

**FORM 7 – NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST
DECISION ON PROPOSED POLICY STATEMENT OR PLAN OR
VARIATION**

Clause 14(1) of Schedule 1, Resource Management Act

To The Registrar
 Environment Court
 Christchurch

I, **Port Otago Ltd** appeal against a decision of **The Dunedin City Council** on the following plan: **The Proposed Second Generation Dunedin City District Plan (2GP)**

I made a submission on that plan.

I am not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.

I received notice of the decision on **7 November 2018**

The decision was made by **The Dunedin City Council**

I FIRST APPEAL

1.1 The decision I am appealing is:

The requirement that industrial activities including “Port Activities” in the Industrial Port Zone are required to comply with the hazardous substances quantity limits and storage requirements in Rule 9.3.4.

1.2 The reasons for the appeal are:

- (a) The zone is industrial and industrial activities (including Port Activities) are governed by the HSNO regime and provision of hazardous substances quantity limits and storage requirements in the Industrial Port Zone is unnecessary and could lead to compliance issues with both HSNO and the RMA which increases compliance costs unnecessarily;
- (b) It is sufficient that industrial activities are required to comply with HSNO and this has been recognised in the Port Zone at Port Chalmers.

1.3 I seek the following relief:

The deletion of Rule 9.3.4(1)(e) so the industrial zones are not subject to Rule 9.3.4.

II SECOND APPEAL

2.1 The decision I am appealing is:

The setback and limitation in Rule 10.3.3 of structures for Port Activities in the Industrial Port Zone to a maximum footprint of 10 m² within 20 m from mean high water springs.

2.2 The reasons for the appeal are:

- (a) The limitation is unnecessary and has been removed from the Port Zone at Port Chalmers;
- (b) There is no logical reason to limit the erection of structures for Port Activities at the Port of Dunedin within 20 metres of mean highwater springs;
- (c) The limitation in the plan will prevent the efficient use of the area for Port Activities including covered storage of cargo.

2.3 I seek the following relief:

An exemption for buildings, structures and earthworks associated with Port Activities within the Industrial Port Zone by adding “Port Activities within the Industrial Port Zone” to the exceptions to the operation of Rule 10.3.3.

III THIRD APPEAL

3.1 The decision I am appealing is:

The limitation on earthworks for Port Activities in the Industrial Port Zone by Rule 8A.5.1.

3.2 The reasons for the appeal are:

It is unnecessary and not appropriate that Port Otago should be required to obtain consent for earthworks for Port Activities in the Industrial Port Zone for the same reason that such consent is not required in the Port Zone.

3.3 I seek the following relief:

The amendment of Rule 8A.5.1.1 d so that "*Port Zone or Port Activity in the Industrial Port Zone*" are always considered "earthworks – small scale".

I attach the following documents to this notice:

- (a) a copy of my submission and further submissions (with a copy of the submissions opposed or supported by my further submission):
- (b) a copy of the relevant parts of the decision:
- (c) any other documents necessary for an adequate understanding of the appeal: **NIL**
- (d) A list of names and addresses of persons to be served with a copy of this notice.



.....
L A Andersen
Counsel for Appellant

.....12/12/18
Date

Address for service of appellant:

The offices of McMillan & Co situated at Level 5, Forsyth Barr House, 165 Stuart Street, The Octagon, Dunedin (PO Box 5547)

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Note to Appellant

You may appeal only if - -

You referred in your submission or further submission to the provision or matter that is the subject of your appeal; and

In the case of a decision relating to a proposed policy statement or plan (as opposed to a variety or change), your appeal does not seek withdrawal of the proposed policy statement or plan as a whole.

Your right to appeal may be limited by the trade competition provisions in Part 11A of the Resource Management Act 1991.

The Environment Court, when hearing an appeal relating to a matter included in a document under section 55(2B), may consider only the question of law raised.

You must lodge the original and 1 copy of this notice with the Environment Court within 30 working days of being served with notice of the decision to be appealed. The notice must be signed by you or on your behalf. You must pay the filing fee required by regulation 35 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003. You must serve a copy of this notice on the local authority that made the decision and on the Minister of Conservation (if the appeal is on a regional coastal plan), within 30 working days of being served with a notice of the decision.

You must also serve a copy of this notice on every person who made a submission to which the appeal relates within 5 working days after the notice is lodged with the Environment Court.

Within 10 working days after lodging this notice, you must give written notice to the Registrar of the Environment Court of the name, address, and date of service for each person served with this notice.

However, you may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to this appeal, you must, - -

- Within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- Within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the appellant's submission and (*or or*) the decision (*or part of the decision*) appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

Form 5

**SUBMISSION ON PROPOSED SECOND GENERATION DUNEDIN CITY DISTRICT PLAN (2GP)
PURSUANT TO CLAUSE 6 OF FIRST SCHEDULE
RESOURCE MANAGEMENT ACT 1991**

To: Submission on 2GP
Dunedin City Council
PO Box 5045
DUNEDIN

Name of submitter Port Otago Limited
PO Box 8
Port Chalmers

Address for Service: Lesley McLachlan
Port Otago Limited
PO Box 8
Port Chalmers
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Phone (03) 472 7890

Trade Competition Declaration My submission is limited to addressing environmental effects directly impacting my business.

Hearing Port Otago Limited wishes to be heard in support of this submission at the hearing. If others make a similar submission, we will consider presenting a joint case with them at a hearing.

INTRODUCTION

Overview of Port Otago Limited

Port Otago Limited is the successor to the elected Otago Harbour Board and is wholly owned by the Otago Regional Council. It owns the land based commercial port infrastructure at both Dunedin and Port Chalmers, and has occupancy rights to the coastal marine area at and adjacent to its berths and commercial port area. Port Otago also maintains the commercial shipping channels, berths and swinging area within Otago Harbour.

Otago Harbour is a sheltered natural harbour which provides deep water access to the port facilities. This combination of deep water and natural shelter has meant that the largest vessels serving the New Zealand coast called on Port Chalmers.

Port Otago is a primary export port for the South Island region of New Zealand which creates strong competition against other ports by offering real benefits to shipping lines and cargo owners. Port Otago ensures this strong competition by delivering superior customer service in all aspects of its activities through a can-do attitude and hard work. Our people are committed to delivering the highest standards of port services at all times.

Port Otago is a key link in the international supply chain due to its proximity to major export production sources in the lower South Island, and the strategic location of the harbour for vessel rotation to and from deep-sea destinations. Continued emphasis on optimising the supply chain makes the availability of a modern, multi-modal port in Otago essential to the economic wellbeing of southern New Zealand.

Containerisation and the emergence of Dunedin as the regional centre for major export industries based on meat, dairy and forestry production enables the port to act as the southern gateway for the key primary industries that continue to drive New Zealand's international trade.

In addition to meat, dairy and forestry, Port Otago handles significant exports of fish, apples, and other agriculturally based products. There is also a growing demand for processed timber produced from the fast growing, sustainable pinus radiata plantations in Port Otago's catchment.

Dunedin, the largest city in Port Otago's catchment, has a population of 125,000 and is a major service, research, education and tourism hub for New Zealand. Importantly, it has the comprehensive infrastructure that helps to create successful ports. Dunedin's role as a regional export centre relies on the area's sophisticated road and rail network and the well-developed warehousing and cool storage sector located there. This ability to offer a complete package to exporters and importers enhances supply chain efficiency.

Port Chalmers and Dunedin port areas are a fundamentally important part of the import/export supply chain for the lower South Island region and also for Otago tourism with upwards of 80 cruise vessels a season. Providing our customers with a competitive global shipping service is of fundamental importance to the region's social and economic prosperity.

Port Otago is committed to wisely and sustainably managing its land-based facilities and the harbour resources on which it depends for its operation in combination with the community. Port Otago is also committed to sustainable business practices and environmentally responsible operation.

Current Capital Works Programme

Port Otago Limited has recently commenced a two-year, \$30 million capital works programme that will position the southern port for the next generation (known as Project Next Generation). The series of projects are, to a large extent, inter-related and in response to the rapidly changing shipping environment. The imminent arrival of larger container and cruise ships on the New Zealand coast and the need to be able to aggregate cargo at key ports, are the main drivers of this generational development at Port Chalmers.

There are four projects included in the \$30 million envelope. They are:

1. Shipping channel deepening
2. Berth sheet piling
3. Warehouse expansion
4. New tug and barge vessels

Port Otago has consistently engaged in infrastructure upgrades and in recent years has completed the purchase of a new 68-tonne bollard pull tug, a new pilot launch, two new container cranes and a number of four-high straddle cranes. These have all been part of a co-ordinated programme of infrastructure upgrades designed to maintain the Port's operating efficiency and productivity. The four projects are part of that on-going programme and highlight the Port's commitment to remaining at the forefront of shipping and port activity in New Zealand.

With the four projects that make up Project Next Generation, Port Otago will increase employment within the company and indirect employment. Twenty new jobs have been created over the past year. These and further jobs are created as a result of the channel deepening and warehouse expansions, plus the operation of the new tug and barge, as well as indirect employment arising from the increased scope of the port business.

Relevance of 2GP to Port Otago

In addition to the capital works programme, Port Otago also has extensive operational and regular maintenance requirements. Various aspects of Port Otago's operations are affected by the Resource Management Act 1991 as the Port is regularly required to obtain resource consents under the existing district plan. In this regard, the Port has a significant interest in the content of the new district plan as it will influence the planning framework which it is required to operate under.

SUBMISSION POINTS

Summary of key submission points

In general, Port Otago supports the 2GP and acknowledges the collaborative approach adopted by Council staff with regard to the changes necessary to facilitate ongoing use and development of the land resource at Port Chalmers. There is however a number of important additional changes sought through our submissions to ensure that the Port can continue to operate and develop in an efficient manner, in particular in relation to our industrial and port land holdings within Dunedin city.

In support of the requested changes to the 2GP, it is noted that the district plan must give effect to Policy 9 of the New Zealand Coastal Policy Statement 2010 (NZCPS) which states:

Policy 9 Ports

Recognise that a sustainable national transport system requires an efficient national network of safe ports, servicing national and international shipping, with efficient connections with other transport modes, including by:

- (a) ensuring that development in the coastal environment does not adversely affect the efficient and safe operation of these ports, or their connections with other transport modes; and*
- (b) considering where, how and when to provide in regional policy statements and in plans for the efficient and safe operation of these ports, the development of their capacity for shipping, and their connections with other transport modes.*

Policy 9 addresses the efficient and safe operation of ports as part of the transport network, the development of their capacity for shipping, and their connections with other transport modes. It is specifically relevant to activities that contribute to achieving those goals. Of note, there is a specific requirement to provide for the port and its development in this plan.

The NZCPS also requires that the plan provides an appropriate level of protection from other activities which may impact on the port, which includes allowing the port to operate without its activities being curtailed through increased reverse sensitivity issues.

Key changes required to the plan relate primarily to providing a suitable planning framework that allows redevelopment of industrial land in the Dunedin harbour industrial area. Redevelopment of this area will assist with promoting the sustainable management of this valuable waterside land and with maintaining a vibrant and functioning port in the city. The close proximity of quality industrial land and other compatible land uses is important for supporting the ongoing operation of the port.

Our specific submissions are set out in the table below.

2GP Reference	Support/Oppose/Amend	Decision Sought	Reasons for Submission
Chapter 1 – Plan Overview and Introduction			
1.5.1 Activity definitions Industry	Amend	Delete the existing “industry” definition and replace with the following version (taken from the Operative District Plan) <u>The use of land and buildings for the primary purpose of manufacturing, fabricating, processing, packing or associated storage of goods, and includes offices and staff facilities which are ancillary to the primary activity on the site.</u>	The definition included in the 2GP for industry creates uncertainties. The list of exclusions is difficult to follow and it is unclear why the exclusions are necessary. This definition makes the plan unnecessarily complex for users.
Port	Amend	Amend the definition for “port” as follows: <i>The use of land and buildings for the operation of a port, including:</i> • <i>mooring, berthing, departure, manoeuvring, refuelling, storage, maintenance and repair of vessels;</i> • <i>embarking and disembarking of passengers;</i> • <i>loading and unloading of cargo and storage facilities of cargo; and</i> • <i>any ancillary activities directly associated with the operation of the</i>	The suggested amendments to the definition provide greater clarity and avoid the potential for necessary port and storage activities not being permitted.

2GP Reference	Support/Oppose/Amend	Decision Sought <i>facility, including offices and staff facilities.</i>	Reasons for Submission
1.5.2 Other definitions Noise affected property	Amend	Amend the definition for "noise affected property" to read: <i>Noise Affected Property</i> <i>Any noise sensitive activity within the port noise control mapped area and shown on the Port Noise Contour Map as receiving levels of port noise above 55dBA Ldn. This definition excludes properties that are located within the Commercial (Principal Centre) zone, or properties that have received acoustic treatment in accordance with Rule 30.5.4 and Appendix 30B or and are receiving port noise at or below the certified level of port noise.</i>	This amendment will avoid the requirement for noise mitigation on existing properties within the Port Noise Control Area notation where they are located within commercial zoned land in Port Chalmers. The requirement for noise mitigation on commercially zoned properties is currently not required. The Commercial (Principal Centre) zone does not provide for residential amenity protection so it is unreasonable to require the port to provide mitigation to such properties. Furthermore, the main source of noise received in this area is road traffic noise rather than port noise. The change from "or" to "and" for other situations reflects the current approach to port noise mitigation whereby the noise mitigation is required to be increased when noise levels increase significantly at previously treated properties. This change will benefit affected residential properties and reflects current practice.
Port noise	Amend	Amend definition as follows: <i>Port Noise</i>	The omission of the word "not" appears to be an error as the intention and historic approach has been to mitigate noise from ships at berth,

2GP Reference	Support/Oppose/Amend	Decision Sought	Reasons for Submission
		Noise generated within the Port Zone and the adjacent coastal marine area associated with port activities, excluding: • noise from ships <u>not</u> at berth • noise from construction of permanent port facilities (see definition of construction noise); and • noise from an emergency situation.	rather than those ships that are not berthed, even though both scenarios are technically outside the jurisdiction of the district plan.
Chapter 2 – Strategic Directions			
Policy 2.3.1.1	Amend	Reword as follows to provide sentence clarity and to reflect the zoning approach adopted in 2GP: <i>Identify important gateways (including Dunedin International Airport, Dunedin Port and Port of Otago at Port Chalmers) zone these as major facilities and use rules to:</i> a. <i>enable them to continue to operate efficiently and effectively, while minimising as far as practical any adverse effects on surrounding areas; and</i> b. <i>protect them from activities that</i>	The policy recognises the importance of the Dunedin Port and Port Chalmers and notes the importance of protecting the ports from reverse sensitivity effects. The policy requires minor rewording for clarity and to reflect the fact that the major facilities zone has only been used for Port Chalmers and does not apply to the Dunedin Port area.

