

**BEFORE THE ENVIRONMENT COURT**

**IN THE MATTER** of the Resource Management Act 1991 (the  
**Act**) and of an appeal pursuant to clause  
14(1) of the first schedule of the Act

**BETWEEN** PROGRESSIVE ENTERPRISES LIMITED  
(ENV-2012-CHC-002)

Appellant

**AND** SELWYN DISTRICT COUNCIL

Respondent

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

In Chambers at Christchurch

**CONSENT ORDER**

**Introduction**

[1] On 23 December 2012 Progressive Enterprises Limited lodged an appeal against a decision of the Selwyn District Council relating to Plan Change 29 to the Selwyn District Plan.

[2] The court has now read and considered the consent memorandum of the parties dated 5 July 2012 which proposes to resolve the appeal.

**Other relevant matters**

[3] Foodstuffs (South Island) Limited and Rolleston Square Limited have given notice of an intention to become parties under section 274 of the Resource Management Act 1991 (the **Act**) and have signed the memorandum setting out the relief sought.



**Orders**

[4] The court is making this order under section 279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The court understands for present purposes that:

- (a) all parties to the proceedings have executed the memorandum requesting this order;
- (b) all parties are satisfied that all matters proposed for the court's endorsement fall within the court's jurisdiction, and conform to the relevant requirements and objectives of the Act, including, in particular, Part 2.

[5] The court, by consent, orders under section 279(1)(b) of the Act that:

- (a) the appeal is allowed subject to the amended provisions of Plan Change 29 set out in Schedule A, which is attached to and forms part of this order;
- (b) the appeal is otherwise dismissed;
- (c) there is no order as to costs.

DATED at CHRISTCHURCH this 12<sup>th</sup> day of July 2012

  
**J E Borthwick**  
**Environment Judge**

Issued:



## SCHEDULE A

### Amendments to PC29 Provisions

#### POLICY B3.4.22

Allow people freedom in their choice of the design of buildings or structures except where building design needs to be managed to:

- Avoid, remedy or mitigate adverse effects on adjoining sites; or
- Maintain the character of areas with outstanding natural features or landscapes values or special heritage or amenity values; or
- Maintain and establish pleasant and attractive streets and public areas in the Business 1 zone.

#### Explanation and Reasons

In general, the District Plan does not have provisions that tell people what colour, shape or materials to use when building structures. The Plan does, however have rules for the height, bulk of buildings and recession planes, to avoid adverse effects of shading and loss of privacy or outlook, on adjoining sites. In the case of the Business zones some of these provisions are either relaxed or do not exist where adjoining another business zoned site. An exception is within the Business 1 zone where it is considered that active management of design is needed in order to address the effects on public spaces.

Some areas have been identified in the Plan as having either: outstanding natural features or landscapes values or special heritage or amenity values. In these areas, the Plan has design criteria for erecting a building or structure, including signs, as a permitted activity (no resource consent needed). Buildings or structures that cannot comply with the rules, may be able to be erected through the granting of a resource consent, if the proposed design is appropriate to the area.

The areas subject to building design controls due to the proximity of outstanding natural features or landscapes are identified in Part B, Section 1.4 of the Plan. Such controls affect the expansion of the townships of: Arthur's Pass, Castle Hill and Lake Coleridge, and the expansion of other townships in certain directions. It will also affect parts of the Rural Zone. This matter is addressed in the Rural Volume of the Plan.

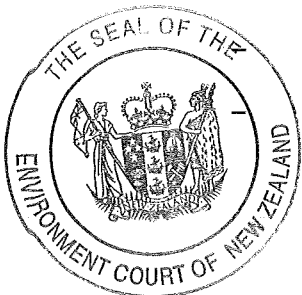
The townships of Arthur's Pass and Castle Hill also have building design controls in their existing villages. These controls are to maintain the special building styles and associated character that exist in those villages, at present. This matter is addressed in policies 28 and 29 of this Section.

#### Building Act 2004

A building consent is still required for the erection, alteration or demolition of any building under the Building Act 2004, whether that building requires a resource consent or not. All buildings must comply with any relevant structural criteria in the New Zealand Building Code.

