



**SECOND  
GENERATION  
DISTRICT PLAN**

# **Major Facilities – Port Zone Decision of Hearings Panel**

**Proposed Second Generation Dunedin City  
District Plan (2GP)**

**7 November 2018**





## **User guide to the decision reports and the marked-up decisions version of the 2GP**

The decisions of the 2GP Hearings Panel are presented in 29 decision reports (one report per hearing topic).

The reports include the Panel's decisions and reasons and incorporate the requirements under s32AA.

At the end of each report a table has been included summarising all the decisions on provisions (Plan text) in that decision report.

### **Marked-up version of the Notified 2GP (2015)**

The decisions include a marked-up version of the notified 2GP, which shows the amendments made to the notified plan in ~~strike-through~~ and underline. Each amendment has a submission point reference(s) or a reference to 'cl.16' if the amendment has been made in accordance with Schedule 1, clause 16(2) of the Resource Management Act. Schedule 1, clause 16(2), allows minor and inconsequential amendments to be made to the Plan.

Amendments to the Schedules below are not marked up as in other sections of the plan as they are drawn from a different source. Any changes to Schedules are detailed in the decision report for the relevant section.

Some very minor clause 16 changes such as typographical errors or missing punctuation have not been marked up with underline or strikethrough. More significant cl. 16 changes (such as where provisions have been moved) are explained using footnotes, and in some cases are also discussed in the decision.

### **Hearing codes and submission point references**

As part of the requirement of the DCC to summarise all original submissions, all submission points were given a submission point reference, these references started with 'OS'. Further submissions were also summarised and given a submission point that started with 'FS'.

The submission points are made up of two numbers the first is the submitter number, which is followed by a full stop, the second part is the submission point number for that submitter.

For example, OS360.01 is submitter 360 and their first submission point.

The 2GP Hearings Panel has used these same submission point references to show which submission points different amendments were attributed to. However, to enable these changes to be linked to different decision reports, the reference code was changed to start with a decision report code, e.g. Her 308.244.

A list of hearing codes can be found on the following page.

It should be noted that in some cases where several submitters sought a similar change, the submission point reference may not include all of these submission points but rather include only one or say, for instance, "PO 908.3 and others".

### Master summary table of all decisions

In addition to the summary table at the end of each decision report there is a master summary table that lists all decisions on provisions (Plan text), across all hearing topics, including details of the section(s) of the decision report in which that decision is discussed, and the relevant section(s) of the s42A reports. The s42A report sections will be helpful for appellants needing to identify which other parties have submitted on that provision, as notices of the appeal must be served on every person who made a submission on the provision or matter to which the appeal relates. The master summary table of decisions can be found on the decisions webpage of the 2GP website ([2gp.dunedin.govt.nz](http://2gp.dunedin.govt.nz)).

### List of hearing codes

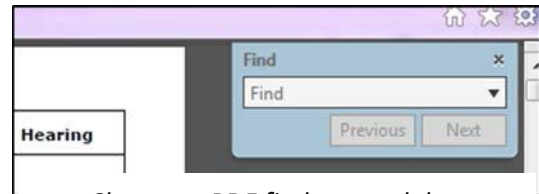
Hearing topic	Code
Commercial Advertising (cross plan hearing topic)	CP
Commercial and Mixed Use Zones	CMU
Community Correction Facilities (cross plan hearing topic)	CP
Defence Facilities and Emergency Services (cross plan hearing topic)	CP
Designations	Des
Earthworks	EW
Heritage	Her
Industrial Zones	Ind
Major Facilities (without Port and Mercy Hospital)	MF
Manawhenua	MW
Mercy Hospital	Mer
Natural Environment	NatEnv
Natural Hazards	NatHaz
Natural Hazard Mitigation	HazMit
Network Utilities	NU
Plan Overview and Structure	PO
Port Zone	Port
Public Amenities	PA
Public Health and Safety (PHS)	PHS
Quarries and Mining Activities (cross plan hearing topic)	CP
Recreation Zone	Rec
Residential Zones	Res
Rural Zones	RU
Rural Residential Zones	RR
Scheduled Trees	ST
Service Stations (cross plan hearing topic)	CP
Temporary Activities	TA
Transportation	Trans
Urban Land Supply	ULS

## How to search the document for a submitter number or name

1. If you want to search for particular submitter name, submission point or Plan provision in any of the reports (decision report, marked-up version of the Plan, or s42A report) the easiest way to do this is to use the 'Find' function.
2. When you have the document open, press the keys CTRL and F (Windows) or CMND and F (Mac) to bring up the 'PDF Finder'.



*Chrome – PDF finder search box*



*Chrome – PDF finder search box*

3. Once the PDF search box appears (in the top left or right corner of your browser) type in the submission number or submitter name and press enter on your keyboard.
4. The PDF finder will search for all instances of this term. Depending on the size of the document and your internet connection it may take a minute or so.
5. Press on the up or down arrows (Chrome) or 'next' (Internet Explorer) in the search box to view the different instances of the term until you find the one you are looking for.
6. An 'advanced search' function is available under the Edit tab in some PDF viewers, this allows you to search 'whole words' only to look for exact strings of letters or numbers



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## 1.0 Introduction

1. This document details the decision of the Proposed Dunedin City District Plan Hearings Panel/Te Paepae Kaiwawao Motuhake O Te 2GP with regard to the submissions and evidence considered at the Port Zone Hearing, held on 17<sup>th</sup> and 18<sup>th</sup> of May, 2017, at the 2GP Hearings Centre.

## 1.1 Scope of Decision

2. Unless otherwise noted, this Decision Report addresses the 38 original and 64 further submission points addressed in the Port s42A Report.

### 1.1.1 Section 42A Report

3. The Port Topic s42a Report dealt primarily with plan provisions included in Section 30 – Port Zone, and definitions related to Port Chalmers. The Port Zone is one of the Major Facilities Zones, which also includes Dunedin International Airport (Section 24) and Dunedin Hospital (Section 23). The introduction to the Major Facilities Zones outlines the intent of these major facilities, as follows:

*"The major facilities are key facilities throughout the city which contribute to the economic, social and cultural well-being of the community. The facilities identified in the District Plan are among the key facilities which enable people in Dunedin to access essential services such as education, health care, transport, and recreation. Including these facilities in separate zones, with provisions tailored specifically to them, ensures that their contributions to economic and social prosperity can be maintained and encouraged."*

4. The performance standards of particular relevance are Rule 30.5.4 Port Noise and associated Appendices (Appendix 30A Port Noise Management Plan, Appendix 30B Port Noise Mitigation Plan and Appendix 30C Port Noise Liaison Committee) and Rule 30.6.4 Maximum Height.
5. The Port section of the 2GP also links to other parts of the 2GP particularly Section 6 – Transportation, Section 9 - Public Health and Safety and Section 19 - Industrial Zones. The decisions on those topics should be read in conjunction with this decision.

### 1.1.2 Structure of Report

6. The decision report is structured by topic. The report does not necessarily respond to individual submission points; instead it discusses the matters raised in submissions and records our decisions and reasons on the provisions relevant to each topic. Appendix 2 at the end of the report summarises our decision on each provision where there was a request for an amendment. The table in Appendix 2 includes provisions changed as a consequence of other decisions.
7. Schedule 1 of the RMA outlines key aspects of the process that must be used to prepare and make decisions on a Plan change (including the submission and hearing process)
8. Clause 16(2) of that schedule allows a local authority to make an amendment where the alteration "is of minor effect", and to correct any minor errors, without needing to go through the submission and hearing process.
9. This Decision includes some minor amendments and corrections that were identified by the DCC Reporting Officers and/or by us through the deliberations process. These amendments are referenced in this report as being attributed to "cl.16". These amendments are summarised in Section 5.0.

## 1.2 Section 32AA Evaluation

10. Section 32 of the Resource Management Act 1991 (RMA) establishes the framework for assessing proposed objectives, policies, rules and appendices. Section 32AA of the RMA requires a further evaluation to be released with decisions, outlining the costs and benefits of any amendments made after the proposed Plan was notified.
11. The evaluation must examine the extent to which each objective is the most appropriate way to achieve the purpose of the RMA and whether, having had regard to their efficiency and effectiveness, the policies and rules proposed are the most appropriate for achieving the objectives. The benefits and costs of the policies and rules, and the risk of acting or not acting must also be considered.
12. A section 32AA evaluation has been undertaken for all amendments to the notified plan. The evaluation is included within the decision reasons in section 3.0 and 4.0 of this decision.