2GP Reference	Support/Oppose/Amend	Decision Sought	Reasons for Submission
		may lead to reverse sensitivity issues.	
Policy 2.3.2.3	Amend	Amend as follows: <i>Manage the existing and proposed harbourside edge mixed use areas around the edge of the CBD through zones that provide for a compatible mix of activities that support rather than detract from the vibrancy and vitality of the CBD and centres (Warehouse Precinct, Princes, Parry and Harrow Street Zone, Smith Street and York Place Zone and Harbourside Edge Zone), and that:</i> <i>for the Warehouse Precinct, support the retention of scheduled heritage buildings and heritage precinct values; and</i> <i>for the Harbourside Edge Zone, allow for a transition toward a mixed-use environment, with enhanced public connection to and along the coast, focused on office, residential, visitor accommodation, restaurant and entertainment and exhibition activities, alongside</i>	Office use is sought for the Harbourside Edge Zone to allow for an adequate range of activities necessary to support redevelopment.

2GP Reference	Support/Oppose/Amend	Decision Sought	Reasons for Submission
Chapter 9 – Public Health and Safety			
Rule 9.3.4 hazardous substances Rule 6.5(6) Port Zone	Oppose	Delete sub-clause (6)	The hazardous substance provisions were recently amended through Plan Change 13 to the Operative District Plan. Sub-clause (6) appears to be a new requirement for separation or separate fire cells where there are multiple sub-facilities on a site. This clause seeks to only adopt other legislative requirements (i.e. Hazardous Substances Regulations 2001). Adoption and repetition in a manner such as this is unnecessary and could lead to compliance issues with both HSNO and the RMA, which increases compliance costs unnecessarily. Where HSNO triggers test certificates, such as stationary containers or location, then Port Otago is happy to provide these documents to the Council to demonstrate compliance with HSNO.
Chapter 10 - Natural environment			

2GP Reference	Support/Oppose/Amend	Decision Sought	Reasons for Submission
Rule 10.3.3 Setback from coast and waterbodies	Oppose	Either delete this rule or provide an exemption for buildings, structures and earthworks associated with port activity, as well as buildings within the Harbourside Edge Zone as follows: 10.3.3 Setback from Coast and Water Bodies <i>New buildings and structures, additions and alterations, earthworks - large scale, storage and use of hazardous substances, and network utilities activities must be set back:</i> 1. 20m from mean high water springs (MHWS); and... ...6. Except, the following are exempt from this standard: a. natural hazard mitigation activities; ... n. <u>buildings, structures and earthworks associated with port activity;</u> o. <u>any buildings, structures and earthworks within the Harbourside Edge Zone.</u>	There is an operational requirement for port buildings, structures and associated earthworks within 20 metres of mean high water springs (MHWS). Furthermore, Harbourside Edge Zone development will take place within 20 metres of MHWS. Accordingly, exemptions for these activities are necessary.

2GP Reference	Support/Oppose/Amend	Decision Sought	Reasons for Submission
Chapter 11 - Natural hazards			
Rule 11.3.4 Relocatable buildings	Oppose	Delete requirement for relocatable buildings within the Harbourside Edge Zone.	The rules require that buildings for sensitive activities, which includes residential and visitor accommodation, are relocatable. Residential and visitor accommodation activities are anticipated within the Harbourside Edge Zone which is included within the Hazard 3 (coastal) overlay. There is no indication on what is meant by relocatable, but a common understanding of the term would suggest this would be impracticable to achieve in an inner city mixed use development. It is considered impractical to require relocatable buildings in this location. A more practical approach for the Harbourside Edge Zone might be to incorporate specific foundation design requirements.
Rule 11.4.2 Assessment of development performance standard contraventions; 11.5.2 Assessment of all restricted discretionary activities	Oppose	Amend to provide suitable criteria for departures from permitted activity standards. Combine criteria from 11.4.2 and 11.5.2 to reduce repetition and provide clarity on the applicable assessment criteria.	The criteria provided to enable assessment of departures from permitted activity conditions relating to minimum floor levels and relocatable buildings are unclear and seem to be duplicated across Rules 11.4.2 and 11.5.2. The criteria provided seek that buildings are relocatable (e.g. 11.4.2 (4) and 11.4.2(7), which is not a suitable consideration for an application specifically seeking to depart from this requirement.

2GP Reference	Support/Oppose/Amend	Decision Sought	Reasons for Submission
Rules 11.6 Assessment of all discretionary activities and 11.7.2 Assessment of non-complying activities	Oppose	Delete or provide clarification that there are no discretionary or non-complying activities applicable to land within Hazard 3 Flood and Hazard 3 Coastal Overlay Zones.	It is unclear when a discretionary or non-complying consent would be required in relation to the natural hazard rules. Accordingly, clarification is required on the necessity for assessment criteria for these activities.
Chapter 12 – Transitional Provisions			
Chapter 16 – Rural zones			
16.3.3 Activity status table (13) Mining	Oppose	Amend to provide for the Aramoana quarry and aggregate processing at 853 Aramoana Road (Pt Secs 46 to 49 Blk V North Harbour Survey District, CT 13C/755) as a permitted activity in the Rural Coastal Zone. This is to provide for the maintenance and development of harbour rock walls and structures including work on the Aramoana mole and Long Mac Groyne.	The use of Port Otago's Aramoana quarry is a Scheduled Permitted Activity pursuant to Rule 6.5.8 of the Operative District Plan. It is located in the Rural Coastal Zone in the 2GP. Quarrying comes under the definition of "mining" in section 1.5.1 of the 2GP. Overlays for the Aramoana quarry site include a High Natural Coastal Character overlay. The activity status of mining in a rural zone is typically discretionary under Rule 16.3.3, but mining becomes a non-complying activity within an area of high natural coastal character under Rule 16.3.3. The High Natural Coastal Character overlay covers most of the site. This status is questionable for an established quarry site. The change from a permitted activity to a non-complying activity is an unacceptable change to the planning provisions applying to

2GP Reference	Support/Oppose/Amend	Decision Sought	Reasons for Submission
			this site. The change would require Port Otago to consent the entire quarry operation as a non-complying activity, as soon as any change to its use meant that existing use rights no longer applied. The Aramoana quarry is only used to maintain port related structures around the harbour entrance. Aggregate is not transported back into town from this site, so environmental effects are minimal.
Chapter 18 - Commercial and mixed use zones			
Zone descriptions 18.1.1.6 Harbourside Edge Zone	Amend	Amend as follows: <i>The Harbourside Edge Zone encompasses an area adjoining the Steamer Basin side of Fryatt Street, Birch Street and Kitchener Street and extends to the waterfront and west to Buller Street. The zone provides for the continuation of the existing industrial activity, while allowing for a transition toward a more mixed use environment...</i>	A Harbourside Edge Zone is sought for the land occupied by warehouses on the northern side of the Steamer Basin adjoining Fryatt Street, to assist redevelopment of this area. This land has similar attributes as the other land included within the Harbourside Edge Zone. A more flexible zoning would enable revitalisation of this area in conjunction with the Harbourside Edge Zone on the southern side of the Steamer Basin, in a comprehensive manner. In addition, the 2GP has reduced the extent of the Harbourside Zone in the Operative District Plan by dividing this into a Harbourside Edge Zone and an Industrial Zone with a Harbourside Edge Transition Zone overlay. This is a significant reduction of the development rights

2GP Reference	Support/Oppose/Amend	Decision Sought	Reasons for Submission
			currently available on the land bounded by Birch, Buller, White and Kitchener Streets. It is submitted that the Harbourside Edge Transition Zone overlay be removed and a Harbourside zone reinstated for the land bounded by Birch, Buller, White and Kitchener Streets. The suggested text amendment reflects this.
Objective 18.2.1	Amend	Include reference to other Harbourside Edge Zone locations sought in this submission as follows: <i>g. an area around <u>Fryatt, Birch and Kitchener Streets</u> and the coast (HE Zone) which provides for the continuation of the existing environment characterized by industrial activity, while allowing for a transition toward a vibrant and attractive place to live, work and visit by also providing for conference, meeting and function, entertainment and exhibition, restaurant, visitor accommodation and residential activities.</i>	As above, acknowledging the requested extension to the Harbourside Edge Zone.
Policy 18.2.1.3	Oppose	Amend text to allow for office use within the Harbourside Edge Zone as follows: <i>Avoid retail and office activities outside of the commercial areas where they are</i>	Office use is sought within the Harbourside Edge Zone to provide for adequate redevelopment opportunities in this location. Offices are an essential component of a vibrant and successful mixed use development within

2GP Reference	Support/Oppose/Amend	Decision Sought	Reasons for Submission
		<i>provided for unless:</i> a. <i>it is an ancillary and secondary component of a retail 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</i> b. <i>there is a significant and sustained increase in the amount of retail activity across the city and it can be demonstrated that as a result there is a medium to longer term under-supply of retail land across all the areas where general retail is provided for; or</i> c. <i>in the HE Zone, it is associated with port, industrial or marine related activities operating in the area or <u>is it part of a comprehensive mixed use development; or</u></i> d. <i>in the PPH Zone it is associated with campus activities; or</i> e. <i>in the CEC Zone it is associated with campus or hospital activities.</i>	this zone. Not providing for offices within this zone would severely limit the scope of future development and potentially threaten development feasibility.

2GP Reference	Support/Oppose/Amend	Decision Sought	Reasons for Submission
Rule 18.3 Activity status / 18.3.1 Rule location Rule 18.3.4 Activity status table Rule 18.5.6 Minimum car parking Rule 18.5.7 Minimum vehicle loading	Oppose	Amend sub-clause (4) to read: <i>4. Transportation activities (Section 6), except that there is no requirement to provide any on-site carparking, a loading dock, or hotel coach parking within the Harbourside Edge Zone.</i> Consequential amendments to Tables 18.3.4, 18.5.6 and 18.5.7 to ensure that on-site car parking, loading and coach parking are not required for the Harbourside Edge Zone.	On-site carparking, loading and coach parking is not practicable for the narrow sites within the Harbourside Edge Zone, whilst achieving the urban design and amenity requirements of policies 18.2.3.4 and 18.2.3.5 of the 2GP.
Rule 18.3.4 Activity status table	Amend	Amend to allow for office use as a permitted activity within the Harbourside Edge Zone.	Office use is sought within the Harbourside Edge Zone to provide for adequate redevelopment opportunities in this location.
Rule 18.6.18 Standards Harbourside Edge	Oppose	Delete all prescriptive building standards and rely on the restricted discretionary consent requirement (Rule 18.3.6(5)) which applies to all new buildings and additions and alterations, to address the urban design outcomes sought in the policies provided in the 2GP. Consequential amendments to assessment	Prescriptive standards governing the height, position and length of street frontages of buildings are likely to result in shading and limit design opportunities. Similarly, standards relating to pedestrian accessway location, use of the public walkway and walkway surfaces are prescriptive and limiting. All design and amenity effects can be adequately managed through Rule 18.3.6(5) which requires consent

2GP Reference	Support/Oppose/Amend	Decision Sought	Reasons for Submission
		criteria to give effect to this submission.	be obtained for all new buildings, additions and alterations to buildings within the Harbourside Edge Zone. A design guide or assessment criteria would be a more appropriate means of providing guidance on the type of design sought for this site rather than the prescriptive permitted activity conditions included in Rule 18.6.18. Elevating the activity status to discretionary or non-complying when the prescriptive standards are not met (sub-clauses 7 and 8) is unnecessarily restrictive and will inhibit development of the harbourside land.
Chapter 30 - Port			
Chapter 30 (general)	Support	Except where otherwise indicated, Port Otago supports the provisions included for the port zone.	The 2GP provides an appropriate framework for the operation, maintenance and development of the port at Port Chalmers, except where otherwise indicated.
Section 30.1 Introduction	Amend	Amend 1st bullet point in paragraph 5 to read • <i>performance standards focused on the management of the effects of noise (including through port funded acoustic insulation of existing residential and rural zoned</i>	Support introductory text but request amendment is made to clarify that port funded noise mitigation is only available for residential and rural zoned properties within the port noise control mapped area. Clarification is required in the introduction that the restrictions relating to fertiliser are only in

2GP Reference	Support/Oppose/Amend	Decision Sought	Reasons for Submission
		<i>properties) within a mapped area (port noise control mapped area);</i> Amend 5th bullet point in paragraph 5 to read • <i>not allowing the storage of logs, woodchips or fertiliser north of George Street in Port Chalmers (Boiler Point area), managing the storage of logs, woodchips and the outdoor storage of fertiliser.</i>	relation to when it is stored outdoors. It is further noted that the exclusion area provided in the 2GP is north of George Street, but excludes the northernmost "Boiler Point" area.
Policy 30.2.2.2	Amend	Amend to read: <i>Require fertiliser and woodchips to be stored in a manner and in an area where they will not become windblown and will not contaminate any off-site areas.</i>	Policy 30.2.2.2 needs reconsidering. There are no particular areas within the Port Zone that are more or less vulnerable in terms of windblown contamination. Accordingly restricting the area for fertiliser and woodchip storage is not necessary and there is no environmental reason to do this. It is appropriate to require the Port to avoid material becoming windblown and contaminating off-site areas.
Policy 30.2.2.4	Amend	<i>Require land-use activities <u>Enable the port</u> to operate, and development to be designed, to ensure that adverse effects from noise on the health of people can be avoided or, if avoidance is not possible,</i>	This policy suggests an avoidance approach to managing port noise, which does not reflect the "mitigation" approach adopted in the noise rules for Port Chalmers historically and in the 2GP. The rewording suggested better reflects the

2GP Reference	Support/Oppose/Amend	Decision Sought	Reasons for Submission
		<i>adequately mitigated.</i>	policy approach adopted for managing port noise at Port Chalmers.
Rule 30.3.3 Activity status table (5) Community activities	Amend	Amend to provide for recreational activities as a permitted activity (e.g. walkways and fishing).	The plan does not permit recreational fishing activity which takes place around the outside of the operation port area, within the Port Zone. This activity is provided for as a permitted activity within the Operative District Plan and therefore a similar provision would be appropriate in the 2GP.
Rule 30.5.4(4) Port noise	Amend	Amend sub-clause (4) to make non-compliance with the port noise rules in 30.5.4 a restricted discretionary activity as follows: <i>4. Port activity that does not comply with the performance standard for Port Noise is a non-complying restricted discretionary activity.</i>	Rule 21.5.6 of the Operative District Plan requires a restricted discretionary activity consent for the port activity if the noise mitigation obligations are not met. The same general approach to managing port noise has been adopted in the 2GP, but a non-complying activity status for the (unlikely) event that noise mitigation is not able to be provided. This activity status is too onerous and a restricted discretionary activity is more appropriate.
Rule 30.6.1 Earthworks standards	Oppose	Align the permitted volume threshold with the 100m ³ threshold used in the Operative District Plan and delete the reduced threshold for earthworks within 5 metres of MHWS where it relates to the Port Zone.	The earthworks controls are less enabling than the current Operative District Plan provisions for the Port Zone and no specific reason is identified for this. For the Port Zone, the permitted threshold has changed from 100m ³

