

**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 removal of the Port Chalmers Principal Centre from the Port Noise Control Mapped Area at Port Chalmers instead of excluding properties that are located within the Commercial Principal Centre from the definition of “noise affected property”.

1.2 The reasons for the appeal are:

While the removal of the Port Chalmers Principal Centre from the Port Noise Control Mapped Area meets part of Port Otago’s objective in that it removes any obligation by Port Otago to acoustically treat properties within that zone, it also has the undesirable effect that it removes the requirement for property owners to insulate properties within that zone under Rule 9.3.1.2 when a new building is constructed or a new use is established in an existing building for noise sensitive activities.

1.3 I seek the following relief:

- (a) The reinstatement of the Port Chalmers Principal Zone within the Port Noise Control Mapped Area; and

- (b) Amend the definition of “noise affected property” so that it reads *“Any noise sensitive activity within the Port Noise Control Mapped Area excluding the Port Chalmers Principal Zone...”*.

II SECOND APPEAL

2.1 The decision I am appealing is:

The additional obligations placed on Port Otago as a result of the amendment of the definition of noise sensitive activities.

2.2 The reasons for the appeal are:

Port Otago agreed to provide mitigation for residential properties within the Port Noise Control Mapped Area. The change to the definition of noise sensitive activities expands the uses that are potentially liable for mitigation.

2.3 I seek the following relief:

Further amend the definition of “noise affected property” so that it reads:

Any noise sensitive activity that is a residential activity within the Port Noise Control Mapped Area *excluding the Port Chalmers Principal Zone* and shown on the Port Noise Contour Map as receiving levels of port noise above 55 dBA L_{dn} . This definition excludes properties: that have received acoustic treatment in accordance with rule 30.5.4 and appendix 30B or. that are receiving port noise at or below the certified level of port noise.

III THIRD APPEAL

3.1 The decision I am appealing is:

The amendment of the requirements in relation to the measurements or assessment of Port Noise required by the Appendices to Chapter 30 Port Zone of the measurement and assessment of L_{eq} (15 minute) by the inclusion of adjustments for any special audible characteristics to any L_{eq} (15 minutes) made in accordance with clause 7.3 and A6 of NZS6809:1999 excluding audible warning devices.

3.2 The reasons for the appeal are:

- (a) The Leq (15 minute) measurement is an easy convenient check on the L_{dn} measurements for the mitigation and compensation regime that Port Otago has agreed to implement;
- (b) The adding of special audible characteristics to the Leq measurements effectively increases those measurements by 5 dBA meaning they will read at 5 dBA more than the comparable L_{dn} measurements as the nature of Port Noise means the 5 dBA penalty is invariably added to the measured dBA level;
- (c) The effect of an increase of 5 dBA in the Leq measurements will potentially significantly increase the number of properties that Port Otago is required to purchase or acoustically treat being properties that were not intended to fall into the over 65 dBA category as they are receiving more than 60 dBA L_{dn} but less than 65 dBA L_{dn} ;
- (d) There is no logic in excluding audible warning devices from Leq measurements as they are avoidable noise that can properly incur a penalty to an Leq measurement.

3.3 I seek the following relief:

The amendment of clause 1A to read “*There shall be no adjustment for any special audible characteristics to any Leq (15 minutes) made in accordance with clause 7.3 A6 of NZS6809:1999 apart from adjustments for audible warning devices*”.

IV FOURTH APPEAL

4.1 The decision I am appealing is:

The amendment of the minimum reporting and recording requirements in Rule 30A.2 in Appendix 30A Port Noise Management Plan.

4.2 The reasons for the appeal are:

The amended reporting requirements are unnecessary, expensive and provide less satisfactory reporting than the current method used by Port Otago which accurately identifies sources of noise that have the potential to cause disturbance at Careys Bay.

4.3 I seek the following relief:

Rule 30A.2 be amended by amending subsections 1. and 2. as follows:

1. The Port Operator must maintain at its expense, sound level monitoring equipment to ensure the continuous measurement of port noise emanating from port activities 24 hours a day and 7 days a week and, in addition, maintain at least one permanent real time noise monitor in the residential zone at Careys Bay that makes a calibrated audio recording of noise events above a pre-set threshold and one permanent real time noise monitor within the boundaries of the Port Zone that makes a calibrated audio recording of noise events above a pre-set threshold and obtains image recording footage of Lmax exceedances.
2. The Port Operator must provide the results of the sound level monitoring to the Council and the Port Noise Liaison Committee not less than four times a year in a summary form showing Leq and calculated L_{dn} sound exposure with the real time data being used to cross reference significant Lmax events by reference to both port noise and non-port noise events. This monitoring must highlight significant port noise emissions and correlate those with port activity and wind speed and wind direction data.

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

.....
 Date

17/12/18

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)

Telephone: Phone (03) 477 2238

Fax: Fax (03) 474 5588

Contact Person: Mr Len Andersen (counsel for appellant)
P O Box 5117, Dunedin;
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Email: len@barristerschambers.co.nz

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
LMcLachlan@portotago.co.nz
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> • mooring, berthing, departure, manoeuvring, refuelling, storage, maintenance and repair of vessels; • embarking and disembarking of passengers; • loading and unloading of cargo and storage facilities of cargo; and • any ancillary activities directly associated with the operation of the	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	Reasons for Submission
		<i>facility, including offices and staff facilities.</i>	
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 <u>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.</u></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> <i>enable them to continue to operate efficiently and effectively, while minimising as far as practical any adverse effects on surrounding areas; and</i> <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 <u>office</u>, 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
		<i>continued use for port-related and other industrial activities.</i>	
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: <i>10.3.3 Setback from Coast and Water Bodies</i> <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> <i>1. 20m from mean high water springs (MHWS); and...</i> <i>...6. Except, the following are exempt from this standard:</i> <i>a. natural hazard mitigation activities;</i> <i>...</i> <i>n. buildings, structures and earthworks associated with port activity;</i> <i>o. any buildings, structures and earthworks within the Harbourside Edge Zone.</i>	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 is 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
		properties) within a mapped area (port noise control mapped area); Amend 5th bullet point in paragraph 5 to read • 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.	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	Require land use activities Enable the port 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,	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 <i>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 9.3.1.2 to 9.3.1.4 30B.1.1 to 30B.1.4 apply to the offer to purchase or provide acoustic treatment.</i> <u>30B.1.21</u> Owner to decide <i>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.</i>	
Appendix 30B Port Noise Mitigation Plan	Amend	Amend text in 30B.2 as follows: <i>30B.2 Mitigation for noise affected properties 60dBA and above</i> <i>The port operator must contribute to the costs of acoustic treatment for noise</i>	There is a referencing error in this clause.

2GP Reference	Support/Oppose/Amend	Decision Sought	Reasons for Submission
		<i>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 <u>30B.2.1 to 30B.2.2</u> apply to any offer to provide acoustic treatment.</i>	
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 <u>30B.3.1 to 30B.3.2</u> 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

**FURTHER SUBMISSION IN SUPPORT OF, OR IN OPPOSITION TO,
SUBMISSION ON PUBLICLY NOTIFIED PROPOSED
POLICY STATEMENT OR PLAN**

Clause 8 of First Schedule, Resource Management Act 1991

TO: Further submissions on 2GP,
Dunedin City Council
Email: districtplan@dcc.govt.nz

Name of person making submission: **Port Otago Ltd**

This is a further submission in opposition of a submission on the following proposed policy statements or plan or on the following variation to the proposed policy statement or a variation to the following proposed plan or a variation to a change proposed in the following existing policy statement of plan (the proposal):

The proposed second generation Dunedin City District Plan ("2GP")

I am a person who has an interest in the proposal that is greater than the interest the general public has because Port Otago Ltd is the sole occupier of the port zone which is the subject of this submission.

I oppose the submissions of:

- (a) **James Foerster submission 292.**
- (b) **Christopher Hilder submission 311.**
- (c) **Careys Bay Association submission 391.**
- (d) **Kris Nicolau submission 398.**
- (e) **Bronwen Joan Thomas submission 494.**
- (f) **Blair Francis Smith submission 497.**
- (g) **Eryn Makinson submission 516.**
- (h) **Mary McFarlane submission 882.**
- (i) **Katrina Varian submission 981.**

The particular parts of the submissions I oppose are:

The whole of each submission.

The reasons for my opposition are:

(a) Careys Bay residential amenity (submissions 311 & 516)

It is not appropriate to have a provision protecting residential amenity in Careys Bay as it creates a hierarchy that potentially gives such amenity priority over the operation of the port at Port Chalmers meaning there can be no proper balancing of the wider interests of the Dunedin community in considering the effects of the operation of the port.

(b) Port Noise (submissions 311, 391, 398, 516, 882 and 981)

- (i) The submitters seek to change the existing noise regime which was put in place by the Environment Court with the agreement of the Careys Bay Association. They propose enforceable noise limits even though the Environment Court accepted that such provisions were inappropriate, unworkable and unenforceable;
- (ii) The noise regime in the existing district plan has proved enormously successful which is reflected by the fact that there has been no attempt to replace it with specified noise limits by any resident living in Port Chalmers when the Port Chalmers residents have the greatest exposure to port noise;
- (iii) All of the submitters relate to Careys Bay residents who are protected from the worst effects of port noise by the topography of the area and do not have significant adverse effects from port noise;
- (iv) The most efficient means of dealing with noise complaints is for the complaints to be made to Port Otago Ltd in the first instance.

(c) Containers at Boiler Point (submissions 292, 311, 391, 398, 494, 497, 511 and 885)

- (i) A limit on stacking containers to three high at Boiler Point would not have any practical effect because Port Otago Ltd has existing use rights to stack containers five high so long as there is a constantly changing landscape;
- (ii) The proposed rule in the 2G plan is preferable to the existing rule for two reasons:

-3-

- (1) The existing rule allows false claims to be made that Port Otago Ltd is acting contrary to the current zone provisions; and
- (2) The necessity to constantly change the skyline requires unnecessary activity from Port Otago which is inefficient and results in avoidable noise being created.

(d) Lighting (submission 398)

The rules in relation to light spill are appropriate.

I seek that the whole of each of the submissions be disallowed.

I wish to be heard in support of my further submission.

If others make a similar submission, I will consider presenting a joint case with them at a hearing.



.....
L A Andersen
Counsel for Port Otago Ltd

3/3/16
.....
Date

Address for service of person making further submission:

Lesley McLauchlan, Port Otago Ltd, PO Box 8, Port Chalmers (Email
LMcLauchlan@portotago.co.nz)

Telephone: (03) 472 7890

Fax:

Contact person:

Counsel Instructed: L A Andersen

Telephone: (03) 477 3488

Fax: (03) 474 0012

Email: len@barristerschambers.co.nz

Note to person making further submission

A copy of your further submission must be served on the original submitter within 5 working days after it is served on the local authority.

If you are making a submission to the Environment Protection Authority, you should use Form 16C.

Note to person making further submission

A copy of your further submission must be served on the original submitter within 5 working days after it is served on the local authority.

If you are making a submission to the Environment Protection Authority, you should use Form 16C.

Introduction

Welcome to the online submission form for the Proposed Second Generation Dunedin City District Plan.

Submissions are open until 5pm Tuesday 24 November 2015.

Fill out your details below and then click the "Make a Submission" tab to find the provisions you wish to submit on.

Privacy Statement

Please note that submissions are public. Your name, contact details and submission will be included in papers that are available to the public and media. DCC will only use your information for the purpose of this plan review process.

Submitter Details

First Name: **Christopher**
Last Name: **Hilder**
Street: **9 Slant Street**
Suburb: **Careys Bay**
City: **Port Chalmers**
Country: **New Zealand**
PostCode: **9023**
Daytime Phone: **03 470 5019**
Mobile: **027 463 8422**
eMail: **cj.hilder@clear.net.nz**

Trade competition and adverse effects:

☒ I could ☒ I could not

gain an advantage in trade competition through this submission

☒ I am ☒ I am not

directly affected by an effect of the subject matter of the submission that :

a. adversely affects the environment, and

b. does not relate to the trade competition or the effects of trade competitions.

Wishes to be heard:

☒ Yes

☒ I do NOT wish to speak in support of my submission and ask that the following submission be fully considered.

If others make a similar submission I will consider presenting a joint case with them at the hearing

☒ Yes

☐ No

Hearing Needs:

Correspondence to:

☒ Submitter

☐ Agent

☐ Both

Submission**Consultation Document Submissions****D. Management Zones > 15. Residential Zones > 15.2 Objectives and Policies**

- ☐ I support the provision
- ☐ I oppose the provision
- ☒ I seek to have the above provision amended

The decision I seek is (give precise details):

Specific mention of the need to protect the special amenity of Careys Bay

Reason for my views (you can add supporting documents):

I believe that a district plan should serve as a useful guide to planning over longer periods than merely 10 years. As far as possible, the objectives of a district plan should not change unless there is a real reason brought about by a change in the situation or circumstances. Careys Bay still has the same special qualities of residential amenity that the previous district plan protected and there is no reason to remove this protection.

E. Major Facilities Zones > 30. Port > Rules

- ☐ I support the provision
- ☐ I oppose the provision
- ☒ I seek to have the above provision amended

The decision I seek is (give precise details):

Addition of enforceable noise controls in accordance with NZS6809:1999. Removal of the exemptions for log and container handling activities in 2 b.

Reason for my views (you can add supporting documents):

I recognise NZS6809:1999 as a guiding document for control of port noise, and it calls for upper limits on noise to be set. Expansion of port activities currently taking place creates the risk of increased adverse effects arising from noise. Like any industry there need to be limits placed on the level of adverse effects the industry can create.

E. Major Facilities Zones > 30. Port > Rules > Rule 30.3 Activity Status

- ☐ I support the provision
- ☐ I oppose the provision
- ☒ I seek to have the above provision amended

The decision I seek is (give precise details):

Container stacking at Boiler Point should be limited to 8m height.

Reason for my views (you can add supporting documents):

The original resource consent for construction of the Boiler Point reclamation placed a limit on the height of container stacking of 8m. The Environment Court made it clear at the time that this provision was intended to protect the visual amenity of Careys Bay. The situation has not changed since then: the residential area is still occupied by residents, the port area is still occupied by container stacks. There has never been a good reason for undoing the original decision of the Environment Court.

E. Major Facilities Zones > 30. Port > Rules > Rule 30.5 Land Use Performance Standards > 30.5.4 Port Noise

- ☐ I support the provision
- ☒ I oppose the provision
- ☐ I seek to have the above provision amended

The decision I seek is (give precise details):

removal of 6a .

Reason for my views (you can add supporting documents):

The port is an economically significant industry, but this does not exempt it from having its adverse effects on the environment controlled.

Attached Documents

File
No records to display.



THE PROPOSED
**SECOND
GENERATION
DISTRICT PLAN**

24 NOV 2015

SUBMISSION FORM

This is a submission on the Proposed Second Generation Dunedin City District Plan (2GP) for Dunedin pursuant to Clause 6 of Schedule 1 of the Resource Management Act 1991

Once you have completed this form, include any supporting documentation and return to the Dunedin City Council.

MAKE YOUR SUBMISSION:

Online: www.2gp.dunedin.govt.nz

Email: planning@dcc.govt.nz

Post to: Submission on 2GP
Dunedin City Council
PO Box 5045
Moray Place
Dunedin 9058

Deliver to: DCC Customer Services Agency
Ground floor
Civic Centre
50 The Octagon
Dunedin

Please note that all submissions are public information. Your name, contact details and submission will be available to the public and the media. The DCC will only use your information for the purposes of this plan review process.

All submissions must be received before 5pm on Tuesday, 24 November 2015.