## 1.3 Statutory Considerations

13. The matters that must be considered when deciding on submissions on a district plan review are set out in Part 2 (sections 5-8, purpose and principles) and sections 31, 32 and 72-75 of the RMA. District plans must achieve the purpose of the RMA and must assist the council to carry out its functions under the RMA.
14. The s42A Report provided a broad overview of the statutory considerations relevant to this topic. These include:

- Section 75(3) of the RMA, which requires us to ensure the 2GP gives effect to any National Policy Statement (NPS) or National Environmental Standard (NES) that affects a natural or physical resource that the Plan manages. We note that there are NES directly relevant to this particular topic. The following NPS, however, is relevant:

Objective 6 of the New Zealand Coastal Policy Statement seeks to enable people and communities to provide for their social, economic, and cultural wellbeing and their health and safety, through subdivision, use and development. Policy 9 is particularly relevant to the Port Zone, and 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."
- Section 74(2)(a) of the RMA, which requires us to have regard to the proposed Otago Regional Policy Statement (pRPS) and section 75(3)(c) of the RMA, which requires us to ensure the 2GP gives effect to the operative Otago Regional Policy Statement (oRPS). We note that the proposed RPS was notified on 23 May 2015, and decisions released on 1 October 2016. At the time of making these decisions on 2GP

submissions some of the proposed RPS decisions are still subject to appeal, and therefore it is not operative

- Section 74(2)(b)(i), which requires us to have specific regard to any other key strategies prepared under the Local Government Act. The s42A Report highlighted the Dunedin Spatial Plan 2012 as needing to be considered as this DCC strategic document sets the strategic directions for Dunedin's growth and development for the next 30 plus years.

15. These statutory requirements have provided the foundation for our consideration of submissions. We note:

- where submissions have been received seeking an amendment of a provision and that provision has not been amended, we accept the advice in the original s42A Report that the provision as notified complies with the relevant statutory considerations
- where a submitter has sought an amendment in order to better meet the statutory considerations, we have discussed and responded to these concerns in the decision reasons
- in some cases, while not specifically raised, we have made amendments to the Plan as the evidence indicated this would more appropriately achieve these statutory considerations, in these cases we have explained this in our decision reasons
- where we have amended the Plan in response to submissions and no parties have raised concerns about the provisions in terms of any statutory considerations, and we have not discussed statutory considerations in our decision, this should be understood to mean that the amendment does not materially affect the Plan's achievement of these statutory considerations.

## 2.0 Hearing appearances and evidence presented

16. Submitters who appeared at the hearing, and the topics under which their evidence is discussed, are shown below in Table 1. All evidence can be found on the 2GP Hearing Schedule webpage under the relevant Hearing Topic <https://2gp.dunedin.govt.nz/2gp/hearings-schedule/index.html>

**Table 1: Submitters and relevant topics**

Submitter (submitter number)	Represented by / experts called	Nature of evidence	Topics under which evidence is discussed
Blair Smith (OS497, FS2260)	Mr Blair Smith	Oral and tabled evidence.	<ul style="list-style-type: none"> <li>3.1 Management of Port Noise</li> <li>3.2 Maximum Height</li> <li>3.3 Outdoor storage of woodchips, logs and fertilisers</li> </ul>
BP Oil NZ Ltd and Mobil Oil NZ Ltd and Z Energy Ltd (the Oil Companies) (FS2487)	Ms Georgina McPherson (Principal Planner, Burton Consultants)	Tabled evidence (did not appear at hearing)	<ul style="list-style-type: none"> <li>3.5 Community Activities</li> <li>3.1 Management of Port Noise</li> </ul>
Careys Bay Association Limited (OS391, FS2203)	Mr Joseph Cecchi (Chairman)	Oral and tabled evidence.	<ul style="list-style-type: none"> <li>3.1 Management of Port Noise</li> <li>3.2 Maximum Height</li> </ul>
	Ms Mary McFarlane		
Christopher Hilder (OS311)	Mr Christopher Hilder	Oral evidence and tabled evidence.	<ul style="list-style-type: none"> <li>3.1 Management of Port Noise</li> <li>3.2 Maximum Height</li> <li>3.4 New Objectives and Policies suggested</li> </ul>
Eryn Makinson (OS516)	Ms Eryn Makinson	Oral evidence and tabled evidence.	<ul style="list-style-type: none"> <li>3.1 Management of Port Noise</li> <li>3.2 Maximum Height</li> </ul>
Katrina Varian (OS981)	Ms Katrina Varian	Oral evidence and tabled evidence.	<ul style="list-style-type: none"> <li>3.1 Management of Port Noise</li> <li>3.2 Maximum Height</li> </ul>
Kristine Nicolau (OS398, FS2421)	Ms Kristine Nicolau	Oral evidence and tabled evidence.	<ul style="list-style-type: none"> <li>3.1 Management of Port Noise</li> <li>3.2 Maximum Height</li> <li>3.3 Outdoor storage of woodchips, logs and fertilisers</li> </ul>
New Zealand Transport Agency (NZTA) (OS881)	Mr Andrew Henderson (Senior Associate – Planning, Beca Limited)	Tabled evidence (did not appear at hearing)	<ul style="list-style-type: none"> <li>3.4 New Objectives and Policies suggested</li> </ul>
Mary McFarlane (OS882,	Ms Mary McFarlane	Oral evidence and tabled evidence.	<ul style="list-style-type: none"> <li>3.1 Management of Port Noise</li> </ul>

FS2168)			<ul style="list-style-type: none"> <li>• 3.2 Maximum Height</li> <li>• 3.3 Outdoor storage of woodchips, logs and fertilisers</li> <li>• 3.4 New Objectives and Policies suggested</li> </ul>
Port Otago Limited (OS737, FS2378)	Mr Len Andersen (Legal Counsel, Len Andersen Barrister)	Tabled and oral legal evidence	<ul style="list-style-type: none"> <li>• 3.1 Management of Port Noise</li> <li>• 3.2 Maximum Height</li> <li>• 3.3 Outdoor storage of woodchips, logs and fertilisers</li> <li>• 3.4 New Objectives and Policies suggested</li> <li>• 3.5 Community Activities</li> <li>• 3.6 Other amendment – Definition of Port Noise</li> </ul>
	Mr Keith Ballagh (Acoustic Engineer, Marshall Day Acoustics)	Pre-circulated expert acoustic engineering evidence	
	Ms Mary O'Callahan (Principal Planner, GHD Ltd)	Pre-circulated planning evidence	
	Mr Brian Corson (Engineering Officer, Port Otago Limited)	Tabled evidence describing acoustic treatment process	
	Mr Geoffrey Plunket (Chief Executive Officer, Port Otago Limited)	Tabled evidence regarding operation of the Port	

42. Appearances for the Dunedin City Council were:

- Mr Peter Rawson, Reporting Officer
- Mr Malcolm Hunt, Acoustic Consultant of Malcolm Hunt Associates
- Mr Barry Knox, Senior Landscape Architect
- Mr Peter Christos, Urban Designer.

43. Evidence provided by Mr Rawson included:

- s42A Report organised primarily under topic heading which responded to each submission point
- opening statement (tabled and verbal)
- revised recommendations (tabled and verbal) responded to each submitter.

44. Evidence provided by Mr Hunt included:

- Port Noise Review Report April 2017
- Final Comments and Recommendations – Noise Matters (19 May 2017).

45. Landscape/urban design evidence provided by Mr Knox and Mr Christos for Dunedin City Council regarding height at Port Otago.

46. Planning assistance to the Hearing was provided by:

- Mr Paul Freeland, Senior Planner.

## 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.

### 3.1.5 Policy 30.2.2.4 (port noise)

99. The submission of *Port Otago Limited* (OS737.27) was concerned that Policy 30.2.2.4 suggested an avoidance approach to managing port noise rather than the mitigation approach reflected in the operative and proposed District Plan provisions. It sought to have Policy 30.2.2.4 reworded to read:

~~"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, adequately mitigated."

100. This submission point was supported by *the Oil Companies* (FS2487.109). It was opposed by *Ms Mary McFarlane* (FS2168.8), *the Careys Bay Association Limited* (FS2203.3), *Mr Blair Smith* (FS2260.3), *Ms Bronwen Thomas* (FS2293.3) and *Kristine Nicolau* (FS2421.11) in further submissions.