2GP Reference	Support/Oppose/Amend	Decision Sought	Reasons for Submission
			volume in the Operative District Plan to 30m³ per 100m³, or just 1m³ where carried out within 5 metres of MHWS. Given the nature of the port, activities are invariably necessary within close proximity to the coast. The rules as drafted will result in unnecessary compliance costs. A permitted activity standard requiring erosion and sediment control measures to be installed can address any issues relating earthworks within proximity to the coast and will avoid unnecessary consent requirements for earthworks associated with normal port activities.
Rule 30.6.3 Location of Outdoor Storage	Oppose	Delete sub-clause (1) and the associated map which requires that woodchips and logs must not be stored in the "port wood exclusion mapped area".	The 2GP should be enabling of port activities within the Port Zone. There are no valid environmental effects or reasons identified for this exclusion area, so it should be deleted. While the current Operative District Plan provisions do not permit the open air storage of logs in the area north of George Street, this is historical and is not relevant to the ongoing management of environmental effects associated with the port. The original restriction arose from the 1990s Planning Tribunal decisions on the Back Beach and Boiler Point reclamations. Issues related to the efficient use of reclaimed land and limiting

2GP Reference	Support/Oppose/Amend	Decision Sought	Reasons for Submission
			activity levels (i.e. the amount of handling of cargo stored at the port) in order to ameliorate adverse amenity affects for Careys Bay residents. Ironically, the 2GP has not restricted log and wood storage at Boiler Point at all, but rather has limited it in the central part of the port only. The reason that the restriction on log storage was extended from Boiler Point down to the area north of George Street in the Operative District Plan, is that Port Otago agreed to that restriction at the time as it then considered the area north of George Street would remain as a dedicated container berth, and it was an easy way to define an exclusion area. While there are currently no plans to change the layout of the port, the dynamic nature of international transportation means that Port Otago has to be able to adapt promptly to meet the requirements of shipping lines. Port Otago also considers that the original restriction on log storage at the Boiler Point reclamation is now invalid and unnecessarily restrictive. The storage of logs and wood chips will not affect amenity to any greater extent than the containers which are permitted within this area. Indeed, container stacking is generally noisier are a less natural element in

2GP Reference	Support/Oppose/Amend	Decision Sought	Reasons for Submission
			residential views than logs. The provisions should be amended to permit the storage of logs and wood chips in all areas of the Port Zone.
Rule 30.11.3 Assessment of non-complying performance standard contraventions	Oppose	Delete sub-clause (3) Port Noise	A non-complying activity status for when the Port Noise rules are not met is too onerous. A restricted discretionary activity is more appropriate.
Appendices 30A – 30C Port Noise Appendix 30A Port Noise Management Plan	Oppose	Amend 30.1.B Minimum monitoring and reporting requirements as follows: <i>4. The port operator must produce and include in the port noise management plan a port noise contour map based on a current busy 5 day operating scenario. The contour map must be updated at least on an annual basis or when a change to port operations is likely to affect the levels of port noise received in the township and settlement, rural residential 2, recreation, industrial, principal centre and hill slopes rural zone at nearby properties. Port noise contours must be modelled at 1dB intervals between 55Ldn and 70Ldn.</i>	Listing all of the adjacent zones may create an expectation for port funded mitigation, which is not required for all zones identified here as being in proximity to Port Chalmers. The proposed amendment does not change the monitoring or reporting requirements.
Appendix 30B Port Noise Mitigation Plan	Amend	Amend text in 30B.1 as follows: <i>30B.1 Mitigation for noise affected</i>	There is a referencing error in this clause and two clauses that are numbered 30B.1.2.

2GP Reference	Support/Oppose/Amend	Decision Sought	Reasons for Submission
		properties 65dBA and above The port operator must offer to purchase or provide acoustic treatment for noise affected properties which receive at any point within their boundary levels of port noise equal to or greater than an assessed 65 dBA Ldn (5 day average) or an assessed 65 dBA Leq (15 min, 10pm – 7am) on more than three occasions (more than 24 hours apart) during any rolling 12 month period. The conditions and standards in 0.3.1.2 to 0.3.1.4 <u>30B.1.1 to 30B.1.4</u> apply to the offer to purchase or provide acoustic treatment. <u>30B.1.21</u> Owner to decide The owner of each such noise affected property must have the right to elect whether to accept either purchase or acoustic treatment and there is no time limit on the owner's acceptance of the offer.	
Appendix 30B Port Noise Mitigation Plan	Amend	Amend text in 30B.2 as follows: <u>30B.2 Mitigation for noise affected properties 60dBA and above</u> The port operator must contribute to the costs of acoustic treatment for noise	There is a referencing error in this clause.

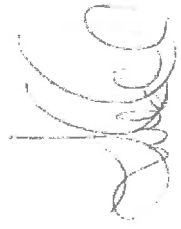
2GP Reference	Support/Oppose/Amend	Decision Sought	Reasons for Submission
		affected properties or may offer to purchase noise affected properties which are shown on the current port noise contour map as receiving at any point within their boundary port noise levels equal to or greater than 60 dBA Ldn (5 day average). The conditions and standards in 9.3.1.2 to 9.3.1.4 30B.2.1 to 30B.2.2 apply to any offer to provide acoustic treatment.	
Appendix 30B Port Noise Mitigation Plan	Amend	Amend text in 30B.2 as follows: 30B.3 Mitigation for noise affected properties 55dBA to 60dBA The port noise liaison committee will provide technical advice to noise affected properties. In special circumstances the port noise liaison committee utilising its annual mitigation budget may offer to contribute to the costs of acoustic treatment for noise affected properties which are shown on the current Port Noise Contour Map as receiving at any point within their boundary port noise levels equal to or greater than 55 dBA Ldn (5 day average). The conditions and standards in 40.2.3.1 to 40.2.3.2 30B.3.1 to 30B.3.2 apply to the provision of	There is a referencing error in this clause.

2GP Reference	Support/Oppose/Amend	Decision Sought	Reasons for Submission
		<i>technical advice or an offer to provide acoustic treatment.</i>	
Planning Maps			
Hazard 3 Flood and Hazard 3 Coastal Overlay Zones	Oppose	Delete Hazard 3 Flood and Hazard 3 Coastal affecting Port Otago owned Industrial Port, Industrial and Harbourside Edge zoned land or amend rules to ensure these notations do not restrict port or mixed use harbourside development in these locations.	The rules require buildings for sensitive activities, which includes residential and visitor accommodation, to be relocatable. Residential and visitor accommodation activities are anticipated within the Harbourside Edge Zone which is included within the Hazard 3 (coastal) overlay. It is impractical to require relocatable buildings in the context of mixed use harbourside development. A more appropriate approach might be to consider foundation design requirements on a site specific basis. This will allow quality development to occur (rather than relocatable buildings) while still managing the potential hazards.
Harbourside Edge Zone	Amend	Amend zoning for the Industrial Port zoned land located to the north of the existing Harbourside Edge Zone (on the northern side of the Steamer Basin); specifically all land on the Steamer Basin side of Fryatt Street.	A Harbourside Edge zone is sought for the land occupied by warehouses on the northern side of the Steamer Basin, to assist redevelopment of this area. This land has similar attributes as the other land included within the Harbourside Edge Zone. A more flexible zoning would enable revitalisation of this area in conjunction with the Harbourside Edge Zone on the southern side of the Steamer Basin, in a

2GP Reference	Support/Oppose/Amend	Decision Sought	Reasons for Submission
Port Wood Exclusion mapped area	Oppose	Delete	The 2GP should be enabling of port activities within the Port Zone. There are no valid environmental effects or reasons identified for this exclusion area, so it should be deleted.

CONCLUSION

Port Otago is a major contributor to the social and economic prosperity of the region, so it is important that the ongoing operation of the port is not hindered through overly restrictive planning provisions. Port Otago Limited is pleased to have the opportunity to input to the 2GP and considers there are some important amendments needed to resolve the concerns identified within this submission. In the interest of keeping our submissions as brief as possible, we have not commented on matters we are supportive of. There are a number of positive inclusions in the 2GP, including changes the height limits at Port Chalmers. We commend the Council on the approach taken on this and other provisions which enable our activities to be carried out.



Lincoln Coe (signature)
for Port Otago Limited

Date: 24 November 2015

3.0 Key topics discussed at the hearing or covered in tabled evidence

3.1 Context

34. The importance of the health and safety of people and communities is acknowledged within the purpose of the Resource Management Act 1991 and is a worldwide concern acknowledged through institutions such as the World Health Organisation. Throughout Dunedin, land use and development activities have the potential to affect the health and safety of people, including effects resulting from excessive noise, light spill, the storage and use of hazardous substances, and threats to the City's water, wastewater, and stormwater systems.
35. In response to these issues, the 2GP controls the way that activities must operate. These controls include restricting the amount of noise and light spill that activities can generate; requiring appropriate acoustic insulation in identified areas; setting appropriate limits on the amount of hazardous substances allowed; setting requirements in relation to connecting or providing water supply for firefighting or potable water, stormwater, and wastewater public infrastructure; controlling the emission of electrical interference; requiring forestry and tree planting to be setback from boundaries; setting controls on fencing to ensure that that passive surveillance is provided for; and requiring earthworks to take into account the potential effects on groundwater.
36. Performance standards within the Public Health and Safety section of the 2GP relate to Acoustic Insulation (Rule 9.3.1), Electrical Interference (Rule 9.3.2), Fire Fighting (Rule 9.3.3), Hazardous Substances Quantity Limits and Storage Requirements (Rule 9.3.4), Light Spill (Rule 9.3.5), Noise (Rule 9.3.6) and Service Connections (Rule 9.3.7). This section of the 2GP links to most other parts of the 2GP particularly management and major facilities zones.
37. The three major topics addressed at the Public Health and Safety Hearing, were hazardous substances (including Hazard Facility areas requested by *Liquigas Limited* and *the Oil Companies*), noise (including the Mosgiel Noise Control Area requested by Fonterra) and Light Spill. These topics will be addressed first, followed by matters regarding minor changes to wording or the measurement of defined terms.

3.2 Hazardous substances

3.2.1 Overview

38. The Public Health and Safety section of the 2GP manages hazardous substances through the Hazardous Substances Quantity Limits and Storage Requirements (Rule 9.3.4), and Appendix A6 Hazardous Substances Quantity Limits.
39. In summary, these include quantity limits and storage requirements for seven different groupings of zones, as specified in Appendix A6.1 to A6.7, and require the storage and use of hazardous substances to be set back 12m from National Grid transmission lines, support structures and substations (with some exceptions).
40. A total of 36 submission points were received on these provisions, with 19 original submission points and 17 further submissions points.
41. Since the hearing took place, legislative amendments have changed the requirements surrounding the management of hazardous substances. These legislative changes

include the Resource Legislation Amendment Bill (April 2017) and the transfer of the Hazardous Substances and New Organisms (HSNO) Act requirements into a new Health and Safety at Work (HSW) Act. Sub-section 1.3.1 and 1.3.2 above provides additional detail on these changes.

42. For clarity, we have structured sub-sections 3.2.2 to 3.2.6 of this report below by:
- providing an overview of the Management of Hazardous Substances in other New Zealand District Plans (sub-section 3.2.2)
 - making an assessment and decisions on those submissions which have:
 - requested reliance on HSNO instead of managing hazardous substances under the 2GP (sub-section 3.2.3)
 - requested amendments to Policy 9.2.2.1 and the Hazardous Substances Quantity Limits and Storage Requirements rule (sub-section 3.2.4)
 - requested amendments to the definition of Hazardous Sub-Facility (sub-section 3.2.5)
 - requested amendments to Section 9.1 Introduction to the Public Health and Safety section of the 2GP (sub-section 3.2.6).
43. The requests by *Liquigas Limited* and the *Oil Companies* for new hazard facility areas are addressed in sub-section 3.3.

3.2.2 Management of Hazardous Substances in other NZ District Plans

44. We were provided with evidence, in the s42A Report and from witnesses during the hearing, on how the issues of reverse sensitivity and risks associated with hazardous substances and bulk fuel facilities have recently been examined in the New Zealand planning system. In particular, these matters have been addressed during the Plan review processes of the Auckland Unitary Plan, the Christchurch Replacement District Plan, the City of Napier District Plan and the Hamilton City District Plan.
45. We have here summarised the approaches followed in these district plans to provide context to the discussion in later sections of this decision report:

3.2.2.1 Auckland Unitary Plan

46. The partly operative Auckland Unitary Plan deals with the management of bulk fuel facilities, as follows:
- identifies hazardous facilities and infrastructure located at the Wiri Oil Terminal, Wiri LPG Depot and the high pressure Refinery to Auckland petroleum pipeline
 - provides a framework to manage the risk of adverse effects on activities located in proximity to existing hazardous facilities and infrastructure, which may include vapour cloud explosions, large fires or the release of toxic gas which could cause blast overpressure, fragments, heat radiation or poisoning
 - restricts sensitive activities or incompatible land uses or manages the encroachment of other land uses in proximity of existing hazardous facilities and infrastructure, to ensure that the operation and potential expansion of the facilities and infrastructure is not compromised through:
 - an Inner Emergency Management area applies to the area closest to the facility, requiring the preparation of emergency management plans, and building design considerations within this area; and
 - a Wider Emergency Management Area applies to an area around the inner emergency management area, requiring the preparation

of emergency management plans to ensure that activities operating within proximity of the hazardous facilities and infrastructure are aware of the risks and are suitably prepared.

47. It deals with the management of hazardous substances generally, as follows:
- rules to manage the use, storage and disposal of hazardous substances on land and in the coastal marine area that can present a specific risk to human or ecological health and property
 - rules designed to apply in addition to the requirements of the Hazardous Substances and New Organisms Act 1996 legislation, considered necessary in accordance with section 142 of the Hazardous Substances and New Organisms Act 1996
 - rules to address primarily the potential adverse effects and risks from the use of land for the use, storage, or disposal of hazardous substances, influenced by the nature of the hazardous substance, its quantity, what parts of the environment may be affected by an adverse event, the likelihood of an event, and the degree of effect.
48. There are several activity statuses depending on the zone, and quantities and type of hazardous substances.

3.2.2.2 Christchurch Replacement District Plan

49. The Christchurch Replacement District Plan is now operative and Chapter 4 deals with the management of hazardous substances, as summarised below:
- manages the residual risks associated with the storage, use, or disposal of hazardous substances, including the minimisation of reverse sensitivity effects, and avoidance of sensitive activities being located within a defined Risk Management Area at located in Woolston
 - provides for the storage, use, or disposal of hazardous substances as a permitted activity throughout the district, subject to provisions in other chapters, except for two non-complying activities:
 1. new storage or use of hazardous substances with explosive or flammable properties within close proximity to National Grid transmission lines and some electricity distribution lines; and
 2. sensitive activities located within the defined Risk Management Area.