SUBMITTER DETAILS *Fields indicated by an asterisks (*) are mandatory.*

Full name of submitter or agent*

Joseph Cecchi

Organisation (if submission on behalf of an organisation)

Careys Bay Associates Ltd

Address for service for submitter or agent* Please provide an address where you would like correspondence sent to

Email address SR Cecchi@yahoo.co.nz

Postal address* 30 Harbour Ten. Port Chalmers Postcode* 9023

Phone number* 472 8754 Mobile number

TRADE COMPETITION *Fields indicated by an asterisks (*) are mandatory.*

Please note: If you are a person who could gain an advantage in trade competition through your submission, your right to make a submission may be limited by clause 6(4), Schedule 1 of the Resource Management Act 1991.

Please tick one of the following*

I could ☐ could not ☒ gain an advantage in trade competition through this submission.

If you could gain an advantage in trade competition through this submission, please tick one of the following*

I am ☒ am not ☐ directly affected by an effect of the subject matter of the submission that:

(a) adversely affects the environment; and

(b) does not relate to trade competition or the effects of trade competition

HEARINGS *Fields indicated by an asterisks (*) are mandatory.*

Please tick one each of the following*

I would like ☒ would not like ☐ to be heard in support of my submission

If others submitters make a similar submission, I will ☐ will not ☒ consider presenting a joint case with them at a hearing

SUBMISSION DETAILS Fields indicated by an asterisks (*) are mandatory.

Please identify the specific provision(s) of the Proposed Second Generation Dunedin City District Plan that your submission relates to*.

Provision name and number (where applicable):

For example: Rule 15.5.2 Density

30.5.4

30.5.4

Section name (where applicable):

For example: the residential zones

Map layer name (where applicable):

For example: General Residential 1 Zone

Scheduled item number (where applicable):

For example: Reference #T147 - Scheduled Tree at 123 Smith Street

My submission is*

☐

I support the provision

☒

I oppose the provision

☐

I seek to have the above provision amended

Choose the most appropriate statement. If more than one applies, for example you support the provision in part but wish to have part amended (removed or changed), choose 'have the provision amended' and explain this in the 'decision I seek' field.

The decision I seek is that (please give precise details, such as suggested amended wording)*

Container stack - Reduced to a Permit 3 container high

Port Noe Mangrove needs to set limits and enforcement.

Reasons for my views (you may attach supporting documents)*

Documents attached

Signature of submitter (or person authorised to sign on behalf of submitter)
(A signature is not required if you make your submission by electronic means.)

Date

28/11/15

The Careys Bay Association (we) feel the approach to Noise Management on Boiler Point by the current District Plan is inadequate. We would like to see the following:

- 1) We applaud the DCC for taking total control of the Noise Management at Port Otago.
- 2) A noise plan which must set limits and enforces them for the Residents of Port Chalmers.
 - a) Under the current scenario any complaints are recorded by Port Otago and the DCC and nothing is ever done about it.
 - b) The existing DCC District Plan contains an exemption which effectively removes all enforceable noise limits with respect to noise emanating from the Port in lieu of a mitigation package for only those worst affected. This in effect allows Port Otago to increase noise relatively unhindered. This exemption appears to be at odds with the requirements of section 16 of the RMA.
 - c) We note that section 16 of the RMA requires the emitter of noise to adopt the best practicable option to ensure that the emission of noise does not exceed a reasonable level. We further note that NZS 6802:2008 states that the best practical option in relation to the emission of noise, means the best method of preventing or minimizing the adverse effects on the environment considering, among other things, certain matters defined in the RMA. We are concerned that the existing exemption/regime appears to remove the emphasis for Port Otago to ensure that the emission of noise from the Port is prevented or minimized.
 - d) If limits on noise were set and enforced.
 - i) All parties would have a firm bases on what is and is not acceptable noise levels.
 - ii) At times noise levels are intolerable and many time totally unnecessary.
- 3) We were given an opinion by a Wellington law firm that we would be able to have a noise plan implemented through the court but like all of these decisions it was costly.
 - a) We feel if the DCC implemented such a plan :
 - i) It would be a leader in New Zealand and help all ports in New Zealand set regulations for Port Noise Management.
- 4) We would like to see a real time monitoring of noise at Port Otago for both the Port Company and the Local Residents accessible on line.

- a) This again would:
 - i) Be a model of all ports New Zealand wide.
 - ii) Encourage good relationship with the Port Chalmers community.
 - iii) Have a proactive approach to noise control, they could immediate action as the noise occurs instead of reacting to the public informing them of a noise problem.
- 5) We feel that the current noise management plan is out of date with current technology and methods. The model they use needs to be updated and independently peer-reviewed.
 - a) We also consider that the existing Noise Model (currently used as the only means of determining whether a property is noise affected or not) should be peer reviewed to determine the degree to which it is affected. The terms of reference for any such review should include independent noise measurement and monitoring throughout Careys Bay.
 - b) We are concerned that current noise management policies does not adequately consider or address the potential foreseeable effects of the wharf extension. The primary issues we have with this report are:
 - i) There is scant information on the operating noise levels and associated effects resulting from the proposed port expansion. The report concentrates on construction noise which is only for a relatively short period.
 - ii) It is not clear in the report if the modelled noise contours and/or predicted levels mentioned in the report have been calculated in accordance with NZ Standard methods of noise measurement. I.e. whether or not they include the penalty that should be included for impact and tonal components to reflect the noise nuisance associated with this type of noise. It is assumed that this is not the case and therefore the report is likely to be misleading.
 - iii) We are concerned that only data from previous noise surveys has been used to assess the noise environment in Careys Bay and other areas last results were obtained in 2003. It is our contention that noise from the Port has
 - increased significantly since that time, in line with significantly increased levels of container handling. We believe that the use of outdated information does not provide a true representation of the existing noise environment and that predicted noise levels based on old data are therefore underestimated.
 - iv) We consider that a full peer review of the Assessment of Noise Effects report and Noise Model (including extensive noise measurement and

monitoring) is the only truly transparent process for establishing the validity of the report and to allay the above concerns.

- 6) We feel that leaving reports of noise complaints up to Port Otago is inadequate and it should be administrated by the DCC and all complaints should be directed to the DCC rather than Port Otago, which the review of complaints totally impartial.
 - a) We have taken our complaints to the Ombudsman but find the Port is not subject to ruling of the Ombudsman and we are left without due process under the current rules. If a proper noise management plan was initiated by the DCC, the noise complaints could be managed properly and our complaints taken seriously.
- 7) The wharf expansion, if and when it happens, will cause new problems with noise in Careys Bay and will affect the contours of the current management plan. A proper and meaningful consultation including all the relevant parties involved would see a suitable noise management plan achieved.
- 8) We feel new technologies would reduce noise issues at the Port:
 - a) The Port under the existing noise control regime has little incentive to reduce noise at source and there appears to have been relatively little effort made to do so. Furthermore where provisions already exist under the Noise Management Plan such as the training of straddle carrier operators to reduce operational noise, there appears from our perspective to be little effort made to ensure that such training is put into practice. I.e. the level of noise from the same operation in the same area can vary significantly dependent on how violently containers are handled. We consider that should Project Next Generation proceed, conditions should be included which require the Port to install technologies and implement measures to ensure noise is minimised at source in accordance with the general provisions of section 16 of the RMA. Such technologies include but are not necessarily limited to the following:
 - i) The use of shore based power (either from the grid or a suitably attenuated generator) to allow noisy ships generators to be switched off while in Port. This technology has been implemented in other ports around the world where they are in close proximity to residential areas. Note that this technology has additional benefits in that it improves health and safety for Port workers by reducing noise in the working environment, and where grid power is used it greatly reduces airborne pollution.
 - ii) The use of silent blocks (resilient hard elements installed on contact surfaces) to reduce impact noise.

- iii) The use of noise barriers to block out as much of the noise as possible.
 - iv) The use of audible warning devices that operate at higher frequencies and concentrate the sound diffusion near the source. Such audible warning devices lead to a significant reduction in noise level with distance away from them.
 - v) The use of straddle carriers with hush technologies. Accepted that the majority, but not all, of the Port's straddle carriers now have these.
 - vi) Avoiding the use of side-loaders which typically result in greater levels of impact noise than straddle carriers at Boiler Point.
 - vii) Better training for straddle carrier and side loader operators to ensure quieter operation of this machinery. Ensuring that straddle carrier and side loader operators put this training into practice. Experienced (quieter) operators to be used during the hours of night.
 - viii) The exploration of the use of electric powered vehicle in the Port Area.
- 9) Policy 5.4.5 of the Regional Plan: Coast for Otago, recognises Carey's Bay as a coastal recreational area of particular importance. Policy 11.3.6 of the District Plan is specifically to protect the existing character of Carey's Bay from the adverse effects of change of use or development of the Port activities at Port Chalmers. We have significant concerns that the character of Careys Bay would be irrecoverably lost if this current noise continues and increases in the future with the Warf extension.

In conclusion we would like to see noise limits set and enforced and an effective way of enforcing these noise limits and responding to noise complaints.

The Careys Bay Association Ltd (“we”) object to the permanent height of the container stacks on Boiler Point being changed to 15 meters for the following reasons.

Environment Court Decision

1. We have an Environment Court decision which restricts the container height to a permanent height of three containers, with a **short term** height of five. We believe that the new District Plan should reflect this decision and if Port Otago believe that it should be five they should refer back to the Environment Court.
2. The District Plan should make it a permanent three container high.
3. Port Otago consistently stacks containers more than three on what we would consider more than a “temporary basis”. At no point in time have there been container stacks of three high on Boiler Point. The new District Plan is rewarding Port Otago for flaunting the Environment Court decision.
4. The only recourse we have to reversing this change in the District Plan is with the Environment Court. We have already spent \$30 000 getting a decision of a permanent three high. There is a significant disparity of money and resources available to the Careys Bay Association Ltd, compared with Port Otago and the Dunedin City Council. To challenge any decision would put further drain on tax payers (as the Council would need to be represented) and also the Careys Bay Association.

Policy Considerations

5. What is the policy objective and how does it relate to the policy objective as a whole for the District Plan to “sustainably manage the natural and physical resources of Dunedin to meet the needs of current and future generations and to provide for their social, economic and cultural wellbeing”?
6. The volume of containers in 2015 is down 4%. This is less containers than in the past. So why do they need to increase the height to “operate effectively and efficiently”?
7. If they are so pushed for container space on the Port, why have they building large warehouse for storage of milk product at back built? By their own actions they have built wharehouse for milk product at Sawyers Bay an off site location, which means they are only wasting valuable reclaimed land at the Port for warehouse space.
8. In the 2GP 30.8.4 Assessment of development performances standard contraventions 6. a. ii. Building structures and outdoor storage, including shipping containers, are of a height that avoids or mitigates significant adverse effects on visual amenity in Port Chalmers and Careys Bay as far as practicable (Policy 30.2.2.1)
9. Containers stacked at of three high or five high is like having a five -story

building blocking your sight lines and view.

Resource Management Act

74(1)(b)

In Accordance with section 74(1)(b) of the Resource Management Act 1991 (the Act), as a territorial authority you must prepare and change the district plan in accordance with the provisions of Part 2 of the Act.

Section 6(b) in Part 2 states that,

“In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for...the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development”

Can this be justified when the Council is charged with protecting the outstanding natural features and landscapes?

74(3)

Section 74(3) states that you must not have any regard to trade competition, or the effects of trade competition.

Can this decision be justified in line with environment policy and the protection of natural landscapes, and not affected by the trade competition of the Port Company?

Local Government Act 2002

Section 77

Under the Local Government Act 2002 section 77(1)(a)-(b) in your decision making you are required to seek to identify all reasonably practicable options for the achievement of the objective of a decision and assess the options in terms of their advantages and disadvantages. This section also applies to decisions made under the Resource Management Act (see section 77(1)(5)).

What other options were considered by the Council with regard to the decision to allow the increase in height limit and why were they rejected?

Section 78

Under section 78 The Council is required to take into account the community views. The views of the Careys Bay Association Ltd reflect part of the community that is most likely to be affected by this decision. We would like to strongly emphasise our opposition to this proposal. Was there proper consultation before this change in height was included in the 2GP?

Section 80

80(1) states that if a decision of a local authority is significantly inconsistent with, or is anticipated to have consequences that will be significantly inconsistent with, any policy adopted by the local authority or any plan required by this Act or any other enactment, the local authority must, when making the decision, clearly identify—

- (a) the inconsistency; and
- (b) the reasons for the inconsistency; and
- (c) any intention of the local authority to amend the policy or plan to accommodate the decision.

We have outlined below why we consider this may be inconsistent with the Building Act. Are there any other Acts, with which you might consider this decision to be inconsistent. We draw your particular attention to the new Health and Safety at Work Act 2015.

Policy 5.4.5 of the Regional Plan:

Coast for Otago, recognises Carey's Bay as a coastal recreational area of particular importance. Policy 11.3.6 of the District Plan is specifically to protect the existing character of Carey's Bay from the adverse effects of change of use or development of the Port activities at Port Chalmers. We have significant concerns that the character of Carey's Bay would be irrecoverably lost if this is allowed to go ahead. Due to the planned pile driven wharf extension to the end of Boiler Point this may be only the first step to larger container stacks.

Building Act 2004

Under the Building Act 2004 a shipping container has been considered to be within the definition of a "building" when it does not contain hazardous substances (see Determination 2011/104 available online at: <http://www.building.govt.nz/UserFiles/File/Building/Determinations/2011/2011-104.pdf>).

In that case, while the decision states that the act of simply moving a container around is not considered to be "building work" for which a building consent is required, we are of the view that stacking five shipping containers on top of one and other, is likely be considered to be "building work" for the purposes of the Act.

By allowing the stacking of containers from three to five on a permanent basis, you are then permitting structures of five containers high, to be permanently located on land. This is more than just moving containers around, it is creating new buildings, that are effectively over three stories high.

As this is could be interpreted as "building work" is The DCC going to be requiring Port Otago to obtain a building consent for any containers that are going to be stacked five high on a permanent basis?

As The DCC is aware, any building work must comply with the building code. Does The DCC anticipate that Port Otago will comply with the requirements of the Building Code, in particular B1 Structure?

Does the DCC consider that if these containers are empty they could be considered to be dangerous buildings in high wind (within the meaning of section 121 of the Building Act)? We note a recent article regarding shipping containers being blown over in the wind: <http://www.stuff.co.nz/dominion-post/news/69250704/shipping-containers-blown-into-sea-prompt-centreport-review-of-stacking.html>

Conclusion

This proposal not only goes against a decision by the environment court, but also jeopardises the natural beauty of the Dunedin Harbour and presents severe health and safety risks for those employed Port Otago.

So in conclusion we would call for the Council to restrict the container height on Boiler Point to a permanent three high or keep the status quo with the Council enforcing the "Short Term" five height.

Paula Myers

From: Anna Johnson
Sent: Wednesday, 25 November 2015 03:05 p.m.
To: Paula Myers
Subject: FW: 2GP SUBMISSION

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Administration

Please add to her submission

From: Sue Bidrose
Sent: Tuesday, 24 November 2015 3:02 p.m.
To: Anna Johnson
Subject: Fwd: 2GP SUBMISSION

Just ensuring you got this...

Kind regards,
 Sue

Sue Bidrose
 Chief Executive Officer
 Dunedin City Council

Begin forwarded message:

From: KRIS NICOLAU <krisnicolau@mac.com>
Date: 24 November 2015 at 12:41:06 PM NZDT
To: <planning@dcc.govt.nz>
Cc: <Sue.Bidrose@dcc.govt.nz>, <Vivienne.Harvey@dcc.govt.nz>
Subject: 2GP SUBMISSION

Kris Nicolau
 12 slant st
 careys bay 90 23
 otago

WISHING MY SUBMISSIONS TO BE HEARD :

WANT TO TALK ABOUT PORT AND PORT OTAGO SPECIFICALLY

REGARDING:

NOISE

HEIGHT OF CONTAINERS

LIGHT

THANK YOU
KRIS NICOLAU

03-472-7935

Teresa Gutteridge

From: Eryn <eryn@hilderbuild.com>
Sent: Monday, 23 November 2015 10:42 p.m.
To: planning@dcc.govt.nz
Subject: ZGP

Hi

I have just tried to make an online submission to the above, but have waited 25 minutes and have not got a confirmation email - when I tried again it said my email address had already been used. Instead I have given my submission below:

E. Major Facilities Zones > 30. Port Addition of enforceable noise controls in accordance with
 > Rules NZS6809:1999. Removal of the exemptions for log and container
 handling activities in 2 b.