101. *Careys Bay Association Limited* (OS391.2) made a broad submission to amend the approach for the management of port noise which it considered was inadequate. Furthermore, they stated in their submission that:

*"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."*

102. The Reporting Officer highlighted that Policy 30.2.1.1 focuses on enabling port activities, and that Policy 30.2.2.4 focuses on the performance standard for Port Noise and its drafting reflected that function. He also stated that in the Drafting Protocol 'require' policies relate to performance standards, and 'enable' policies relate to permitted activities. He, therefore, considered it would be inconsistent with the Protocol to alter Policy 30.2.2.4 as requested by *Port Otago Limited* because this policy relates to the performance standard for Port Noise (Rule 30.5.4) (s42A Report, Section 5.3.2, p.51).

103. The Reporting Officer recommended some changes to Policy 30.2.2.4 as a result of those submissions that requested a review of the overall approach for the management of port noise, in particular OS391.2 (s42A Report, Section 5.6.1, p. 81). The amendments to Policy 30.2.2.4 recommended by the Reporting Officer are shown below (s42A Report, Section 5.6.1, p. 84):

*"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 be avoided or, if avoidance is not possible, ~~adequately mitigated~~ minimised as far as practicable."* {Port 391.2}

104. We note that the use of the words "minimised as far as practicable" instead of "adequately mitigated" and the replacement of "can" with "will" were the subject of the reconvened Plan Overview Hearing on 6 December 2017. Please refer to the Plan Overview Decision Report for decisions on these Plan drafting matters.

105. He recommended that the Panel amend Policy 30.2.2.4 to ensure additional guidance to, and consistency with, Rule 30.5.4 Port Noise, which references noise "minimisation" and "minimise port noise emissions". He also noted that in order to operate effectively

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 \$50,000<sup>1</sup> (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 25<sup>th</sup> 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 23<sup>rd</sup> 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 20<sup>th</sup> 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 2<sup>nd</sup> 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 30B1.1 (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).

218. *Carey's Bay Association Ltd* (OS391.1) and *Blair Smith* (OS497.1) in addition to a permanent height limit of 9m (three containers high), also sought addition of a 15m high (five containers high) for containers stored on a short term basis (as per the operative Plan).
219. *Kristine Nicolau* (OS398.1) and *Katrina Varian* (OS981.1) sought a review of the Maximum Height performance standard but did not outline any specific reasons in their submissions.
220. *Port Otago Limited* (FS2378.26, FS2378.27, FS2378.28, FS2378.29, FS2378.30, FS2378.31, FS2378.32, FS2378.33 and FS2378.35) opposed these submissions.

### 3.2.3 s42A Report

221. The Reporting Officer in his s42A Report stated that in forming his views on the issue he concurred with and relied on the expertise and advice of Mr Knox, Senior Landscape Architect and Mr Christos, Urban Designer of DCC in their pre-circulated expert evidence.
222. Mr Knox and Mr Christos had undertaken an assessment of the landscape and amenity values of residential areas overlooking Boiler Point and Back Beach, with reference to how these values may be impacted by structures at various heights, including shipping containers. This assessment includes viewing the scene from the Truescape locations and extrapolating the information provided by these simulations.
223. Those officers considered that the visual amenity values of Back Beach are less likely to be adversely affected by shipping containers stacked five high than in Carey's Bay. This is because most residential sites are elevated or screened by topography or vegetation and because of the presence of the large Port Otago building, which is visually quite dominant because it has a horizontal long and unrelenting appearance, particularly when viewed from across the harbour toward Portobello.
224. The officers believed, overall, there is not a significant increased adverse effect on the visual amenity of Carey's Bay whether the shipping containers are stacked three high or five high (Statement of Evidence, p. 6, para.23). In summary, they considered that five high shipping container stacks (not greater than 15 metres) would be generally acceptable for both locations. However, they considered that any more than five containers high would begin to have an adverse effect on Carey's Bay, which would become significant, especially when viewed from dwellings lower down the slopes or other lower vantage points.
225. For those reasons the Reporting Officer recommended that the Maximum Height performance standard (Rule 30.6.4) be retained without amendment. He also noted that the existing warehouse buildings (which are approximately 15m in height), cranes and ships (including cruise ships in summer) are also all part of the height-scape of the Port, and the stacked containers should be seen in the context of those other buildings and structures.
226. He agreed with *Port Otago Limited* that requiring the Port to artificially move around shipping containers (to comply with the operative District Plan requirements for allowing containers to be stacked to five high or 15m on a 'short term basis') would result in increased container movements in Boiler Point and Back Beach, which has the potential to increase noise unnecessarily.
227. He also summarised the height rules for Ports in some other district plans in New Zealand (City of Napier District Plan, Christchurch Replacement District Plan and Nelson Resource Management Plan) and described that the 15m maximum height

limit for buildings and structures (including shipping containers) at Boiler Point and Back Beach is consistent with the maximum height for building structures in those other ports.

### 3.2.4 Hearing

#### 3.2.4.1 Careys Bay residents' evidence

228. For the *Carey's Bay Association* (OS391.1) Mr Cecchi presented a statement in which he raised several concerns, including:

- there had been a lack of consultation with the community on the height provision, which he considered should have been undertaken years ago
- there was a lack of evidence to justify the need to stack shipping containers five high. He considered if additional containers need to be stored they should be located off site, for example in the log storage area across the road from the Stadium
- there is a health and safety risk of shipping containers being blown by the wind and falling onto the Boiler Point walkway
- the validity of the Truescape consultation was questionable, and many of the vantage points for photographs suggested by *Carey's Bay Association* had not been properly represented or considered
- Mr Knox and Mr Christos who had never seen the shipping containers stacked three high.

229. Mr Cecchi also provided items of correspondence and decisions relating to the height of shipping containers at Port Otago and at other locations to illustrate his concerns and draw attention to how this issue had been managed.

230. *Mary McFarlane* (OS882.2) presented a statement in which she also questioned the Truescape exercise, and, the lack of consultation carried out and the absence of any visual simulations showing the shipping containers stacked three high.

231. *Blair Smith* (OS497.1) tabled a letter from Mr John Sule, DCC Senior Planner, as a response to Mr Smith's complaints about shipping container stacking at Boiler Point. In that response Mr Sule had explained that given the uncertainty of the term 'short term basis', which the Court imposed in the operative District Plan height rule to allow shipping containers to be stacked five high, that the DCC had decided that taking action on the alleged breach of the rule is not possible or appropriate. In response to a question from us, Mr Smith said that he has only seen shipping containers stacked three high on one occasion, despite having lived on Aramoana Road for several years.

232. In her presentation *Kris Nicolau* (OS398.1) said she supported those provisions which protect the amenity of Carey's Bay, including Policy 11.3.6 of the operative District Plan. She also said that the Port had been allowed to reclaim the Boiler Point land on the understanding that there would be controls on their operations to protect the existing community. She felt that the 2GP is now attempting to ignore the special character and amenity of Carey's Bay.

233. *Christopher Hilder* (OS311.4) in his presentation made the following main points:

- the resource consent granted for the Port Otago reclamation by decision C48/93 of the Planning Tribunal included an 8-metre height limit for buildings. The interim decision C97/92 included a 15-metre height limit and the Environment Court erred in making this decision because there was no evidence provided regarding the 'necessity' for changing from an 8m to a 15m height limit, as required by section 81(3) of the RMA.

- the appropriate planning context remains the permitted baseline of an undisturbed harbour. Policy 11.3.6 of the operative District Plan identifies and protects the special character of Carey's Bay, which *Port Otago Limited* sought to remove, which is inappropriate. The policy helped ensure that development will take place in a balanced way, having regard to existing amenity values and the Panel should consider the Port Zone rules in the 2GP in that context.
  - the purpose of the Boiler Point reclamations was originally for additional storage and assembly space for cargo but that area has only ever been used for the storage of empty shipping containers. He considered that had the Planning Tribunal known this, consent would not have been granted for the reclamation.
234. Mr Hilder, in response to our questions, said he considered there is scope for the changes outlined in his evidence (including maximum height of 8m for buildings and structures and all electric wiring, cabling and other services to be located underground) because his submission was broad. He also clarified that because he can't see Boiler Point from his property he was less concerned with the amenity effects of the shipping containers compared with Port noise.
235. A statement from *Katrina Varian* (OS981.1) was read to us by Ms Jo Kidson. It said that over the 1989–1996 period she had been involved in Planning Tribunal and Environment Court hearings regarding the Boiler Point reclamation. Her statement provided more of the historical background to developments at the Port, including that the Carey's Bay Association had been created when the Harbour Board proposed to fill in Carey's Bay right across to Rocky Point, in order to create a carpark, which the residents opposed.
236. She quoted excerpts from the 1981 Port Chalmers District Scheme and the 1989 District Plan, which she said were supportive of the objective of defending her quality of life and clarified that she was involved in court hearings over the 1989–1996 period which ended with the construction of the Boiler Point reclamation with no consent for berthing at the open pile wharf.
237. She also clarified that the focus of her argument was that the DCC has not fulfilled its responsibility to its citizens by agreeing to accept the ORC's transfer of noise powers, duties and other functions relating to the coastal marine area. She also considered that it is nonsense for an offending party (*Port Otago Limited*) to assess, measure and be responsible for regulating its own noise emissions.