3.2.2.3 City of Napier District Plan

50. The operative City of Napier District Plan, in Chapter 63 and provisions from plan change 10, relies on the HSNO Act for the management of hazardous substances, to avoid any duplication of regulation.
51. Under these provisions the storage, handling, or use of hazardous substances is permitted provided that it complies with the relevant conditions in the Hazardous Substances Condition Table. Conditions relate to hazardous substances being stored and handled on impervious surfaces and preventing hazardous substances from being washed or spilled into natural ground or entering any piped storm water systems or storm water ground soakage during a 1% AEP rain event.
52. Exceptions to the above permitted activities are Arsenic (As) within the Ahuriri Estuary Zone (prohibited activity) and Major Hazardous Facilities (discretionary activities).

3.2.2.4 Hamilton City District Plan

53. The operative Hamilton City District Plan, in Chapter 25.4 provides a different activity status depending on the zone, quantities and type of hazardous substances, which include permitted, controlled, discretionary and non-complying activities.
54. In addition, the Hazardous Facilities Screening Procedure (HFSP) in Appendix 12 is used to determine the activity status of new hazardous facilities and existing hazardous facilities, which have lost their existing use rights, in accordance with an activity status table.

3.2.3 Submissions requesting reliance on HSNO instead of 2GP provisions

3.2.3.1 Submissions

55. *Fonterra Limited* (OS807.49), supported by *New Zealand Fire Service Commission* (FS2323.30), *Oceana Gold (New Zealand) Limited* (FS2439.45) and *Horticulture New Zealand* (FS2452.27), opposed the setting of hazardous substances quantity limits and storage requirements in the 2GP, and instead requested reliance entirely upon HSNO requirements. The main reasons were that this would be consistent with several second generation district plans, and this was also the direction from the Independent Hearing Panel for the Christchurch Replacement Plan (which is discussed further below). *Fonterra Limited* (OS807.52) also sought the deletion of Appendix 6.2 Hazardous Substances Quantity Limits for the Commercial Mixed Use, Industrial, Stadium, Moana Pool, Edgar Centre and Taieri Aerodrome Zones, for similar reasons.
56. *LPG Association of NZ Inc* (OS85.1, OS85.2, OS85.3 and OS85.4) and *Rockgas Limited* (OS897.1 and OS897.2) also opposed the setting of hazardous substances quantity limits and storage requirements for LPG and instead requested reliance upon HSNO requirements. However, in OS85.4 *LPG Association of NZ Inc* acknowledged where there are issues such as reverse sensitivity, and where sensitive areas have been identified by Council, additional controls in the 2GP may then be warranted. *Liquigas Limited* (FS2327.2) and *the Oil Companies* (FS2487.18 and FS2487.23) supported the *LPG Association of NZ Inc* (OS85.1) for similar reasons.
57. The main submission point by these submitters is encapsulated in the submission of *LPG Association of NZ Inc.* as follows:

"The guidance provided on the Quality Planning website, endorsed by the Ministry for the Environment, Local Government NZ, NZ Planning Institute and the Resource Management Law Association, is quite clear in the recommendations around district plans not including HSNO requirements unless very specific issues are present at a site. The interim findings from the Hearings Panel for the current Christchurch City district plan clearly support this view. The Hastings district plan has adopted this approach. There is a proposed change to wording in the RMA by the Ministry for the Environment which purpose is to: "The explicit function for councils to control hazardous substances and the ability for councils to control new organisms (GMOs) through the RMA will be removed. This is considered to be best managed under the Hazardous Substances and New Organisms Act 1996 and by the Environmental Protection Authority. The removal of the explicit function for councils to control hazardous substances will not limit councils' abilities to use land use controls to avoid hazardous substances events where appropriate under the RMA, but it will remove the perceived need for RMA controls in all circumstances. The functions for regional councils and territorial authorities, in combination with part 2 of the RMA, will still allow enough scope for councils to control hazardous substances where appropriate. This will be confirmed in updated guidance on hazardous substances management"

58. *Horticulture New Zealand* (OS1090.24) requested removing the hazardous substances quantity limits requirements (Appendix A6) from the 2GP unless it was otherwise required for matters not addressed through HSNO controls. *Horticulture New Zealand* (OS1090.40) also sought either the removal of the hazardous substance quantity limits for the recreation, rural, rural residential and Dunedin Botanic Garden zones or its replacement with provisions consistent with the Christchurch City Plan or with provisions to clearly exclude rural activities where they comply with HSNO requirements (Appendix A6.4). The *University of Otago* (FS2142.17) and *Ravensdown Limited* (FS2481.25) supported this submission.
59. Some of these submitters drew our attention to what they considered to be a clear directive from the Christchurch Hearings Panel (also relying on the expert evidence they had heard from Peter Dawson, Principal Scientist and Mark St Clair, Planner, for the Crown through the Canterbury Earthquake Recovery Authority ("CERA")), that it did not support the use of threshold limits in the Replacement Plan. CERA was a submitter to the Christchurch Replacement District Plan.
60. In summary, the approach in the Christchurch Replacement District Plan (Chapter 4 Hazardous Substances and Contaminated Land) is that the use, storage or disposal of any hazardous substance (unless otherwise specified in this plan) is a permitted activity (Rule 4.1.4.1.1 Permitted activities). Although, within Rule 4.1.4.1.5 Non-complying activities, any new storage or use of hazardous substances with explosive or flammable properties within 5m, 10m and 12m of the centre line of a; 33kV electricity distribution line, 66kV electricity distribution line (or National Grid transmission line) and a 110kV or 220kV National Grid transmission line, respectively are non-complying activities (subject to a number of exclusions). In addition, any sensitive activity located within a Risk Management Area is also a non-complying activity with this rule ceasing to have effect by 31 March 2019. An advice note also states that:
- "The Risk Management Areas are shown on Planning Map 47A. The geographic extent of these areas may be subject to a future plan change to have effect by 31st March 2019 and any such plan change would need to be based on the findings of a Quantitative Risk Assessment."*
61. *Mercy Dunedin Hospital Limited* (OS241.50) sought retention of the Hazardous Substances Quantity Limits and Storage Requirements (Rule 9.3.4) all related provisions because the use of such substances is integral to the efficient operation of hospitals.
62. *Liquigas Limited* (OS906.13) also sought retention of the Hazardous Substances Quantity Limits and Storage Requirements and *Liquigas Limited* (OS906.14) sought the retention of Appendix A6.2 and considered the provisions appropriately provides for the storage and use of hazardous substances in the industrial zones. This submission was supported, in part, by the *NZ Fire Service Commission (NZFS)* (FS2323.32) and *the Oil Companies* (FS2487.55). NZFS considered that the 2GP should only be concerned with rules concerning the location of larger quantities of hazardous substances, and that the detailed controls in other locations should be addressed through HSNO. *The Oil Companies* requested inclusion of a specific provision to recognise the requirements of service stations.
63. *Port Otago Limited* (OS737.7) sought to remove Appendix A6 -Hazardous substance quantity limits - Rule A6.5.6, which applies in the Port Zone and which is linked to the Hazardous Substances rule (Rule 9.3.4). Rule A6.5.6 states:
6. *The permitted quantity thresholds apply per hazardous sub-facility. Each hazardous sub-facility must be separated from any other hazardous sub-facility on the same site and meet the following locational requirements:*

- a. if located external to a building, the gazetted¹ or regulated controls¹ for "high intensity land use" and "low intensity land use" apply, and the location is such that the "controlled zone" or tabled separation distances of each facility do not overlap; or
- b. if permitted to be located inside a building by the gazetted¹ or regulated controls¹, or referenced standards pursuant to HSNO, then each hazardous sub-facility must be located in a separate fire cell.

64. The reasons *Port Otago Limited* gave for deletion of sub-clause (6) were:

"The hazardous substance provisions were recently amended through Plan Change 13 to the Operative District Plan. Sub-clause (6) appears to be a new requirement for separation or separate fire cells where there are multiple sub-facilities on a site.

This clause seeks to only adopt other legislative requirements (i.e. Hazardous Substances Regulations 2001). Adoption and repetition in a manner such as this is unnecessary and could lead to compliance issues with both HSNO and the RMA, which increases compliance costs unnecessarily.

Where HSNO triggers test certificates, such as stationary containers or location, then Port Otago is happy to provide these documents to the Council to demonstrate compliance with HSNO."

65. The *New Zealand Fire Service Commission* (FS2323.29) supported this submission and agreed that duplication of HSNO requirements with storage requirements in district plan provisions should be avoided.
66. *Ravensdown Limited* (OS893.40 and OS893.49) questioned the hazardous substance quantities, which they considered to be arbitrary and restrictively low for large-scale industrial activities located in an Industrial Zone (Appendix A6.2). This submitter also opposed the use of the quantities list to determine an activity status, because it is arbitrary and restrictively low for large scale industrial activities located in an Industrial Zone. *Ravensdown Limited* (OS893.48 and OS893.53) also sought the retention of the permitted activity status for the storage and use of hazardous substances in the industrial zones (Rule 19.3.4.16), and the retention of the exemption of the storage and use of certain fertilisers in a rural zone from the hazardous substances quantity limits (Appendix A6: Rule 6.4.2.c.3).

3.2.3.2 Section 42A Report

67. The Reporting Officer provided a general overview on the Hazardous Substances and New Organisms (HSNO) Act and associated regulations and the reliance on HSNO for LPG. His evidence referred to, and relied upon the expert evidence of Mr Mike Gray (hazardous substances expert), advisor to DCC on this matter (s42A Report, Section 5.7.1, pp. 175–177 and Section 5.7.2 pp. 184–185).
68. Mr Gray's expert evidence was that the 2GP should contain additional controls over and above the HSNO requirements, noting in particular:
- not all substances that are hazardous are classed as 'hazardous substances' under HSNO – this includes coal and asbestos;
 - HSNO only requires secondary containment for liquids, and even then only requires containment of the substance being stored, with no specific allowance for firefighting water runoff. This could be a major concern

- during firefighting or in situations where runoff infiltrates a sensitive wetland or an unconfined aquifer;
 - adverse effects concerning sulphur are not fully controlled under HSNO, for example, sulphur dust explosion is not managed at all under HSNO;
 - HSNO does not control the toxic smoke and fumes from chemical fires (including from sulphur);
 - hazardous substances of a toxic or corrosive classification (and not class 1, 2, 3, 4 or 5) do not currently require a Location Test Certificate for storage or use; and
 - Cyanide storage does not always provide adequate protection under HSNO (for example during flood or earthquake).
69. Mr Gray did not support the submissions to remove the threshold quantities for LPG and related gases, because HSNO controls do not provide adequate protection to sensitive areas or allow for safe management of these substances in all environments, particularly for larger quantities. However, he said that consideration might be given to permitting minor changes to the quantity limits if deemed appropriate following a risk assessment.
70. The Reporting Officer accepted there may be some duplication with the HSNO regulations, but considered that the overall approach of managing hazardous substances in the 2GP, is necessary to ensure that people, property and the environment are protected from the adverse effects of hazardous substances. In particular the 2GP controls will ensure hazardous facilities are not located near sensitive activities, and will restrict sensitive activities from locating near hazardous facilities. His evidence was that the 2GP's approach is consistent with the guidance provided by the Quality Planning website in its document titled 'Plan Topics – Managing Hazardous Substances 2013' and with the Auckland Unitary Plan and the Hamilton City Council – Partly Operative District Plan (s42A Report, Section 5.7.1, pp. 175-177).
71. The Reporting Officer also provided a summary of the advice from DCC's Resource Consents team's experiences from dealing with processing a resource application (LUC-2015-572) and gave this as an example of why it was considered reliance entirely on HSNO is not appropriate.
72. That resource consent related to a factory at 64 Bradshaw Street, Dunedin, where the applicant wanted to set up a large scale storage and manufacture operation of odourless LPG (50 tonnes) and aerosols (500,000 litres). This site is zoned Industrial and is located close to a densely populated residential area, which includes pensioner housing, schools and a sports field (Bathgate Park).
73. The Reporting Officer stated that:
- "Whilst the original proposal complied fully with HSNO, the Council land use assessment was that the risk from these quantities of hazardous substances to the surrounding area was unacceptable. The New Zealand Fire Service fully concurred with Council's assessment and after a number of meetings and discussions a resource consent was issued for 24.5 tonnes of LPG and 75,000 litres of aerosol storage. A full risk assessment was carried out and safety measures such as gas detection sensors and spray cage facilities were incorporated into the conditions of consent"* (s42A Report, Section 5.7.1, pp. 176-177).
74. The Reporting Officer also noted that *Liquigas Limited* (OS906.13 and OS906.14) had supported the Hazardous Substances Quantity Limits and Storage Requirements (Rule 9.3.4), and it has also supported Appendix A6.2 as appropriately providing for the storage and use of hazardous substances in the Industrial zones (s42A Report, Section 5.7.1, p. 173 and Section 5.7.2 p. 185).

75. The Reporting Officer disagreed with *Port Otago Limited's* (OS737.7) request to remove Rule A6.5.6, which applies in the Port Zone. He considered that Rule 6.5.6 will not lead to undue compliance issues or costs because the provision will allow for more than one hazardous sub-facility to be located on the site as long as the locational requirements within the rule, and the quantity limits within Rule 6.5, are met. He therefore recommended no change to this provision (s42A Report, Section 5.7.6, pp. 191-192).
76. In response to *Ravensdown Limited* (OS893.40 and OS893.49) the Reporting Officer deferred to the expertise of Mr Gray who advised that HSNO requirements are the minimum requirements and there are a number of situations where this minimum level of control would be inadequate in to address the risk from the storage and use of hazardous substances. The advice also does not support exempting large scale industries from the requirements of HSNO. Therefore, the Reporting Officer recommended that OS893.40 and OS893.49 be rejected (Statement of Evidence, pp. 9-11), (s42A Report, Section 5.7.1, p. 174).

3.2.3.3 Evidence presented at hearing

3.2.3.3.1 *LPG Association of New Zealand evidence*

77. The *LPG Association of New Zealand* (OS85) called Ms Claire Hunter (planning consultant), Mr Peter Gilbert (executive director), and Mr Thaddeus Ryan (legal counsel).
78. In Ms Hunter's planning evidence she described that the 2GP's threshold limits for LPG of 200kg in residential zones, and a limit of 450kg for LPG in industrial and commercial zones, result in an unnecessary and inefficient double up of regulation between HSNO and the 2GP for the management of LPG (Statement of Evidence, pp. 16-17). Ms Hunter also stated in her evidence:

"It is my view that there need to be sound resource management reasons for setting such limits and they need to be adequately justified in terms of section 32 of the RMA. In my opinion, requiring consent for quantities of LPG that are similar to the thresholds set under HSNO and HSWA is unlikely to better enable the management of hazard risk associated with the use and storage of LPG. It is not clear to me what is missing from the other legislation that might result in concern for the Council, particularly in relation to LPG, to the extent that it sees a need to include threshold limits in the 2GP.