I recognise NZS6809:1999 as a guiding document for control of port noise, and it calls for upper limits on noise to be set. Expansion of port activities currently taking place creates the risk of increased adverse effects arising from noise. Like any industry there need to be limits placed on the level of adverse effects the industry can create. We, as residents, should have protection in place for this.

E Major Facilities Zones > 30. Port removal of 6a
 > Rules > Rule 30.5 Land Use
 Performance Standards > 30.5.4
 Port Noise

The port is an economically significant industry, but this does not exempt it from having its adverse effects on the environment controlled

D. Management Zones > 15. I believe that a district plan should serve as a useful guide to
 Residential Zones > 15.2 planning over longer periods than merely 10 years. As far as
 Objectives and Policies possible, the objectives of a district plan should not change
 mention of the need to protect unless there is a real reason brought about by a change in the
 the special amenity of Careys Bay situation or circumstances. Careys Bay still has the same special
 qualities of residential amenity that the previous district plan

[Discard]

protected and there is no reason the remove this protection.

E Major Facilities Zones > 30 Port Container stacking at Boiler Point should be limited to 8m
> Rules > Rule 30.3 Activity Status height

The original resource consent for construction of the Boiler Point reclamation placed a limit on the height of container stacking of 8m. The Environment Court made it clear at the time that this provision was intended to protect the visual amenity of Careys Bay. The situation has not changed since then: the residential area is still occupied by residents, the port area is still occupied by container stacks. There has never been a good reason for undoing the original decision of the Environment Court.

Eryn Makinson
9 Slant St
Careys Bay
Port Chalmers, 9023
(p) 03 472 7541, (m) 0277 810 810

Paula Myers

From: Katrina Varian <kvarian@xtra.co.nz>
Sent: Tuesday, 24 November 2015 12:16 p.m.
To: planning@dcc.govt.nz
Subject: Submission on proposed second generation district plan

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Consult24, Administration

Katrina Varian
 33 William St
 Careys Bay
 Dunedin

phone 03 472 7151

As a long-time member of the community of Careys Bay I object to parts of this plan as well as supporting or having new ideas about other parts. My experience over the past 30 years suggests that the Port Company (POL) is unwilling or unable to manage, avoid or mitigate the adverse effects of its activities upon the residents of Careys Bay and Port Chalmers.

The responsibility for the management of noise currently rests with the DCC. The current system is not working. Complaints about noise are gathered as data but there is no feedback nor change in the behaviour of the Port so many people cannot be bothered to continue to play their role as responsible citizens to minimize the noise. It cannot be acceptable to expand the Port and its activities where serious noise is already a problem.

In my oral submission I also wish to discuss the environmental impact of permanent structures at the port and the proposed increase in height limit. I have suggestions regarding how storage could be managed.

I wish to be involved in any of the ongoing discussions concerning the activities of POL by participating in this planning process.

My reasons for participating are that I live in very close proximity to the port.

The outcome that I seek is that the environment of Careys Bay and Port Chalmers is prevented from any further degradation.

I WOULD LIKE TO BE HEARD IN SUPPORT OF MY SUBMISSION.



THE PROPOSED
**SECOND
GENERATION
DISTRICT PLAN**

Dunedin City Council

24 NOV 2015

SUBMISSION FORM

This is a submission on the Proposed Second Generation Dunedin City District Plan (2GP) for Dunedin pursuant to Clause 6 of Schedule 1 of the Resource Management Act 1991

Once you have completed this form, include any supporting documentation and return to the Dunedin City Council.

MAKE YOUR SUBMISSION:

Online: www.2gp.dunedin.govt.nz

Email: planning@dcc.govt.nz

Post to: Submission on 2GP
Dunedin City Council
PO Box 5045
Moray Place
Dunedin 9058

Deliver to: DCC Customer Services Agency
Ground floor
Civic Centre
50 The Octagon
Dunedin

Please note that all submissions are public information. Your name, contact details and submission will be available to the public and the media. The DCC will only use your information for the purposes of this plan review process.

All submissions must be received before 5pm on Tuesday, 24 November 2015.

SUBMITTER DETAILS *Fields indicated by an asterisks (*) are mandatory.*

Full name of submitter or agent* **MARY JANE MCFARLANE**

Organisation (if submission on behalf of an organisation)

Address for service for submitter or agent* *Please provide an address where you would like correspondence sent to*

Email address **maryp@tchalmers@gmail.com**

Postal address* **P.O. BOX 54 PORT CHALMERS**

Phone number* **03 472 8639** Mobile number **021 510010**

TRADE COMPETITION *Fields indicated by an asterisks (*) are mandatory.*

Please note: If you are a person who could gain an advantage in trade competition through your submission, your right to make a submission may be limited by clause 6(4), Schedule 1 of the Resource Management Act 1991.

Please tick one of the following*

I could ☐ could not ☒ gain an advantage in trade competition through this submission.

If you could gain an advantage in trade competition through this submission, please tick one of the following*

I am ☐ am not ☐ directly affected by an effect of the subject matter of the submission that:

(a) adversely affects the environment; and

(b) does not relate to trade competition or the effects of trade competition

HEARINGS *Fields indicated by an asterisks (*) are mandatory.*

Please tick one each of the following*

I would like ☒ would not like ☐ to be heard in support of my submission

If others submitters make a similar submission, I will ☐ will not ☒ consider presenting a joint case with them at a

SUBMISSION DETAILS *Fields indicated by an asterisks (*) are mandatory.*

Please identify the specific provision(s) of the Proposed Second Generation Dunedin City District Plan that your submission relates to*.

Provision name and number (where applicable): MAJOR FACILITIES GROUP.
For example: Rule 15.5.2 Density

Section name (where applicable): PORT ZONE.
For example: the residential zones

Map layer name (where applicable):
For example: General Residential 1 Zone

Scheduled item number (where applicable): HEIGHT } BOILER PT.
NOISE }
For example: Reference # T147 - Scheduled Tree at 123 Smith Street

My submission is*

☐ I support the provision ☒ I oppose the provision ☐ I seek to have the above provision amended

Choose the most appropriate statement. If more than one applies, for example you support the provision in part but wish to have part amended (removed or changed), choose 'have the provision amended' and explain this in the 'decision I seek' field.

The decision I seek is that (please give precise details, such as suggested amended wording)*

I object to the permanent height of container stacks on Boiler Pt being changed to 15m.

I request a review of obsolete noise management policies for Boiler Point

*Please see attached letters.

Reasons for my views (you may attach supporting documents)*

Documents attached including photographs.

2 GP District Plan Submission
 MAJOR FACILITIES GROUP
 Port Zone - 'PORT at PORT CHALMERS'

24 NOV 2015

from MARY McFARLANE
 P.O. BOX 54, PORT CHALMERS 9050.

HEIGHT.

I object to the permanent height of container stacks on Boiler Point being changed to 15m. The 'status quo' is meant to be 3 (Environment Court decision 2004).

How can a D.C.C. planning process over-ride the Environment Court?

There was a 'public consultation' process in June last year conducted by D.C.C. planners at the Port Town Hall.

There were multiple versions of the same view. 4 different views with 3 different container heights depicted.

The problem is All the 'Existing View' photographs showed containers stacked 5 High. Then when one looked at 'Proposed Base Limit View', it was EXACTLY the same as the 'status quo' which is meant to be 3.

D.C.C. planners use that word a lot.

Aside from all the other arguments about height which are crucial, eg we can no longer see the lines of the peninsula or the water beyond Boiler Point, the public consultation process was bogus and misleading.

Please see attached flyers + photographs I took, also, correspondence with Paul Freeland. The D.C.C. CANNOT overturn a court decision on the basis of a misleading 'public consultation'!

MJM for me

2 GP - MAJOR FACILITIES GROUP

PORT ZONE - 'PORT at PORT CHALMERS'

from MARY MCFARLANE, P.O. Box 54, PORT CHALMERS

NOISE, 'managed rather than setting limits'

My question is WHO is managing it?

Present situation when woken at night is to telephone the Port Otago gatehouse + register a noise complaint.

This may then be relayed to the Duty Supervisor.

Depending on the mood, character and personal ethics of both individuals they may take action.

The action is to write it down. Sometimes it will result in action, mostly not.

When I follow up the next day with the staff member responsible, he may, or may not even be aware there was a complaint. It was not passed on.

Sometimes I will get a call explaining why it was noisy.

This is somewhat akin to the police investigating themselves. That is why the public can go to an Independent Police Complaints Authority.

- The D.C.C. do not take noise complaints about Port Otago activities at Boiler Point.
- Noise Monitoring must be in real time, not averaged out over 5 days. Are student parties generating a lot of noise averaged out?
- Wayne Boss D.C.C. Rep on the Port Environment Liaison Committee (Incorporating the Port Noise Liaison Committee) attended the July/Winter meeting at Port Otago. I asked him why is he at these meetings. He:

"Because of something historic ... [I don't know what]"

I replied "It's because of a 2004 Environment Court decision"

- Future Noise - With the extension of the container wharf to the very end of Boiler Point we are facing continual + protracted sleep

disturbance. There must be a review of the Noise research work done in 2003 as it is out of date. Container volumes have increased. The noise monitor for Careys Bay is in the cemetery not in the middle of the natural amphitheatre that is Careys Bay. Might U2 add a small part of history. Port Otago grew in to Careys Bay by creating the Boiler Point extension. We had little choice. Port Otago activities are necessary and at times interesting but they must do better and be honest and direct in their dealings with our community.

May McFarlane
Careys Bay.
November 2015

2014



Container Height Visualisations

Where: Port Chalmers' Town Hall

When: Tuesday 17th June – 6-7pm

Wednesday 18th June - 12-1pm

Thursday 19th June – 6-7pm

Come and see what different container stack heights on Boiler Point may look like from various locations in Careys Bay, and let us know what you think.

Your feedback will contribute to development of District Plan provisions to manage land use at Port Chalmers.

Paul Freeland

Senior Planner, City Development
Dunedin City Council
Phone: 474-3325
Email: districtplan@dcc.govt.nz

McFarlane Submission
Port at Port Chalmers
Nov 2015

It has been quite some time

How can I help you?

Kind regards

Paul Freeland
Senior Planner, City Development
Dunedin City Council
50 The Octagon, Dunedin, P.O. Box 5045, Moray Place, Dunedin 9058, New Zealand
Telephone: 03 477 4000 Fax: 03 474 3451
Email: paul.freeland@dcc.govt.nz <<mailto:paul.freeland@dcc.govt.nz>>
www.dunedin.govt.nz <<http://www.dunedin.govt.nz>>
P Please consider the environment before printing this e-mail

From: Mary McFarlane [<mailto:maryportchalmers@gmail.com>]

Sent: Thursday, 12 November 2015 2:42 p.m.

To: Paul Freeland

Subject: Fwd: Container Height Visualizations Port Chalmers Town Hall, June 2014

Dear Paul

Hello. You never replied to my email below. Why not?

Yours sincerely

Mary McFarlane

Begin forwarded message:

From: Mary McFarlane <maryportchalmers@gmail.com> <<mailto:maryportchalmers@gmail.com>>

Date: 19 June 2014 5:04:43 pm NZST

To: "Paul.Freeland@dcc.govt.nz" <<mailto:Paul.Freeland@dcc.govt.nz>>

<Paul.Freeland@dcc.govt.nz> <<mailto:Paul.Freeland@dcc.govt.nz>>

Subject: Container Height Visualizations Port Chalmers Town Hall

Dear Paul,

Re: Container Height Visualizations

This is a follow up to our conversations yesterday, at the 12-1pm viewing, and when you returned my call after 3pm. My conscience has not been eased by what you said that, despite the photographs of Boiler Point being the same, people would be able to get the idea. Some people find it very hard to visualize, which is the very point of this exercise. The photographs are supposed to show CLEARLY the present height containers are authorised to be on a permanent basis (3), THEN, the height they can be on a very temporary basis (5) and, as I understand it Port Otago's future wants as permanent and temporary stacking (5 & 7).

As I looked and looked at the first pair of photographs I thought 'WHAT is going on?'

There are instructions on the floor where to stand and look at the photographs, then I stepped right and looked at the projected scene. Identical numbers of containers at Boiler Point as in the first photo, aside from tall coloured cubes to the hard right of the photograph, which isn't Boiler Point anyway.

The first (before/existing) image must show the whole of Boiler Point with containers stacked 3 high.

I want to see this, in fact, I MUST see this. THEN images 5 high, THEN 7 high.

What has been presented to the people of Carey's Bay does not constitute fair and reasonable public consultation. By the way, are there any guidelines/best practice regarding public consultation? Also, access should have been open, so people could look over 3 full days.

Go back to the company that has been commissioned to do this sloppy lazy work, and get Port Otago to co-operate. Regarding the tar sealing of the log pile depot in town, opposite the Stadium, they stated in the ODT they wanted to be 'good neighbours'. They must demonstrate they can be good neighbours to the people of Carey's Bay, not just the inhabitants of an industrial area where no one actually LIVES.

Yours sincerely,

Mary McFarlane

Sent from my iPad

If this message is not intended for you please delete it and notify us immediately. You are warned that any further use, dissemination, distribution or reproduction of this material by you is prohibited.

If this message is not intended for you please delete it and notify us immediately. You are warned that any further use, dissemination, distribution or reproduction of this material by you is prohibited.

From: Mary McFarlane [mailto:maryportchalmers@gmail.com]

Sent: Sunday, 22 November 2015 8:01 p.m.

To: Paul Freeland

Subject: Re: Container Height Visualizations, Port Chalmers Town Hall, June 2014

Dear Paul,

I don't want to know anything, I want an answer from you. Again, I am pointing out a legitimate issue about the DCC misleading the public at the above consultation. You are being ingenious in saying you don't understand what I am saying. It reads clearly to me, and we spoke of my concerns regarding the nature of the consultation at the Port Town Hall twice.

There were NO photographs of Boiler Point with the containers stacked three high. There were groups of three photographs from various angles, supposedly showing three high, five high and seven high. The 'three' high photographs showed containers stacked five high, which is MISLEADING and shows that even the Christchurch consultants the DCC hired could not EVER get a photo of containers stacked three high, thus complying with the Environment Court ruling which proves Port Otago have never complied with three high.

I have said to you the DCC attempt at a public consultation regarding container heights in June 2014 was misleading - to be charitable - or intentionally dishonest. I repeat 'what was presented to the public does not constitute fair and reasonable public consultation'. You never replied.

The deadline for Second Generation submissions is upon us and we still haven't seen photographs of Boiler Point with containers stacked three high.

The DCC cannot say they have consulted the public about this matter.

Yours sincerely

Mary McFarlane

Sent from my iPad

On 12/11/2015, at 4:43 pm, Paul Freeland <Paul.Freeland@dcc.govt.nz<mailto:Paul.Freeland@dcc.govt.nz>> wrote:

Hi Mary,

I did read your email originally, and have done so again, and am uncertain as to what you want to know or the response you are seeking.

The only clear question I can see in this is whether there is best practice or guidelines with regard to public consultation which presumably there are.

I tried ringing your cell, but couldn't get through to you.

Cheers

Paul

From: Mary McFarlane [mailto:maryportchalmers@gmail.com]

Sent: Thursday, 12 November 2015 4:28 p.m.

