

**IN THE ENVIRONMENT COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY**

I TE KŌTI TAIAO O AOTEAROA

BETWEEN

HILARY JANE CALVERT

CRAIG HORNE SURVEYORS LIMITED

Appellants

AND

DUNEDIN CITY COUNCIL

Respondent

NOTICE OF APPEAL

Under clause 14(1) of the Resource Management Act 1991

Solicitor Acting: S M Chadwick

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Dunedin

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NOTICE OF APPEAL

Under clause 14(1) of the Resource Management Act 1991

To: The Registrar
Environment Court
Christchurch

- 1 Hilary Jane Calvert and Craig Horne Surveyors Limited (“Appellants”) appeal a decision of the Dunedin City Council (“Council”) on the Proposed Second Generation Dunedin City District Plan (“2GP”).
- 2 The Appellants made submissions on the fencing provisions in the 2GP.
- 3 The Respondent publicly notified the decision on 7 November 2018.
- 4 The Appellants are not a trade competitor for the purposes of section 308D of the RMA.
- 5 The decision was made by the Council’s 2GP Hearings Panel.
- 6 The decision appealed is:
 - 6.1 All decisions relating to and amending the rules in the 2GP prescribing fence height and design, including;
 - a The decisions noted at section 4.5 of the decisions report of the Hearings Panel for the Residential Zones;
 - b The decisions noted at section 3.1.7.2 of the decisions report of the Hearings Panel for the Major facilities zones; and
 - c The decisions amending all other fence height and design rules in the 2GP to be consistent with those decisions.
 - 6.2 The specific provisions or matters that the decisions relate to are all rules governing fence height and design on urban property boundaries, including rules:
 - 15.6.3.2 (notified version 15.6.2.2);
 - 15.6.3 (notified version 15.6.2);
 - 20.6.2.2 (notified version 20.6.1.2);

20.6.2 (notified version 20.6.1);

22.6.3 (notified version 22.6.2);

27.6.3 (notified version 27.6.2);

28.6.4 (notified version 28.6.3);

31.6.2 (notified version 31.6.2);

34.6.3.2 (notified version 34.6.2.2);

34.6.3 (notified version 34.6.2);

34.6.13 (notified version 34.6.12); and

35.6.3 (notified version 35.6.2).

Together the 'New Fencing Rules'.

7 The reasons for the appeal are:

Unnecessary and unwarranted

7.1 There is no need for the New Fencing Rules.

7.2 The fencing rule in the current district plan ("Current fencing rule") functions well and has the significant additional benefit of being simple, clear and predictable.

7.3 There is no evidence that the Current fencing rule has caused a proliferation of excessively high fences in the district nor any other adverse effects which need to be managed.

7.4 Any urban design or other benefits from the New Fencing Rules were overstated and unsupported by evidence at the Council hearings.

Unreasonable and unduly complex

7.5 The New Fencing Rules are unreasonable and unnecessary in that they are:

a Overly complex and difficult to follow;

b Create a confusing variation of standards across different zones and areas and types of fence; and

- c Are unduly onerous and impinge unjustifiably on private property rights.

Significant additional cost

- 7.6 The New Fencing Rules would result in significant, needless and unjustified additional compliance fees, costs and time commitments for all property owners in Dunedin.
- 7.7 Any claimed benefits do not justify the significant additional costs of construction and compliance for property owners.

Unenforceable

- 7.8 The New Fencing Rules are so complex and uncertain that they would be effectively unenforceable, particularly when existing use rights are taken into account.
- 7.9 The Council does not have the resources to administer, monitor and enforce the New Fencing Rules.

Other methods available

- 7.10 Complex plan rules should be avoided where there are a range of other methods such as to promote alternative fence designs which are more appropriate and those other methods should be preferred.

- 8 The Appellant seeks the following relief:

- 8.1 That the appeal be allowed;
- 8.2 That a new fencing rule be included in the 2GP which provides consistently for all urban areas that:

The maximum height of a fence along all boundaries is 2 metres.

- 8.3 Such other relief as the Court sees fit; and
- 8.4 Costs.

- 9 **Attached** to this Notice of Appeal are the following documents:

- 9.1 A copy of the Appellants' submissions.
- 9.2 A copy of parts of the relevant decisions.

9.3 A list of the parties served with a copy of this appeal.

DATED this 18th day of December 2018



S Chadwick

Counsel for the Appellants

Address for service of Appellants:

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79 Stuart Street

Dunedin 9016

PO Box 5541

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Email: schadwick@webbfarry.co.nz

Advice to recipients of copy of notice

How to become a party to proceedings

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

To become a party to the appeal, you must,—

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

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

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

All further documents relating to the 2GP and this appeal can be found on the Council's 2GP website <https://2gp.dunedin.govt.nz/>



THE PROPOSED
**SECOND
GENERATION
DISTRICT PLAN**

SUBMISSION FORM

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

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

MAKE YOUR SUBMISSION:

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

Email: planning@dcc.govt.nz

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

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

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

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

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

Full name of submitter or agent*	HILARY JANE CALVERT		
Organisation (if submission on behalf of an organisation)	/		
Address for service for submitter or agent* Please provide an address where you would like correspondence sent to			
Email address	hcalvert@xtra.co.nz		
Postal address*		Postcode*	
Phone number*		Mobile number	021 407 262

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

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

Please tick one of the following*

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

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

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

- (a) adversely affects the environment; and
(b) does not relate to trade competition or the effects of trade competition

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

Please tick one each of the following*

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

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

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

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

Provision name and number (where applicable): *Rule 15.6.3 Fencing.*
 For example: Rule 15.5.2 Density

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

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

Scheduled item number (where applicable):
 For example: Reference #T147 - Scheduled Tree at 123 Smith Street

My submission is*

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

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

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

Proposed new rule 15.6.3 not be included in the 2GP. The operative rule is sufficient.

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

See attached.


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

20/11/15
 Date

Attachment to
Submission HJ (Glenn
2GP)

The reasons for my views are as follows:

1. The costs and benefits have not been sufficiently taken into account. (Section 32 Report (Residential Zones Section 32 Report pp 17 and 18).