In my view, a more efficient approach to managing the potential effects of hazardous substances and associated public health and safety risk would be through general zoning and overlay controls where appropriate. In my opinion, the Council has not provided sufficient evidence to support the proposed threshold limits particularly to justify the additional costs associated with imposing duplicated controls on the handling, storage and use of LPG.

On this basis, I recommend amendments to the proposed provisions of Chapter 9 of the 2GP that would remove the threshold limits, both for LPG and other hazardous substances. That would be subject to:

- (a) *rules in other chapters controlling the primary land uses associated with the hazardous substances (as with a factory in a residential zone); and*

- (b) *the specific restriction on substances with explosive or flammable properties within 12 metres of national grid infrastructure set out in proposed Rule 9.3.4.2.*

If there are any other instances in which limits on the use or storage of certain hazardous substances are specifically necessary, to protect a particularly sensitive area or an area that is particularly susceptible to natural hazards, then they could be added to the provisions I have proposed."

79. Ms Hunter's evidence also included extensive references to Dr Peter Dawson's and Mr Mark St Clair's evidence presented to the Hearings Panel on the Christchurch Replacement District Plan; the Quality Planning Guidance: Plan Topics – Managing Hazardous Substances; and to the final decision of the Hearings Panel on the Christchurch Replacement District Plan.
80. Ms Hunter's evidence contained her recommended amendments to the hazardous substances provisions of the 2GP, including deletion of the hazardous substances quantity limits and storage requirements in Rule 9.3.4.1 and Appendix A6 (Statement of Evidence, Appendix F, p. 26). She also recommended deletion of the exemptions for the storage and use of hazardous substances within 12m of the National Grid (Rule 9.3.4.2), and replacing this with the words 'except the storage and use of hazardous substances which do not trigger a requirement to obtain a test certificate under HSNO', as the exception to this rule.
81. Ms Hunter's evidence also commented as follows, in her Appendix F:
- "Any additional rules specifically justified as necessary, that provide for particular restrictions on the storage or use of specific types of hazardous substances in or adjacent to areas of land that are particularly sensitive or particularly subject to natural hazards, should be inserted here. They would be assessed as restricted discretionary activities, and would be subject to the exemptions listed below."*
82. In response to questions from the Panel, Ms Hunter clarified that in her opinion no added value was provided by the resource consent process followed for 64 Bradshaw Street, Dunedin, because HSNO requirements were appropriate in the management of any hazard risk associated with the use and storage of LPG. She was also of the opinion that any hazardous substances rules (if considered necessary) should not duplicate regional plan rules, including restrictions on discharges to air and water.
83. Mr Ryan's legal evidence for the *LPG Association of NZ Inc* was that the 2GP's approach for the management of hazardous substances is not warranted. He considered that, given the broad scope of HSNO, it continues a blanket thresholds-based approach which is not justified by previous consents, does not reflect best practice and has not been adequately justified. He considered there had been no rigorous evaluation of whether the provisions are 'necessary' and that they add an unnecessary additional layer of regulatory control.
84. Mr Gilbert's evidence includes an overview of the role of the LPG Association, and the nature of its submission, and a comparison of the HSNO regulations concerning LPG with the 2GP limits approach for the management of hazardous substances.
85. His main points are outlined below.
- the 2GP approach of having small quantity limits, such as a 200kg limit for LPG in residential zones, will affect some small businesses in Dunedin including motels, fish and chip shops and laundrettes. The 450kg limit in other zones will affect about 50 users, for example, larger motels and

retail outlets, and manufacturing companies that use boilers and breweries

- the resource consent example used by the Reporting Officer in his s42A Report (at 64 Bradshaw Street) under HSNO would require a spray cage for LPG storage greater than 12,000 litres (approx. 6 tonnes), and detention devices for un-odorised LPG. Also, the conditions of consent replicated HSNO requirements, which he considered were unnecessary. He failed to see the benefits of requiring LPG users (or other hazardous substances users) to go through the time, effort and cost of a resource consent process in addition to the HSNO requirements
- the blanket quantity limit approach for LPG (particularly at the lower trigger limits of 200kg and 450kg) would create additional costs to users with no corresponding safety benefits
- Napier, Hastings, South Taranaki, Kapiti Coast and Christchurch territorial authorities have all adopted a similar approach of not having any city wide quantity limits for hazardous substances, but they have instead taken an approach (as outlined in Ms Hunter's evidence) of only imposing limits where appropriate for specific and fully justified circumstances.

86. In response to questions from the Panel, the experts called by the *LPG Association of New Zealand* said they considered the Christchurch approach is best practice. Noting that LPG is already tightly controlled under HSNO, their view was that any additional controls in the 2GP should only be applied where 'necessary'.

3.2.3.3.2 *Rockgas Limited evidence*

87. *Rockgas Limited* (OS897.1) called Mr Owen Graham, (Land and Property Advisor), who raised similar matters to the LPG Association of New Zealand clarifying that any storage of LPG over 100kg under HSNO requires an independent Location Test Certificate (LTC) to be issued, which needs to be renewed every year.
88. Mr Graham stated in his evidence that he considered it to be unnecessary to require blanket control of LPG under the 2GP. He said the DCC, "*should only require resource consent applications where there are sensitive matters that must be addressed such as proximity to school or childcare facilities, special areas of natural environment, or requirements such as earth removal triggering other matters for consideration.*"
89. Mr Graham also stated that if the DCC remains of a view that quality limits should remain (which he does not support), the limits need to be significantly increased.
90. When questioned, Mr Graham confirmed that he has applied for resource consent under the hazardous substances provisions of the operative District Plan, and as part of the information provided he usually attaches the HSNO certification, which he considers is an unnecessary duplication of process.

3.2.3.3.3 *Fonterra Limited evidence*

91. *Fonterra Limited* (OS807) called Mr Dean Chrystal (planning consultant) who stated that (Statement of Evidence, p. 5):

"while I consider it has become unnecessary for local authorities to continue to control the overall use and storage of hazardous substances through limiting quantities due to the duplication with HSNO, I do not consider that this is particularly an issue for Fonterra in terms of its Mosgiel site."

3.2.3.3.4 *Ravensdown Limited evidence*

92. *Ravensdown Limited* (OS893) called Mr Chris A Hansen (planning consultant), Mr Murray Mackenzie (Chief Technical Manager), Mr Mark Christensen (legal counsel) and Mr Jon Farren (acoustic consultant). Mr Hansen in his evidence raised similar issues to those raised in the evidence of Ms Hunter called by the *LPG Association of New Zealand*. He agreed with the approach followed in the Christchurch Replacement Plan and the evidence of Dr Dawson and Mr St Clair as part of the Christchurch Replacement Plan hearings, and considered that there is an unnecessary duplication between HSNO and the 2GP provisions.
93. Mr Hansen noted that s.142 of the HSNO Act allows for additional controls to be provided for in plans under the RMA, although he considered that the key test is whether such requirements are considered 'necessary'. He questioned whether the Section 32 Evaluation required by the RMA that accompanies the 2GP demonstrates this necessity and properly assesses the benefits and costs of adopting this approach. He considered that the Christchurch Decision now provides clear guidance to determine whether the additional controls are necessary.
94. Mr Hansen's evidence posed the following questions as appropriate to determine whether additional controls are required in the 2GP to manage hazardous substances (Statement of Evidence, p. 18, para 74):
- "are the additional controls indispensable, requisite and must be included in order for the effects of the storage and use of hazardous substances to be managed to levels required to meet the objectives of the plan? Or, alternatively, are there gaps in the HSNO regulations that mean a clear resource management issue cannot be appropriately addressed, and additional controls are needed?"*
95. Mr Hansen observed that this 'necessity' test has not been effectively applied in the DCC commissioned ChemSafety Report, the Section 42A Report responses to the submissions on these matters, or the Section 32 Evaluation Report notified with the 2GP.
96. Mr Mackenzie described in his evidence the tools for the management of hazardous substances at the Ravensbourne site in Dunedin. These include a Health and Safety Plan, Risk Management framework including hazard identification and management and Standard Operating Procedures (SOP's) by area, and the Code of Practice for Prevention of Sulphur Fires and Explosions. Appendix 1-4 of Mr Mackenzie's evidence provided examples of how actual hazardous substances are dealt with under the HSNO framework and a (partial) Standard Operating Procedure associated with site sulphur handling.
97. He said that regular audits are undertaken to monitor compliance, including internal audits by site personnel, internal audits by the company Internal Auditor, and external audit of compliance with the ACC Partnership Programme.
98. Mr Mackenzie also stated, that (Statement of Evidence, pp. 3-4, para 11-12):
- "At the Ravensbourne plant, a range of hazardous substances are stored and used. All of these substances are stored and used in accordance with HSNO requirements. Based on Table A6.2 in Schedule A6 of the 2GP Plan, I can confirm that a resource consent would be needed for all hazardous substances that are stored and used at the plant.*
- I cannot find any discussion in any of the documents I have read about how the specific levels of the various categories of substances in Table A6.2 were identified or calculated. I do not see any identified link between the amounts listed in that Table and effects on either the environment, or public or worker safety and health. In my view, the limits in the Table appear not to be based on a risk assessment or scientific basis."*

99. Mr Mackenzie said the Chemsafety report implies that there is a risk of a sulphur dust explosion in fertiliser manufacturing facilities with sulphur stores, which he considers is misleading. He described that the sulphur used in Ravensdown's fertiliser manufacturing facilities is formed sulphur that is not explosive. He said it is in any event treated differently under the New Zealand and international regulations, which means formed sulphur used in fertiliser manufacture is not a "Dangerous Good", which is recognised in its classification under HSNO.
100. Mr Mackenzie also questioned the Chemsafety report's concerns about the potential for dust explosions with sulphur, which he said is not supported by any research. He contended that many materials seen as non-hazardous have been involved in major dust explosions, which include sugar, flour, milk powder, starch and grains, in general. Finally, Mr Mackenzie considered that there is nothing in either the nature of the Ravensbourne activity or the surrounding area, which means that additional controls in the 2GP are necessary.
101. Mr Christensen outlined in his submissions the relationship of HSNO with the RMA and clarified that more stringent requirements for the management of hazardous substances can only be imposed where 'necessary'. On that basis she considered 2GP controls in the Industrial Zone, additional to HSNO, are not necessary. He states: (Statement of Evidence, p. 4, para 14):

"The s42A report is unconvincing and unclear about what additional environmental or risk management benefit would arise from a resource consenting regime required for the use or storage of hazardous substances above the specified volumes, particularly when that is irrespective of the circumstances of the site and the surrounding environment."

102. He said there is nothing in the operative or proposed RPS, which requires district plans to have additional controls over and above HSNO. He also contended that the Christchurch approach for the management of hazardous substance should be preferred, because it has been through a robust and persuasive process, which determined that additional controls to HSNO in Christchurch City are unnecessary.
103. In response to questions from the Panel, the experts called by *Ravensdown Limited* (OS893) clarified that the HSNO requirements for Ravensdown are comprehensive, and not a minimum level of control; Ravensdown is not a major hazard facility; and that they considered the Christchurch approach to managing hazardous substances is appropriate in Dunedin.

3.2.3.3.5 *Horticulture New Zealand evidence*

104. *Horticulture New Zealand* (OS1090) called Ms Lynette Wharfe (planning consultant) who provided evidence for *Horticulture New Zealand* in both the Auckland and Christchurch district plan process for the management of hazardous substances.
105. Ms Wharfe considered in her evidence that the Christchurch outcome is more appropriate as it has included a level of enquiry that did not occur through the Auckland process. This included the involvement of the Crown and the EPA for the first time and a rigorous cross-examination process.
106. Ms Wharfe said that she had also been involved in the Hastings District Plan process, which was referred to in the Christchurch decision, and she stated that (Statement of Evidence, p. 8, para 8.13):

"The Hastings Plan specifically seeks to avoid unnecessary duplication between HSNO and the Plan by providing for the storage, handling and use of hazardous substances as permitted activities except for specific provisions within the Heretaunga Plains Unconfined Aquifer which was identified as a

sensitive area. It also has provisions for Major Hazardous Facilities which are specifically listed facilities that require a resource consent."

107. Her view was that the Section 32 Evaluation Report did not consider whether more stringent requirements than HSNO are necessary, and also noted changes to the management of hazardous substances by the Resource Legislation Amendment Bill, which would amend the provisions of the RMA to remove obligations on both regional councils and territorial authorities in relation to hazardous substances. She also described that the intent of the Government in developing this amendment is to rely on HSNO for the management of hazardous substances.
108. In response to questions, Ms Wharfe said the Christchurch approach was best and that it was a robust and comprehensive process with a good outcome. The involvement of the Crown was key to this process and their evidence was compelling and well received by the Panel.

3.2.3.3.6 *University of Otago evidence*

109. *University of Otago* (FS2142.17) called Mr Murray Brass, who outlined in his planning evidence further reasons for support of *Horticulture New Zealand* (OS1090.24) (Statement of Evidence, pp. 5-6, para 34-35):

"34. *In effect, the s42A report takes the approach that because there are some circumstances where land use controls are appropriate in addition to HSNO controls, therefore the District Plan should default to controlling the full range of identified hazardous substances. From that full range of hazardous substances, specific exceptions may yet be allowed in response to specific submissions.*

35. *My understanding of the Horticulture New Zealand submission, and certainly the intent of the University's further submission, was to apply a reverse approach – given that HSNO controls already apply as a default, to only have additional controls in the District Plan where these are specifically warranted. The s42A report, in my reading of it, has not addressed this option."*

110. Mr Brass raised the example of table salt (sodium chloride), which is a hazardous substance under HSNO. The 2GP has limits ranging from 5kg in residential zones to 1000kg in the Campus Zone, with restricted discretionary status for any exceedance of those limits. He considered that the storage of 5kg of salt in a personal home would not have any adverse effects on neighbouring properties or the wider environment and therefore control under the 2GP is unnecessary.
111. Mr Brass supported the concerns of other submitters that the 2GP should be revised to only impose land use controls in the 2GP where this is necessary to address environmental effects beyond what is covered by HSNO.

3.2.3.3.7 *Port Otago Limited evidence*

112. *Port Otago Limited's* (OS737.7) legal submissions were presented by Mr Len Anderson, who contended that there is little or no justification for controls under the RMA, as HSNO effectively manages all effects that hazardous substances could have. He noted that HSNO has comprehensive requirements for setbacks from boundaries or from sensitive uses such as residential activity, emergency response and storage tank design.
113. Mr Anderson stated that Ms Mary O'Callahan (an experienced planner who represents the submitter in other matters under the 2GP) had advised him that she is not aware

of any application for a hazardous substances facility in the industrial or port environment which has been declined, and her view was that in general resource consent conditions simply rely on compliance with HSNO regulations.