To: Paul Freeland

Subject: Re: Container Height Visualizations, Port Chalmers Town Hall, June 2014

Dear Paul,

Did you read the letter below, dated 19 June 2014?

You never replied. Please read it and reply.

Yours sincerely

Mary McFarlane

Sent from my iPad

On 12/11/2015, at 3:45 pm, Paul Freeland <Paul.Freeland@dcc.govt.nz<mailto:Paul.Freeland@dcc.govt.nz>> wrote:

Hi Mary,

Sorry for the delay in getting back to you.

From: Paul Freeland <Paul.Freeland@dcc.govt.nz>
 Date: 23 November 2015 9:57:54 am NZDT
 To: Mary McFarlane <maryportchalmers@gmail.com>
 Subject: RE: Container Height Visualizations. Port Chalmers Town Hall. June 2014.

Hi Mary,

I understand your issue with the visualisation, and get your point

I do not agree that the viewers were misled, either accidentally or intentionally

Kind regards

Paul Freeland

-----Original Message-----

From: Mary McFarlane [mailto:maryportchalmers@gmail.com]
 Sent: Monday, 23 November 2015 9:51 a.m.
 To: Paul Freeland
 Subject: Re: Container Height Visualizations. Port Chalmers Town Hall. June 2014.

But Paul,
 nowhere did it show the status quo of three containers high.
 There were no photographs showing Boiler Point at three containers high. Go and have a look at the panoramas you displayed.

Where it showed the status quo, which you have said below is three, the containers were five high.

Hence misleading viewers. That's my point.

Sincerely

Mary McFarlane

Sent from my iPad

On 22/11/2015, at 9:40 pm, Paul Freeland <Paul.Freeland@dcc.govt.nz> wrote

Hi Mary,

The consultation over container heights was not about compliance, but about what height may be appropriate in the second generation District Plan

Clearly 3 containers high is permitted by the current District Plan, and therefore the status quo to a degree.

I'm sorry that you consider that the consultation was misleading or dishonest, but it did clearly show alternative options to the three containers high status quo, and was done to enable feedback to be given and assist in the development of the proposed District Plan

As you are aware the proposed District Plan is open for formal submissions, and a Hearings Panel will make decisions in the new year.

Kind regards

Paul Freeland



Looking East Southeast - Existing View from Careys Bay



Southeast - Proposed Base Limit View - Boiler Point: 15m from Careys Bay.



882



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

3.1 Management of Port Noise

3.1.1 Management of noise at Port Chalmers

47. The proposed approach to the management of noise at Port Chalmers in the 2GP was strongly influenced by the operative District Plan. The operative District Plan Port Noise provisions derived from the Environment Court decisions are outlined below. This is based on the s42A Report in addition to information from other relevant case law.
48. Environment Court Decision No.C165/2002 (dated 10 December 2002) between the Careys Bay Association Incorporated and Dunedin City Council answered the jurisdictional question, in paragraph 1 of this decision, of:
- "Is there jurisdiction for rules in the proposed Dunedin City Plan (the proposed plan) to take into account noise from the Coastal Marine Area in regulating compliance with the noise limits on activities within the Port 1 Zone?"*
49. The Court determined that (para. 51, C165/2002):
- "As a result we have concluded that the submissions of the City Council are correct. These are that:*
- (1) although the proposed plan may include rules which address total noise generated or received at various points they can only control the emission of noise from Port Otago if that noise is created by Port Otago or on their site (Port 1 zone);*
 - (2) the emission of noise from ships is not a noise generated by Port Otago and cannot be used as a mechanism to control the activity of Port Otago either directly or indirectly;*
 - (3) the content of any rules would need to be carefully examined to ensure that they only sought to address effects created by Port Otago or to mitigate noise effects within the district or avoid reverse sensitivity."*
50. Environment Court Decision No.C150/2003 (issued 10 November 2003) is an Interim Decision between Careys Bay Association Incorporated and Dunedin City Council. The Court outlined its conclusion and directed the Council to prepare a draft set of rules and/or methods to be forwarded to the Court for further mediation (para. 175– 183 of the Environment Court decision). Furthermore, in paragraph 176 the Court stated:
- "It is our view that an outline of the noise management plan, an outline of the consultative committee and the details of the mitigation package should be included in the plan by way of annexures. The plan rules should contain:*
- (a) The measurement method used;*
 - (b) Ldn and Leq15 (minutes continuous measurement);*
 - (c) The monitoring points;*
 - (d) The regularity with which information should be supplied to the City Council and the Noise Liaison Committee;*
 - (e) That there should be a consultative committee consisting of residents of the Port Company, the Regional Council and the Residents Association;*
 - (f) That there will be a Noise Management Plan at all times consisting of detail in the outline in this decision (or similar) which is attached to this plan as an appendix;*

(g) *That there will be a mitigation/purchase package operating in terms attached to the plan as an appendix."*

51. Decision No.C41/2004 is the final decision between Careys Bay Association Incorporated and Dunedin City Council (dated 6 April 2004), which made decisions on the control of noise at Port Chalmers and directed the DCC to update the proposed plan (now the operative District Plan) by adding a number of different noise definitions and amendments to the Environmental Issues (Section 21) of the operative District Plan. The main changes to Section 21 were a new Rule 21.5.2 Port Noise Management and Noise Mitigation Performance Standards and new Appendices, Appendix 21A (Port Noise Management Plan), Appendix 21B (Port Noise Mitigation Plan) and Appendix 21C (Port Noise Liaison Committee).
52. Under the Environmental issues section (Section 21) of the operative District Plan there are requirements to:
- investigate and adopt the best practicable option to minimise Port Noise emissions and at all times to operate in accordance with a Port Noise Management Plan (Appendix 21A)
 - implement a Port Noise Mitigation Plan (Appendix 21B) for the purchase of, or payment for acoustic treatment for, noise affected properties
 - establish, maintain and participate in a Port Noise Liaison Committee (Appendix 21C).
53. As a result of these operative District Plan requirements a Port Noise Management Plan and Port Noise Mitigation Plan was developed by Port Otago Limited in 2004 (refer subsection 2.5.2 and 2.5.4 of the s42A Report for greater detail on these plans). In addition, a Port Noise Liaison Committee was set up and operates in accordance with the requirements of Appendix 21C of the operative District Plan. This Committee has a role of considering all noise issues arising from the port operation and carrying out the functions identified in the Port Noise Management Plan and mitigation functions identified. This Committee must also meet at least four times a year and produce minutes.
54. The Port Noise Boundary and the Port Outer Control Boundary for Port Chalmers are shown on District Plan Map 70 of the operative District Plan. New residential development in the Residential 1 Zone or Local Activity 1 Zone built within the inner and outer noise control boundaries is required to be noise insulated to an internal standard of 40 dBA Ldn (Rules 8.7.2(xi) and 9.7.2(ix)). The operative District Plan provisions reflect the outcome of appeals to the Environment Court.
55. The 2GP follows a similar approach to the operative District Plan. Policy 30.2.2.4 and Rule 30.5.4 Port Noise states:
- "Require land use activities 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, adequately mitigated."*
- "30.5.4 Port Noise*
- 1. The operator of the port at Port Chalmers must:*
 - a. develop a noise management and noise mitigation plan for Port Chalmers to provide for noise minimisation, mitigation of the effects of port noise and community liaison;*
 - b. investigate and adopt the best practicable option to minimise port noise emissions;*
 - c. produce and, at all times, operate in accordance with a port noise management plan, which must include, but is not limited to, the matters set out in Appendix 30A;*

- d. *implement a port noise mitigation plan for the purchase or acoustic treatment of noise affected properties, which must include, but is not limited to, the matters set out in Appendix 30B; and*
 - e. *establish, maintain and participate in a port noise liaison committee, which must operate in accordance with the requirements set out in Appendix 30C.*
2. *The measurement of port noise must be in accordance with NZS6801:2008 Acoustics - Measurement of Environmental Sound, and assessment must be in accordance with NZS6809:1999 Acoustics - Port Noise Management and Land Use Planning, provided that:*
 - a. *subject to Rule 9.3.6.6 a., the rating level described in clause 7.3 of NZS6809:1999 Acoustics - Port Noise Management and Land Use Planning must be determined for the sole purpose of defining any Leq (15 min) sound level, required for the purposes of Appendices 30A and 30B; and*
 - b. *adjustments for any special audible characteristics to any Leq (15 min) made in accordance with clause 7.3 and A6 of NZS6809:1999 must, except for audible warning devices, not apply to noise from log and container handling activities.*
 3. *For the purpose of comparison with noise criteria specified in Appendix 30B the following apply:*
 - a. *in calculating any Ldn (5 day average), one ship visit of up to five days duration, must be deemed to be one occasion; and*
 - b. *in assessing any Leq (15 min) sound level between 10pm and 7am the following day, one ship visit of up to five days duration must be deemed to be one occasion.*
 4. *Port activity that does not comply with the performance standard for Port Noise is a non-complying activity."*
56. As with the operative District Plan provisions, Rule 30.5.4 Port Noise requires the operator of the port at Port Chalmers to investigate and adopt the best practicable option to minimise Port Noise emissions and at all times to operate in accordance with a Port Noise Management Plan (Appendix 30A). It also requires the implementation of a Port Noise Mitigation Plan (Appendix 30B) for the purchase, or acoustic treatment, of noise affected properties and to establish, maintain and participate in a Port Noise Liaison Committee (Appendix 30C).
57. The Port Noise Control Area in the 2GP is larger than the operative District Plan, extending further northwards to include Careys Bay and surrounding Rural Residential 2 and Recreation zoned land (refer subsection 2.3.2 and 2.3.5 of the Port s42A Report). This was as a result of modelled increases in the extent of port noise associated with *Port Otago Limited's* Next Generation Project to extend the wharf at Port Chalmers and to undertake other work (refer Port s42A Report, Section 2.7).
58. We note there are also other documents produced by Port Otago Limited which relate to port noise which are the 'Port Environment Plan Port Chalmers' and 'Principles of Undertaking Acoustic Treatment Work & Examples of Solutions', refer sub-sections 2.5.1 and 2.5.5 of the Port s42A Report for a detailed summary on these documents. These documents are also available on the *Port Otago Limited* website.
59. The Port Environment Plan is a broad non-statutory umbrella document (which is updated annually) outlining *Port Otago Limited's* commitment to the environment in which the port operates. The objective of this plan is to establish an ongoing framework for *Port Otago Limited's* management team to work with the community and the city to resolve issues of environmental concern in the Port Chalmers area and includes a Port Environment Liaison Committee which has membership from the community

affected by port activities. The management of noise issues in accordance with the Port Noise Management Plan and the Port Noise Mitigation Plan are one of the environmental issues identified in this plan.

60. The document 'Principles of Undertaking Acoustic Treatment Work & Examples of Solutions' 2014, also produced by the Port Otago Limited, is a non-statutory guidance document which gives an overview of the underlying principles of acoustic treatment. It also gives descriptions and examples of the type of acoustic treatment work done to different elements of a dwelling and information on materials and products used in different situations to reduce the internal noise level within a dwelling.
61. In addition, the Deed of Transfer of Noise Enforcement Functions (1996) transfers from the Otago Regional Council to the DCC all functions, powers, or duties relating to the emission and mitigation effects of noise in the coastal marine area within or adjoining the district of the DCC.

3.1.2 Management of port noise in other NZ Ports

62. In the s42A Report, the Reporting Officer provided a summary of the Nelson, Napier and Christchurch (Lyttelton Port) approaches for the management of port noise and also highlighted similarities and differences between the approach at Port Chalmers compared to these other ports (s42A Report, Section 2.6, pp. 23-26).
63. The approaches with respect to those three ports are similar to that in the operative District Plan and the 2GP, with similar requirements for a Port Noise Management Plan, a Port Noise Mitigation Plan, and a Port Noise Liaison Committee.
64. At Port Chalmers, for noise-affected properties within the 60 dBA Ldn contour and above, Port Otago Limited is required to contribute to acoustic treatment and to consider the purchase of properties (refer points 5 and 6 of Port Otago Noise Mitigation Plan). This is also the case at Port Nelson, however at Port Napier the port is only required to contribute acoustic treatment, with no requirement to consider property purchase.
65. The Port of Lyttelton approach in the Christchurch Replacement District Plan requires the purchase of properties where a residential zoned property is within a 70dBA Ldn or greater contour. By comparison, the approach in the 2GP requires purchase, or the acoustic treatment, of noise affected properties within a 65dBA Ldn or greater contour, and the Port operator is required to consider property purchase of noise affected properties within a 60dBA Ldn or greater contour.
66. It also requires acoustic treatment where a property within a residential zone is contained within the 65dBA Ldn or greater contour. By comparison, the approach in Port Chalmers requires purchase, or the acoustic treatment, of noise affected properties within a 65dBA Ldn or greater contour, and the Port Noise Liaison Committee (on a case-by-case basis) is required to provide a contribution to the costs of acoustic insulation where noise affected properties are within a 60dBA Ldn or greater contour. In addition, the Port Chalmers' Port Noise Liaison Committee provides technical advice to owners of noise affected properties within the 55dBA to 60dBA contour, and in special circumstances, may offer to contribute to the costs of acoustic treatment.
67. Another difference is that the Port Nelson Noise Management Plan requires an independent chair for the Port Noise Liaison Committee, while there is no such requirement in the 2GP.
68. The management of noise in the Port Zone was the issue of most concern to submitters at the Port Hearing and where there is the most disagreement between Port Otago Limited and residents. There are a number of interrelated provisions regarding the management of noise, which for clarity we have listed under separate sub-headers as follows.
 - Definition of Noise Affected Property and Section 30.1 Introduction (port noise)

- Definition of port noise
- Policy 30.2.2.4 (port noise)
- Rule 30.5.4 Port Noise
- Port Noise Management Plan
- Port Noise Mitigation Plan
- Port Noise Liaison Committee

3.1.3 Definition of Noise Affected Property & Section 30.1 Introduction (port noise)

3.1.3.1 Background

69. This section addresses those submissions of *Port Otago Limited* (OS737.3 and OS737.25) which raised concerns with the wording of Noise Affected Property, and in relation to port funded acoustic mitigation.
70. The 2GP defines Noise Affected Property as:

"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 have received acoustic treatment in accordance with Rule 30.5.4 and Appendix 30B or are receiving port noise at or below the certified level of port noise."

71. The port noise control mapped area is an area which includes all Port zoned land and also extends to most of the commercial area of Port Chalmers (which is zoned as a Principal Centre), surrounding residential land of central Port Chalmers and Careys Bay, and surrounding Rural Residential 2 and Recreation zoned land.
72. The Port Noise Contour Map is a requirement of the minimum monitoring and reporting requirements of the Port Noise Management Plan which states that (Appendix 30A, para 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. Port noise contours must be modelled at 1dB intervals between 55Ldn and 70Ldn."

73. Bullet point 1 of paragraph 5 of Section 30.1 Introduction to the Port Zone states:

"Potential adverse effects of port activity on surrounding properties are managed through:

- *performance standards focused on the management of the effects of noise (including through port funded acoustic insulation of existing residential properties) within a mapped area (**port noise control mapped area**);"*

3.1.3.2 Submissions

74. *Port Otago Limited* (OS737.3) sought to have the definition of Noise Affected Property amended to exclude properties located within the Commercial (Principal Centre) Zone

which had received acoustic treatment in accordance with Rule 30.5.4 and Appendix 30B and were receiving port noise at or below the certified level of port noise.