The benefits of the proposed rule as being "provisions relating to parking, garages, fences and setbacks from the road provide for a safe and pleasant environment which will, in turn, result in social benefits in terms of the health and safety of its residents".

The main costs are only referenced in the sentence "Provisions (including the various limitations to the use of the front part of sites) will limit development potential and may result in less efficient land use. It is however considered that the benefits of these provisions outweigh the costs."

The Summary regarding effectiveness and efficiency says on balance the proposals are the most effective and efficient way of delivering on the principle.

The only comment concerning fences in the other options category is "Allowing high impermeable fences along front boundaries can have significant effects on streetscape amenity and public safety."

The above do not amount to sufficient weighing up of the costs and benefits. While this may appear to be a minor rule change, it is a rule which is proposed to apply to all homeowners in Dunedin, so the costs and benefits need a more detailed approach. No financial costs have been canvassed, nor uncertainty costs.

2. The rule does not apply the objective that it "reflects the current or intended future character of the neighbourhood". The current character of fencing along the front boundary of residential properties in Dunedin is diverse, reflecting the time over which Dunedin has developed. Front boundaries have fences, no fences, hedges and shrubberies. The materials creating such visual delineation lines between public and private spaces are also diverse, as are the reasons for the choice of boundary markers. Some of the common reasons include:
 - For privacy, so that passers by cannot see into rooms close to the street. For decency, so that those who wish their rubbish or their smalls not to be on display can have them in a non public part of their property.
 - To screen the property from road noise on a busy road or near a busy intersection.
 - For the better enjoyment of the outside space for private socializing without the effect of having a party in the street, particularly on corner sites: this may be the sunniest part of the yard.
 - To keep animals in, and to provide reassurance that such animals will not escape to attack passers by.
 - To provide a backdrop to a garden from the inside, and a fence to grow against.
 - To screen children playing outside from those who should not be watching children, especially without the knowledge of the parents of such children.
 - Because the effects of a fence are instant, whereas a hedge (which would not breach the conditions proposed) will take too long to grow.

None of these legitimate and current reasons for having a fence which may be non compliant with the proposed rule have been taken into account, or so it seems.

3. Applying such a rule in existing residential areas would not have the effect of changing the streetscape in such areas because the number of new houses to which this rule would apply is very low. Having the very occasional front boundary subject to such a rule would not achieve anything.
4. In the normal course of events homeowners do not seek council advice when they are building a front fence, and under the existing rules they would need to do so unless their fence was over 2 metres. Under the proposed rule any fences over 1.4 metres may be breaching the rules and should likely be checked out with the council as to whether a consent is required. Normally law abiding citizens could then be building a fence which is non compliant unbeknownst to themselves in circumstances where were the council to find out and the fence breaches the rules, the breach would turn up on any LIM provided for the property.
5. The cost of applying for a consent for building a fence which may need special permission if it breaches the rule is a significant barrier and cost to a landowner, out of proportion to the value of building the fence which could otherwise be done and is in fact often done by home handymen and women. This cost has not been taken into account in weighing up whether a rule such as this one is justified.
6. If a homeowner does want to build a higher non visually permeable fence and needs a consent, council staff would have to look into whether it was appropriate to grant such a consent on the basis of whether the effects were no more than minor etc. To give them guidance, council could provide circumstances in which such a fence would be appropriate. If there is likely to be a range of reasons why someone could reasonably build such a fence, why not just let them in the first place?
7. Since the rule is not proposed to apply to hedges or shrubberies, any possible benefit which may arise from passers by being able to peer into front yards as of right would be able to be stymied by using a hedge rather than a fence, thereby bypassing the useful effects of having the rule.
8. As regards this possible safety advantage, by far the most likely people to help "supervise" burglars etc on a residential property is your neighbour, and the rule is not intended to apply to side yards, thereby precluding a likely better way of achieving any such benefit.

To be attached to the submission of Hilary Calvert

SUBMISSION FORM

Proposed Second Generation Dunedin City District Plan for Dunedin pursuant to Clause 6 of Schedule 1 of the Resource Management Act 1991

To: Chief Executive
Dunedin City Council
PO Box 5045
Dunedin 9058

From: Mr Craig Horne & Craig Horne Surveyors Ltd
C/- Cubitt Consulting Ltd
11 Bedford Street
St Clair
Dunedin 9012

Phone: (03) 4557276
Email: allan@cubittconsulting.co.nz

Trade Competition:

Mr Craig Horne or Craig Horne Surveyors Ltd could not gain an advantage in trade competition through this submission.

Hearings:

Mr Craig Horne & Craig Horne Surveyors Ltd wishes to be heard in support of their submission and would consider presenting a joint submission if others make a similar submission.

My Submission relates to the following Provisions of the Proposed Second Generation Dunedin City District Plan for Dunedin:

The Rural zone, Residential zone, Transportation and Scheduled Tree provisions of the proposed District Plan and the associated map overlays; the Hazard notation overlays and in particular the "Hazard 2 & Hazard 3 – Flood" and "Hazard 3 – Coastal" overlays, and associated provisions.

My submission is:

I oppose these provisions.

The Decision I seek is:

- (1) Remove all “Hazard 2 and Hazard 3 – Flood” overlay and “Hazard 3 – Coastal” overlay from the planning maps and all other hazard zones that cannot be adequately justified by the section 32 report.

- (2) Amend following Objective and policies of the Rural Zone:

(Text removed is shown with strike through and text added is shown with underlining.)

Objective 16.2.1

Rural zones ~~are reserved for~~ that enable productive rural activities and the protection and enhancement of the natural environment, along with certain activities that support the wellbeing of ~~rural communities~~ the community where these activities are most appropriately located in a rural environment ~~rather than an urban environment and adverse effects can be appropriately managed~~. Residential activity in rural zones is ~~limited to that which directly supports farming or which is associated with papakāika~~.

....