#### Method

- District Plan Rules
- Height of Buildings (All Zones)
- Size of Buildings (Living zones)



- Recession Planes (All Zones)
- Urban Design Guides

#### **POLICY B3.4.23a**

Ensure that Business 1 zoned town centres are walkable and well integrated, and that development in those town centres contributes to the economic and social vibrancy of the District's towns by:

- complementing public spaces (both those in public ownership and on-site public space) with high quality active frontage
- ensuring the provision of high quality public space
- bringing activity to street frontages by, where possible, positioning of buildings and active frontage along the street boundary and not locating car parking between buildings and a road
- providing for a high quality pedestrian experience in places the public may be present
- ensuring that development supports the urban structure by providing for direct and logical pedestrian routes within and through larger sites and to entranceways along pedestrian desire lines.
- ensuring entranceways are positioned in logical places for pedestrian access
- Allowing for a variety of building typologies including large format retailing where appropriate

#### **Explanation and Reasons**

Town Centres are the hub of a community and the venue for a variety of transactions. A vibrant and vital town centre results from the variety of experiences and transactions on offer from a single journey. The presence of people on the street is an essential component of a vital town centre, adding interest, excitement and commercial opportunities.

An inviting and walkable town centre allows people to combine shopping and other activities (such as using the library or meeting with friends). The social fabric of the town is strengthened by the opportunities for chance encounters. There are health benefits from allowing people to incorporate walking into their daily routine. But people will only walk around a centre if it is safe, attractive and convenient.

The integration of adjacent sites is important for the economic success of the centre, increasing opportunities for multi-use visits and broadening the range of activities taking place in the centre.

For these reasons, a centre must have a layout which supports pedestrian activity and buildings must be designed to bring interest and activity to streets and areas where people may be present. Developments which turn their backs on the street and neighbouring development and which do not contribute to a pleasant and convenient pedestrian experience will undermine the opportunity for a community hub to be developed.

The plan differentiates between small developments (with floor areas below 450m<sup>2</sup>) and large ones.

Small developments have a reduced scale of effects, but there is more potential for adverse cumulative effects from development which is undertaken at different times. Effects are



managed with bottom line standards designed to ensure regular development with good street interaction.

Large developments have a greater scale of effects but can be designed comprehensively and include on-site public space. These proposals need a greater degree of scrutiny, so they are restricted discretionary activities, but assessment can include the overall effects of the development on the environment (rather than rigid compliance with standards).

The policy recognises that there is a demand for large format retail; that it is appropriately located in the B1 zone; and that its presence can be an important contribution to the economic and social vitality of a town centre. It seeks a balance between the positive contribution such retail makes and the adverse effect it can have if poorly designed.

#### Methods

##### District Plan Rules (Business 1 zones)

- Streetscene
- Retail Activities
- On-Site Public Spaces
- Entranceways
- External finish
- Landscaping

#### Urban Design Guides

### **RULE 16.10 – LARGE SCALE COMMERCIAL DEVELOPMENTS (450M<sup>2</sup> OR MORE)**

#### Restricted Discretionary Activities

16.10.1 In the Business 1 zone, developments comprising:

- a) one or more new commercial buildings; and/or
- b) commercial building additions

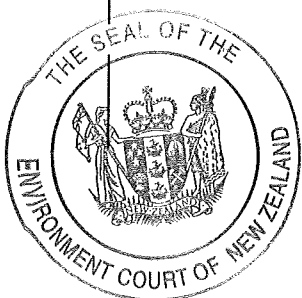
where the new building and/or addition has with a total gross floor area of 450m<sup>2</sup> or more shall be a restricted discretionary activity.

16.10.2 Under rule 16.10.1, Council has restricted the exercise of its discretion to:

16.10.2.1 The extent to which the development:

- ~~a) is compatible with its context in terms of scale, and~~
- b)a) \_\_\_\_\_ contributes to visual variety, including in relation to the architectural modulation and detailing proposed, and
- c)b) \_\_\_\_\_ visually integrates or disguises roof mounted servicing equipment.