75. The reasons outlined by *Port Otago Limited* (OS737.3) included: there is currently no requirement for noise mitigation of commercially zoned properties: the Centre does not provide for residential amenity protection and so it is unreasonable to require the Port to provide mitigation to such properties: and the main source of noise received in this area is road traffic noise rather than port noise.
76. Part of the submission by *Port Otago Limited* (OS737.25) sought to have the words "and rural zoned" added after the words 'existing residential' within bullet point 1 of paragraph 5.
77. The submitter's reason for this is to clarify that port funded noise mitigation is only available for residential and rural zoned properties within the port noise control mapped area.
78. *Kristine Nicolau* (FS2421.3) opposed the *Port Otago Limited* (OS737.3) submission and *Mary McFarlane* (FS2168.5), *Blair Smith* (FS2260.2) and *Bronwen Thomas* (FS2293.2) opposed the *Port Otago Limited* (OS737.25) submission.

3.1.3.3 s42A Report

79. The s42A Report explained that the Plan requires land owners to provide acoustic insulation of buildings containing noise sensitive activities within the Port Chalmers Principal Centre because most are located either within 40m of the State Highway (George Street and Beach Road) or within 70m of a railway line (Main South Railway and Port Chalmers Branch Railway) (Rule 9.3.1: Acoustic Insulation).
80. The Reporting Officer agreed with *Port Otago Limited* that the operative District Plan does not consider properties within the Port Chalmers Centre to be noise affected properties. He also agreed that as this Centre is commercially zoned, it is unreasonable to expect residential amenity for these properties, although he did consider it valid to protect sensitive activities within the Port Chalmers Principal Centre from the adverse effects of noise (including port noise).
81. Consequently, he recommended that the definition of Noise Affected Property be amended to exclude the Port Chalmers Principal Centre because the acoustic amenity of noise sensitive activities in that centre is already adequately managed by the Acoustic Insulation performance standard (Rule 9.3.1).
82. For the sake of clarity, the Reporting Officer recommended that bullet point 1 of paragraph 5 of the Introduction to the Port Section (30.1) be amended, with the wording "existing residential properties" to be replaced with "existing residential buildings".

3.1.3.4 Hearing and revised recommendations

83. Mr Len Andersen (legal counsel for *Port Otago Limited*) agreed that the recommendation (s42A Report, Section 5.1.2, p. 45) to amend the definition of Noise

Affected Property (OS737.3) is appropriate because the commercial zone is subject to noise from a variety of sources, and it is not appropriate for Port Otago to acoustically treat these properties (para 3.3, legal submission).

84. Ms Mary O'Callahan, planning consultant for *Port Otago Limited* recommended alternative wording of bullet point 1 of paragraph 5 of Section 30.1 Introduction, as shown below (Statement of Evidence, para 1):

"performance standards focused on the management of the effects of noise (including through port funded acoustic insulation of existing residential buildings and rural zoned dwellings) within a mapped area (port noise control mapped area)"

85. In his revised recommendations, the Reporting Officer proposed further amendments to that clause to read:

"performance standards focused on the management of the effects of noise (including through port funded acoustic insulation of existing residential buildings within a noise affected properties) within a mapped area (port noise control mapped area)"

86. Furthermore, he noted that because he had made other recommendations to change the definition of "Noise Affected Property" to exclude properties within the Port Chalmers Principal Centre, he considered that the above amendment would achieve the relief sought by *Port Otago Limited* of not being required to acoustically insulate residential buildings within the centre.

3.1.3.5 Decision and reasons

87. We accept, in part, the submission by *Port Otago Limited* (OS737.3), and agree, in part, with the recommendation of the Reporting Officer that the definition of Noise Affected Property should be amended to exclude properties in the Port Chalmers Principal Centre.
88. However, we consider that it would a better solution, which will provide better clarity and certainty to Plan users, to entirely remove the Port Chalmers Principal Centre area from the port noise control mapped area in the 2GP planning maps instead of excluding this area from the definition of noise affected property. Refer Appendix 1 (see amendment reference Port 737.3). We reject the further submission by *Kristine Nicolau* (FS2421.3).
89. Our reasons are the same as those in the s42A Report, and in particular that the amenity of noise sensitive activities within the Port Chalmers Principal Centre is already adequately addressed by the Acoustic Insulation performance standard (Rule 9.3.1).
90. We accept, in part, the submission by *Port Otago Limited* (OS737.25) to amend paragraph 5 of Section 30.1 Introduction of the Port Zone, and agree with the revised recommendations of the Reporting Officer on this matter. We consider that it is clearer to refer to 'residential buildings within a noise affected property' rather than residential and rural zoned properties' because 'residential buildings' and noise affected property'

are defined in the 2GP. Amendments are shown in Appendix 1 and attributed to submission point Port (Port 737.25).

91. The reasons for our decision is that the amendment is necessary to clarify that port funded acoustic insulation of existing residential buildings is only required for a noise affected property within the port noise control mapped area.

3.1.4 Definition of Port Noise

92. The 2GP defines Port Noise as:

"Noise generated within the Port Zone and the adjacent coastal marine area associated with port activities, excluding:

- *noise from ships at berth*
- *noise from construction of permanent port facilities (see definition of construction noise) and*
- *noise from an emergency situation."*

93. *Port Otago Limited* (OS737.4) sought to have the definition of Port Noise amended to exclude noise from ships not at berth. The submission said that 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, rather than those ships that are not berthed, even though both scenarios are technically outside the jurisdiction of the District Plan.
94. In her further submission *Kristine Nicolau* (FS2421.4) opposed the requested amendment by *Port Otago Limited* but did not give specific reasons.
95. The Reporting Officer, in his s42A Report, recommended that the submission of *Port Otago Limited* be accepted because it is consistent with best practice as outlined in NZS6809:1999 Acoustics – Port Noise Management and Land Use Planning and that noise from vessels not at berth is excluded from the definition of Port Noise. This is also the approach followed in the operative District Plan version of Port Noise, as inserted by Decision No.C41/2004 of the Environment Court.
96. Mr Len Andersen, legal counsel for *Port Otago Limited* noted at the hearing that the mistake has been rectified in the s42A Report (Statement of Evidence, para 3.4).

3.1.4.1 Decision and reasons

97. We accept the submission of *Port Otago Limited* (OS737.4) to amend the definition of Port Noise to exclude noise from ships not at berth, as shown in Appendix 1 (see amendment reference Port 737.4). We reject the further submission by *Kristine Nicolau* (FS2421.4).
98. We agree with *Port Otago Limited* and the Reporting Officer that this amendment is necessary to correct an error in the 2GP. Excluding noise from ships not at berth is consistent with best practice as outlined in NZS6809:1999 Acoustics – Port Noise Management and Land Use Planning and the historic approach imposed by Environment Court Decision No.C41/2004.

and efficiently the Port Zone has to operate 24 hours a day, seven days a week, and therefore in some instances minimisation as far as practicable of adverse noise effects is all that can realistically be achieved.

106. *Port Otago Limited* and *Careys Bay Association Limited* did not present any evidence in relation to this submission point.

3.1.5.1 Decision and reasons

107. We reject the submission of *Port Otago Limited* (OS737.27) that requested a change to Policy 30.2.2.4 to give it an enabling focus. We agree with the Reporting Officer that Policy 30.2.2.1 is concerned with enabling Port Activities and that Policy 30.2.2.4 has an appropriate focus on the avoidance of the adverse effects of noise on the health of people. We do not agree with their concern that Policy 30.2.2.4 suggests an avoidance approach to the management of port noise, for the reasons provided by the Reporting Officer as summarised above.

108. We accept in part the broad submission by the *Careys Bay Association Limited* (OS391.2) that there be a new plan for the management of noise at the Port. We accept the recommendation of the Reporting Officer. The changes to Policy 30.2.2.4 he recommended to include 'minimised as far as practicable' instead of 'adequately mitigated' will give appropriate relief to the submitter and ensure additional guidance to, and consistency with, Rule 30.5.4 Port Noise, which requires the port operator to investigate and adopt the best practicable option to 'minimise' port noise emissions.

109. To implement this decision we have amended Policy 30.2.2.4 as follows:

"Require land use activities to operate, and development to be designed, to ensure that adverse effects from noise on the health of people can will {PO cl.16} be avoided or, if avoidance is not possible, adequately mitigated minimised as far as practicable {Port 391.2}."

3.1.6 Review of approach for management of port noise, Rule 30.5.4 and Appendices

3.1.6.1 Submissions

110. We consider the major issue for the Port Zone Hearing concerned the overall management approach outlined in the Port Noise performance standard (Rule 30.5.4) and in the Port Section appendices. This was the focus of most of the submitters, who sought that the overall approach, which is based on the current ways that noise is managed at Port Otago, should be reviewed and substantially changed. The decisions requested in these submissions and their reasons are summarised below.
111. *Christopher Hilder* (OS311.1, OS311.2) sought to amend the Port Noise performance standard (Rule 30.5.4) by including enforceable noise controls in accordance with NZS6803:1999 and removing reference to the Noise performance standard (Rule 9.3.6.6a). These submissions were further supported by *Mary McFarlane* (FS2168.1, FS2168.2). *Mr Hilder* recognised that NZS6809:1999 is a guiding document for control of port noise, and it calls for upper limits on noise to be set. He considered that

expansion of Port Activities creates the risk of increased adverse effects arising from noise, and limits should be imposed to control these effects. He also considered that the port is an economically significant industry, but this does not exempt it from having its adverse effects on the environment controlled. *Ms McFarlane* supported OS311.1 and OS311.2 and her opinion was that the Port's operations erodes the quality of life of Careys Bay residents, for example with empty containers being moved around at night, and she had concerns about future noise with the proposed wharf extension.

112. *Careys Bay Association Limited* (OS391.2) sought a new approach for noise management at Port Chalmers, including enforceable noise limits, real time monitoring, DCC-initiated noise management plan, noise complaints managed by DCC and implementation of noise minimisation practises (including ships connected to shore power, use of silent blocks, noise barriers, hush technologies, better training of operators). The submitter's reasons included that the existing way of measuring port noise is outdated, the effect of the proposed port extension has not been considered, having Port Otago Limited receiving and dealing with noise complaints is inappropriate, port noise has increased, and Port Otago is not required to prevent or minimise port noise.
113. *Kristine Nicolau* (OS398.3) sought a review of the Port Noise performance standard (Rule 30.5.4). No specific reasons were given in her submission.
114. *Mary McFarlane* (OS882.1) sought an amendment of the Port Noise performance standard (Rule 30.5.4) with regard to the management of noise for Boiler Point. Her submission was that when noise complaints are made to the Port Otago gatehouse they are registered but may or may not be followed up appropriately and resolved. *Ms McFarlane* considered that this was not a transparent process and it would be more appropriate for the DCC to investigate and manage these complaints. She was also concerned with the extension to the wharf and the effect of port noise on Careys Bay residents when this area becomes operational. She also considered that there should be a review of the noise research done in 2003 as it is out of date, and questioned the location of the noise monitor at the cemetery instead of in Careys Bay itself. *Port Otago Limited* (FS2378.24) opposed this submission.
115. *Katrina Varian* (OS981.2) sought an amendment of the Port Noise performance standard (Rule 30.5.4) to improve compliance. She considered that Port Otago Limited is unwilling or unable to manage, avoid or mitigate the adverse effects of its activities upon the residents of Careys Bay and Port Chalmers. Also, she considered that the current system is not working with complaints about noise gathered as data, as there appeared to be no feedback or change in the behaviour of the Port. Her submission considered that it was unacceptable to expand the Port and its activities where serious port noise is already a problem.
116. *Eryn Makinson* (OS516.1) sought to amend the Port Noise performance standard (Rule 30.5.4) to add enforceable noise controls in accordance with NZS6809:1999 and remove exemptions for log and container handling activities in 2b. *Ms Makinson* considered that NZS6809:1999 is the guiding document for the control of Port Noise and called for upper limits to be set. She was also concerned with the potential increase in adverse noise effects from the expansion of the Port and considered that residents should have protection in place for this.

117. *Port Otago Limited* (FS2378.18, FS2378.19, FS2378.20, FS2378.22, FS2378.23, FS2378.24 and FS2378.25) opposed submissions OS311.1, OS311.2, OS391.2, OS398.3, OS882.1, OS981.2 and OS516.1 and stated that:
- "(i) *The submitters seek to change the existing noise regime which was put in place by the Environment Court with the agreement of the Careys Bay Association. They propose enforceable noise limits even though the Environment Court accepted that such provisions were inappropriate, unworkable and unenforceable;*
 - (ii) *The noise regime in the existing district plan has proved enormously successful which is reflected by the fact that there has been no attempt to replace it with specified noise limits by any resident living in Port Chalmers when the Port Chalmers residents have the greatest exposure to port noise;*
 - (iii) *All of the submitters relate to Careys Bay residents who are protected from the worst effects of port noise by the topography of the area and do not have significant adverse effects from port noise;*
 - (iv) *The most efficient means of dealing with noise complaints is for the complaints to be made to Port Otago Ltd in the first instance."*
118. *Port Otago Limited* (OS737.29) also sought to amend the Port Noise performance standard (Rule 30.5.4) to make non-compliance with the port noise rules a restricted discretionary rather than a non-complying activity, because they considered that the non-complying activity status for non-compliance is too onerous. *Mary McFarlane* (FS2168.9), *Careys Bay Association Limited* (FS2203.4), *Blair Smith* (FS2260.4), *Bronwen Thomas* (FS2293.4) and *Kristine Nicolau* (FS2421.12) opposed *Port Otago Limited* submission point OS737.29.
119. The *Southern District Health Board* (OS917.9) sought the amendment of the Port Noise performance standard (Rule 30.5.4), to ensure that the correct legal formatting in relation to NZ Standards is used which was supported by *Port Otago Limited* (FS2378.6).

3.1.6.2 s42A Report

120. It was acknowledged in the s42A Report that the Reporting Officer's opinion on these issues relied to a great extent on the advice provided by Mr Malcolm Hunt's acoustic report on the management of port noise. In particular, he agreed with the changes recommended by Mr Hunt to the Port Noise performance standard (Rule 30.5.4) and the associated appendices (s42A Report, Section 5.6.1, pp. 70-86).
121. In summary, the changes recommended by Mr Hunt to the Port Noise performance standard (Rule 30.5.4), were:
- removal of the exception (in Rule 30.5.4.2b) of the noise from log and container handling activities
 - correct legal formatting of the NZ standards
 - amending the title of Rule 30.5.4. from 'Port Noise' to 'Port Noise Management' and a consequential change to Rule 30.5.4.4
 - deleting Rules 30.5.4(2) and (3) from Rule 30.5.4 and moving these provisions (except for Rule 30.5.4.2b) to the head of the appendices to Chapter 30, as an over-arching requirement for noise measurement and assessment referred to within the appendices.

122. The Reporting Officer said he agreed with the summary of Mr Hunt's report in his s42A Report, the last sentence of which states:

"These factors, plus the operation of the Port Noise Liaison Committee to oversee the Port Noise Management Plan and receive, act on and monitor noise complaints are considered an effective combination of measures which themselves form the 'best practical option' under the specific circumstances at Port Chalmers."

123. Mr Hunt also considered that the overall approach for the management of noise in the Port Noise performance standard (Rule 30.5.4) is consistent with, or an improvement on, the approaches used at the Ports of Nelson, Napier and Lyttelton.
124. The Reporting Officer disagreed with the *Port Otago Limited* submission point OS737.29 and described that the non-complying activity status for non-compliance with the port noise performance standard would only be triggered if the Port Operator failed to undertake the noise management obligations and duties outlined in the rule, which he considered are reasonable and he noted that the Port Operator had not submitted against these management requirements. He also described that the retention of the non-complying activity status will also send a message about the importance of the Port Operator undertaking these noise management obligations and duties. Therefore, the Reporting Officer recommended that *Port Otago Limited* submission point OS737.29 be rejected.