#### 3.2.4.2 Port Otago Limited evidence

238. Legal submissions for *Port Otago Limited* (OS737 and FS2378) were presented by Mr Andersen; expert noise evidence by Mr Ballagh; expert planning evidence by Ms O'Callahan; and evidence on Port operations by Mr Plunket, Chief Executive Officer.
239. Mr Andersen, stated that (Legal Submission, p. 5, para. 4.1.1):
- "Port Otago's position is that the provision that allows containers to be stacked 5 high at Boiler Point is appropriate. The current situation with the changing skyline creates unnecessary work (and noise) even though the container stack is constantly changing."*
240. Ms O'Callahan supported the Reporting Officer's s42A Report observations regarding the similar heights for containers at other ports. She said she had done some further research and provided a comparison of maximum height limits in seven different New Zealand ports (Statement of Evidence, p. 10) as follows:

- Napier no height limit
- Nelson 12m building height limit (not applicable to containers)
- Lyttelton 15m limit for buildings, and containers exempt apart from one location where a 15m limit applies
- Wellington 27m limit
- Tauranga varies between 12m to 25m limit
- New Plymouth 15m limit
- Auckland 18m to 30m limit

241. Mr Plunket stated that (Statement of Evidence, p. 9):

*"A constant movement of containers to and from the Boiler Point area is required to comply with the existing Boiler Point height restriction. This does result in more activity within the area than would be possible if there was more flexibility with the height restriction.*

*A 15 metre height limit is anticipated to provide the same changing skyline as viewed from Carey's Bay as at present. It would however give the flexibility to place in the area containers which are received for particular trades and which will be held on site for a 2 to 4 week period. Examples include controlled atmosphere containers positioned into Port Otago at the start of the apple season and containers positioned at Port Otago for the tulip bulb trade. Where possible these longer stay containers will be positioned at the southern end of Boiler Point and the faster moving containers at the northern end of Boiler Point in order to give the changing skyline effect for the main view point from Carey's Bay."*

242. Mr Plunket also clarified in his evidence that containers are not stacked adjacent to the Back Beach walkway, and at Boiler Point containers are tiered three high adjacent to the walkway, followed by four high and five high, and the walkway is closed to the public when strong winds are forecast.

243. Mr Ballagh stated that (Statement of Evidence, p. 12):

*"The use of a five-high stack of containers at Boiler Point helps to reduce noise to Carey's Bay. The containers are heavy enough, and provide a continuous enough barrier to prevent direct transmission of noise from port operations at Boiler Point into Carey's Bay residential areas. Noise will still travel over top of the stack and bend around, but this involves at least a 10 – 15 dB attenuation of the sound and so noise levels in Carey's Bay are reduced compared to what they would be without the stack. If a lower height limit were imposed then the acoustic attenuation would be reduced, particularly at higher elevations in Carey's Bay. Therefore, from an acoustic point of view, it is a useful modification to the 2GP to allow this to happen on a more permanent basis. I support this addition to the 2GP."*

244. We also asked *Port Otago Limited* several questions at the hearing related to the Maximum Height performance standard. These included the implications on the port operation if the height of shipping containers was restricted to a stack of three high and therefore having to move them to Sawyers Bay or Dunedin. Mr Plunket advised that it costs approximately \$100 per shipping container to move an empty container from Port Chalmers to Dunedin by truck, and that while transport by rail may be cheaper he noted that KiwiRail are more efficient when doing longer hauls. He also clarified that Port Otago Limited charge shipping operators for the storage of shipping containers and they try and incentivise operators to store containers off-site through a higher charge at the Port.

245. The Reporting Officer in his revised recommendations reiterated his recommendation in his s42A Report, that the Maximum Height performance standard in the 2GP be retained without amendment, for the reasons outlined in his s42A Report and in the evidence by Mr Knox and Mr Christos.

### 3.2.5 Wrap-up Hearing

246. A final 'wrap-up' hearing was held on 6th of December 2017, for submitters to respond to additional evidence we had asked for or received after the initial hearing. In this instance we invited the submitters on the maximum height of containers to give feedback on the evidence provided to us by *Port Otago Limited* in response to our Minutes dated 25<sup>th</sup> May and 20<sup>th</sup> July 2017 (in which we had requested the Port to provide information and assessments of the noise implications arising from containers stacked at various heights at the port), discussed in section 3.1.
247. *Katrina Varian* and Joe Cecchi on behalf of the *Careys Bay Association* attended the hearing and spoke to their written statements.
248. Mr Cecchi was concerned that the provisions of the 2GP could be ignored and that *Port Otago Limited* could rely on the operative Plan provisions through existing use rights pursuant to Section 10 of the RMA. We explained that *Port Otago Limited* is correct, and that depending on the scale, intensity or characteristics of the activity, that *Port Otago Limited* could continue to operate and rely on the operative Plan provisions about maximum height at Boiler Point.
249. Mr Cecchi also raised concerns about the accuracy of the modelling methods, software utilised and accuracy of the data. He also asked whether the new evidence from Mr Ballagh had been peer reviewed. Mr Freeland advised that a peer review was not deemed necessary, as the new evidence did not show a reduction in the  $L_{dn}$  measurement of port noise from the containers stacked at Boiler Point as Port Otago Limited had been expecting to be the case. He said the only benefit in noise reduction being claimed was limited to a reduction in the effects of impact noise.
250. We asked Mr Cecchi whether visual effects or noise effects were of greater importance to the *Careys Bay Association*. Mr Cecchi advised that noise was probably of greater concern to the Association.
251. *Ms Varian* said she had similar concerns as to the noise modelling software and data being outdated.

### 3.2.6 Decision and reasons

252. We reject the submissions from *James Foerster* (OS292.1), *Carey's Bay Association Limited* (OS391.1), *Bronwen Thomas* (OS494.1), *Blair Smith* (OS497.1), *Mary McFarlane* (OS882.2), *Christopher Hilder* (OS311.4) and *Eryn Makinson* (OS516.5) who sought a reduction in the Maximum Height performance standard (Rule 30.6.4) in the Port Zone, and therefore we accept the further submissions of *Port Otago Limited* (FS2378.26 to FS2378.35) who opposed these submissions.
253. In terms of visual and amenity effects, we consider that visual effects of containers need to be seen in context of the wider Port operations and we accept the expert evidence of Mr Knox and Mr Christos that any adverse effects on Carey's Bay and Back Beach of a 15m height limit for shipping containers and buildings would not be significant and are appropriate and acceptable for these locations. We also agree with the Reporting Officer, and the evidence of Ms O'Callaghan, that the 15m height limit for the Boiler Point and Back Beach height mapped area is consistent with other Ports within

New Zealand. Overall, we did not have the evidence to convince us that imposing a 9 metre height limit was necessary to mitigate the visual effects of containers stacked in these locations.

254. We also agree with the evidence of Mr Plunket that suitable measures are in place to ensure the safety of people using the walkways adjacent to the containers.
255. In terms of noise effects, while the evidence shows the stacked container wall will have no appreciable effect on  $L_{dn}$  measurement of port noise, Mr Ballagh's evidence was clear there would be a significant reduction in impact noise from containers on the ship side of the wall and the higher wall (at 15m) will have a greater attenuation of this type of noise than a 9m high wall would have). The evidence (including from Mr Plunket) was also that a five-container high stack will, overall, result in fewer movements of containers and therefore less noise than would a three-container high wall which would require more day to day movement of containers as well as with extra containers needing to be stored off-site.
256. We consider that this decision, together with our decisions on port noise management, and the port wood exclusion mapped area (addressed in section 3.3 below), should contribute to a management regime resulting in significant noise attenuation at Carey's Bay.