Policy 16.2.1.2 Provide for other rural activities, veterinary services, rural industry, community activities, cemeteries and crematoriums in the rural zones where the effects can be adequately managed. ~~in line with Objectives 16.2.2 and 16.2.3, 16.2.4 and their policies, and the objectives and policies of any relevant overlay zones.~~

...

Policy 16.2.1.5 Enable residential activity, ~~with the exception of and papakāika, in the rural zones to a level (density) that supports farming activity and achieves Objectives 2.2.2, 2.3.1, 2.4.6, 16.2.2, 16.2.3 and 16.2.4 and their policies.~~

...

Policy 16.2.1.7 ~~Avoid residential activity in the rural zones on a site that does not comply with the density standards for the zone, unless it is the result of a surplus dwelling subdivision.~~

(a) Provide for rural residential living in the rural zones on existing undersized titles in the following circumstances:

- o The title is located within or adjoins an enclave of existing undersized titles, some of which are developed;
- o Natural hazards can be avoided, remedied or mitigated;
- o Adequate set backs are provided to maintain the amenity values of adjoining properties and to minimise reverse sensitivity;
- o Infrastructure, including the roading network, is not compromised.

(b) Provide for further subdivision for rural residential living purposes in the rural zones within areas that are already fragmented.

...

Policy 16.2.2.5 ~~Only allow~~ Enable rural tourism large scale, rural research large scale, community and leisure largescale, sport and recreation, veterinary services,

visitor accommodation, cemeteries, crematoriums, factory farming, domestic animal boarding and breeding (including dogs), rural industry, mining or landfills where significant adverse effects on the amenity of residential activities on surrounding properties will be avoided or, if avoidance is not possible, adequately mitigated, are avoided, remedied or mitigated.

Policy 16.2.2.6 ~~Only allow~~ Provide for factory farming, domestic animal boarding and breeding (including dogs), rural industry, mining, landfills or non-rural activities, other than those that are permitted in the rural zones, where the potential for reverse sensitivity effects, that may affect the ability of permitted activities to operate, will be avoided remedied or mitigated ~~or, if avoidance is not possible, will be no more than minor~~

...

Policy 16.2.3.5 ~~Only allow~~ Enable factory farming, rural tourism large scale, rural industry, rural research large scale, mining and landfill activities where ~~there are no~~ significant adverse effects from large scale development on rural character and visual amenity are avoided, remedied or mitigated.

Policy 16.2.3.6 ~~Only allow~~ Enable community and leisure activities large scale, sport and recreation, early childhood education, and visitor accommodation activities where ~~the any significant~~ adverse effects of development on rural character and visual amenity are ~~insignificant~~ are avoided, remedied or mitigated.

...

Policy 16.2.3.8 Only allow subdivision activities where the subdivision is designed to ensure any associated future land use and development will maintain or enhance the rural character and visual amenity of the rural zones or meets the criteria of Policy 16.2.1.7.

Policy 16.2.4.2 Avoid activities other than farming in a high class soils mapped area, unless:

- a. the scale, size and nature of the activity on the high class soils mapped area means that any loss of current or potential future rural productivity would be insignificant; or
- b. for mining, the activity must locate on the part of the site with high class soils due to operational requirements and there are no practicable alternative locations; or
- c. the location is an existing area of fragmented rural land.

Policy 16.2.4.3 Only allow subdivision where the subdivision is designed to ensure any future land use and development will:

- a. maintain or enhance the productivity of rural activities;
- b. maintain high class soils for farming activity, or ensure any loss is no more than minor;
- c. maintain land in a rural rather than rural residential land use except in these circumstances provided for in Policy 16.2.1.7.; and
- d. not significantly increase the potential for reverse sensitivity from residential activities in the rural zones; OR

e. where the subdivision is designed to enable the development of those activities anticipated in Policies 16.2.2.5, 16.2.2.6, 16.2.3.5 and 16.2.3.6

Policy 16.2.4.4 Avoid residential activity in the rural zones at a density that may, over time and cumulatively, reduce rural productivity by displacing rural activities while recognising the need to enable appropriate development, including rural residential development, of existing undersized rural sites.

- (3) Add to Rule 16.5.2.3 the following:

(Text removed is shown with strike through and text added is shown with underlining.)

16.5.2 Density

1. The maximum density of standard residential activities is as follows:

- ...
 c Hill Country ~~400-ha~~ 15 ha
 f Peninsula Coast (i) ~~20~~ 15 ha
 g Taieri Plains ~~25-ha~~ 15 ha
 ...

3. Standard residential activity that contravenes the performance standard for density is a noncomplying activity, except:

...
c. Standard residential activity on sites 15 hectares or above that were consented before 26 September 2015 shall be permitted activities.

d. Standard residential activity provided for by Policy 16.2.1.7 shall be a restricted discretionary activity.

Council's discretion is restricted to:

- I. Setbacks and screening to minimise adverse effects on the amenity values of adjoining properties and to minimise reverse sensitivity effects;
- II. The provision of appropriate infrastructure to minimise any adverse effects water quality;
- III. The bulk and design of the dwelling to minimise adverse visual effects;
- IV. Measures to avoid or mitigate natural hazards.

e. Standard residential activity on existing undersized rural sites as at 26 September 2015 not provided for by Policy 16.2.1.7 and that are smaller than 15 hectares shall be a discretionary

- (4) Add to Rule 16.7.4 the following:

(Text removed is shown with strike through and text added is shown with underlining.)

Rule 16.7.4 Minimum Site Size

...
 1. The minimum site size for new resultants sites is:

- a Coastal ~~40-ha~~ 15 ha
- b High Country ~~400-ha~~ 15 ha
- c Hill Country ~~400-ha~~ 15 ha
- d Hill Slopes ~~25-ha~~ 15 ha

e Middlemarch Basin ~~80 ha~~ 15 ha

f Peninsula Cosat ~~40 ha~~ 15 ha

g Taieri Plains ~~40 ha~~ 15 ha

3. General subdivision that does not comply with the standard for minimum site size is noncomplying, except in the following circumstances where the subdivision is restricted discretionary:

...
b....