3.1.6.3 Hearing and revised recommendations

3.1.6.3.1 *Careys Bay residents' evidence*

125. A substantial amount of evidence was provided by submitters, many of whom are residents of Careys Bay, on the operation of the port and Port Noise provisions, including the noise effects of handling of logs and containers. This evidence included past correspondence, photographs, and previous court decisions.
126. The *Careys Bay Association* (OS391.2) was represented by its Chairman, Mr Cecchi. He took issue with the evidence of Mr Keith Ballagh (Acoustic Engineer representing Port Otago) which was that allowing shipping containers stacked up to five high would reduce the level of port noise in Careys Bay. Mr Cecchi said that Port Otago Limited has kept shipping containers stacked up to five high for years and this has not reduced port noise in Careys Bay.
127. Mr Cecchi also questioned why the Port was monitoring and reporting breaches of port noise rules, and considered that no other industries do this. He also disagreed that Port Otago Limited records all noise complaints, which he states he knows is not true. He also contended that Port Otago do not do enough to reduce noise and containers are banged around for no reason, and he questioned why containers are not moved around at a more reasonable time of day. Mr Cecchi concluded by presenting the amendments to rules which the *Careys Bay Association* sought from their submission, as summarised above.

128. In response to our questions, Mr Cecchi clarified that the Port Noise Liaison Committee for practical reasons has been combined into the Port Environment Liaison Committee (which deals with all environmental issues associated with the operation of the port). Mr Cecchi contended that the importance of port noise is downplayed at these meetings and, while noise complaints are read out, nothing is ever done about them. He also said he thought that an independent chair of the committee would be helpful.
129. The evidence of *Mary McFarlane* (OS882 and FS2168) was that the Boiler Point extension has created a reverse sensitivity issue for Careys Bay residents that has serious adverse effects on the quality of life of residents in all respects (i.e. aurally, visually, mentally and physically). She said that residents in Careys Bay should not be forced to accept greater levels of noise nuisance just because Port Chalmers has historically experienced high levels of noise nuisance. *Ms McFarlane* also described the noise issues associated with log handling, including the trucks' air horns as they arrive, a bulldozer lifting logs off trucks (taking up to eight grabs to clear a truck) and putting into a steel cradle or in a line, and then a concrete batter block being used to thump the end of the logs into a tidy even row. Furthermore, *Ms McFarlane* stated that "*throughout this process of chains rattling, horn, grab, thump, there is a high pitched beeping.*" (Statement of Evidence, p. 3).
130. *Ms McFarlane* also presented photographs of logging machinery to demonstrate these points. She tabled some Environment Court decisions relevant to the noise. Her view was that logs and wood chips should not be stored or marshalled at Boiler Point due to the adverse noise effects of log handling at the Port (which includes multiple repetitive actions).
131. In response to our questions *Ms McFarlane* said the need is for negotiations in good faith between Port Otago Limited and Careys Bay residents, as this had broken down since 2011 when residents challenged the resource consent for the extension of the wharf. She also stresses the important role of the Port Noise Liaison Committee to manage the noise issue.
132. A statement from *Katrina Varian* (OS981) was read to us by Ms Jo Kidson, as Ms Varian could not present for medical reasons. Her statement began with an historical background to the Port, and said that the Careys Bay Association was created when the Harbour Board proposed to fill in Careys Bay right across to Rocky Point in order to create a car park, which the residents opposed. From 1989–1996 she was involved in the Tribunal and Environment Court hearings regarding the Boiler Point reclamation. She outlined that under the 1989 local government reorganisation, the Harbour Boards were dissolved and the Port Otago Limited was then created with the primary objective of making a profit, and the Otago Regional Council became a majority shareholder.
133. She also outlined that, through the 1996 Deed of Transfer, the DCC had become the territorial authority responsible for monitoring and controlling noise at Port Chalmers, but that the noise monitoring tasks were given to Port Otago Limited. *Ms Varian* likened this to the DCC firing all parking officers and leaving the public to park where they want and for as long as they want and then issue their own tickets.
134. She also referenced the New Zealand Institute of Economic Research study about Port Performance, which suggested that ports should disclose quarterly (or at least every

six months) information to the general public about their activities. She also stated that (Statement of Evidence, p. 6):

"The present situation is cosy. ORC, POL and the DCC act like chums and this has to stop. How can anyone be held to account in the current situation."

135. Ms Varian sought:

- a halt to the plan to convert the open pile wharf at Boiler Point into a fully functioning one (which she considers as short sighted);
- an independent mediator to take charge of noise monitoring and mitigation, an additional four to six monitors installed, noise monitors given to DCC, and POL charged to have its noise emissions monitored;
- port noise data should be posted quarterly on the internet; and
- openness and honesty in residents' relationship with Port Otago Limited.

136. Kristine Nicolau (OS398, FS2421) in her statement expressed concern at how noise complaints were managed by Port Otago Limited, describing that once a complaint was made it was noted by Port Otago who would then simply send back an explanation about why it was noisy, and sometimes afterward it would get even noisier despite the complaint. She said that in 2009 she wrote to all DCC Councillors who transferred her complaint to noise officers who then claimed that *"we have been told to ignore all port noise complaints"*. Ms Nicolau said ultimately, she was sent a letter from the DCC's CEO which stated that the noise level was only 66dBA, and below the five-day average of 67.5dBA.

137. Ms Nicolau also described the poor relationship of the Port Noise Liaison Committee with Careys Bay residents, noting that residents are discouraged from raising any other issues or talking to Committee members outside the meeting, and conversations are either not minuted or ignored. She said appointment of an independent chair may assist.

138. This submitter also sought several noise mitigation options, which included:

- rates rebate for all purchasers of properties prior to 2004
- an independent body to handle compensation requests (not Port Otago Limited)
- acoustic insulation cap should be \$50,000¹ (Port Otago Limited to pay for lawyers and design fees and labour costs)
- no purchase of houses as an option
- houses bought prior to 2004 to have roofs insulated, and to be paid for by Port Otago Limited
- only electric forklifts, cranes and other lifting equipment at Boiler Point
- use 'cold ironing' (i.e. connecting electricity from the port) options
- any new berths should only be created and used when they are needed (e.g. for super ships), and ships should be docked with their bow pointed 'in'.

139. We requested clarification as to what difference ships being 'bow in' would make to port noise. Ms Nicolau explained that the bow of a ship is where the generator is located and therefore a ship should be pointed 'bow in' so that the noise from generators is facing closer to Port Chalmers and away from Careys Bay. She also

claimed that "cold ironing" is possible, noting that Port of Auckland was starting to do this, and 'hush technology' is also possible with Hong Kong having complete computerisation of shipping containers.

140. *Christopher Hilder* (OS311) presented a detailed statement including an overview of previous Environment Court decisions; the history of Careys Bay and the Port; contested the reverse sensitivity argument of Port Otago Limited against common law and law of nuisance; and gave planning reasons as to why maximum noise limits and other suggested controls should be inserted in the 2GP.
141. He provided further detail and discussion on his recommendations, summarised as follows:
- the alignment of noise controls in ORC and DCC plans for the Port
 - setting of upper noise limits in the 2GP applying to residential or rural boundaries at:
 - o the Boiler Point area of 55dBA Leq (7am-11pm) and at all other times 45dBA Leq and 75dBA Lmax
 - o at the rest of the port operational area of 65dBA Leq 15 minute and 85dBA Lmax in accordance with NZS 6809:1999. Mr Hilder considered that the setting of these limits will encourage noise reduction measures being adopted by the port operator. Examples he gave were cold ironing (power being connected to the shore), straddle carrier hush kits, electric container handling machinery, real time monitoring in shift supervisor's office and changing the type of reverse sounder
 - prohibition of log handling berthing vessels on the east side of the Boiler Point reclamation and log handling on Boiler Point
 - independent monitoring and regular independent reassessment and revalidation of the noise model and contours
 - an independent chair of the Port Noise Liaison Committee
 - mitigation measures delivered within specified timeframes
 - noise insulation available for residents within the 50BA Ldn contour
 - removal of upper limit payment for noise insulation work by Port Otago Limited
 - offers that are rejected to be offered again after a specified period.
142. In response to questions, *Mr Hilder* said that he thought he had scope to seek the changes outlined in his evidence because his submission was broad. He also clarified that he was personally less concerned with the impact of container noise and more concerned with the noise from larger ships. He also considered that apart from the impact of container noise that a 45 dBA limit at residential or rural boundaries could be achieved for the Port. He said that Port Noise from Boilers Point into Careys Bay should be treated differently, with more stringent provisions than in other areas of the Port, because of the extension of the wharf and the resulting adverse noise effects on the amenity of Careys Bay residents.
143. *Eryn Makinson* (OS516) said she had experienced increased noise from the Port causing her to be woken at night by container banging and crashing. She also said that her noise complaints to the Port had resulted in no reduction in noise, with no follow up from Port Otago Limited. She also claimed that after contacting Port Otago Limited there was no record of the complaint and as a result the DCC and Port Environment Liaison Committee were not made aware of the complaint. Also, she said Port Otago Limited does not have standards of quiet shipping container handling which operators are expected to adhere to, they do not undertake adequate training and incentives to

ensure this happens, and they do not have shift supervisors monitoring the operator's compliance with these standards. She stated that (Statement of Evidence, p. 2):

"My point is that when you allow the creator of the noise pollution to also decide how to respond to complaints they have no motivation to do anything regarding either the noise pollution or the complaint, so they don't."

144. She also considered that the Port Environment Liaison Committee has no will to do anything useful because it is led by Port Otago Limited and trying to negotiate with it has been a disempowering experience for Careys Bay residents.
145. In summary *Ms Makinson* sought (Statement of Evidence, pp. 6-7):
- independent measuring and monitoring of port noise, using Lmax
 - an independent Port Noise Liaison Committee with equal representation from the Careys Bay Association and Port Otago Limited representatives, which as a benchmark will ensure that Port Otago Limited does not drop containers at night
 - explicitly exclude logs, wood chips and fertiliser storage from any part of Boiler Point reclamation
 - the reference to the special character of Careys Bay (from the operative District Plan) to be reinstated
 - financial penalties to be imposed on Port Otago Limited where it fails to meet its obligations to mitigate adverse noise effects (e.g. every time a container is dropped at night or a complaint is not recorded).
146. We asked *Ms Makinson* whether she is affected by night time noise from trains. She said although she is sometimes woken at night by trains, she knows when they are coming and so they are not as disturbing, unlike the intermittent and unpredictable noise from shipping container bangs, and the beeping of port machinery.
147. *Blair Smith* (FS2260) in response to a question from us said that Careys Bay acts like an amphitheatre with the noise from the Port bouncing off the surrounding hills.

3.1.6.3.2 *Port Otago Limited evidence*

148. A substantial amount of evidence was provided by *Port Otago Limited* (OS737, FS2378) on the management of port noise at the hearing, including legal submissions by Mr Andersen (Legal Counsel) and expert evidence by: Mr Keith Ballagh (acoustic consultant), Ms Mary O'Callahan (planning consultant), Mr Brian Corson (Engineering Officer) on the acoustic insulation process and Mr Geoffrey Plunket (Chief Executive Officer) on the operation of the Port.
149. Mr Andersen gave an overview of the principles which he considered underlie the port noise regime (Statement of Evidence, para 2.2). In summary these are:
- the Port can operate 24 hours a day
 - the Port has no control over shipping movements
 - there are practical limits on how noise can be controlled by rules
 - DCC has no ability to control noise in the coastal marine area meaning ship noise and some loading operations are outside the jurisdiction of the 2GP
 - *Port Otago Limited* agreed to monitor and mitigate all noise generated within the Port Zone and adjacent coastal marine area in return for an absence of enforceable noise limits

- *Port Otago Limited* agreed to purchase or acoustically treat the worst affected properties (at the owner's option) and also set up a regime for treatment of less affected properties under the control of the Port Environmental Liaison Committee;
 - properties that were acoustically treated would be treated to a level 3 dBA above the noise currently being experienced by that property on a five-day Ldn measurement and the property owners would have no further claim for acoustic treatment or purchase unless that certified level of noise was exceeded when they would once again be eligible;
 - if *Port Otago Limited* bought a noise affected property then it had to either acoustically treat or demolish the property.
150. He responded to the s42A Report recommendation to remove the exemption of noise from log and container activities from the special audible character penalty aspect of the Port Noise performance standard (Rule 30.5.4.2b). Mr Andersen considered that Mr Hunt and the Reporting Officer were mistaken about the exclusion as they suggested that it was the noise from the activities, and not the special audible characteristics, that were excluded (Statement of Evidence, pp. 2-3). He said:
- "The removal of the inability to add the 5 dBA to the meter reading is opposed. It effectively increases Port Otago's obligation to purchase or mitigate by 5 dBA Leq."*
151. Mr Ballagh in his evidence introduced environmental noise and its control, and a history of his involvement with the noise issues at Port Chalmers. He then explained the development and workings of the operative District Plan as it affects Port Otago's operations at Port Chalmers, the changes to the noise management regime under the 2GP, provided comment on the public submissions on port noise, and discussed the changes sought by Port Otago to the 2GP.
152. He stated that the current approach of dealing with the effects of noise through a management plan, a mitigation plan and a noise liaison committee, appears to be working (Statement of Evidence, pp. 13-14). He said the Port has established two permanent noise monitors, and regularly reports on the results of the noise recorded at those stations. The port noise contour maps are updated and produced annually, and a programme of purchase and/or acoustic treatment of properties has been in place for several years. He said acoustic treatment has been completed on almost all the most affected properties (and many the moderately affected properties). He said that he supports the 2GP approach for the management of port noise.
153. He reiterated his support of *Port Otago Limited's* submission on the definition of 'Noise Affected Property' but disagreed with the s42 Report recommendation regarding the exemption of noise from log and container activities from special audible character penalty (Rule 30.5.4.2b). He noted that this provision was extensively analysed at the 2004 Environment Court decision which had determined the allowance for special audible character was already "built into" the acoustic criteria. In his opinion the recommended provision would have the consequence of making the short-term measurement too sensitive.
154. Mr Ballagh also noted that the Port is actively seeking to reduce the noise emitted from its container handling equipment. The modern diesel electric straddle carriers are much quieter than the older diesel straddle carriers (modern carriers are more than 10 dB quieter than the ones used in the 1990's).

155. Mr Ballagh explained the noise model used for the Port and stated that it has steadily improved since it was first developed in 1994 (Statement of Evidence, p. 11). He also stated that (Statement of Evidence, para. 18.3, 18.4):

"In brief, the noise model consists of three parts; the noise emission from each piece of machinery (collected from individual measurements at the Port), the detailed description of the locations and times of usage of each machine, and acoustic software to predict the propagation of noise taking the topography into account. A typical noise contour plot is shown in figure 1 from the Port Noise Management Plan. This shows a five-day Ldn for a busy day in 2017. Noise contours are shown in 5dB increments from 55 to 65 Ldn. The same data is also shown in figure 1A but with 1 dB intervals.

This noise modelling is carried out annually to forecast the noise contours for the coming year so that any adjustments to the housing sound insulation programme can be identified."