### **3.3 Outdoor storage of woodchips, logs and fertilisers**

#### **3.3.1 Background**

257. There is a large amount of background information regarding the outdoor storage of woodchips, logs and fertilisers at the Port. This includes previous Planning Tribunal and Environment Court Decisions and operative District Plan provisions.
258. The Environment Court decision C66/2002 directed the DCC to amend Rule 11.5.1 of the operative District Plan and exclude the open air storage of fertiliser anywhere in the Port 1 Zone. It also excluded the open air storage of woodchips and logs in the area north of George Street (including Boiler Point). Contravention of this rule is a restricted discretionary activity in the operative District Plan.
259. The provisions in the 2GP in the Introduction, Policy 30.2.2.2 and Rule 30.6.3 Location of Outdoor Storage regarding the storage of logs, woodchips and fertiliser, are essentially a carry over of the operative District Plan provisions in Rule 11.5.1(i). There has, however, been an error in mapping between the operative Plan and the 2GP. In the operative District Plan the area where the storage of woodchips and logs are excluded is north of George Street (which includes the Boiler Point area) however, in the 2GP the port wood exclusion mapped area does not include the Boiler Point area.
260. A number of submitters sought amendments to the relevant provisions of the 2GP including changes to bullet point 5 of paragraph 5 of Section 30.1 Introduction, Policy 30.2.2.2 and Rule 30.6.3 Location of Outdoor Storage. These provisions are reproduced and discussed below.
261. The introduction to the Port Zone (Section 30.1) in paragraph 5, and bullet point 5 states that:

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

- not allowing the storage of logs, woodchips or fertiliser north of George Street in Port Chalmers (Boiler Point area)."*



262. Policy 30.2.2.2 states:

*"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."*

263. Rule 30.6.3 Location of Outdoor Storage states:

- "1. Woodchips and logs must not be stored in the port wood exclusion mapped area.*
- 2. Fertiliser must not be stored outside, or in a building that is not fully enclosed."*

264. Rule 30.6.7 Securing of Outdoor Storage states:

*"Materials must be stored in a way that prevents material contaminating any off-site area."*

265. A map of the port wood exclusion mapped area is shown as part of this notified rule and applies to the area north of George Street (although as explained in paragraph 254, this erroneously does not include Boiler Point). This is in contrast to the operative Plan where the outdoor storage of woodchips and logs in the area north of George Street (including Boiler Point) are managed under Rule 11.5.3(ii).

### **3.3.2 Submissions**

266. *Port Otago Limited* (OS737.25) sought to have bullet point 5 of paragraph 5 amended 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."~~

267. *Port Otago Limited's* reason was that *"clarification is required in the introduction that the restrictions relating to fertiliser are only in 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."* (Submission, pp. 17-18)

268. The *Port Otago Limited's* (OS737.25) submission was opposed by further submitters *Mary McFarlane* (FS2168.5), *Blair Smith* (FS2260.2) and *Bronwen Thomas* (FS2293.2).

269. *Ms McFarlane's* (FS2168.5) reasons were that *"woodchips/logs at Boiler Point: Port Otago closes access to Boiler Point due to wind gusts and possibility of container stacks of 5 high blowing apart and crushing people. How can they 'control' logs and woodchips at Boiler Point, this is faulty thinking."*

270. The submissions of *Blair Smith* (FS2260.2) and *Bronwen Thomas* (FS2293.2) were concerned that the changes sought by *Port Otago Limited* will impact on residents in Careys Bay and make light of their obligations under the Resource Management Act and go against previous Environment Court decisions.

271. *Port Otago Limited* (OS737.26) sought that Policy 30.2.2.2 be amended as follows:

*"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."*

272. These amendments were opposed in further submissions by *Mary McFarlane* (FS2168.6) and *Kristine Nicolau* (FS2421.10).
273. *Port Otago Limited* (OS737.31) sought that the Location of Outdoor Storage performance standard (Rule 30.6.3.1) be amended by removing clause 1 and the 'port wood exclusion mapped area' to allow storage of logs and wood chips in all areas of the Port Zone. This was opposed by further submitters *Mary McFarlane* (FS2168.7), *Haboursides and Peninsula Preservation Coalition* (FS2267.119) and *Kristine Nicolau* (FS2421.17).
274. *Port Otago Limited's* reasons for their submissions are that there are no areas within the Port Zone that are any more or less vulnerable in terms of windblown contamination. Accordingly restricting the area for fertiliser and woodchip storage is not necessary and there are no environmental effects based reasons to do this (Submission, p. 18, pp. 20-22).
275. *Mary McFarlane's* (FS2168.6 and FS2168.7) concerns were the same as those outlined for FS2168.5 (refer above) and relate to off-site effects.
276. *Kristine Nicolau* (FS2421.10 and FS2421.17) sought consultation with City Councillors and relevant Council staff to understand the issue, and to establish independent monitoring through the DCC.
277. *Harboursides and Peninsula Preservation Coalition* (FS2267.119) requested that outdoor storage adjacent to the shoreline must be fully screened by vegetation as part of a plan by a qualified landscape architect (Further Submission, p. 21). Their reasons were that:

*"Vegetation screening of shoreline buildings and structures is a visually protective, low cost acknowledgement that the harbour is the 'jewel' in the Dunedin scenic crown that a good neighbour would seek to maintain. It is in no way akin to overall 'beautification' projects which are nonsensical for a working port having mobile equipment"*

### 3.3.3 Section 42A Report

278. The Reporting Officer in response to Port Otago Limited's submission (OS737.25), recommended that the introduction to the Port Zone (Section 30.1) in paragraph 5, and bullet point 5 be amended as follows:
- "~~not allowing~~ requiring the storage of materials outside (including logs, woodchips or fertiliser) to be undertaken in a manner which ensures material will not become windblown or contaminate any off-site areas. north of George Street in Port Chalmers (Boiler Point area)."* (s.42A Report, pp.68-69)
279. The Reporting Officer noted that the Rule 30.6.7 Securing of Outdoor Storage effectively manages the outdoor storage of materials (including of fertiliser and woodchips) so they will not become windblown and will not contaminate any off-site areas. He considered that these amendments to bullet point 5 of paragraph 5 of the Introduction would better reflect this rule.
280. The Reporting Officer recommended that the *Port Otago Limited's* (OS737.26 and OS737.31) submissions be accepted, in part (s42A Report, Section 5.5, pp. 67-68). In summary his reasons were that:

- the potential noise effects of enabling the storage of woodchips and logs in all of the Port Zone operational area can be adequately managed by the Port Noise rule (30.5.4)
- there is unlikely to be degradation of visual amenity because of logs and woodchips being stored instead of buildings and shipping containers within the port wood exclusion mapped area, and woodchips and logs are a more natural element
- the area within the port wood exclusion mapped area is not sufficiently different or unique to warrant a restriction on the storage of logs and woodchips
- the 'Securing of Outdoor Storage' rule (30.6.7) which states "*materials must be stored in a way that prevents materials contaminating any off-site area*" addresses the concerns of submitters of wood chip dust and other materials contaminating off site areas, and has not received any submission to it and is therefore beyond challenge.

281. The Reporting Officer also recommended the following changes be made to Policy 30.2.2.2, the 'Location of Outdoor Storage' rule and to the 2GP planning maps:

*"Amend Policy 30.2.2.2, as follows:*

*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. {Port 737.26}"*

*"Amend Rule 30.6.3 Location of Outdoor Storage, as follows:*

*Location of Outdoor Storage*

*1. ~~Woodchips and logs must not be stored in the port wood exclusion mapped area.~~*

*2. Fertiliser must not be stored outside, or in a building that is not fully enclosed.*

*Port Wood Exclusion Mapped Area*

*Remove the port wood exclusion mapped area from Rule 30.6.3 Location of Outdoor Storage {Port 737.31}"*

*Remove the port wood exclusion mapped area from the 2GP planning maps {Port 737.31}*

### **3.3.4 Hearing**

282. *Port Otago Limited* (OS737.25) called Ms O'Callahan who supported the Reporting Officer's recommended amendments to bullet point 5 of paragraph 5 of the introduction about the outdoor storage of woodchips, logs and fertilisers.

283. *Port Otago Limited* (OS737.26 and OS737.31) called Mr Andersen (Legal Counsel), Ms O'Callahan (planning witness), and Mr Plunket (Chief Executive Officer) who provided evidence on Policy 30.2.2.2 and the Location of Outdoor Storage performance standard.