16.10.23.2 The extent to which the design and location of active frontages and entranceways to buildings to:



~~a) creates on-site public space which is attractive and convenient for pedestrians; and~~

~~b) addresses other public space such as roads with active frontage.~~

16.10.2.3 The extent to which the design and layout of the site provides and addresses (for instance through active frontage) well-located people-orientated space appropriate to the scale and nature of the activities on site; and attractive pedestrian areas; either public streets or spaces with an equivalent amenity to public streets, where practicable.

16.10.2.4 The extent to which the site layout provides direct, logical and attractive pedestrian routes of sufficient width within and through the site as part of a comprehensive walking network for the wider area.

16.10.2.5 The extent to which the development maintains and/or provides continuous building lines, active frontage and verandahs along street boundaries and main pedestrian routes, where practicable.

16.10.2.6 Whether car parking areas contribute to the provision of high quality public space, and are not located between buildings and a road where possiblepracticable.

16.10.2.7 The extent to which the design and location of landscaping will contribute to a high quality pedestrian experience by mitigating the any adverse visual effects of development and defining the edges of streets and other space accessible to the public.

~~16.10. 2.8 The provision of appropriate servicing or the proposed activities in relation to amenity effects; and~~

16.10.2.9 The degree to which the colours and reflectivities proposed for the exterior of buildings, including rooves, will contribute to pleasant and attractive streets and public areas.

16.10.3 Any application arising from Rule 16.10.1 will not require the written approval of other persons and shall be non-notified.

~~Note: People-oriented space (rule 16.10.2.3) means public space (including on-site public space) which has high pedestrian amenity~~

~~Subject to high pedestrian amenity being achieved~~In rule 16.10.2.3, examples of people oriented-space with street like amenity might include (but are not limited to):

- legal roads and public reserves;
- "Private Streets": areas of private land where buildings with a majority of active frontage are directly opposite each other with pedestrian facilities on both sides of an accessway
- "Pedestrian Precincts": traffic-free street or lanes faced by active frontage on both sides.
- "Pedestrian Parades": wide footpaths in front of shops, providing space for pedestrian activities, separated from car parking by landscaping.



- “Nooks and Corners”: Making use of larger areas of leftover space, separated from car parking by landscaping.
- “Pedestrian Squares”: generally enclosed on 2 or more sides by active frontage, and where vehicles are not permitted.

Illustrations of these concepts are provided in the Council's *Commercial Design Guide*.

## **RULE 17.7 – PARKING AREAS AND LANDSCAPING**

### **Permitted activities**

17.7.1 In the Business 1 zone, new car parking areas shall be a permitted activity if they comply with the following:

17.7.1.1 A continuous landscaping strip is provided between any legal road and ~~the~~ an adjacent parking area, except across vehicle crossings and pedestrian accesses, which complies with the following :

- A depth of at least 3m with plants that will grow to a height of 60cm within 3 years over the entire area or
- A depth of at least 1.5m, ~~planted with visually impermeable hedging~~ that will reach a continuous height of 1m (visually impermeable) within 3 years.

17.7.1.2 A minimum of 1 tree is provided for each ten metres of road frontage, set in a planting bed with minimum dimensions 1.5mx1.5m.

Note: For car parking areas resulting in more than 20 parking spaces, Rule 17.7.2 will apply in addition to Rule 17.7.1.

### **Controlled Activities**

17.7.2 In the Business 1 zone, new car parking areas resulting in more than 20 parking spaces shall be a controlled activity.

17.6.1.1 The exercise of Councils discretion shall be limited to the following:

- a) The degree to which low level landscaping has been provided in order to break up the appearance of hard surfacing, particularly between the car park and pedestrian areas.
- b) Whether an adequate number of trees, within suitably sized planting beds, have been provided in appropriate locations within the car parking area in order to mitigate any adverse visual effects.

### **Restricted Discretionary Activities**

17.7.3 Any car parking area which does not comply with Rule 17.7.1 shall be a restricted discretionary activity. The exercise of the discretion shall be limited to consideration of effects on visual amenity.