OR

c. The subdivision is provided for by Policy 16.2.1.7.

Council's discretion is restricted to the size and shape of the allotments and the performance standards in Rule 16.7.1 to 16.7.3.

OR

d. The subdivision is for activities contemplated by Policy 16.2.2.5 and Policy 16.2.2.6.

Council's discretion is restricted to the size and shape of the allotments and the performance standards in Rule 16.7.1 to 16.7.3.

OR

e. The subdivision is for activities contemplated by Policy 16.2.3.5 and Policy 16.2.3.6.

Council's discretion is restricted to the size and shape of the allotments and the performance standards in Rule 16.7.1 to 16.7.3.

4. The subdivision involves the subdivision of an existing residential building greater than 100m² that was built before 26 September 2015 as provided for by 3 (a) and (b) above but does not comply with the other conditions/criteria of that rule shall be a discretionary activity.

(5) Rule 15.6.3 Fence Height and Design

1(b) Along all other road boundaries ~~1.4m~~ 1.8m

1(c) Along a side or rear boundary with a reserve ... ~~1.4m~~ 1.8m

(6) Rule 15.7.4 Minimum Site Size

(2) General subdivision that does not comply with the standard for minimum site size is non-complying, except in the following circumstances ...

1. A ~~three~~ two or more site subdivision where one resultant site is below the minimum site size and the average

(7) Rule 7.5.2 Setback from Schedule Tree

2. The following activities must not take place under the dripline of a scheduled tree, ~~or within a distance from the trunk equivalent to half the height of the tree, whatever is the greater...~~

(8) Rule 6.6.3.9 Width of Vehicle Driveways

- (a)(i) Residential activities 1-6 lots 3.5m 4.5m legal width 3m formed width

- (9) The addition of intensive residential activity similar to the Inner City Residential zone should be provided in others parts of the city, for example around the Mosgiel CBD.
- (10) Rural residential zones should be expanded, or additional land zoned Rural Residential, or existing under sized rural zoned land allowed to be developed for residential activity as per item 2 above.
- (11) Make any consequential amendments necessary to give effect to the submission points 1 to 10 above.

The Reasons for My Submission are:

The proposed District Plan (and its associated s32 Report) is deficient in that it does not sustainably manage existing undersized rural properties, which are a physical resource that must be managed. Furthermore it does not provide for the range of rural productivity and living options that are sought after by the community.

This is further exacerbated by the increase in the minimum lot size up to 25 to 100 hectares for dwellings in the majority of the rural parts of the City. These proposed minimum lot sizes will inhibit the productive use of the rural land where more intensive land use is possible. While this will assist in maintaining the productivity of the rural zone for most pastoral purposes, it does not recognise that there are more intensive productive land uses (pastoral and non-pastoral). It also does not recognise a number of locations within the City where land is already fragmented to well below the minimum lot sizes of either the current or proposed District Plan. The sustainable management purpose of the Act is best served by allowing these areas to be developed further. This will provide for both the rural living options sought after by the community and the other facilities that contribute to community wellbeing (provided for by the policies) while protecting the productive parts of the rural environment from lifestyle development pressure.

In respect of the rural residential zones, there has been no notable addition of land to the rural-residential zones in the 2GP while there is large demand for this type of lifestyle from the city's residents and those looking to move to the Dunedin area. The increase in minimum lot sizes will decrease the number of 'lifestyle' lots created within the rural zone, although the amount of rural land 'lost' to rural-residential activity is unlikely to change. Council needs to provide for the rural-residential demand by increasing the rural residential zone and/or allowing for residential activity on under sized rural zoned titles.

With respect to the hazard notations in the plan, the risks appear to be greatly overstated. The approach taken to this issue is very broad brush and does not appear to be overly

accurate. If lines on maps are to be used, they must be meaningfully and must accurately reflect the risk. The technical reports indicate a very generalised approach to the issue.

The approach adopted is both unfair and unreasonable and will have a number of adverse consequences for affected land owners. These will potentially include:

- Development opportunities will be significantly reduced.
- Cost involved in gaining resource consents.
- Impacts on property valuations and insurance premiums.
- The impact on potential purchasers of supposedly flood affected properties – reduced saleability.

Both the s32 Report and the associated technical reports are deficient and do not justify the imposition of this hazard overlay. Accordingly the hazard notations should be removed.

In respect of fence height, there are currently no notable issues with the standard or height of fencing along road or reserve boundaries. There are few properties that have fences higher than 1.4m and those that do, do not detract from the amenity of the street or cause any noticeable safety or security issues. There is no need to create additional restrictions where there is no quantifiable problem with the status quo.

In respect of the exception allowance for minimum site sizes the basic concept of the rule is good and necessary however it doesn't extend far enough and should apply also to a 2 lot subdivision and for more than 3 lot subdivisions provided the performance standards are met.

In respect of scheduled trees, while there is no doubt that trees are a valuable part of the city, scheduled trees is at odds with the intensification of residential activity in the residential zone. There are a wide range of appropriately sized trees throughout the city streets and private property and protecting trees that are mostly too large for the residential zone is inappropriate and unnecessary. The Planning Consents Committee has recognised this with the large number of consents granted to remove scheduled trees. We consider there should be no scheduled trees in private property within residential zones, however if they are to remain the dripline of the tree is the appropriate limit for restricting activities.

In respect of minimum access widths, the 4.5m legal width is unnecessarily large particularly for infill subdivision in existing residential zones for 1 – 3 lots/dwellings. It is my estimation that only a small percentage of properties with infill capability will have 4.5m between the existing dwelling and side boundary that can be used for access. It is Council's stated purpose to encourage more infill development and the proposed 4.5m legal width of access will have the opposite effect. The current 3.5m legal width serving 1-3 lots is appropriate and should be replicated in the 2GP.