3.2.3.4 Revised recommendations from Reporting Officer

114. The Reporting Officer, in providing his revised recommendations, acknowledged what he considered was robust evidence provided by the *LPG Association of New Zealand* and other submitters with regard to the relationship of HSNO and the RMA for the management of hazardous substances.
115. He noted that the submitters' evidence supported an approach similar to that followed in the Christchurch Replacement Plan where hazardous substances are mainly managed outside the 2GP through HSNO, except where additional controls under the 2GP are deemed 'necessary'. The Reporting Officer also recognised the importance of the evidence from Mr Peter Dawson and Mr Mark St Clair for the Crown who appeared at the Christchurch Replacement Plan hearings, as well as the Quality Planning Guidance titled Plan Topics Managing Hazardous Substances 2013.
116. The Reporting Officer accepted that the Section 32 Evaluation report did not provide an adequate analysis to justify the potential situations where additional controls for hazardous substances under the RMA (in addition to HSNO) may be 'necessary'. He noted that the Section 32 work had been done prior to the decisions of the Christchurch Replacement Plan and so that decision had not been available for guidance in developing the 2GP provisions.
117. The Reporting Officer then reproduced in his revised recommendations the potential situations where he considered additional controls under the RMA may be necessary, as outlined in the Quality Planning Guidance. He also described some situations where additional controls under the RMA (via the 2GP) may be necessary for the management of hazardous substances, drawing on the 2GP definition of 'sensitive activities', the natural hazard provisions of the 2GP, and what he considered to be sensitive natural environments.
118. He stated:
- "I also consider that 'sensitive natural environments' should include the coastal marine area, underground aquifers, rivers and streams, wetlands and ASCV's."* (Revised Recommendations, p.3)
119. In conclusion, the Reporting Officer said:

"I consider that if the Panel is of a mind to follow the approach more in line with Christchurch than Auckland or Hamilton, then further (substantial) work is required to draft up provisions to facilitate this. Extensive analysis (and expert advice) would be required to assess the type and location of hazardous substances, and its associated effect on the potential situations where additional controls under the 2GP may be 'necessary'."

Approaches to consider whether 'necessary' include:

- *Whether setbacks from sensitive activities or sensitive environments are required*
- *The quantity and type of hazardous substances which should be permitted (if any) within the identified 'sensitive areas'. Similar standards as in the notified 2GP could be considered as a starting point for assessment of this*

- *Differing approaches depending on the type (characteristics) of the hazardous substance and the type of sensitive area*

I do not consider that the recommended changes by Claire Hunter are sufficient as they do not fully address the range of sensitive activities, natural hazards, or sensitive natural environments in Dunedin and the potential effects of hazardous substances on these.” (Revised Recommendations, p.3)

3.2.3.5 Post-adjudgment evidence

120. We requested that the Reporting Officer undertake additional research on the type and distribution of sensitive activities, sensitive natural environments and natural hazards in the 2GP, and the sensitive natural environments managed by the Otago Regional Council.
121. The results of that further work are encapsulated in a memorandum dated March 2018 titled “Hazardous substances, sensitive activities and sensitive environments”.
122. In that memorandum the Reporting Officer considered that additional controls for hazardous substances under the RMA (in addition to Health and Safety at Work (HSW) Act and HSNO requirements) are ‘necessary’ in all zones with the exception of industrial zones, where there are no natural hazard overlays or sensitive natural environments, and the Port Zone.
123. He also mapped the location of the industrial zoned land, natural hazard overlays or sensitive natural environments and determined that high class soils and ASCV’s are not located on industrial zoned land. In addition, the only area which contains aquifers, groundwater protection zones or groundwater zones under the Otago Regional Plan: Water and is industrial zoned is in Mosgiel, and this land is also subject to a flood hazard.
124. He therefore recommended that industrial zoned land where the 2GP hazardous substances provisions should apply are those which contain a natural hazard overlay in the 2GP. Conversely, he recommended that industrial zoned land where the 2GP hazardous substances provisions should not apply, and instead there should be reliance solely on HSW and HSNO requirements, are those which do not contain a natural hazard overlay in the 2GP. Maps showing the location of these industrial zoned areas are contained in Appendix 1 of this memorandum.

3.2.3.6 Decision and reason

125. We accept in part the submissions from *Fonterra Limited* (OS807.49), *New Zealand Fire Service Commission* (FS2323.30), *Mercy Dunedin Hospital Limited* (OS241.50), *Oceana Gold (New Zealand) Limited* (FS2439.45), *Horticulture New Zealand* (OS1090.24, OS1090.40, FS2452.27), *Fonterra Limited* (OS807.52), *LPG Association of NZ Inc* (OS85.1, OS85.2, OS85.3 and OS85.4), *Ravensdown Limited* (OS893.40, OS893.48, OS893.49 and OS893.53), *Rockgas Limited* (OS897.1 and OS897.2), *Liquigas Limited* (OS906.13 and OS906.14) and *Port Otago Limited* (OS737.7), to the extent that we have made a decision to rely on Hazardous Substances and New Organisms Act (HSNO) and Health and Safety at Work Act (HSW) regulations and notices for the management of hazardous substances in locations where sensitive activities cannot establish without consideration of the effects of hazardous substances, and that are not subject to natural hazards.
126. On hearing the evidence we consider there is a need for some control of hazardous substances in the 2GP, and we were not convinced that other legislation can be relied upon totally to deliver the appropriate outcomes under the RMA for all areas of the

City. Therefore, while we can see the benefit in avoiding duplication of control, we were reluctant to remove all control from the 2GP.

127. We have therefore decided on an approach which we feel is consistent with the decision made in the Christchurch Replacement Plan for hazardous substances. We agree with submitters and expert evidence from the submitters, to the extent that the Health and Safety at Work Act (HSW) regulations and notices should adequately manage the potential adverse effects of hazardous substances in those parts of the industrial and port zones, which are not subject to hazard overlay zones.
128. We note that since the Public Health and Safety Hearing in late January and early February 2017, there have been significant legislative changes in how hazardous substances are managed with the new HSW, Hazardous Substances Regulations, and the Hazardous Substances Properties Control Notices coming into force on 1 December 2017, as well as the Resource Legislation Amendment Bill receiving royal assent on 18 April 2017.
129. For clarity, we note that we are retaining the 2GP approach to managing hazardous substances for all zones where sensitive activities can establish as a permitted activity, and all areas which are subject to a natural hazard overlay zone. In making this decision we agree with the Reporting Officer's post-adjudgment evidence (refer above).
130. More specifically, we support retention of the 2GP provisions for the storage and use of hazardous substances:
 - for residential activities in all zones, and all activities in the residential zones, Smith Street and York Place (SSYP), and Schools zones
 - in commercial and mixed use zones (except Smith Street and York Place (SSYP)), Stadium, Moana Pool, Edgar Centre and Taieri Aerodrome zones
 - in Invermay and Hercus, Dunedin Public Hospital, Campus, and Otago Museum zones
 - in recreation, rural, rural residential, and Dunedin Botanic Garden zones
 - in Dunedin International Airport Zone
 - in Ashburn Clinic, Mercy Hospital, and Wakari Hospital zones
 - in industrial zones in a natural hazard overlay (within a hazard 2 and 3 (flood), hazard 2 (land instability), hazard 3 (alluvial fan) or hazard 3 (coastal) overlay zone)
131. Therefore, we have decided to make the following amendments:
 - amend clause b of the table within Rule 9.3.4.1 Hazardous Substances Quantity Limits and Storage Requirements by removing reference to industrial zones from requiring compliance with Appendix A6.2
 - amend clause e of the table within Rule 9.3.4.1 Hazardous Substances Quantity Limits and Storage Requirements by removing reference to the Port Zone from requiring compliance with Appendix A6.5 and also deleting Appendix A6.5 - Port Zone
 - deleting the reference to the Hazardous Substances Quantity Limits and Storage Requirements in the Port Zone (Rule 30.3.4.6 and Rule 30.6.2)
 - amend clause e of the table within Rule 9.3.4.1 Hazardous Substances Quantity Limits and Storage Requirements by adding reference to 'Industrial zones within a hazard 2 and 3 (flood), hazard 2 (land instability), hazard 3 (alluvial fan) or hazard 3 (coastal) overlay zone' requiring compliance with Appendix A6.2
132. Amendments are shown in Appendix 1 and attributed to submission point reference PHS85.1.
133. We consider that this is necessary because of:

- uncertainty as to how the Health and Safety at Work (HSW) Act, Hazardous Substances Regulations, and the Hazardous Substances Properties Control Notices which came into force on 1 December 2017 will work with regards to sensitive activities, including working from home in residential areas
- the impact of different natural hazards on the use or storage of different types of hazardous substances.

3.2.4 Policy 9.2.2.11 and Hazardous Substances Quantity Limits and Storage Requirements rule

3.2.4.1 Overview

134. Policy 9.2.2.11 states:

"Require hazardous substances to be stored and used in a way that avoids risk of adverse effects on the health and safety of people on the site or surrounding sites or, if avoidance is not possible, ensures any adverse effects would be insignificant."

135. The Hazardous Substances Quantity Limits and Storage Requirements (Rule 9.3.4) states:

"9.3.4 Hazardous Substances Quantity Limits and Storage Requirements

1. The storage and use of hazardous substances must comply with the quantity limits and storage requirements specified in Appendix A6, as follows:

Zones and activities		Appendix
a.	Residential activities in all zones, and all activities in the residential zones, Smith Street and York Place (SSYP), and Schools zones	A6.1
b.	Commercial mixed use zones (except Smith Street and York Place (SSYP)), industrial, Stadium, Moana Pool, Edgar Centre and Taieri Aerodrome zones	A6.2
c.	Invermay and Hercus, Dunedin Public Hospital, Campus, and Otago Museum zones	A6.3
d.	Recreation, rural, rural residential, and Dunedin Botanic Garden zones	A6.4
e.	Port Zone	A6.5
f.	Dunedin International Airport Zone	A6.6

2451. The Reporting Officer, Jane Macleod, agreed with submitters that there may be circumstances where public access to coastal or riparian margins should be restricted, including for health and safety reasons (s42A Report, p.275). Ms Macleod recommended that Policy 10.2.4.1 be amended to add the phrase "where appropriate", and that the assessment rule that applies to contraventions of Rule 10.3.3 (Rule 10.4.3.10) be amended to include consideration of issues such as public health and safety and site security.
2452. At the hearing, *Ravensdown* tabled a statement but did not appear. The statement noted that *Ravensdown* supported retention of Policy 10.2.4.1 and the Reporting Officer has recommended amendment to it. *Ravensdown* supports the s42A recommended amendment.
2453. At the hearing, Dr Michael Thorsen (ecological expert) provided evidence and appeared for *Oceana Gold*. Dr Thorsen's evidence supported the s42A recommendation.

3.8.9.1 Decision and Reasons

2454. We accept in part the submissions of *KiwiRail Holdings Limited* (OS322.34) and *Oceana Gold (New Zealand) Limited* (OS1088.42). As discussed in section 3.6.12, we acknowledge that Policy 5.1.1 of the pORPS-dv and Policy 19 of the provide for the restriction of public access under certain circumstances. These circumstances include where a restriction is necessary to protect public health or safety, or to ensure a level of security consistent with the purpose of a resource consent or lawfully established activity – situations outlined by the submitters.
2455. However, we do not support the specific request to qualify the policy with "where practicable" (or the Reporting Officer's recommended "where appropriate") on the basis that the NZCPS, the pORPS-dv and Objective 10.2.4 of the 2GP all go beyond requiring access only "where practicable" or "where appropriate". Rather, they provide for restriction of access only "where necessary", and seek to "maintain and enhance" access.
2456. Instead we consider that it is appropriate for the relevant assessment rule (Rule 10.4.3.10, which guides assessment of contraventions of the setback from the coast and water bodies performance standards) to reference the circumstances listed in the NZCPS and RPS under which restriction of public access may be necessary. Of those circumstances, the assessment rule provides specific guidance only in relation to alternative access arrangements. As outlined in section 3.8.4, we have amended Rule 10.4.3.10.b to include "General assessment guidance" stating that in assessing a contravention of the setback from the coast and water bodies standard, Council will consider "any relevant circumstances listed in the New Zealand Coastal Policy Statement 2010 or the Regional Policy Statement for Otago that may support restriction of public access. {NatEnv 690.24}". We consider this constitutes partial alternative relief for the submitters.

3.8.10 Rule 10.3.3 Setback from coast and water bodies performance standard

2457. Rule 10.3.3 is the performance standard that controls the setback of buildings and structures, earthworks – large scale, storage and use of hazardous substances, and network utilities from the coast and water bodies.
2458. Multiple submissions were received on Rule 10.3.3 as follows:
- *STOP* (OS900.158) and *Forest and Bird* (OS958.75) sought retention of the rule for conservation reasons.
 - *Transpower New Zealand Limited* (OS806.49) supported the exemption to the rule for network utilities poles and masts.

- *Ravensdown Limited* (OS893.23) sought to retain the 20m setback from mean high water springs, as it represents good resource management practice.
- *Port Otago Limited* (OS737.8) and *Chalmers Properties Limited* (OS749.4) requested that either the rule was deleted or an exemption provided for port activities, and activities in the Harbourside Edge Zone, as it is an operational requirement for these activities to be within 20m of mean high water springs. These submissions were opposed by *HPPC* and supported by *Otago Regional Council* and *BP Oil NZ Ltd and Mobil Oil NZ Ltd and Z Energy Ltd*.
- *Moi Bien Investments Ltd* (OS826.17) sought that Rule 10.3.3 not apply to the St Clair Neighbourhood Destination Centre, as this would be overly restrictive and onerous and not promote the sustainable management of the area.
- *DCC* (OS360.218) sought that a note was added to the rule to clarify that it does not apply to swale mapped areas.
- *Joel A Vanderburg* (OS189.7) sought to amend Rule 10.3.3 to exclude stock from small water bodies of less than 3m in width, in order to encourage riparian plantings in these areas.
- *KiwiRail Holdings Limited* (OS322.91) sought to exclude causeways from the rule, with no specific reason given for this submission.
- *Lynnore Joan Templeton* (OS735.3) sought an amendment to 2GP provisions for earthworks alongside creeks, in order to enable a water extraction project in the Strath Taieri.
- *Otago Peninsula Community Board* (OS588.7) requested an exception to the standard for structures associated with conservation and ecotourism, such as bird hides, viewing structures and boardwalks.
- *Timothy George Morris* (OS951.16) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*) (OS1054.16) sought deletion or amendment of the rule to allow for farming activities to occur.
- The submission from *KiwiRail Holdings Limited* (OS322.31) to amend Policy 10.2.2.2 was also considered as a submission to amend Rule 10.3.3 so that it excluded activities in the rail corridor. We also address this submission here, as we consider that exemptions to Rule 10.3.3 will effectively address the concerns of submitters, rather than including exemptions into the policy.