284. Mr Andersen stated (Statement of Evidence, p. 5, para. 3.5):

*"Port Otago opposed woodchips and logs not being able to be stored north of George Street. Integrated management of the Port must allow changes in operations through the whole site to meet change in markets even though it must be considered extremely unlikely that the container berth would ever be used for anything other than containers."*

285. Mr Plunket gave evidence on operational considerations as follows (Statement of Evidence, Para 18.2, 18.3-18.5:

- log exports are predominantly driven by customer demand in Asian markets, the international log export price and shipping costs
  - Port Otago needs flexibility to adapt to any change in customer demand to optimise the use of the area, provided that the performance standards (noise, lighting, dust and stack heights) set out in the 2GP are achieved, without the need for a separate resource consent process
  - it is likely that Port Otago will need to utilise the Port Zone more intensively with higher stack heights etc in the longer term as this is preferable to increasing the land area through reclamation
  - Port Otago has no current plans to store logs north of George St, as the area is totally utilised by the Container Terminal operations.
286. Ms O’Callahan concurred with the recommendations of the Reporting Officer, and stated (Statement of Evidence, p. 10):
- "There is no identified district plan reason for this restriction identified in the objectives and policies in the 2GP. The only relevant policy refers to a need for fertiliser and woodchips to be stored in a manner and in an area where they will not become windblown. There is no particular location that is better than others in terms of dust potential from woodchips and the policies do not relate to log storage at all. Rules need to give effect to outcomes sought in the objectives and policies, and in this case, there is no reason for a locational restriction."*
287. *Mary McFarlane* (FS2168.5, FS2168.6 and FS2168.7) referred to previous Planning Tribunal and Environment Court decisions that state logs should not be stored or marshalled at Boiler Point, which she considered is still valid and therefore should still stand. She also described and provided photographs of the adverse effects from windblown contamination of log handling (Statement of Evidence, Appendix A, part 3 & 4). She contended that if log handling occurred at Boiler Point it would result in wood dust covering boats, affecting diners in the Careys Bay Hotel and houses in Careys Bay. Therefore, Ms McFarlane sought the existing (operative District Plan) restrictions on the use of Boiler Point area be included in the 2GP.
288. *Kristine Nicolau* (FS2421.10 and FS2421.17), in her tabled evidence, disagreed with *Port Otago Limited* that there are no areas within the Port Zone that are more or less vulnerable in terms of windblown contamination. She said that Boiler Point is a long piece of reclaimed land in the middle of the bay partly buffered by the other edge of Careys Bay and is probably the windiest place on the port. She said the walkway is often closed because of high winds and containers have been blown off Boiler Point into the harbour. She claimed that woodchips and logs or fertilizer out in the open would bring unnecessary pollution into Careys Bay living and sleeping places.
289. *Christopher Hilder* provided an overview of previous decisions and the history of Careys Bay and the Port, questioned the reverse sensitivity argument of *Port Otago Limited* against the common law, law of nuisance, and made a planning argument related to why his recommended amendments (which include prohibiting the storage, consolidation and distribution of woodchips, logs and fertilizer at Boiler Point) should be included in the 2GP.
290. As a result of questions from us at the hearing, Mr Plunket gave further details on the port operations at Port Chalmers, and Port Otago Limited’s intentions regarding storage of woodchips and logs at Boiler Point. Mr Plunket confirmed that *Port Otago Limited* has no intention of storing logs or woodchips at Boiler Point. He also clarified that therefore *Port Otago Limited* would not oppose having the port wood exclusion mapped area applied to Boiler Point.
291. Although the Reporting Officer noted during the hearing that because there were only submissions from *Port Otago Limited* (OS737.31) to remove the port wood exclusion

mapped area from the main part of the port operation area (which does not include Boiler Point), the scope for this change will have to be attributed to submissions on the port noise issues.

### 3.3.5 Revised recommendations

292. In his revised recommendations, the Reporting Officer recommended no change to his s42A Report recommendations, although he accepted the verbal evidence from Mr Plunket at the hearing that *Port Otago Limited* has no intention to store logs or woodchips on Boiler Point. In view of this, and considering submissions and evidence from Carey's Bay residents about the noise effect of handling logs, he was comfortable with the 2GP preventing the storage of logs and woodchips on Boiler Point.
293. He recommended amending the Location of Outdoor Storage performance standard (Rule 30.6.3) and the port wood exclusion mapped area so that woodchips and logs cannot be stored at Boiler Point. The Reporting Officer attributed these changes to submission point OS391.2 from *Careys Bay Association Limited*.

### 3.3.6 Decision and reasons

294. Regarding the securing of outdoor storage of materials, we have decided to make amendments to the Introduction, Policy 30.2.2.2 and Assessment of Restricted Discretionary Activities (Performance Standard Contraventions) (Rule 30.8.4.8.a.ii).
295. We accept in part the submission by *Port Otago Limited* (OS737.25) to amend bullet point 5 of paragraph 5 of Section 30.1 Introduction of the Port Zone to require storage of outside materials in a manner that will not become windblown or contaminate any off-site areas. The amendments are as follows:
- ~~not allowing~~ requiring the storage of materials outside (including logs, woodchips or fertiliser) to be undertaken in a manner which ensures material will not become windblown or contaminate any off-site areas. north of George Street in Port Chalmers (Boiler Point area). {Port 737.25}
296. We consider that the amendments are necessary to more accurately reflect the Securing of Outdoor Storage performance standard (Rule 30.6.7) which requires materials stored anywhere within the Port Zone to be stored in a way that prevents materials contaminating any off-site area.
297. We also accept in part the submission by *Port Otago Limited* (OS737.26) to amend Policy 30.2.2.2 and the associated amendment to assessment Rule 30.8.4.8 to acknowledge that any materials stored outside within the Port Zone should be managed to avoid windblown contamination. Our reasons are we do not consider that there is any area within the Port Zone which is more or less susceptible to windblown contamination and this policy as revised and the associated Securing of Outdoor Storage performance standard (Rule 30.6.7) will ensure fertiliser and woodchips will not become windblown and will not contaminate any off-site areas. The amendments required for this decision, including consequential amendments are:
- *Policy 30.2.2.2*  
*Require fertiliser and woodchips and other materials {Port 737.26} to be stored in a location and manner ~~and in an area~~ {Port 737.26} where they ~~will not~~ are unlikely to {Port 737.26} become windblown and will not contaminate any off-site areas.*

- Amend Assessment of Restricted Discretionary Activities (Performance Standard Contraventions) (Rule 30.8.4.8.a.ii) as follows:

*Fertiliser, woodchips and other materials are stored in a location and manner ~~and in an area~~ {Port 737.26} where they ~~will not~~ are unlikely to become windblown and will not contaminate any off-site areas (Policy 30.2.2.2). {Port 737.26}*

298. Regarding the location of outdoor storage, we reject the submission by *Port Otago Limited* (OS737.31) to remove the port wood exclusion mapped area from the Location of Outdoor Storage performance standard (Rule 30.6.3) and the 2GP planning maps. We consider that the Location of Outdoor Storage performance standard contributes to the management of both windblown contamination, and port noise. As a result, we have decided to extend the port wood exclusion mapped area to include Boiler Point and match the extent in the operative District Plan.
299. Our primary reason for making this decision relates to the noise effect of handling logs near residential properties, particularly for Careys Bay residents (*Careys Bay Association Limited* (OS391.2)). We also note that this decision will also contribute to the reduction of potential risk from windblown contamination from the outdoor storage of woodchips and logs in the port wood exclusion mapped area.
300. Amendments to extend the port wood exclusion mapped area to include Boiler Point on the 2GP planning maps and to the map within the 'Location of Outdoor Storage' performance standard (Rule 30.6.3) are shown in Appendix 1 and have been attributed to submission point Port 391.2.
301. Finally, we note for clarity, that clause 2 of the Location of Outdoor Storage performance standard (Rule 30.6.3) which states "*fertiliser must not be stored outside, or in a building that is not fully enclosed*" has not been submitted on and therefore has not been amended.
302. We also note that as a clause 16 amendment, the content of Rule 30.6.7 (Securing of outdoor storage materials), which states; "*materials must be stored in a way that prevents materials contaminating any off-site area*" has been moved to Rule 30.6.3 so that all provisions in regards to outdoor storage are in one place. This has resulted in Rule 30.6.7 being deleted, and is of minor effect.