In respect of intensive residential activity, the large areas of intensive residential activity in the proposed 2GP are confined to between George and Princes Streets and the Town Belt. This land is some of the steeper land in the city and on the shaded side of the hill. Generally from a development perspective this is considered the least suitable land for intensive development. Development costs are considerably higher, less land is ultimately available for dwellings and invariably more shading of downhill properties will occur. It is far more appropriate that gently sloping or flat land preferably with a northerly aspect be available for intensive development.

Dated at Dunedin on 24 November 2015

A handwritten signature in dark ink, appearing to read 'Allan Cubitt', written in a cursive style.

Signed _____

Allan Cubitt as Agent for Craig Horne & Craig Horne Surveyors Ltd



**SECOND
GENERATION
DISTRICT PLAN**

Residential Zones

Decision of Hearings Panel

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

7 November 2018

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2.0 Hearing appearances and evidence presented

2.1 Original Hearing commencing 3 November 2016

17. 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
A & E Walker (OS82)		Attended hearing	Requests to change GR2/GR1 Zone boundaries – Mosgiel
Akmal Bashir (FS2125)		Statement tabled at hearing	Zoning - Wakari
Alastair Logan (OS425 and FS2315)		Statement tabled at hearing	- How and where should the Plan provide for medium density development? - Management of sunlight, greenspace, views and vistas
Alice Wouters and Chris Rietveld (FS 2256)		Statement tabled at hearing	Zoning - Wakari
Alison Rowena Beck and Philip Jeffrey Ward (FS2380)	Alison Beck and Forbs Williams	Statement tabled at hearing	- Broad Submissions on the density performance standard relating to criteria for, or extent of, medium density zones - Management of sunlight, greenspace, views and vistas

Allan Sutherland (OS1044)	Kurt Bowen (surveyor)	Attended hearing	• Zoning - Aramoana
Anthony Parata (OS248)		Statement tabled at hearing	• How and where should the Plan provide for medium density development?
Barry Smaill (OS167)		Attended hearing	• Rule 15.5.2 Density • Impermeable surfaces • Rule 15.5.12 Outdoor living space performance standard • Rule 5.6.7.1 Height in Relation to Boundary
Blueskin Nurseries Limited (OS309) Blueskin Projects Limited (OS739)	Mark Brown Ciaran Keogh (resource management consultant)	Attended hearing	• How and where should the Plan provide for medium density development? • Fence height and design • Rule 15.7.4 Minimum site size • Zoning - West Harbour/North Coast
Bob Mathieson (OS1040)	Kurt Bowen (surveyor)	Attended hearing	• Mapping corrections – 15 Thoreau Street
BP Oil NZ Ltd and Mobil Oil NZ Ltd and Z Energy Ltd (OS634)	Georgina McPherson (resource management consultant)	Pre-circulated statement	• How and where should the Plan provide for medium density development?
Bus Users Support Group (OS1080)	Peter Dowden (representative)	Attended hearing	• How and where should the Plan provide for medium density development?
Catherine Morrison (FS2135)		Pre-circulated statement	• Zoning - West Harbour/North Coast

Hilary Calvert (OS 190)		Statement tabled at hearing	• Fence height and design
Jenny Bunce (OS159)		Statement tabled at hearing	• Requests to change GR2/ICR Zone boundaries – NEV/Opoho
Jo Galer (OS801) Peter McIntyre (OS712)		Attended hearing	• How and where should the Plan provide for medium density development? • Requests to change GR2/ICR Zone boundaries – NEV/Opoho
John Sule (OS834)		Statement tabled at hearing	• Requests to change GR2/GR1 Zone boundaries – Peninsula and surrounding suburbs
Liz Angelo (FS2489) Arthur Street Neighbourhood Support (OS843)	Liz Angelo (representative)	Attended hearing	• How and where should the Plan provide for medium density development? • Rule 15.5.2 Density
Margaret Davidson (OS417)		Statement tabled	• How and where should the Plan provide for medium density development? • Management of sunlight, green space, views and vistas • Rule 14.4 Notification • Rule 15.3.4 Activity status table – development activities

Port Otago Ltd (FS2378)	Len Anderson (legal counsel)	Legal submission tabled at hearing	Request for new policy for Careys Bay
Richard La Hood (OS419)		Statement tabled at hearing	Requests to change GR2/GR1 Zone boundaries – South City
Robert Frances Wyber (OS394)		Statement tabled at hearing	- How and where should the Plan provide for medium density development? - Rule framework for medium density zones - Garages and carports - Fence height and design - Management of Early Childhood education - Definition of habitable room - Introduction - Rule 15.4 Notification - Rule 5.6.7.1 Height in Relation to Boundary - Rule 15.6.12 Number and location of ancillary signs - Maps – Infrastructure Constraint Mapped Area
Robert Tongue (OS452)		Attended hearing	- Rule 15.5.2 Density - Requests to change GR2/ICR Zone boundaries – Central City
Roger Miller (OS126)	Shelly Chadwick (legal counsel) and Paul Hadden (surveyor) Roger Miller	Legal submission and other statements tabled at hearing	Zoning - Mosgiel

4.5 Fence height and design

532. The operative District Plan includes a maximum height for fences of 2m. The 2GP introduces new requirements for the height and permeability of fences, and for fences in heritage precincts. The 2GP still allows for fences up to 2m but has a new requirement that any portion of fence above 1.4m is visually permeable, or where 40% of the structure overall is visually permeable.