156. Mr Ballagh also described in more detail how noise from the port is monitored, with two permanent monitoring sites at the rear of 19 Scotia Street and on the hill above Boiler Point (Statement of Evidence, pp. 9-10). He said additional measurements have been made at eight other sites, essentially to check that the shape of the noise contours are correct, and that there are no appreciable anomalies. The most recent of these surveys was carried out in 2012 and revealed that the noise model was accurate for Port Chalmers, but was mostly overestimating the Port noise in Careys Bay.
157. He also advised us that two further noise surveys were recently completed with one monitor placed at 3 Henry Street in Careys Bay, and one at Island Terrace at Back Beach, and the monitors collected data for a month (21 February to 23 March 2017). He outlined that the results for 3 Henry Street were an average 5-day Ldn of 53dB and a highest 5-day Ldn of 54dB, with the model predicting a 52dB noise level which he considered demonstrated a good agreement between the model and the actual noise survey measurements (Statement of Evidence, p. 10).
158. Mr Ballagh also described that the results for Island Terrace were an average 5-day Ldn of 58dB and a highest 5-day Ldn of 60dB, with the model predicting a 64dB noise level which he considered necessitated an adjustment of the noise model (Statement of Evidence, p. 10).
159. Mr Corson provided evidence on the acoustic insulation process undertaken by *Port Otago Limited*, which includes:
- property owners contact *Port Otago Limited* about their interest in taking part in the acoustic insulation process
 - assessment of the noise exposure of a property, which is the highest noise contour that crosses any point within the property's boundary
 - noise measurements taken on a noisy port day within kitchen, dining room, living room and bedrooms
 - an acoustic solution is developed by Mr Ballagh for each room
 - a scope of work is developed by Mr Corson, which sets out the specific work required to bring the dwelling up to the required standard (actual form of acoustic treatment varies)
 - the scope of work is tendered to building and ventilation contractors

- if property owner decides to go ahead Mr Corson writes a board paper seeking approval from the Port Otago Limited Board
 - a legal agreement is entered between building owner and Port Otago Limited setting out the scope of work, costs, and the obligations of the property owner to maintain the completed work to a standard so that it continues to perform
 - the acoustic work is completed by contractor
 - Mr Corson undertakes acoustic testing to confirm that work achieves the required standard
 - the results of testing are given to Mr Ballagh who checks them and issues an Acoustic Certificate.
160. Mr Corson also advised us that he has worked through the acoustic treatment process from initial contact to acoustic certificate of 14 red zone (over 65 dBA) and 10 blue zone properties. He has also worked on three red zone, seven blue zone and four yellow zone (55 to 60dBA) properties to various stages where the property owners have decided not to proceed.
161. Ms O'Callahan's planning evidence supported the DCC's approach of carrying over the same approach for management of port noise from the operative District Plan into the 2GP. She stated (Statement of Evidence, p. 6, para 26):
- "I note the conveniently narrow view of the NZS6809:1999 taken by the Careys Bay submitters in suggesting this requires enforceable noise limits be included in the 2GP for Port Chalmers. However, these submitters do not acknowledge that Dunedin district plan approach to managing port noise goes well beyond what NZS6809:1999 recommends for mitigation (i.e. insulation)."*
162. Ms O'Callahan's planning evidence also described that in regard to *Port Otago Limited* (OS737.29) to make non-compliance with the port noise rules a restricted discretionary rather than a non-complying activity, that *Port Otago Limited* is not wishing to pursue this submission point further, so she had not provided any specific evidence on this (Statement of Evidence, p. 8, para 39).
163. Mr Plunket gave evidence on the operation of the Port, and made comments on the port noise regime and the complaints process (Statement of Evidence, pp. 5-8). In summary, the main points made in his evidence were:
- enforceable noise limits are not practical because Port Otago Limited cannot control noise from ships within the coastal marine area, which form part of the noise source and if such limits are imposed and Port Otago Limited exceed these limits, port operations would have to cease which would be a significant setback for the port and the Otago region
 - port noise reduction is an important consideration for the port particularly in the training of mobile plant operators and investment in new machinery
 - the Port Noise Mitigation Plan provides certainty to Port Chalmers' residents by ensuring, for the worst affected properties, acoustic insulation or property purchase will be provided. Port Otago Limited has spent \$1.3 million on acoustic treatment and \$1 million on property purchase
 - in the 2016 calendar year there were 53 complaints, of which 42 were noise complaints and 11 other complaints, and 35 of the 53 complaints were from three people, furthermore 26 of the noise complaints were from three Careys Bay residents
 - the number of complaints peaked in 2009 (at 95), and there are generally 50 to 60 complaints per year thereafter

- the process is that details of the complaints are passed to the operating manager or supervisor to see if any immediate action can be taken. Details are also passed to Mr Corson and the complainant is subsequently contacted and feedback provided. All complaints are also reported to the Port Environment Noise Liaison Committee and to the DCC.
164. Mr Plunket also raised the issue of 'real time' noise monitoring, i.e. as and when it occurs. He considered that because of the nature of the noise generated from port operations, real time noise monitoring will not make any practical difference to the way the container terminal operates or to noise levels from these operations (Statement of Evidence, p. 10).
165. We asked *Port Otago Limited* representatives many questions about port noise processes including: the acoustic insulation methodology; the noise complaints process; how port noise is measured; how the Port operates generally, and specifically how container handling at Boiler Point is managed. This included us calling *Port Otago Limited* back for further questions (on Friday 19 May 2017) because of the issues raised in the evidence of residents of Careys Bay.
166. The main points highlighted in answers to these questions were:
- there is no practical way for *Port Otago Limited* to avoid port noise, if there was they would do this regardless of cost
 - the Port Noise Liaison Committee receives noise data with any noise complaints although it is often difficult to identify exactly where the noise complained about is coming from
 - Port Otago Limited looks at noise data daily but usually at a high level (i.e. to see any themes or issues that may have arisen at a broader level)
 - there is regular training of machinery operators and if there is an incident they go out with the trainer for refresher training
 - Port Otago Limited supports providing additional port noise information online
 - Port Otago Limited supports an independent chair paid for by the Port
 - with "cold-ironing", the issue is that the ship must have the wiring on-board, and the ships in New Zealand don't have that, however, Ports of Auckland are considering the issue, which is New Zealand wide
 - during the peak season some movement of containers during the night is undertaken. This is predominately containers coming off ships and some movement of containers when ships are not there, for example containers that are being prepared for washing and upgrading
 - the Port is now less noisy and the equipment that is being used is quieter than it has been in the past. As a result, the number of noise complaints is less than in the past.
167. In addition, at the hearing *Port Otago Limited's* acoustic expert, Mr Ballagh, indicated that the wall of shipping containers on Boiler Point provides about 10 to 15 decibels of noise attenuation for Careys Bay.
168. Mr Malcolm Hunt (Acoustic Consultant) presented some closing comments and revised recommendations (dated 19 May 2017). He reiterated his view that after having heard from the submitters the 2GP Port Noise provisions are generally 'fit for purpose', given the specific circumstances of the Port, the agreements reached previously as set out within various court decisions, and the geographical relationship between port activity areas and sensitive receiving environments including Careys Bay.

169. Mr Hunt also made a revised recommendation regarding the request, by Eryn Makinson (OS516.1), for removal of the exception (in Rule 30.5.4.2b) of the noise from log and container handling activities. He stated (Supplementary Evidence, p. 2):

"I now recognise this '5 dB penalty' is not needed to be added to the LAeq(15 min) measurements referred to within the Noise Mitigation Plan as these 15 minute readings are being used in the Mitigation Plan as a 'short hand' method for estimating overall Ldn port noise levels. I therefore support the wording of Rule 30.5.4.2 as notified."

170. However, in agreeing to continuing this exemption, he expressed remaining concern about the impact of night time single noise events that occur during container handling at Port Chalmers, and set out two recommendations that, if adopted would (a) require detailed reporting of Lmax noise levels measured at residential sites and (b) require the Port Noise Management Plan to investigate and adopt the best practicable option to minimise night time single loud noise events associated with container handling.

3.1.6.3.3 Reporting Officer's Revised Recommendations

171. The Reporting Officer reiterated that port noise is the most contentious matter in the Port Zone and that this is where there is the most disagreement between Port Otago Limited and the residents. He also agreed with Mr Hunt that, after consideration of all the evidence, the overall approach for the management of port noise should be retained in the 2GP although there should be amendments to acknowledge and respond to some of the points made by submitters, including changes to: Rule 30.5.4 Port Noise; the Appendices; Appendix 30A: Port Noise Management Plan; Appendix 30B: Port Noise Mitigation Plan; and Appendix 30C: Port Noise Liaison Committee.
172. More specifically, the Reporting Officer recommended deleting clause 2 and 3 from Rule 30.5.4. Port Noise and moving it with amendments to the Appendices. He acknowledged that these clauses set out worthwhile guidance on how port noise is to be measured and assessed, however rather than being part of the rule they would be more appropriately placed in the appendices in section 30, as an over-arching requirement for noise measurement and assessment.
173. Also, he recommended an amendment to Rule 30.5.4.1.b Port Noise by inserting: 'including specific measures to reduce the occurrence of loud, single noise events (including those associated with handling containers and logs)'. He also recommended an additional clause 3 in Appendix 30A: Port Noise Management Plan to require Port Otago Limited to undertake additional noise readings and reporting. The Reporting Officer said he agreed with the expertise and reasons of Mr Hunt in his document titled 'Final Comments and Recommendations – Noise Matters' which was provided at the end of the hearing, which included concerns regarding the impact of night time single noise events that occur during container handling at Port Chalmers.
174. The Reporting Officer also recommended amendments to require the Port Noise Management Plan and Port Noise Mitigation Plan to be regularly updated. This was in response to the concerns of submitters from Careys Bay. He also recommended that the Port Noise Management Plan and minutes of the Port Noise Liaison Committee be made available on the *Port Otago Limited* website, to address the concerns of some submitters that this information was not readily available for residents and other interested parties.
175. The Reporting Officer also recommended that Appendix 30C be changed to require that an independent chair is appointed to the Port Noise Liaison Committee, and that person

be paid for by *Port Otago Limited*. This is to address the concerns the Committee does not operate independently of Port Otago Limited. We also note that Mr Plunket supported this amendment.

3.1.6.3.4 *Post Hearing Minutes and Other Information*

176. After the initial hearing, we issued a Minute (dated 25th May 2017) to Port Otago Limited requesting that Mr Ballagh provide additional acoustic modelling to show the noise from a wall of containers three high, and also modelled with no containers at all in this location. This was based on our understanding that the modelling provided at the hearing was based on a continuous wall of shipping containers stacked five high, and we were interested to understand what the extent of any noise attenuation might be from the current wall of containers.
177. A memorandum in response from Mr Andersen dated 23rd June 2017 included the modelling information from Mr Ballagh, and said that the modelling did not show the expected reduction in noise contours with containers stacked at Boiler Point, meaning that those containers do not have an effect on the Ldn measurement of port noise. However, he pointed out Mr Ballagh's conclusion that the containers stacked five high do significantly reduce the noise from impacts, and that having a lower wall, or no wall at all, will not provide the same degree of attenuation from this impact noise.
178. The memorandum also emphasised *Port Otago Limited's* concern at the new monitoring clause proposed to be added to Appendix 30.1.B by Mr Hunt's revised recommendations and states:

"The monitoring proposed by that clause would be expensive (several thousand dollars a time to be carried out four times a year) at residential sites including Carey's Bay.

There is no indication of the benefit that Mr Hunt believes would be achieved from this monitoring."

179. We note here that we have not placed any weight in our deliberations on the above response because our Minute did not request any information or comment from the submitter with respect to noise monitoring.
180. We issued a further Minute dated 20th July 2017 to *Port Otago Limited*, noting the acknowledgement in the previous memorandum from the Port that the container wall is itself a source of noise, and on the face of it a container wall stacked five high has potential to generate more movements and therefore more noise. We requested an estimate of the relative numbers of containers on and off the wall, compared to the number of movements of containers on the ship side of the wall. This Minute and the memorandum from Mr Andersen (dated 2nd August 2017) in response is discussed in Section 3.2 Maximum Height of this report, below.
181. We also observed in an article of the 18th September 2017 edition of the Otago Daily Times that *Port Otago Limited* were intending to install new noise monitoring equipment in a variety of locations around Port Chalmers. According to the article, this equipment will enable *Port Otago Limited* to record and pinpoint the source of the noise. In addition, they intended to install telemetry software to track moving plant on the wharf, which will assist in identifying the source of port noise.

3.1.6.4 Decision and reasons

182. We accept in part the submissions of *Careys Bay Association Limited* (OS391.2), *Christopher Hilder* (OS311.1 and OS311.2), *Eryn Makinson* (OS516.1, *Kristine Nicolau* (OS398.3), *Mary McFarlane* (OS882.1) and *Katrina Varian* (OS981.2).
183. We agree with the Reporting Officer and Mr Hunt that the overall approach for the management of port noise should be retained in the 2GP because the port noise provisions are generally 'fit for purpose', given the specific circumstances of the port, the agreements reached previously as set out within various Court decisions, and the geographical relationship between Port Activity areas and sensitive receiving environments including Careys Bay.
184. We are also mindful that the management and mitigation approach to noise generated at Port Chalmers is in line with the approaches used at other main ports in New Zealand. This approach appropriately balances the need for an important element of Dunedin's infrastructure to be able to operate effectively and efficiently, with every encouragement to minimise noise at source, and then to mitigate the effects of noise that cannot be attenuated.
185. In coming to that conclusion, we do, however, consider there are several areas where substantial improvements can be made to manage the noise issue, and we are grateful to the submitters who alerted us to the problems they are experiencing and to their suggestions for changes to make a real difference to their amenity and well-being.
186. We also generally accept the supplementary evidence of Mr Hunt, and agree with the approach suggested in the Reporting Officer's Revised Recommendations in relation to Rule 30.5.4 Port Noise; Appendix 30A: Port Noise Management Plan; Appendix 30B: Port Noise Mitigation Plan; and Appendix 30C: Port Noise Liaison Committee. We consider that the recommended amendments to the Port Noise rule and Appendices will encourage the port operator to continue to investigate and adopt the best practicable options to minimise noise, including in relation to night time single loud noise events associated with container handling, which will improve the residential amenity for residents surrounding the Port who are inescapably affected by Port noise to some degree.
187. Our reasons for this decision are also:
- the 2GP cannot impose noise limits for Port operations because although the Otago Regional Council (ORC) has transferred their environmental noise responsibilities and functions in the coastal marine area (CMA) to DCC, there are no ORC rules controlling noise originating from activities located within the CMA. In addition, the DCC cannot impose rules in the 2GP that apply to activities located within the CMA which lies beyond the jurisdiction of Dunedin City. We refer to the Deed of Notice of Noise Enforcement Functions and the acoustic evidence of Mr Hunt and Mr Ballagh on this matter
 - we accept that the current regime has been set by the Courts as an alternative to noise limits, including mitigation measures that go beyond that expected by a noise standard
 - it is not practicable for DCC to be the first port of call for noise complaints, as there is a limited ability to respond out of hours; and compliance with the rule is not in relation to noise limits but in relation to having in place the measures set out in Rule 30.5.4 Port Noise Management
 - technologies will change over time and assessment of what is practicable is most appropriately managed by way of the Port Noise Liaison Committee
 - we accept the expert evidence that this approach represents best practice and is aligned with similar approaches to managing port noise and the effects of port related noise on residents, at other key ports elsewhere in New Zealand

- we accept the evidence of Mr Hunt that it is appropriate to remove the exemption for log and container handling activities from measurements needed to confirm the eligibility for assistance with acoustic insulation of affected dwellings
- the Port of Otago Limited Noise Mitigation Plan already places requirements for mitigation of port noise which exceeds the requirements elsewhere around the country
- we accept the evidence of Mr Hunt, regarding the impact of night time single noise events during container handling. We agree with Mr Hunt that this warrants the inclusion of more detailed reporting of Lmax noise levels measured at residential sites and requirements that the Port and its committee, through the Port Noise Management Plan, investigate and adopt the best practicable option to minimise night time single loud noise events associated with container handling
- we consider that requirements of an independent Chair, and more accessible documentation associated with the Port Noise Management Plan and the Port Noise Liaison Committee, has merit and note that these measures were supported by all parties
- we support the annual update of the Port Noise Management Plan, so it is kept up to date and consistent with best practise.