## 3.4 New objectives and policies suggested

### 3.4.1 Request for a new policy recognising Careys Bay

303. Policy 11.3.6 of Chapter 11 (Port) of the operative District Plan reads as follows:

*"Protect the existing character of Careys Bay from the adverse effects of change of use or development of the port activities at Port Chalmers."*

304. The explanation provides additional clarity on this policy, as follows:

*"It is recognised that Careys Bay together with its adjoining residential areas has a special amenity arising from the area's relationship to the bay, small scale maritime uses, its aspect and its topography. Careys Bay is generally less affected by port activities than other residential areas closer to the operational port area. This amenity should be protected. For this reason controls apply to the use of reclaimed land at Careys Bay which will be more stringent than other areas adjacent to port operations at Port Chalmers."*

305. *Christopher Hilder* (OS311.3), sought a similar policy included in the 2GP. His reasons were:

*"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."*

306. *Mary McFarlane* (FS2168.3) submitted in support of this submission, because of the adverse effects arising from Port Otago operations including noise effects and the effects on amenity values from containers.

307. *Port Otago Limited* (FS2378.16) submitted in opposition to this submission because:

*"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."*

308. The Reporting Officer in his s42A Report recommended that the Panel not add the new policy as requested by *Christopher Hilder* (OS311.3), because subject to the changes recommended to specific policies elsewhere in this document (particularly Objective 30.2.2 and Policy 30.2.2.1) the existing objectives and policies provide an appropriate balance between protection of amenity and allowing the Port to operate efficiently and effectively.

309. The evidence presented by *Port Otago Ltd* did specifically respond to the relief of *Christopher Hilder* for a new policy like Policy 11.3.6 of the operative District Plan.

310. *Christopher Hilder* (OS311.3) stated that (Statement of Evidence, p. 16, paras. 76-78):

*"In order to meet the cultural and social needs of the residents, features of the cityscape that have special character need to be identified in the plan. It is appropriate to do so, and to do any less would be to plan for homogeneity."*

*The policy serves the purpose of identifying and protecting an area of special character. It needs to be retained."*

*POL is seeking to have this policy removed in order to give primacy to port development in Careys Bay. This is not appropriate. The policy helps ensure that development will take place in a balanced way, having regards to the existing amenity values."*

311. *Mary McFarlane's* (FS2168.3) statement supported the new policy as sought by *Mr Christopher Hilder* noting that *Port Otago Limited* is degrading the quality of life of Careys Bay's residents, and Careys Bay as an area of high/special amenity value is worthy of protection.

### **3.4.2 Decision and reasons**

312. Our decision is to reject the submission by *Christopher Hilder* (OS311.3), and the further submission by *Mary McFarlane* (FS2168.3), and to accept the further submission of *Port Otago Limited* (FS2378.16).

313. We agree with the reasons set out by the Reporting Officer in his s42A Report as outlined above. Subject to the changes recommended to specific policies elsewhere in this

document (particularly Objective 30.2.2 and Policy 30.2.2.1) the existing objectives and policies provide an appropriate balance between protection of amenity and allowing the Port to operate efficiently and effectively. We also agree with *Port Otago Limited's* point that a new policy specific to amenity values in Careys Bay would establish a hierarchy of policies that might affect the balanced objectives and policies in the 2GP, noting that no other community has specific aspects of its character singled out in the policy framework.

- 314. For those reasons we do not consider it is necessary to add a new policy like Policy 11.3.6 of the operative District Plan to the 2GP. We also add by way of comment there is no presumption that provisions from an operative District Plan will be carried forward to a new Plan.
- 315. We note that we have decided on a similar submission from Eryn Makinson (OS516.3) which sought inclusion of policies in the residential section for protection of amenity at Carey's Bay from the effects of activities at the Port. This submission is discussed in the Residential Decision.

### **3.4.3 Request for a new policy to recognise the interface between the port and other transport modes**

- 316. *New Zealand Transport Agency (NZTA)* (OS881.154) sought to have a new policy inserted under Objective 30.2 as follows:

*"Recognise and provide for the interface between the port and other transport modes."*

- 317. The submission stated that (NZTA Submission, pp. 37-38):

*"We consider it important to ensure that the various transport linkages between the port and manufacturing activities are recognised and provided for in the Plan. This promotes a resource efficiency outcome in terms of the time taken to get products to market. To this end, we request the inclusion of an additional policy in this section of the Plan."*

- 318. *Port Otago Limited's* (FS2378.1) reasons for support of this submission were that Policy 9 of the NZCPS requires recognition of ports with efficient connections with other transport modes and it would be useful if port and land use policies appeared in both the Port Zone and the strategic direction chapters of the 2GP.
- 319. The Reporting Officer considered the proposed new policy unnecessary as objective 6.2.3 and 6.2.4 and policies 2.3.1.1, 6.2.3.3, 6.2.3.9, 6.2.4.5 and 6.2.4.6 already recognise and manage the interface between the Port and other transport modes in a more direct manner than proposed by the submitter.
- 320. The *New Zealand Transport Agency* engaged Mr Andrew Henderson (resource management consultant) who tabled a statement which refuted the Reporting Officer's recommendation and stated that:

*"The Transport Agency acknowledges that the various Objectives and Policies relied upon in the s42A Report generally address, at a high level, the efficient operation of the transport network and the Port, but considers that the policy suggested in the submission more appropriately highlights the importance of the relationship between the Port and the various transport modes that service it and provide access to and from it, and therefore requests that the Hearings Panel accept the relief as sought in the submission."*



### 3.4.3.1 Decision and reasons

321. Our decision is to reject the submission by *New Zealand Transport Agency (NZTA)* (OS881.154), and the further submission by *Port Otago Limited* (FS2378.1), to insert a new policy to recognise the interface between the port and other transport modes.
322. We agree with the reasons set out by the Reporting Officer in his s42A Report as outlined above, that other objectives and policies already achieve the outcome sought by the submitter. We therefore consider that it is unnecessary, and adds no value, to include a new policy as suggested.

## 3.5 Community Activities

323. All activities in the Community Activities category (Rule 30.3.3.6) are non-complying.
324. *KiwiRail Holdings Limited* (OS322.152) submitted in support of Rule 30.3.3.6, and *the Oil Companies* (FS2487.112) supported this submission.
325. *Port Otago Limited* (OS737.28) requested that Rule 30.3.3.6 be amended to provide for Recreational Activities as a permitted activity (e.g. walkways and fishing) within the Port Zone.

Community Activities are defined in the 2GP as:

*"Community Activities*

*The category of land use activities that includes:*

- *community and leisure*
- *conservation*
- *early childhood education*
- *sport and recreation."*

326. Community and Leisure activities incorporate non-competitive informal recreation, such as walking and fishing. Community and Leisure activities are defined in the 2GP as:

*The use of land and buildings for the purpose of social gathering, worship, community support, non-competitive informal recreation, or leisure activities. These activities are generally not-for-profit and/or may make use of space in an existing building.*

*Examples are:*

- *churches*
- *community halls*
- *after school care and holiday programmes*
- *plunket*
- *playgroups*
- *Scouts, Girl Guides, Brownies*
- *community gardens*
- *game and hobby clubs*
- *libraries*
- *marae-related activities; and*
- *funeral service providers.*

*Community and leisure activities are managed at two different scales - small scale and large scale.*

*This definition excludes office activities, schools, early childhood education, and sport and recreation.*

*Community and leisure is an activity in the community activities category.*  
{PO cl.16}

327. In the operative District Plan recreational activities are permitted activities in the Port 1 Zone under Rule 11.5.1(x), and recreational activity is defined in the operative District Plan as 'Recreational Activity - means the use of land for recreation purposes'.
328. The Reporting Officer explained that there is an existing walkway which runs along the north-western and northern boundaries of the port operational area at Boiler Point, and along the southern and western boundary of the Back Beach operational area (s42A Report, Section 5.4.2, pp. 56-59). These two walkways are owned by Port Otago Limited and are located on Port zoned land, with a wire security fence separating the walkway from the Port operation. The location of these walkways is shown in Appendix A of the Port Environment Plan 2016 (which is prepared by Port Otago Limited).
329. Appendix B issue 1 of the Port Environment Plan explains that Port Otago under the Maritime Transport Act and the International Port Security Code is unable to provide public access to the port operational area. To offset this loss of direct port access Port Otago has created and extended the public walkways around the Battery Point and Boiler Point reclamations.
330. The Reporting Officer considered it was appropriate to allow the continuation of the various community and leisure activities on the walkway as sought by *Port Otago Limited*, and therefore suggested that a new line be added in the activity status table that provides for "Community and Leisure – Small Scale" activities as permitted. Consequential amendments to numbering in the activity status table would follow.
331. In tabled evidence, Ms Georgina McPherson, planning witness for *the Oil Companies*, said she did not support the Reporting Officer's recommendation. She noted that while *the Oil Companies* had no objection to walking and fishing activities, she considered that the recommendation in the s42A Report to permit 'Community and Leisure – Small Scale' within the Port Zone would provide for a much broader range of activities that are significantly different in nature and scope to walking and fishing activities (Statement of Evidence, paras 3.3, 3.4). She also questioned whether there was scope to make such an amendment.
332. None of the evidence of *Port Otago Limited* specifically mentioned its relief to provide for Recreational activities as a permitted activity.
333. The Reporting Officer, in his revised recommendations, said that it is highly unlikely that activities like churches, community halls etc. would be provided in the Port Zone as part of the community and leisure – small scale definition. He therefore reiterated his s42A Report recommendation that community and leisure - small scale be permitted in the Port Zone.