4.5.1 Submissions

533. Nine submitters (see s42A Report, Section 5.8.3, p. 220) supported the proposed fence provisions and the underpinning policy (Policy 15.2.4.4) and sought that they be retained. These submitters supported the provisions as they agreed that high impermeable fences have adverse effects on residential amenity. They also agreed that encouraging passive surveillance provides a 'community feel' and improved public safety, and contributes to increased street use.
534. The *Property Council New Zealand* (OS317.23) sought that Policy 15.2.4.4 be removed in its entirety. The submitter was unsure how a fence can contribute positively to either the streetscape or the character of the neighbourhood, when its prime purpose is to provide privacy and delineate boundaries.
535. Other submitters (see s42A Report, Section 5.8.3, p. 223), including *Mr Wyber* (OS394.80), *Blueskin Projects Ltd* (OS739.2), *Craig Horne Surveyors Limited* (OS704.2) and *Mrs Hilary Calvert* (OS190.1) sought amendment to the maximum fence height rules (Rule 15.6.3.1) to permit all fences at a height of 1.8m or 2m (depending on submitter), and that the rule requiring fences to be visually permeable above 1.4m (Rule 15.6.3.3) be removed, amended to not require a visual connection, deletion of rules entirely, or the same provisions as is in the operative District Plan.
536. These submitters opposed the proposed rules for a range of reasons, primarily relating to the privacy and security of houses and gardens. Many of them also questioned why the height of fences should be controlled, when hedges may be of any height. These submitters were generally sceptical of the argument that managing fence height will improve pedestrian safety or reduce crime and saw the proposed rules as an excessive and unjustified regulatory burden.
537. The *Otago Property Investors Association (OPIA)* (OS539.1) sought amendment to the fence rule (Rule 15.6.3) to be outcomes based, rather than prescribing acceptable styles or building methods, and so that it is the responsibility of the applicant to satisfy that the necessary outcome is achieved. The OPIA believes it is a governance body's responsibility to strive for outcomes rather than prescribe acceptable styles or building methods. The OPIA considers that performance standards relating to fence height and design are too prescriptive, and as a result will limit ingenuity in the use of resources or methods. In the OPIA's view, improvements in products or construction methods will arise in the future that do not fit the current prescription put in place.

4.5.2 s42A Report and expert evidence

538. The Reporting Officer noted there were several reasons driving this proposed change and addressed each issue raised by submitters and referred to Mr Christos, DCC Urban Designer's expert evidence, dated 16 August 2016 (s42A Report, Section 5.8.3, p.223). He noted several points including the negative visual effects caused by blank fencing which can have adverse effects on residential streetscape values; the benefits of passive surveillance (where private space overlooks public space and vice versa and provides a visual connection which contributes to safety on footpaths); and custodianship. He explained that custodianship is related to when a visual connection exists between the public and private realm, people feel safer. Where this is lacking, the public are given the sense that the area is unsafe. According to Mr Christos, these benefits are well documented and supported by empirical evidence referred to in the

National Guidance for Crime Prevention through Environmental Design in New Zealand (2005).

539. The Reporting Officer was of the opinion fences constructed in compliance with the proposed provisions would, in most situations, allow for a reasonable level of privacy, protection from wind and noise, and adequate security for pets and children. In her opinion, the rules are the result of balancing the right of land owners to do as they wish with their properties with the rights of the public to reasonable amenity in terms of streetscape, but also facilitating an area that can be comfortably and safely used by the public. She considered the points in the s42A Report to provide adequate resource management reasons for managing the height and permeability of fences, and to be in line with the purpose of the RMA.
540. Many submitters questioned why there were restrictions on fence height and permeability and not on hedges. The Reporting Officer noted that the fence height and design rule (Rule 15.6.3) does not apply to hedges as is indicated by the definition of fence, and explained the benefits of hedges, as outlined in Mr Christos's evidence.
541. Submitters raised concern about not being able to have a retaining wall the height required for stability of land, and/or fence on top of the retaining wall depending on the ground level. The Reporting Officer noted this was a permitted activity if relevant rules were complied with, and explained how height from ground level was calculated and outlined concerns about impacts on amenity if a 2m fence was erected on top of a retaining wall as it could result a structure rising 3m above ground level, creating a solid, towering structure, which could overshadow and be intimidating to passers-by.
542. Several submitters raised concerns about the rules prescribing materials or styles, suggesting that people should be able to determine how to achieve outcomes, or that the rules may result in less diversity of fences. The Reporting Officer noted that the 2GP fence rules will not restrict the materials that can be used to build a fence. While certain materials were suggested in the rules to achieve permeability, they are not mandatory, nor are any materials restricted.
543. In response to concerns about implications on existing fences, the Reporting Officer indicated that any existing fences would not be required to comply with the 2GP rules as the rules would only apply to new fences built after the date at which the new rules became operative. She also outlined that processes are available for consent to be applied for to contravene the rules, so applications can be considered on a case-by-case basis.

4.5.3 Hearing evidence

544. *Mr Craig Horne* considered the fence rule to be unnecessary based on a site visit to areas of Mosgiel where there were only a few fences that would exceed the new rules and these were appropriate and not affecting amenity. He considered higher fences in medium density housing areas may be appropriate where windows are near the street.
545. In his written evidence, *Mr Wyber* explained the National Guidelines for Crime Prevention through Environmental Design in NZ are only guidelines and are more relevant to commercial and public areas such as reserves. He did not consider rules will contribute to safety for pedestrians and that their safety is a matter for Police not the 2GP. He was of the opinion dwellings with windows close to the street need to exclude people from looking in from the street with the use of tall, solid fences.
546. *Ms Hilary Calvert* outlined her concern that there had been insufficient consideration of negative effects (or costs of the rules) and a lack of evidence as to how the fence rules would achieve the amenity and safety outcomes sought. She was also concerned whether people would know what their existing use rights were, may not be aware of 2GP rules that needed to be complied with, and that non-compliance over time from developing under a different set of district plan rules could influence home buyers or result in legal challenges.

