circle of a coach (See Appendix 6B, Figure 6B.12)



		v. Bulky goods retail	<p>3. Activities with a gross floor area of less than 1000m² : 1 loading space to accommodate an 8m rigid truck (See Appendix 6B, Figure 6B.10);</p> <p>4. Activities with a gross floor area of 1000m² or more: 1 loading space to accommodate a B Train Truck (See Appendix 6B, Figure 6B.11).</p>
--	--	-----------------------	--

A consequential change is required Rule 18.4.5 Notification

18.4 Notification

5. With respect to sections 95D(b) and 95E(2)(a) of the RMA, Council will not consider general retail – retail services ~~as a permitted activity~~ in scheduled heritage buildings as part of the permitted baseline when ~~in~~ considering the effects of discretionary or non-complying activities in the Warehouse Precinct Zone.