### **3.5.1 Decision and reasons**

334. We accept the submission by *Port Otago Limited* (OS737.28) to provide for Recreational activities as a permitted activity. We acknowledge that this is a wider set of activities than was requested in the submission, but are satisfied that this is the most appropriate definition in the 2GP to use in this instance, as it will enable the current recreational uses of the area to continue without the need for resource consents.
335. We also consider that the existing location and extent of the walkways and fishing areas will preclude the likelihood of any of the other activities encapsulated within the definition of 'community and leisure' being able to establish in this location. We agree with the reasons set out in the s42A Report and the Reporting Officer's revised recommendations, as outlined above for doing so.

336. The Reporting Officer also highlighted, and we agree, that because the walkways are owned by *Port Otago Limited* they have control on the activities which operate within the walkways. We note the evidence of *Port Otago Limited* that the walkways have in the past been closed during high winds, and that there are fences which separate the walkway from the operational parts of the Port.

337. The amendment required for this decision, is as follows:

- Amend the Port Zone Activity Status table (Rule 30.3.3) to include 'community and leisure - small scale' as a permitted activity; and {Port 737.28}
- Amend the Port Zone Activity Status table (Rule 30.3.3.6), so that all 'other' activities in the community activities category remain non-complying {Port 737.28}
- Amend Rule 30.1 Introduction to reference that community and leisure - small scale activities are provided for in the Port Zone {Port 737.28}

## 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.

## 5.0 Minor and inconsequential amendments

348. Clause 16(2) of Schedule 1 of the RMA allows a local authority to make an amendment where the alteration "is of minor effect", and to correct any minor errors, without needing to go through the submission and hearing process.
349. This Decision includes minor amendments and corrections that were identified by the DCC Reporting Officers and/or by us through the deliberations process. These amendments are referenced in this report as being attributed to "cl.16". These amendments generally include:
- correction of typographical, grammatical and punctuation errors
  - removing provisions that are duplicated
  - clarification of provisions (for example adding 'gross floor area' or 'footprint' after building sizes)
  - standardising repeated phrases and provisions, such as matters of discretion, assessment guidance, policy wording and performance standard headings
  - adding missing hyper-linked references to relevant provisions (eg. performance standard headings in the activity status tables)
  - correctly paraphrasing policy wording in assessment rules
  - changes to improve plan usability, such as adding numbering to appendices and reformatting rules
  - moving provisions from one part of the plan to another
  - rephrasing plan content for clarity, with no change to the meaning
  - correctly reference Policy 2.3.1.4 in Policy 30.2.1.4
  - add new Rule 30.5.5 Noise requiring Industry to comply with Rule 9.3.6 Noise
  - move the provisions in Rule 30.6.7 Securing of Outdoor Storage into Rule 30.6.3 Location of Outdoor Storage and delete Rule 30.6.7
350. Minor changes such as typographical errors have not been marked up with underline and strikethrough. More significant cl. 16 changes (such as where provisions have been moved) are explained using footnotes in the marked-up version of the Plan.

## **Appendix 1 – Amendments to the Notified 2GP (2015)**

Please see [www.2gp.dunedin.govt.nz/decisions](http://www.2gp.dunedin.govt.nz/decisions) for the marked-up version of the notified 2GP (2015). This shows changes to the notified 2GP with strike-through and underline formatting and includes related submission point references for the changes.

## Appendix 2 – Summary of Decisions

1. A summary of decisions on provisions discussed in this decision report (based on the submissions covered in this report) is below.
2. This summary table includes the following information:
  - Plan Section Number and Name (the section of the 2GP the provision is in)
  - Provision Type (the type of plan provision e.g. definition)
  - Provision number from notified and new number (decisions version)
  - Provision name (for definitions, activity status table rows, and performance standards)
  - Decision report section
  - Section 42A Report section
  - Decision
  - Submission point number reference for amendment



## Summary of Decisions

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
30. Plan Overview and Introduction	Definition	1.5		Port	Amend definition wording	Port 737.2		5.1.1
30. Plan Overview and Introduction	Definition	1.5		Port Noise	Amend definition wording to clarify that ships not at berth are excluded from the definition	Port 737.4	3.1.4	5.6.1
30. Port	Introduction	30.1			Amend Introduction	Port 737.28	3.5	5.4.2
30. Port	Introduction	30.1			Amend Introduction	Port 737.25	3.1.3	5.5
30. Port	Policy	30.2.2.2			Amend policy	Port 737.26	3.3	5.5
30. Port	Policy	30.2.2.4			Amend policy wording	Port 391.2	3.1.5	5.3.2
30. Port	Activity Status	30.3.3.2		Port	Amend name of performance standard to port noise management	Port 391.2	3.1.6	5.6.1
30. Port	Activity Status	30.3.3.X (New), 30.3.3.6 (Old)	30.3.3.6, 30.3.3.7	Community and leisure - small scale	Amend the activity status of 'community and leisure - small scale' from non-complying to permitted, but keep all other activities in the community activities category non-complying	Port 737.28	3.5	5.4.2

<b>Plan Section</b>	<b>Provision Type</b>	<b>Provision number</b>	<b>New Number</b>	<b>Provision Name</b>	<b>Decision</b>	<b>Submission Point Reference</b>	<b>Decision Report Topic number</b>	<b>S42A Report Section Number</b>
30. Port	Land Use Performance Standard	30.5.4.4	30.3.4.2	Port Noise Management	Do not amend as requested		3.1.6	5.6.1
30. Port	Land Use Performance Standard	30.5.4		Port Noise management (was port Noise)	Amend performance standard name to port noise management and make several other changes to standard	Port 391.2 and Port 516.1.	3.1.6	5.6.1
30. Port	Development Performance Standard	30.6.3	30.6.1	Location of outdoor storage	Amend performance standard by extending the Port Wood Exclusion Mapped Area to include Boiler Point	Port 391.2	3.3	5.5
30. Port	Development Performance Standard	30.6.4	30.6.2	Maximum height	Do not amend Rule 30.6.4 Maximum height		3.2	5.6.2
30. Port	Assessment of Restricted Discretionary Performance Standard Contraventions	30.8.4.8.a.ii	30.8.4.3.a.ii		Amend guidance to reflect change in Policy 30.2.2.2	Port 737.26	3.3	5.5
. Port	Assessment of Non-complying Activities	30.11.3.3			Amend name of performance standard to port noise management	Port 391.2	3.1.6	5.6.1
30. Port	Appendix	30A		Port Noise Management Plan	Amend to provide additional requirements around monitoring	Port 391.2	3.1.6	5.6.1

<b>Plan Section</b>	<b>Provision Type</b>	<b>Provision number</b>	<b>New Number</b>	<b>Provision Name</b>	<b>Decision</b>	<b>Submission Point Reference</b>	<b>Decision Report Topic number</b>	<b>S42A Report Section Number</b>
30. Port	Appendix	30B			Amend Appendix 30B. Port Noise Mitigation Plan to provide additional requirements	Port 737.35, Port 737.36 and Port 737.37	3.1.7	5.7.2, 5.7.3 & 5.7.4
30. Port	Appendix	30C			Amend Appendix 30C. Port Noise Liaison Committee to provide additional requirements	Port 391.2	3.1.7	5.7.2, 5.7.3 & 5.7.4
30. Port	Policy	Requested new policy			Do not add new policy		3.4	5.3.3
30. Port	Appendix			Appendices	Amend to provide additional requirements around measurement or assessment of port noise	Port 391.2	3.1.6	5.6.1