547. *Ms Calvert* considered the fencing rules wouldn't change the streetscape amenity or safety in most established neighbourhoods as not many new fences were being built. She was concerned people would be required to get consent for building fences and that not only would this be a cost to the landowner, but that the discretion to grant the consent and what rules to apply would be at the discretion of DCC staff, which she considered would result in inconsistent application of the rules. She requested that the reasons for allowing fences (currently in the assessment criteria for resource consents) should be put in as exceptions to the rules rather than relying on DCC planners to decide if an applicant has a good reason for wanting taller solid fence.
548. *Ms Calvert* suggested a number of options for consideration:
- the rules could be applied to new subdivisions rather than all areas
 - instead of having the rules, information explaining the benefits of lower and/or visually permeable fences and give planting advice for suitable plants could be provided to people applying for building consent for new homes and could be displayed on a prominent position on the website
 - allow exceptions to the rule if the applicant could show that specific criteria apply and limit the fee for approval to \$50. The criteria could be that solid tall fencing was needed to hide rubbish bins in front yards, minimise significant street noise, privacy for bedrooms facing the street, the premises is used for childcare purposes, or outdoor living space is provided adjacent to the street.
549. In response to questions, *Ms Calvert* argued there should be exceptions for corner sites and childcare facilities where taller solid fences may be needed for privacy reasons.
550. In her revised recommendations, the Reporting Officer recommended adding an exemption for fences built in association with early childhood education facilities.

4.5.4 Decisions and reasons

551. We reject the submissions by *Property Council New Zealand* (OS317.23) to delete the fence rules.
552. We accept in part submissions by *Mr Wyber* (OS394.80), *Blueskin Projects Ltd* (OS739.2), *Craig Horne Surveyors Limited* (OS704.2), *Mrs Hilary Calvert* (OS190.1), *Otago Property Investors Association (OPIA)* (OS539.1), and others referred to above to retain, delete, or amend the fence rules.
553. We acknowledge that fencing rules are contentious with passionate views and arguments both for and against these provisions common place. However, overall we agreed with expert evidence provided by Mr Christos and the reasons outlined by the Reporting Officer for having these rules in terms of the potential for adverse effects on streetscape amenity, and the importance of passive surveillance. We note that for property owners who want higher levels of visual screening, hedges are not managed by the Plan. This is to recognise that although tall dense hedges do not serve some of the purposes of these rules, such as allowing passive surveillance, hedges do provide amenity.
554. This is another decision where we have had to weigh conflicting interests. We accept that it is important to discourage visually impermeable and dominant street boundary structures, but we also accept that restrictions limit the freedom of individual property owners. A compromise has been struck and we recommend that the DCC monitors how these rules work. We also suggest the DCC supplements the 2GP controls with promotion of good design of street boundary structures through a design guide.
555. We have amended the visual permeability component of the rules to allow for fencing along 50% of the boundary to be a solid 2m high fence and 50% of the boundary to have fencing that is visually permeable above 1.4m. These changes are attributed to Res 190.1 and others in Appendix 1. These changes have also been made to rules 20.6.2, 22.6.3, 27.6.3, 28.6.4, 31.6.2, 34.6.3, and 35.6.3 for consistency.

556. We have also considered the issues raised in submissions, and have made a number of amendments to improve the clarity of provisions as changes under Clause 16 of the First Schedule to the RMA including:
- adding a definition of visual permeability and removing this detail from the rule
 - amending Rule 15.6.3 to simplify the provisions, including separating the maximum height and visual permeability rules, deleting the table and rewording these rules so they are clearer
 - updating the figures in Rule 15.6.3 and deleting the figures from Rule 20.6.2, with this rule now referring to the figures in the Rule 15.6.3
557. These changes are shown in Appendix 1 as changes made under clause 16 of the RMA.
558. In making these amendments to the structure of these sections, we note that some of the major facilities zones had included a requirement for fences on the side or rear boundary of *residential* properties to have to meet the permeability rules (27.6.3, 31.6.2, 34.6.3, and 35.6.3). This was included in these sections in error and there is no corresponding rule in the Residential Zone. We consider it appropriate to remove this requirement to ensure consistency between the sections of the 2GP. As this is a substantive change we are unable to correct it under clause 16 of the RMA. We note that there were some submissions on the residential fence provisions generally requesting removal of the provisions or fewer rules. While these submissions did not specifically address the provisions in the major facility zones, the provisions in the major facility zones relate to the boundary of residential zones and we attribute this correction to rules 27.6.3, 31.6.2, 34.6.3, and 35.6.3 in Appendix 1 to Res 394.80 and 1051.2. We do not consider there are any parties that would be prejudiced by these corrections.

4.6 Impermeable surfaces

4.6.1 Definition of impermeable surfaces

559. The definition of Impermeable Surfaces is: "A surface through which water cannot pass and that sheds water. This definition excludes paths that use paving stones, and retaining walls, provided they are less than 1m in width, and are separated from other impermeable surfaced areas by at least 1m."
560. *Ms Emily McEwan* (OS172.7) requested that paths that use paving stones be considered impermeable surfaces because these paving systems are designed not to have water permeate through the joints. She stated that if significant water permeates through the joints these paving systems will fail and suggested that excluding paths using paving stones will simply mean many path and driveway areas will be paved instead of concreted. She believed this will undermine the objective of preventing the adverse amenity and infrastructure efficiency effects of excessive hard surfacing. She further considered large areas of paving stones can present reduced amenity value compared to concrete as they are more prone to allowing the growth of weeds in the joints. She sought the decision that "*paths that use paving stones, and*" be deleted from the definition of impermeable surface.
561. The Reporting Officer indicated that excluding paths that use paving stones from the definition of impermeable surface recognises that paths such as these are common in residential landscaped (permeable) areas and have little or no effect on stormwater runoff. She noted the definition requires these to be less than 1m in width and separated from other impermeable surfaced areas by at least 1m to allow runoff to percolate through the landscaped areas on either side of the path (s42A Report, Section 5.1.4, p.41).
562. The Reporting Officer also noted that Rule 15.6.11 Maximum Building Site Coverage and Impermeable Surfaces, sets limits on the maximum site coverage including buildings and structures and any impermeable surfaces, as a percentage of the site