188. In summary these amendments are:

- renaming the 'Port Noise' performance standard (Rule 30.5.4) 'Port Noise Management', with a consequential amendment to Rule 30.3.3.2 (port activity) and Rule 30.11.3.3 Assessment of non-complying performance standard contraventions which references this rule {Port 391.2}
- adding to clause b of the Port Noise Management performance standard so that it reads:
 - b. *investigate and adopt the best practicable option to minimise port noise emissions, including specific measures to reduce the occurrence of loud, single noise events (including those associated with handling containers and logs); {Port 516.1}*
 - adding to clause d of the Port Noise Management performance standard and clause 8 of Appendix A.1 'Minimum port noise management plan provisions' so that the port noise management plan is required to be annually updated {Port 391.2}
 - the moving of clause 2 and 3 of the Port Noise Management performance standard to the Appendices including deletion of the reference to clause 2 not applying to noise from log and container handling activities {Port 391.2}
 - adding to clause 2 to Appendix 30A.2 'Minimum monitoring and reporting requirements', which require LMax readings to include readings taken at night (including within Careys Bay) while container handling is taking place {Port 391.2}
 - amending clause 11 to Appendix 30A.2 'Minimum monitoring and reporting requirements', which require the port noise management plan to also be held on the web sites of both the port operator and the Dunedin City Council {Port 391.2}
 - addition to Appendix 30C. Port Noise Liaison Committee which requires an independent chair of the committee who is paid by Port Otago Limited and requires minutes of meetings to be made available, including on the Port Otago website. These amendments are to clause 1 and clause 4.d of Appendix 30C. Port Noise Liaison Committee, and are worded as follows:
 1. *The port noise liaison committee required under Rule 30.5.4 must include an independent chair who is paid for by Port Otago Limited and {Port 391.2} must comprise but is not limited to members appointed by the following organisations:*
 - 4.d. *The port operator must make copies of the minutes of the Port Noise Liaison Committee available on its website, and must supply copies on request. {Port 391.2}*

189. Amendments are shown in Appendix 1 and attributed to submission points Port 391.2 and Port 516.1.
190. We also accept the *Southern District Health Board* (OS917.9) submission and agree with this submitter that the correct legal formatting in the 2GP (in relation to New Zealand Standards) is important and consistent with best practice, and have amended the rule accordingly.
191. We also reject the *Port Otago Limited* (OS737.29) submission point to make non-compliance with the port noise rules a restricted discretionary rather than a non-complying activity and agree with the Reporting Officer that this activity status is not overlay onerous.

3.1.7 Appendix 30B - Port Noise Mitigation Plan

3.1.7.1 Background

192. This section is separated out from the previous section because it assesses and makes decisions on specific and additional submission points by *Port Otago Limited* (OS737.35, OS737.36, OS737.37), to those discussed in section 3.1.6 of the Decision Report. These submissions relate to specific amendments to Appendix 30B – Port Noise Mitigation Plan.
193. The Port Noise Mitigation Plan requirements (in Appendix 30B) are essentially the same as in Appendix 21B of the operative District Plan.
194. The Port Noise Mitigation Plan sets out the requirements for the port operator for acoustic insulation or purchase of noise affected properties. These requirements relate to the exposure of noise affected properties in three different categories of mitigation:
- 65dBA and above - rules require the port operator to offer to either purchase or provide acoustic treatment (the owner is to decide), and any properties purchased by the port operator are not to be used for residential purposes unless they receive acoustic treatment;
 - 60dBA and above - rules relate to purchase and acoustic treatment; and
 - 55dBA to 60dBA -rules relate to technical advice and acoustic treatment.

3.1.7.2 Submissions

195. *Port Otago Limited* (OS737.35, OS737.36, OS737.37) submissions on the Port Noise Mitigation Plan requirements (in Appendix 30B) generally relate to the link between the acoustic insulation requirements in Rule 9.3.1 and how they are referenced in the Port Noise Mitigation Plan. More specifically these submissions sought corrections to referencing errors and requested that Appendices 30B.1 – 30B.3 be amended by:
- removing reference to Rules 9.3.1.2 to 9.3.1.4 in Appendix 30B.1 - Mitigation for noise affected properties 65dBA and above, and replacing with a reference to Appendices 30B.1.1 to 30B.1.4 (OS737.35)
 - remedying the numbering error in 30B.1.2 - Owner to decide (OS737.35)
 - removing reference to Rules 9.3.1.2 to 9.3.1.4 in Appendix 30B.2 - Mitigation for noise affected properties 60dBA and above, and replacing with a reference to appendices 30B.2.1 to 30B.2.2 (OS737.36)

- removing reference to Rules 10.2.3.1 to 10.2.3.2 in Appendix 30B.3 - Mitigation for noise affected properties 55dBA to 60dBA, and replacing with a reference to Appendices 30B.3.1 to 30B.3.2 (OS737.37).
196. Further submitters *Blair Smith* (FS2260.6, FS2260.7 & FS2260.8), *Bronwen Thomas* (FS2293.6, FS2293.7 & FS2293.8) and *Kristine Nicolau* (FS2421.14, FS2421.15 & FS2421.16) opposed all of the above original submissions.

3.1.7.3 Section 42A Report

197. The Reporting Officer, based on Mr Hunt's acoustic report, recommended that the reference in Appendix 30B.1 to Rule 9.3.1.2 and Rule 9.3.1.3 was appropriate because these provisions outline the technical requirements for the acoustic insulation of rooms, and so he disagreed with the request by *Port Otago Limited* (OS737.35 and OS737.36) to remove these references (s42A Report, Section 5.7.1 and 5.7.2, pp. 98-103).
198. He did, however, agree with *Port Otago Limited* (OS737.35), also based on the advice of Mr Hunt, that the reference to Rule 9.3.1.4 should be removed from Appendix 30B.1 as it relates to Mitigation for noise affected properties 65dBA and above, and also from Appendix 30B.2 - Mitigation for noise affected properties 60dBA and above. He said this incorrectly refers to the Public Health and Safety Acoustic Insulation performance standard (s42A Report, Section 5.7.2 pp. 101-102).
199. He also agreed with *Port Otago Limited* (OS737.35) that there was a numbering error because two clauses are numbered 30B.1.2. To avoid duplication, he recommended that the "Owner to Decide" heading should be renumbered as 30B.1.1 (s42A Report, Section 5.7.2, pp. 101-102).
200. He also agreed with *Port Otago Limited* (OS737.37), and recommended that the reference to rules 10.2.3.1 to 10.2.3.2 in Appendix 30B.3 'Mitigation for noise affected properties 55dBA to 60dBA' should be removed and replaced with 30B.3.1 to 30B.3.2 to correct the error in referencing, noting that the only other provisions in the 2GP with those numbers are Policy 10.2.3.1 and Policy 10.2.3.2 in Section 10 - Natural Environment, which have no relationship to Port noise provisions (s42A Report, Section 5.7.4, p. 106).

3.1.7.4 Hearing evidence

201. *Port Otago Limited* called Mr Ballagh to present acoustic evidence and Ms O'Callahan to present planning evidence on this matter. Mr Ballagh said he disagreed with the Reporting Officer's recommendation (and the evidence of Mr Hunt) and proposed that the reference to rules 9.3.1.2 and 9.3.1.3 should either be deleted entirely, or replaced with a reference to the provisions of the Port Noise Management Plan and gave the following reasons (Statement of Evidence, p. 13):
- "... rule 9.3.1.2 is less complete than the provisions and definitions of the mitigation plan. For instance, rule 9.3.1.2 while defining an internal design noise level does not specify what external noise level it is based on, making the requirement less certain and open to interpretation, and there is no mention of the 3 dB margin that the mitigation plan requires for future proofing the acoustic treatment."*
202. Ms O'Callahan supported Mr Ballagh's evidence and also recommended that the reference to Rules 9.3.1.2 and 9.3.1.3 should be replaced with 30B.2.1 – 30B.2.2 (Statement of Evidence, Appendix 1, pp. 8-9). These rules relate to requirements for the port operator to purchase or acoustically treat noise affected properties.

3.1.7.5 Revised recommendations

203. Mr Hunt recommended that Rule 30 B.1.3 and Rule 30 B.2.2 be reworded as follows (Statement of Evidence, 19 May 2017, p. 2):

"The conditions and standards of 9.3.1.2, 9.3.1.3, and 9.3.1.5 shall apply to the provision of acoustic insulation under the Port Noise Mitigation Plan, except that the extent of acoustic insulation to be provided under 9.3.1.2 may be lowered within the plan below the stated minimum design standard of 40dBA Ldn indoors."

204. The reasons for this amendment were that decisions as part of the Public Health and Safety Hearing had changed the wording and numbering of this rule which needed to be reflected in Appendix 30B.
205. The Reporting Officer agreed with Mr Hunt and recommended that these changes to the Appendix 30B Port Noise Mitigation Plan be made.

3.1.7.6 Decision and reasons

206. Our decisions regarding 'Appendix 30B. Port Noise Mitigation Plan - 30B.1 Mitigation for noise affected properties 65dBA and above', are that:
- we accept the submission by *Port Otago Limited* (OS737.35) to renumber the heading for '30B.1.2 Owner to decide' and agree that this is necessary for the purposes of clarity. Amendments are shown in Appendix 1.
 - we accept, in part, the submission by *Port Otago Limited* (OS737.35) for amendments to Rule 30B.1 Mitigation for noise affected properties 65dBA and above and Rule 30B.1.3 Acoustic Insulation as recommended in the Revised Evidence by Mr Hunt for the reasons outlined by him that this will provide a link to the acoustic insulation performance standards in Rules 9.3.1. Amendments are shown in Appendix 1.
207. We accept, in part, the submission by *Port Otago Limited* (OS737.36) for amendments to Rule 30B.2 Mitigation for noise affected properties 60dBA and above and Rule 30B.2.2 Acoustic treatment, as recommended in revised evidence by Mr Hunt (with slight amendments for the purposes of clarity), for the same reasons as outlined above. Amendments are shown in Appendix 1.
208. The amendments to Rule 30B.1.3 and Rule 30B.2.2 Acoustic Insulation within Appendix 30B. Port Noise Mitigation Plan, which we have derived from the revised acoustic evidence from Mr Hunt, are:
- "Where acoustic treatment is provided it must be done in accordance with rules 9.3.1.2, 9.3.1.3, and 9.3.1.5." {Port 737.35 and 737.36}*
209. We accept the submission by *Port Otago Limited* (OS737.37) to correct a referencing error by replacing '10.2.3.1 to 10.2.3.2' with '30B.3.1 to 30B.3.2' in Rule 30B.3. Mitigation for noise affected properties 55dBA to 60dBA.
210. Amendments are shown in Appendix 1 and attributed to submission points Port 737.35, Port 737.36 and Port 737.37.

211. Our reasons are that the notified version of Rule 30B.3 contained a referencing error, and that the amendment will add additional clarity to the provision of technical advice or an offer to provide acoustic treatment.

3.2 Maximum Height

3.2.1 Background

212. As outlined in the s42A Report, the operative District Plan Rule 11.5.2(ii) restricts building and structure height (excluding cranes) to 10m for Back Beach, 8.7m for Boiler Point and 15m in other areas (Rule 11.5.2(ii)). An exception is provided for shipping containers at Back Beach and Boiler Point where they may be stacked to five high or 15m, whichever is the lesser, on a short term basis.
213. This operative District Plan height rule was the result of Environment Court decision numbers C4/2002 and C66/2002. The Environment Court decision C66/2002 was that the shipping containers could be stacked to that height only when ships were being loaded or unloaded, and for up to seven days before or after a super ship was berthed at the wharf. We understand that, with the greater frequency of cargo ships now visiting Port Chalmers, this provision has resulted in containers being stacked five high on a fairly permanent basis. There has been some uncertainty as to the correct application of this part of the operative District Plan rule, but it has not resulted in any enforcement action being taken for non-compliance.
214. Consultation was undertaken with the Careys Bay community in June 2014 on the issues concerning the shipping containers stacked at Boiler Point. As part of that some visual simulations of shipping container were prepared by Truescapes Limited, showing containers stacked five high and seven high (s42A Report, Section 2.8, pp. 28-29). These visual simulations were taken from 4 viewpoints, refer below:

Viewpoint 1 – Careys Bay Historic hotel
Viewpoint 2 – 42 Harbour Terrace
Viewpoint 3 – Aramoana Road
Viewpoint 4 – 17 Slant Street

215. In the 2GP, the Maximum Height performance standard (Rule 30.6.4) for the Port Zone allows buildings and structures (including shipping containers) to be a maximum of 30m in height except in the Boiler Point and Back Beach height mapped area where the maximum height is 15m. As for the operative District Plan, cranes, and lighting towers, are exempt from this requirement.

3.2.2 Submissions

216. *James Foerster* (OS292.1), *Bronwen Thomas* (OS494.1), *Carey's Bay Association Limited* (OS391.1), *Blair Smith* (OS497.1) and *Mary McFarlane* (OS882.2) sought that the Maximum Height performance standard (Rule 30.6.4) be amended to only allow stacking of shipping containers 9m high (i.e. three containers). Their reasons included concerns about the violation of Environment Court decisions; adverse effects on views and amenity for residents and tourists on cruise liners; and jeopardising the natural beauty of Otago Harbour.
217. *Christopher Hilder* (OS311.4) and *Eryn Makinson* (OS516.5) sought for Rule 30.6.4 to be amended to only allow stacking of shipping containers to an 8m height. This was supported by further submitter *Mary McFarlane* (FS2168.4).

4.0 Other amendments

338. This section outlines our decisions on small matters that were not traversed at the hearing and were relatively uncontested. For these matters our decisions were made entirely on the evidence presented in the submission and the s42A Report, with our reasons, unless otherwise indicated, being the same as those summarised by the Reporting Officer.
339. Other amendments to the Industrial chapter of the 2GP have been made in response to submissions where the submitter did not provide specific evidence at the hearing or in their evidence agreed with the Reporting Officer who had recommended a change be made. These are discussed below.

4.1 Definition of Port Noise

340. *Port Otago Limited* (OS737.2) sought amendments to the definition of Port to include the loading and unloading of cargo and the provision of storage facilities. *Kristine Nicolau* (FS2421.2) opposed this submission.
341. The Reporting Officer agreed that there should be reference to 'storage' in the definition for Port although he believed that it would be clearer to include this reference as part of the ancillary activities associated with the operation of the Port. He also agreed that the word 'directly' should be removed because the definition of 'ancillary' and 'associated' make the word 'directly' superfluous. Therefore, he recommended that the definition of Port be amended to this effect and the *Port Otago Limited* (OS737.2) submission be accepted in part (s42A Report, sub-section 5.1.1, pp. 39-41)
342. The *Port Otago Limited* (OS737.2) submission was not specifically mentioned in evidence of Port Otago Limited or Careys Bay residents.

4.1.1 Decision and reasons

343. We accept in part the submission by *Port Otago Limited* (OS737.2) and agree with the Reporting Officer's recommended amendments to the definition of Port. Amendments are shown in Appendix 1 and attributed to submission point Port 737.2.

4.2 Appendix 30.1.B Minimum monitoring and reporting requirements

344. *Port Otago Limited* (OS737.34) sought amendments to point 4 of Appendix 30.1.B Minimum monitoring and reporting requirements because "*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*" (Submission, p.22).
345. *Mary McFarlane* (FS2168.10), *Careys Bay Association Limited* (FS2203.5), *Blair Smith* (FS2260.5), *Bronwen Thomas* (FS2293.5) and *Kristine Nicolau* (FS2421.13) opposed this submission.
346. The Reporting Officer disagreed with *Port Otago Limited* that this point would create an expectation for port funded mitigation, which is not required. Contrary to this he

considered the port funded mitigation requirements are clearly set out in Appendix 30B Port Noise Mitigation Plan (s42A Report, Section 5.7.1, pp. 95-99).

4.2.1 Decision and reasons

347. We reject the submission by *Port Otago Limited* (OS737.34) and agree with the Reporting Officer that point 4 of Appendix 30.1.B Minimum monitoring and reporting requirements does not create an expectation for port funded mitigation.

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

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