Submissions on extent of Rule 10.3.3

2459. In response to *Port Otago*, *Chalmers Properties* and *Moi Bien Investments Ltd*, the Reporting Officer, Jane Macleod, commented as follows:

- It was anticipated that there will be development within 20m of mean high water springs in the Harbourside Edge and St Clair Neighbourhood Centre zones as these areas have been significantly altered by development and they are no longer in their natural state.
- It would be appropriate to exempt buildings, structures and earthworks associated with port activities from Rule 10.3.3, for the reason outlined by the submitters, and recommended amending the rule to clarify that it does not apply in the Port Zone.
- The Port Zone s42A Report recommends that Rule 10.3.3 not apply in the Port Zone.
- Provision for public access has already been made within the St Clair Neighbourhood Centre, and Rule 18.6.18.⁴⁴ contains the requirements for buildings and structures close to the harbour edge in the Harbourside Edge Zone.
- There are other heavily developed areas along the coast, such as the Industrial Port Zone, where Rule 10.3.3 does apply, and whether there is no scope to remove it for all activities.

⁴⁴ We note this was mistakenly referred to as 10.6.18 in the Section 42A Report text

2460. Ms Macleod recommended Rule 10.3.3 be amended to exempt activities in the Harbourside Edge Zone and the St Clair Neighbourhood Centre and a new note added to inform plan users that Rule 18.6.18.4⁴⁵ contains the requirements for buildings and structures close to the harbour edge in the Harbourside Edge Zone (s42A Report, pp.280-281).
2461. Ms Macleod supported in part the amendment sought by *Dunedin City Council*, agreeing that the rule should clearly indicate the types of water body to which it applies. She noted that rules 10.3.3.3 and 10.3.3.4 require setbacks from "any water body with a clearly defined bed", while Rule 10.3.3.5 requires a setback from "any water body", without qualification, which could include temporary water courses. She recommended amending Rule 10.3.3.5 to clarify that it applies only to water bodies "with a clearly defined bed". She did not support adding a note in relation to swales, as these would not qualify as water bodies with a clearly defined bed.
2462. In response to the submission of *Joel A Vanderburg*, Ms Macleod did not consider that a rule in the 2GP requiring a setback from water bodies for activities such as farming would be the most effective and efficient method of enabling the biodiversity and natural character values of coastal and riparian margins to be maintained or enhanced, as any such rules would be very hard to monitor and enforce. She considered that education on best practice farm management techniques, including planting and fencing alongside waterways, and other initiatives undertaken by the Otago Regional Council, are a better way of achieving these aims.

Submissions for additional exemptions

2463. The Reporting Officer, Jane Macleod, supported *KiwiRail's* submission on causeways, as these often occur near or over waterways and it was appropriate that they be excluded from the setback requirement. She noted that jetties, boat ramps and wharves are already exempted and recommended that causeways were added to the exemptions to Rule 10.3.3.
2464. In response to the submission by *Otago Peninsula Community Board*, Ms Macleod agreed that it was appropriate for small scale structures such as bird hides, viewing structures and platforms, and boardwalks to be exempt from the setback requirements. She considered, however, that there should be a scale threshold of 10m² area and 2m height for these structures (excluding boardwalks) to ensure they do not adversely affect the natural character of the areas they occupy.
2465. In response to *Lynnore Joan Templeton*, the Reporting Officer considered that, while new irrigation infrastructure clearly had benefits and must necessarily locate alongside water bodies, it also had the potential to generate significant adverse effects on biodiversity and natural character values, public access and increased risk from erosion. Ms Macleod did not consider that new irrigation infrastructure should be exempt from Rule 10.3.3 as she considered a resource requirement appropriate.
2466. In response to *Timothy George Morris* and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*), the Reporting Officer noted that some farming activities such as grazing of livestock are provided for within setbacks. She did not consider that all farming activities should be exempt from this rule, as this would allow farm buildings and earthworks associated with farming to be undertaken on the banks of streams, rivers and adjoining mean high water springs, which would have potential adverse effects on the quality of these water bodies and would impede the establishment of any future esplanade reserves or strips.

⁴⁵ We note this was mistakenly referred to as 10.6.18 in the Section 42A Report text

2467. The Reporting Officer also considered the *KiwiRail* submission (OS322.31) on Policy 10.2.2.2 in relation to Rule 10.3.3. Ms Macleod recommended that Rule 10.3.3 be amended to exempt activities associated with the operation, repair, and maintenance of the existing rail network, similar to the approach recommended for existing network utilities.
2468. At the hearing, *Ravensdown* tabled a statement but did not appear. The statement noted that *Ravensdown* had supported retention of Rule 10.3.3.1 and the Reporting Officer has recommended amendment to it. *Ravensdown* supports the s42A Report recommended amendment.
2469. At the hearing, *Port Otago* and *Chalmers Properties Limited* tabled a statement but did not appear. *Port Otago* and *Chalmers Properties Limited* support the s42A Report recommended amendment to Rule 10.3.3.
2470. At the hearing, *BP Oil NZ Ltd* and *Mobil Oil NZ Ltd* and *Z Energy Ltd* tabled a statement but did not appear. The statement noted that the Oil Companies were a further submitter in support of the *Port Otago* submission. *BP Oil NZ Ltd* and *Mobil Oil NZ Ltd* and *Z Energy Ltd* support the s42A Report recommended amendment to Rule 10.3.3.
2471. At the hearing, we asked the Reporting Officer whether it is appropriate to exclude causeways, given that a causeway is a road or path across wet ground or water and the road or path may sometimes be able to be relocated away from water. Ms Macleod noted that construction of a new road or additions or alterations to existing roads are a fully discretionary activity, with the relevant assessment rule specifying assessment under Policy 6.2.1.3 (and thus only allowed where the road is located and designed to minimise "adverse effects on water bodies or the coast"). She noted also that operation, repair and maintenance of the roading network is a permitted activity, and that, in effect, Rule 10.3.3 would only therefore apply to any Earthworks – Large Scale associated with these activities. Ms Macleod revised her recommendation that these earthworks should be exempt from Rule 10.3.3 rather than causeways (Revised Recommendations Summary, p.57).
2472. At the hearing, we asked the Reporting Officer why she recommended rejecting *Lynnore Templeton's* request to exempt irrigation infrastructure and associated earthworks from Rule 10.3.3, given that community scale hydro is exempt from the rule. Ms Macleod acknowledged the contradiction and noted that the Regional Plan: Water manages all the effects that Rule 10.3.3 seeks to manage, except for public access. After weighing potential benefits and costs, Ms Macleod made a revised recommendation that structures associated with irrigation should be exempt from Rule 10.3.3 (Revised Recommendations Summary, p.57).
2473. After the hearing, we asked the Reporting Officer to provide, in consultation with the Otago Regional Council, information on an appropriate upper scale limit for irrigation structure. Ms Macleod responded that it would be appropriate to exempt irrigation pipes of any size and other structures, such as intake structures, with a footprint of up to 2m² (Reporting Officer Memorandum on Scale of Irrigation Structures, 1 November 2017).

3.8.10.1 Decision and Reasons

2474. We accept in part the submissions of *Port Otago Limited* (OS737.8) and *Chalmers Properties Limited* (OS749.4), and accept the submission of *Moi Bien Investments Ltd* (OS826.17). We have decided to exempt the Harbourside Edge Zone and St Clair Neighbourhood Destination Centre from Rule 10.3.3. We accept the evidence of the Reporting Officer that these areas have been significantly altered by development and they are no longer in their natural state. In addition, we accept provision for public

access to the coast is in place in the St Clair Neighbourhood Destination Centre, and that Rule 18.6.18.4 protects the requirement for this within the Harbourside Edge Zone. We therefore consider that the application of Rule 10.3.3 to these areas does not assist in achieving the outcomes sought by Rule 10.2.2.2 and Rule 10.2.4.1 (relating to public access). We also support, as a consequential amendment, a new Plan Note 10.3C, to explain that the activities within the Harbourside Edge Zone are subject to Rule 18.6.18.4.

2475. We note the Reporting Officer's comment that Rule 10.3.3 does not apply in the Port Zone, and consider it appropriate that this is clarified in the rule, which can be done as a clause 16 amendment. We have identified a number of other major facility zones to which Rule 10.3.3 also does not apply, consider that these can also be clarified at the start of the rule as a clause 16 amendment.

2476. We do not, however, consider that buildings, structures and earthworks associated with port activities should be exempt from Rule 10.3.3 as recommended by the Reporting Officer, but rather that additional exemptions should be restricted to the Industrial Port Zone, where port activities are anticipated. In this zone, we accept that port activities need to occur within 20m of the coast for operational reasons, and that (like the Harbourside Edge Zone and St Clair Neighbourhood Destination Centre) the coastal margin in this area has been significantly altered by development and is no longer in its natural state. However, the Industrial Port Zone differs from these other areas as it lacks any provision for public access to the coast. We therefore consider it appropriate to provide an exemption for small structures (up to 10m²) and any earthworks associated with these, but do not support extending the exemption for buildings or larger structures, because we feel it appropriate that consideration be given to public access should new buildings or large structures be proposed within the 20m setback. We have chosen 10m² as the threshold, as this reflects the threshold under which buildings are no longer subject to 2GP provisions.

2477. In response to these submissions, we have therefore amended Rule 10.3.3 as follows:

- "In all zones, other than the Harbourside Edge Zone, {NatEnv 737.8} St Clair Neighbourhood Destination Centre {NatEnv 826.17}, Dunedin Hospital Zone, Dunedin International Airport Zone, Mercy Hospital Zone, Moana Pool Zone, Otago Museum Zone, Port Zone and Wakari Hospital Zone, {NatEnv cl.16} New buildings and structures, additions and alterations, earthworks large scale, storage and use of hazardous substances, and network utilities activities must be set back a minimum of {NatEnv cl.16}...

6. Except, the following are exempt from this standard...

n. structures with a maximum footprint of 10m² associated with port activities in the Industrial Port Zone; {NatEnv737.8}..."

2478. We accept in part the submission of DCC (OS360.218) and have amended Rule 10.3.3.5 as recommended by the Reporting Officer to clarify that the standard applies to any water body with a clearly defined bed, as follows:

- "5. 5m from any water body with a clearly defined bed {NatEnv360.218} in all other zones"

2479. We agree with the Reporting Officer that this amendment adds more clarity than the specific amendment suggested by the submitter, but consider it has the effect of clarifying swale mapped areas are not subject to the rule.

2480. We accept in part the submission of *Otago Peninsula Community Board* (OS588.7), and have amended Rule 10.3.3 to exempt bird hides, viewing structures and platforms and boardwalks as follows:
- "o. bird hides, viewing structures and viewing platforms with a maximum footprint of 10m² and maximum height of 2m, and boardwalks;" {NatEnv588.7}.
2481. We accept that these structures may in a number of instances be unable to meet the requirements of Rule 10.3.3, and indeed in some instances may be required to maintain or enhance public access or the biodiversity or natural character values of the coast or riparian margins. We consider that exempting these structures from Rule 10.3.3 is consistent with Policy 10.2.2.2 and Policy 10.2.4.1. We agree with the Reporting Officer that there should be a scale limit on structures other than boardwalks, and therefore support the 10m² area and 2m height limits recommended by Ms Macleod.
2482. We reject the submission of *KiwiRail Holdings Limited* (OS322.31), and accept in part the submission of *KiwiRail Holdings Limited* (OS322.91). As discussed in the Transportation Decision Report, we accept that there may be some merit in including rail activity in the Plan if there are problems with relying on a designation. However, in the absence of a set of provisions where there is expert agreement (at least to a substantial degree) that the provisions would be effective and efficient in terms of our obligations under s32AA, our decision at this time is to reject submissions seeking to provide separately for rail activities in the Plan, and to recommend any such changes are progressed by way of a future plan change, to enable potentially affected interests to participate through the Schedule 1 process.
2483. While we do not support including an exemption for 'causeways' from Rule 10.3.3, we do accept in part *KiwiRail Holdings Limited* (OS322.91). We accept that the operation, repair and maintenance of assets on existing causeways will not be able to meet setback requirements. Our decision therefore exempts earthworks associated with the operation, repair and maintenance of the roading network from Rule 10.3.3 as recommended by the Reporting Officer, as follows:
- "p. earthworks associated with the operation, repair and maintenance of the existing roading network;" {NatEnv322.91}
2484. We do not consider that activities associated with new roads or additions or alterations to existing roads should be exempted from the performance standard, as we do not accept that assessment against Policy 6.2.1.3 represents a substitute for Rule 10.3.3 in the case of the latter (as suggested by the Reporting Officer). While Policy 6.2.1.3 provides some direction around effects on water bodies and the coast and on natural character values of the coast, it is not concerned with public access along riparian and coastal margins. We consider that earthworks – large scale associated with new roads or additions and alterations to existing roads should continue to be subject to Rule 10.3.3, with any contraventions assessed against policies 10.2.4.1 and 10.2.2.2.
2485. We accept in part the submission of *Lynnore Joan Templeton* (OS735.3) and have exempted irrigation or stock water pipes of any size, and irrigation or stock water structures, such as intake structures, with a maximum footprint of 2m² from Rule 10.3.3 as follows:
- "q. irrigation pipes of any size, and other irrigation or stock water structures such as intake structures with a maximum footprint of 2m²" {NatEnv 735.3}
2486. We accept the Reporting Officer's evidence that the Regional Plan: Water for Otago manages the effects that Rule 10.3.3 seeks to manage, with the exception of public

access issues. On balance, we agree with the Reporting Officer's assessment that the benefits of providing for these structures within certain scale thresholds outweighs the risks of limiting public access to water bodies. We note and support the alignment of the recommended scale thresholds with provisions in the Regional Plan: Water for Otago.

