

**BEFORE THE COMMISSIONERS APPOINTED ON BEHALF OF DUNEDIN CITY
COUNCIL**

Under the Resource Management Act 1991

In the Matter of the Dunedin City Council
Plan Change 1 – Stage 2 (Non-
Heritage Topics)
Change TA3 – Construction Vibration

**UNIVERSITY OF OTAGO / ŌTĀKOU
WHAKAKAIHU WAKA
Submitter S251**

CARMEN TAYLOR ON BEHALF OF THE UNIVERSITY OF OTAGO

RESPONSE TO DRAFT RIGHT OF REPLY

25 SEPTEMBER 2025

1. The University of the Otago / Ōtākou Whakakaihu Waka (**the University**) presented legal submissions and planning evidence to the Hearing Panel, on 'Change TA3 – Construction Vibration' (**Change TA3**) to the Dunedin City Second Generation District Plan (**2GP**), on Wednesday 20 August 2025.
2. At the hearing the Hearing Panel requested that myself (Carmen Taylor), the University's planning expert, provide comment on Health New Zealand's proposed amended Rule 4.5.5.X.b, particularly the 'exemption' contained in Clause (b)(i) of this rule. This comment was to be provided following the outcome of conferencing on the rule by two technical experts, namely Mr Brendon Shanks (on behalf of Health New Zealand) and Mr Jamie Exeter (on behalf of the Dunedin City Council (**Council**)).
3. On 22 September 2025, Council's policy team provided me with two documents (as listed below in **paragraph 5**) and requested that any response to the documents be provided to them by midday on Thursday 25 September 2025. This is my response on behalf of the University.
4. In preparing this response, I have complied with the Code of Conduct for Expert Witnesses (Environment Court Practice Note 2023). I also confirm that I have abided by the obligations of '9.3 – Duty of Confer' of the Code of Conduct in that my consideration of the documents provided by Council, and my response, has only been discussed with the one other party to this process, namely Ms Joanne Dowd from the Port of Otago (**the Port**). While I have discussed this response with Ms Dowd, this response is my response and is not to be considered a joint response with the Port.
5. The two documents received from Council, and to which I am responding, are as follows:
 - (a) A letter, dated 12 September 2025, from Styles Group (Mr Exeter) to Council titled 'Plan Change 1 Minor Improvements – Health New Zealand Submission' and hereafter referred to as the '**Agreed Rule Letter**'.
 - (b) Council's Reporting Officer's draft Right of Reply (**draft RoR**) containing a response to the '**agreed rule**' appended to the Agreed Rule Letter, and the Reporting Officer's subsequent recommended changes to the agreed rule.
6. As traversed in my evidence (dated 31 July 2025), I considered that the 'building damage' rule (Rule 4.5.4.X.b) should not apply in circumstances where scheduled heritage buildings and structures are located on the same landholding as the proposed construction activity. As a brief overview, my reasons for this opinion were that: the heritage provisions of the 2GP provide for the protection of the protected parts of such buildings and structures; Council's vibration expert did not support the application of the vibration limits to buildings on the same site as the construction activity; and, the application of a non-complying activity status to scheduled heritage buildings and structures, where the limits are exceeded (given that the limits relate to the avoidance of any damage to buildings), is not an efficient or effective resource management approach. For the above reasons, my evidence requested an amendment to the 'exemption' in Rule 4.5.4.X.b.iv (as outlined in Appendix 2 of my evidence).
7. The agreed rule, as proposed by Mr Exeter and Mr Shanks (appended to the Agreed Rule Letter), does not 'exclude' scheduled heritage buildings or structures, located on

the same landholding as the construction activity, from the 'exemption' contained in Clause (i). The reason for this approach, as outlined in the Agreed Rule Letter, is that that DIN 4150-3:2016 (**the DIN Standard**) (upon which the rule is based) is designed to protect buildings from minor damage and the DIN Standard is not an appropriate too for the avoidance of structural damage. Therefore, the proposed agreed rule is consistent with the amendments I requested within my evidence, and for the reasons outlined in my evidence, I support the agreed rule proposed by Mr Exeter and Mr Shanks. The agreed rule, in relation to the 'exemption', is as follows:

(i) Except that this standard does not apply to vibration received at a building on the same site as the construction and site investigation activity, and the building and land on which the construction and site investigation activity is undertaken are in the same ownership.

8. I acknowledge that the Agreed Rule Letter also states if the 2GP objectives and policies aim to protect heritage buildings from minor damage, irrespective of ownership, then the application of the DIN Standard would be appropriate.

