

IN THE SUPREME COURT OF NEW ZEALAND

A. 3/77

TIMARU REGISTRY

IN THE MATTER of Part 1 of the  
Judicature Amendment  
Act 1972

BETWEEN

SOUTH CANTERBURY  
WHOLESALE GROCERIES  
LIMITED a duly  
incorporated company  
having its registered  
office in Timaru

APPLICANT

A N D

THE MAYOR COUNCILLORS  
AND CITIZENS OF THE  
BOROUGH OF TEMUKA  
incorrectly shown as  
THE MAYOR COUNCILLORS  
AND BURGESSES OF THE  
BOROUGH OF TEMUKA

DEFENDANT

Hearing: 1st March 1977

Judgment: 10.3.77

Counsel: Mr B.J. Petrie for Applicant  
Mr N.C. Shannon for Defendant

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JUDGMENT OF CASEY J.

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This application for review of the Temuka Borough Council's refusal to issue a building permit is brought to have the Court determine the meaning of one of the zoning ordinances in its District Scheme under the Town and Country Planning Act 1953. South Canterbury Wholesale Groceries Limited owns a piece of land from which a grocery business was conducted. In December 1976 it submitted plans for the alteration and extension of the building to include a number of shops and a foodmarket, with a large surrounding area for off-street parking - a self-contained shopping complex which is now a familiar feature of most large towns and cities. The land is zoned "Service Zone" in the Code, the objectives being "to provide land on the fringe of commercial zones for expansive commercial type activities which tend to interrupt commercial frontages." Ordinance 3.4.1. Uses reads as follows:-

"Policy - To encourage vehicle oriented commercial activities to locate in these zones."

## Ordinances

## (i) Predominant Uses shall be:

- (a) Car sales and car sales yards.
- (b) Motor Repair Garages.
- (c) Places of assembly.
- (d) Drive-in wholesale or retail outlets.
- (e) Parking lots.
- (f) Petrol service stations provided no building is sited within 15m (50') of a residential zone, and petrol pumps shall be sited a minimum of 4.5m (15') from the front boundary.
- (g) Taverns and hotels.
- (h) Buildings accessory to the above uses.
- (i) Residential accommodation in association with any of the above predominant uses provided that only one unit is associated with any one predominant use and that 82m<sup>2</sup> (900 square feet) of open space be provided about the residential unit.

## (ii) Conditional Uses shall be:

- (a) Agricultural contractors yards, cartage contractors depots.
- (b) Any of the uses listed under Predominant Uses which do not comply with other ordinances for this zone."

The Council refused a building permit on the grounds that the proposed use was not a predominant one under the Code for this zone, and that a specified departure application would be necessary. The Applicant contends that the use is in conformity with Ordinance 3.4.1.(1)(d), as being a drive-in retail or wholesale outlet, and Counsel are agreed that all they now seek is a ruling from the Court on this issue, although the motion seeks orders directing the issue of a building permit. Neither could point to any authority ~~which~~ to assist the Court in the interpretation of the words "drive-in" in this context; there can be no doubt that the proposed complex is a "wholesale or retail outlet". Mr Shannon, for the Council, sought to have the words restricted by the manifest intention of the Council to keep out of the central shopping streets those undertakings which require extensive surrounding land for off-street parking. It is obviously desirable planning to preserve the continuity of shop frontages on the central streets, unbroken by big parking lots. However, I found it difficult to understand from Mr Shannon just what enterprises are envisaged for such a zone within the categories specified as predominant uses in Ordinance 3.4.1. I am not, of course, concerned with

planning principles, except possibly as an aid to interpretation of any ambiguity in the language used. My task in these proceedings is to ascertain the meaning of "drive-in wholesale or retail outlets" as used in this Ordinance, and decide whether the Applicant's proposals conform with it. I was referred to a decision of the Town and Country Planning Appeal Board at Napier dated 12th September 1975 - Robert Holt & Sons Ltd, v. Napier City Council, but it is of no relevance to the question I have to decide, being concerned with planning principles on a specified departure application.

The types of activity permitted as predominant uses in Ordinance 3.4.1. give a very clear indication of how "drive-in" is to be interpreted in this particular case. It obviously does not mean only that type of business where the customer can drive up to or into the business premises and be served without emerging from his vehicle. The only activity specified to which such meaning could apply is (i)(f) - petrol service stations. All the others envisage a situation where customers will have vehicular resort to a place where they may leave their cars and go inside the business premises for service - or leave their cars in these premises for sale or attention. The objective is clear - namely, to confine in one area businesses to which customers have resort in cars, so that the commercial centre of the city will be left free for mainly pedestrian access, and this is confirmed by the policy statement in the Commercial Zone (Ord. 3.3.1.). Accordingly, I think "drive-in", in the context of this Ordinance, has the normal meaning attributed to it in modern commercial undertakings - namely the ability of customers to drive their cars into or adjacent to business premises, where they can if necessary be parked while their business is transacted. The proposed use of this land for retail shops in this way by the Applicant conforms with the predominant use in a Service Zone in the Council's District Scheme. If desired, I am prepared to order that the Council proceed with the consideration of the application for a building permit on this basis.

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Mr Petrie, for the Applicant, very properly intimated that it would not seek costs in the event of a favourable decision, and I make no order.

Petrie Mayman Timpany & More, Timaru  
Shannon & Harrison, Temuka