2487. We reject the submission of *Joel A Vanderburg* (OS189.7) seeking to amend Rule 10.3.3 to exclude stock from small water bodies of less than 3m in width, in order to encourage riparian plantings in these areas. We accept that Rule 10.3.3.6.j specifically exempts post and wire fences from this rule, which would enable fencing along waterways to achieve stock exclusion. We further accept the Reporting Officer's evidence that requiring a setback from water bodies for activities such as farming may be difficult to monitor and enforce. We note that the control of land use for the maintenance and enhancement of water and ecosystems in water bodies and coastal water is a responsibility of regional councils under s30(c) of the RMA. At the Rural Hearing, ORC director of policy, planning and resource management Mr Fraser McRae indicated the ORC considered these responsibilities had been delegated to territorial local authorities under a triennial agreement, but could not produce formal confirmation of this delegation. We recommend clarification of this position between the two authorities as a matter of relative urgency, to then enable the resource management issues listed under s30(c) to be considered and the appropriateness of any relevant management options formally assessed.
2488. We reject the submissions of *Timothy George Morris* (OS951.16) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*) (OS1054.16). We accept the Reporting Officer's assessment that while some farming activities are provided for within setbacks, not all farming activities should be exempt from Rule 10.3.3 due to the potential for adverse effects on biodiversity and natural character values, and public access, and the potential to impede the establishment of any future esplanade reserves or esplanade strips. We do not consider that an exemption of this nature would be consistent with Policy 10.2.2.2 nor Policy 10.2.4.1.
2489. We reject the submission of *Oceana Gold (New Zealand) Ltd* (OS1088.38) insofar as it sought that new structures and earthworks associated with mining be exempt from the requirements for these activities to be setback from water bodies and the coast. We accept, as noted in section 3.8.8, that earthworks associated with mining are not required to meet the setback from water bodies and the coast performance standard because the 2GP definition of earthworks excludes "earthworks associated with quarrying or mining, which is included as part of the definition of mining".
2490. In relation to structures associated with Mining, while we accept the evidence of Dr Thorsen that it may not always be possible for structures to meet setback requirements from the coast and water bodies, there is no suggestion that this will always be the case. We note that contraventions of Rule 10.3.3 are subject to a restricted discretionary consent, with matters of discretion being effects on biodiversity and natural character of riparian margins and the coast, and effects on public access. As discussed in section 3.5, the 2GP has been amended to include specific provisions relating to biodiversity offsetting and environmental compensation, which provide a pathway for activities to be considered even where they have unavoidable adverse effects on biodiversity values. In relation to public access, as outlined in section 3.8.4, the relevant assessment rule (Rule 10.4.3.10.b) has been amended to reference the circumstances listed in the NZCPS and pORPS-dv under which restriction of public access may be deemed necessary. We consider these amendments constitute appropriate recognition of the constraints that structures associated with Mining may face in meeting setback requirements.

2491. As a consequence of our decisions elsewhere in Rule 10.3.3, an amendment to the earthworks clause to clarify its application can be made under clause 16 as follows:
- "r. earthworks required for any of the structures in (a) (~~kr~~) {*NatEnv cl.16*} above..."

3.8.11 Rule 10.4.3.10 Setback from coast and water bodies assessment rule

2492. Rule 10.4.3.10 provides for the assessment of activities that contravene Rule 10.3.3 (setback from coast and water bodies). *Ravensdown Limited* (OS893.24) supported Rule 10.4.3.10, considering that the guidance matters included in the rule are appropriate and necessary.
2493. *STOP* (OS900.76) and *Forest and Bird NZ* (OS958.84) requested that strategic direction Objective 2.2.3 and related policies 2.2.3.1, 2.2.3.3 and 2.2.3.4 should apply to this standard, with no specific reasons given. *Ravensdown Limited* and *Federated Farmers* opposed these submissions, saying that the amendments go further than is appropriate or required.
2494. The Reporting Officer, Jane Macleod, considered that it was unnecessary to add reference to this objective and these policies which are high level and strategic in nature, and not specifically related to the performance standard Rule 10.3.3. Ms Macleod considered the assessment in Rule 10.4.3.10 provides appropriate guidance to plan users and decision makers on the outcomes sought in regard to the effects on biodiversity and natural character of riparian margins and the coast (s42A Report, page 287).
2495. At the hearing, *Ravensdown* tabled a statement but did not appear. The statement noted that *Ravensdown* had supported retention of Rule 10.4.3.10 and the Reporting Officer has recommended amendment to it. *Ravensdown* supported the s42A Report recommended amendment.

3.8.11.1 Decision and Reasons

2496. We accept in part the submissions of *STOP* (OS900.76) and *Forest and Bird NZ* (OS958.84). We accept the Reporting Officer's evidence that the strategic direction provisions the submitters sought to reference from Rule 10.4.3.10 are not specifically relevant to the rule. However, we do note that, in decisions outlined in section 3.3.1.3, 'General assessment guidance' has been added to Rule 10.4.3.10, stating "For those activities that require assessment against Policy 10.2.1.X, in assessing whether the activity meets that policy, the Council will consider whether the area affected meets one or more of the criteria set out in Policy 2.2.3.1." We consider this constitutes acceptance in part of this element of the submissions.

3.9 Wilding Tree Provisions

3.9.1 Policy 10.2.1.6

2497. Policy 10.2.1.6 states: "Require forestry and tree planting to avoid the use of wilding tree species, unless the risk of wilding tree spread into areas of indigenous vegetation can be avoided or, if avoidance is not possible, is insignificant."
2498. This policy is implemented via Rule 10.3.4 Tree Species, which lists those species with a tendency to wilding that must not be used during Forestry or Tree Planting activities. We note that we have changed the name of Tree Planting to Shelterbelts and Small Woodlots, as set out in the Rural Decision.

3.5.3.3 Decision and reasons

164. We reject the submission by *MDHL* (OS241.47) to increase the maximum change in ground level for earthworks in the Mercy Hospital Zone from 1.5m to 2.0m, and therefore accept the further submission by the *Ludgate Sharp Family Trust* (FS2436.9) that opposed the change. We rely on the advice of Mr Paterson and note that a 1.5m change in ground level is consistent with the surrounding residential zoning and the default residential zoning of the Mercy Hospital Zone.

3.5.4 Request to exempt network utilities from 'maximum change in ground level'

165. *Aurora Energy Limited* (OS457.217) sought an exemption from 'maximum change in ground level'. They stated that if earthworks ancillary to network utilities were required to comply with the change in ground level thresholds for the various zones, this would result in resource consent requirement for almost every activity undertaken by *Aurora Energy Limited* to operate and maintain its network.
166. The Reporting Officer disagreed with *Aurora's* submission (OS457.217), and noted that the 'change in ground level' requirement was intended to apply to the change in ground level at the completion of the earthworks, not the maximum depth of cut or fill undertaken during an earthworks project. He also noted that it was unlikely that utility providers will need to significantly alter ground level for the operation of utilities, such as pole, pipe or cable installations and therefore recommended that *Aurora's* submission be rejected (s42A Report, Section 5.11.1, p. 93).

3.5.4.1 Decision and reasons

167. We reject the submission by *Aurora Energy Limited* (OS457.217) to exempt network utilities from the performance standard earthworks small scale threshold, however, we note amendments to Rule 8A.5.1.3 to refer to 'finished ground level' and add a definition of 'finished ground level' in response to OS634.26 in Section 3.5.3 above goes some way to address the concerns raised by *Aurora*. We consider these amendments will ensure that routine operation and maintenance of *Aurora's* assets would not be unduly constrained.

3.5.5 Maximum volume of cut and fill

3.5.5.1 Requests to amend the maximum volume of earthworks in the Port Zone and exempt this zone from threshold in proximity to MHWS

168. The small-scale thresholds performance standard applying in the Port Zone is set out in Rule 30.6.1.1 (new Maximum Volume of Combined Cut and Fill performance standard, Rule 8A.5.1.5) as follows:

Zone/Area		1. Port Zone	2. Within 5m of a water body ¹ or MHWS
i	Maximum change in ground level	1.5m	0.5m
i	Maximum volume of combined cut and fill	30m ³ per 100m ² of site	1m ³
i	Maximum area	—	25m ²

¹See Rule 10.3.3 for how setbacks from waterbodies will be measured.

169. Unlike the earthworks standards for most other zones, the Port Zone provisions did not include different slope categories to reduce the volume of earthworks permitted on steeper slopes.
170. *Port Otago Limited (POL)* (OS737.30) sought to amend the maximum volume of cut and fill allowed in the Port Zone (Earthworks - Small Scale Thresholds performance standard – formerly Rule 30.6.1.1 - new Rule 8A.5.1.5) to be 100m³, which is the standard included in the operative Plan (Rule 17.7.3(ii)). The permitted threshold for earthworks in the Port Zone had changed from the Operative Plan scale threshold limit of 100m³ volume of excavation and fill on a site with an area of 2ha on a 2-yearly basis, to 30m³ volume per 100m² of site area on a 2-yearly basis in the 2GP, or just 1m³ where carried out within 5m of MHWS. We note that the landholding of *Port Otago Limited* in the Port Zone is approximately 26ha, so, with the exception of earthworks in proximity to MHWS, the 2GP approach enables significantly more earthworks.
171. In addition, *POL* sought that the smaller threshold for earthworks within 5m of MHWS, not apply in the Port Zone.
172. *POL* noted that the Earthworks controls are less enabling than the current operative Plan provisions for the Port Zone, and considered that no specific reason had been identified for this.
173. *POL's* view was that to enable Port activities, earthworks are invariably necessary in close proximity to the coast and the 2GP rules will result in unnecessary consent requirements and compliance costs for earthworks associated with normal port activities. In *POL's* view, a permitted activity standard requiring erosion and sediment control measures to be installed, could address any issues relating to earthworks within proximity to the coast.
174. This submission point was supported by *the Oil Companies* (FS2487.116) who also considered that the proposed threshold was too restrictive within an operational Port Zone.
175. The Reporting Officer recommended that the submission of *POL* and further submissions of *the Oil Companies* were accepted, and that as long as all other performance standards were met, notably sediment control rules, that earthworks in the Port Zone should be exempt from the restrictive thresholds applying within 5m of a water body or the MHWS. The Reporting Officer acknowledged that due to the nature of Port activities, earthworks exceeding 1m³ in volume will often be necessary within 5m of the MHWS, and given there was less risk of contamination to surrounding water bodies in the Port Zone (due to the predominantly flat nature of the site, and the fact that it is entirely asphalted) it seemed unduly restrictive to require resource consent for these earthworks (s42A Report, Section 5.6.4, p. 77).
176. At the hearing, Mr Len Andersen, legal counsel called by *POL*, tabled legal submissions that supported the Reporting Officer's recommendation in the s42A Report. Following the hearing, the Reporting Officer reiterated the s42A Report recommendations to retain earthworks thresholds but to remove restrictions relating to proximity to a water body in the Port Zone.

3.5.5.2 Decision and reasons

177. When considering the submissions relating to Port Zone 2GP provisions, we remained cognisant that earthworks can have adverse effects on surrounding properties. These include safety issues relating to the exacerbation of hazards, as discussed above. Other issues arise when poorly contained sediment run-off enters surrounding sites and water bodies, bringing contaminants and debris. These issues, along with dust, soil deposits, and noise from vehicle movement can create both amenity and health concerns and can impact on the cultural values of Manawhenua.

178. Sometimes industries or groups need to undertake earthworks in sensitive areas. As a result, 2GP earthworks rules can limit the ability of essential services and industries, such as ports, to undertake earthworks. More flexible exemptions, therefore, have been proposed for some port-related activities.

179. We accept the submission of *Port Otago Limited* (OS737.30) and the further submissions of *The Oil Companies* to be exempt from restrictions on depth, volume and area for earthworks carried out in the Port Zone within 5m of a water body or MHWS. In making this decision, we agree with the Reporting Officer's reasons and subsequent recommendation in the s42A Report.

180. The amendments required for this decision, including consequential amendments are:

- Amend the Earthworks – small scale thresholds (Rule 8A.5.1) to include earthworks in the Port Zone within the list of earthworks that are always considered earthworks – small scale and therefore exempt from the small-scale thresholds (rules 8A.5.1.3, 8A.5.1.4 and 8A.5.1.5).

The following earthworks are always considered earthworks - small scale:

d. earthworks in the Port Zone; {EW 737.30²}

² EW 737.30: Under notified Rule 30.6.1.1.a.iii.1, earthworks in the Port Zone were only exempt from the 'maximum area' element of the small-scale threshold. The exemption has been expanded, in response to EW 737.30, so that earthworks in the Port Zone are also exempt from the other elements of the scale threshold – i.e. 'maximum change in finished ground level' and 'maximum volume of combined cut and fill'.

181. See Appendix 1 (amendments attributed to EW 737.30 and others).

3.5.6 Request relating to the Residential Zones

182. *Michael Doherty* (OS695.1) sought amendments to earthworks thresholds in Residential Zones to allow for higher volumes of combined cut/fill in cases where property access for approved residential purposes would otherwise be adversely impacted by the proposed thresholds.

183. The Reporting Officer acknowledged that the earthworks provisions do restrict the ability of residents to develop their properties, including by establishing family flats and property access, but relied on the evidence of Mr Paterson that these activities should be undertaken only where it can be shown that no adverse effects will arise from earthworks exceeding the permitted thresholds. He recommended that the submission be rejected and that the volume of cut and fill thresholds for earthworks in residential zones be retained without amendment (S42A, Section 5.6.4, pp. 76-77)

3.5.6.1 Decision and reasons

184. We reject the submission of *Michael Doherty* (OS695.1) and have retained the earthworks – small scale maximum volume of combined cut and fill thresholds for residential zones. Our decision is based on the expert advice of Mr Paterson that the volume thresholds are a reasonable level to require a consent to assess the potential for adverse effects and apply conditions on consent or other restrictions on what is consented as required.

Names and addresses of persons to be served with a copy of Notice of Appeal: Industrial Port

1. The Dunedin City Council, 2gpappeals@dcc.govt.nz
2. BP Oil NZ Ltd and Mobil Oil NZ Ltd and Z Energy Ltd (“the Oil Companies”), Attention: Georgina McPherson, PO Box 33817, Takapuna, Auckland 0740
3. Chalmers Properties Limited, rhibbs@chalmersproperties.nz
4. Forest and Bird NZ, s.maturin@forestandbird.org.nz
5. Fonterra Ltd, Attention: Dean Chrystal, PO Box 1845, Christchurch 8140
6. Harboursides and Peninsular Preservation Coalition, craig@ihug.co.nz
7. Horticulture New Zealand, angela.halliday@hortnz.co.nz
8. Liquigas Ltd, Attention: Claire Hunter, PO Box 489, Dunedin 9054
9. LPG Association of NZ Inc., peter@lpga.org.nz
10. Mercy Dunedin Hospital Ltd, Attention: Louise Taylor, PO Box 489, Dunedin 9054
11. New Zealand Fire Service Commission, Attention: Perri Duffy, PO Box 6345, Auckland 1141
12. Oceana Gold (New Zealand) Ltd, jackie.stjohn@oceanagold.com
13. Otago Regional Council, warren.hanley@orc.govt.nz
14. Ravensdown Limited, Attn: Chris Hansen, C/- CHC Ltd, PO Box 51-282, Tawa, Wellington 5249
15. Rockgas Ltd, PO Box 10742, chris.drayton@contactenergy.co.nz
16. Save The Otago Peninsula (STOP) Inc Soc, stopincsoc@gmail.com
17. University of Otago, Property Services Division, murray.brass@otago.ac.nz