9. The draft RoR recommends further amendments to the agreed rule. In the context of the University's submission, and my hearing evidence, the relevant recommended amendments, and the stated reasons for the amendments, are as follows:

(a) Amendments to Clause (i) (the 'exemption') of the agreed rule, whereby a suitably qualified person must certify that the construction works will not cause structural damage of a scheduled heritage buildings or structures located on the same site, within the same land ownership, as the construction activity. The stated reason for this recommended amendment, as I read the draft RoR, is that the exception provided in the agreed rule could theoretically result in structural damage to scheduled heritage buildings / structures located on the same site as a construction project, with such damage being a 'permitted activity'. In addition, the draft ROR states that the proposed exemption 'does not give effect' to proposed Policy 13.2.1.10 (the policy proposed by Change TA3) which only allows adverse effects from vibration on scheduled heritage buildings / structures to be insignificant. The recommended amendment is as follows:

(i) Except that this standard does not apply to vibration received at a building or structure on the same site as the construction and site investigation activity and the building or structure and land on which the construction and site investigation activity is undertaken are in the same ownership, provided that:

1. where the building or structure is a scheduled heritage building or scheduled heritage structure, a suitably qualified person certifies that the works can be undertaken without causing structural damage to the scheduled heritage building or structure.

(b) The draft RoR recommends a further amendment to the agreed rule that states that scheduled heritage buildings and structures are 'structures that are sensitive to vibration and are of great intrinsic value' in terms of the vibration limits that are relevant under the DIN Standard (i.e., Line 3 under the DIN Standard whereby the lowest vibration limits apply - as discussed in the section

32 Report, prepared by Styles Group (dated 5 May 2023)). The stated reason for this recommended amendment, as I read the draft RoR, is that the agreed rule's reliance on the DIN Standard itself, rather than reliance on actual limits as proposed in the section 42A Report, creates uncertainty and may lead to interpretation disputes. Given this context, the recommended additional Rule 4.5.4.X.b clause is as follows:

(iii) *Scheduled heritage buildings and scheduled heritage structures are always considered to be 'structures that are particularly sensitive to vibration and are of great intrinsic value' in terms of assessment under DIN 4150–3:2016.*

- (c) Finally, while the agreed rule provides a restricted discretionary activity consent pathway where the DIN Standard is not complied with, the draft RoR recommends retaining a non-complying activity status where the vibration limits in the DIN Standard are exceeded at night and in relation to scheduled heritage building and structures. The stated reason is that this approach aligns with the existing architecture of the 2GP.

10. I oppose the draft RoR's three recommended amendments to the agreed rule that I have outlined above (paragraph 9(a) to (c)), for the same reasons that I outlined in my evidence. In relation to the reasons for the recommended amendments to the agreed rule, I consider:

- (a) The recommended new Clause (i)(1) seems to rely solely on Policy 13.2.1.10, and has not considered the broader objective, policy and rule framework that applies to the scheduled heritage buildings and structures under the 2GP. I discussed this within my evidence and therefore do not intend to repeat this assessment within this response. Rather, I reiterate that, in my opinion, the 2GP heritage provisions adequately provide for the protection of the protected parts of scheduled heritage buildings and structures. Therefore, the recommended new Clause (i)(1) is not necessary. I also note that reliance on a proposed policy (Policy 13.2.1.10), which is not yet operative and which could be subject to amendment, is not appropriate (particularly as the rule that is under discussion seems to be directly and solely connected to this policy, and vice versa).
- (b) The recommended new Clause (iii) is also unnecessary as, based on my understanding of the DIN Standard, the sensitivity of buildings / structures to vibration is a matter of assessment under the DIN Standard. I also note, that while I agree that scheduled heritage buildings and structures have effectively been identified as having significant intrinsic value, in the absence of structural technical advice, it is an assumption on the Reporting Officer's behalf that all such buildings / structures are sensitive to vibration.
- (c) The recommended retention of non-complying activity status for exceedance of the DIN Standard in relation to scheduled heritage buildings and structures is not an effective or efficient resource management approach. The purpose of the DIN Standard, as I understand it, is that the vibration limits will avoid any damage to buildings and in circumstances where the limits are exceeded then management measures can be put in place to avoid or manage the risk from

vibration. In this context, in my opinion, application of a restricted discretionary activity status is appropriate.

11. In summary, I request the acceptance of the agreed rule as appended to the Agree Rule Letter.



Carmen Taylor

On behalf of the University of Otago / Ōtākou Whakakaihu Waka

25 September 2025