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
15. Residential Zones	Land Use Performance Standard	15.5.12		Outdoor living space	Do not amend as requested		4.17	5.7.5
15. Residential Zones	Note to Plan User	15.5.2A		General advice	Add general advice note	Res 452.3 and 394.45	3.3.1	5.7.1.2
15. Residential Zones	Development Performance Standard	15.6.1		Building length	Do not amend as requested		4.18.1	5.8.2
15. Residential Zones	Development Performance Standard	15.6.1		Building length	Do not amend as requested		4.18.2	5.8.2
15. Residential Zones	Development Performance Standard	15.6.3	15.6.2	Fence height and design	Amend the performance standard to allow fencing along 50% of the boundary to be a solid 2m high fence and 50% of the boundary to have fencing that is visually permeable above 1.4m	Res 190.1	4.5	5.8.3
15. Residential Zones	Development Performance Standard	15.6.7.1	15.6.6.1	Height - Height in relation to boundary	Amend performance standard to allow development on steep or narrow sites in the GR1	Res 546.1 and 490.21	4.20	5.8.5

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
15. Residential Zones	Assessment of Discretionary Activities	15.11.3.2 (new)	15.12.3.2		Amend assessment guidance consequential to changing the activity status of contravention of maximum gross floor area for working from home and diaries (add guidance)	Res 997.3	5.7	5.7.4
15. Residential Zones	Assessment of Non-complying Activities	15.12.5.4	delete		Amend assessment guidance consequential to changing the activity status of contravention of maximum gross floor area for working from home and diaries (remove guidance)	Res 997.3	5.7	5.7.4
20. Recreation Zone	Development Performance Standard	20.6.2	20.6.1	Fence height and design	Amend the performance standard to allow fencing along 50% of the boundary to be a solid 2m high fence and	Res 190.1	4.5	5.8.3

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
					50% of the boundary to have fencing that is visually permeable above 1.4m			
22. Dunedin Botanic Gardens	Development Performance Standard	22.6.3	22.6.2 (22.6.2.1 and 22.6.2.2)	Fence height and design	Amend the performance standard to allow fencing along 50% of the boundary to be a solid 2m high fence and 50% of the boundary to have fencing that is visually permeable above 1.4m	Res 190.1	4.5	5.8.3
27. Mercy Hospital	Development Performance Standard	27.6.3	27.6.2	Fence height and design	Amend the performance standard to allow fencing along 50% of the boundary to be a solid 2m high fence and 50% of the boundary to have fencing that is visually permeable above 1.4m	Res 190.1	4.5	5.8.3

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
27. Mercy Hospital	Development Performance Standard	27.6.3	27.6.2	Fence height and design	Amend performance standard to remove requirement for fences on the side or rear boundary of residential properties to have to meet the visual permeability requirements (just for road boundaries)	Res 394.80 and 1051.2	4.5	5.8.3
28. Moana Pool	Development Performance Standard	28.6.4	28.6.3	Fence height and design	Amend the performance standard to allow fencing along 50% of the boundary to be a solid 2m high fence and 50% of the boundary to have fencing that is visually permeable above 1.4m	Res 190.1	4.5	5.8.3

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
31. Schools	Development Performance Standard	31.6.2	31.6.1	Fence height and design	Amend the performance standard to allow fencing along 50% of the boundary to be a solid 2m high fence and 50% of the boundary to have fencing that is visually permeable above 1.4m	Res 190.1	4.5	5.8.3
31. Schools	Development Performance Standard	31.6.2	31.6.1	Fence height and design	Amend performance standard to remove requirement for fences on the side or rear boundary of residential properties to have to meet the visual permeability requirements (just for road boundaries)	Res 394.80 and 1051.2	4.5	5.8.3

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
34. Campus	Development Performance Standard	34.6.3	34.6.2	Fence height and design	Amend the performance standard to allow fencing along 50% of the boundary to be a solid 2m high fence and 50% of the boundary to have fencing that is visually permeable above 1.4m	Res 190.1	4.5	5.8.3
34. Campus	Development Performance Standard	34.6.3	34.6.2	Fence height and design	Amend performance standard to remove requirement for fences on the side or rear boundary of residential properties to have to meet the visual permeability requirements (just for road boundaries)	Res 394.80 and 1051.2	4.5	5.8.3

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
35. Wakari Hospital	Development Performance Standard	35.6.3	35.6.2	Fence height and design	Amend the performance standard to allow fencing along 50% of the boundary to be a solid 2m high fence and 50% of the boundary to have fencing that is visually permeable above 1.4m	Res 190.1	4.5	5.8.3
35. Wakari Hospital	Development Performance Standard	35.6.3	35.6.2	Fence height and design	Amend performance standard to remove requirement for fences on the side or rear boundary of residential properties to have to meet the visual permeability requirements (just for road boundaries)	Res 394.80 and 1051.2	4.5	5.8.3
15. Residential Zones	Appendix	15A			Do not amend as requested		6	5.11.1



**SECOND
GENERATION
DISTRICT PLAN**

Public Health and Safety Decision of Hearings Panel

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

7 November 2018

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Submitter (Submitter Number)	Represented by/ experts called	Nature of evidence	Topics under which evidence is discussed
(OS308 and FS2142)	Services Division, University of Otago		Acoustic Insulation (sub- section 3.5) Noise (sub-section 3.6) Infrastructure definition, objectives and policies (sub-section 3.9) Policy 9.2.2.8 (Fence height performance standard) (sub-section 3.10.1) Assessment Rules (sub- section 3.12)
<i>Robert Francis Wyber (OS394)</i>	Himself	Tabled statement	Noise (sub-section 3.6)

28. Appearances for the Dunedin City Council were:

- Mr Paul Freeland, Senior Planner (Senior Planning Assistance to the Hearing)
- Mr Peter Rawson, Reporting Officer
- Mr Malcolm Hunt, Principal Acoustic Engineer, Malcolm Hunt Associates

29. The following appeared at the hearing via "Skype"

- Mr Keith Gibson, Beca Limited, Technical Lighting Advice
- Dr Mike Gray, Systems Manager, Chemsafety

30. Evidence provided by Mr Rawson included:

- Section 42 report organised primarily under topic heading where responded to each submission point
- Opening Statement
- Revised Recommendations in response to evidence
- Impact Assessment Overview of Risks from proposed Spectator Events and Education Zone
- From the Quality Planning website "Managing Hazardous Substances 2013"
- UK Health and Safety Executive: "Land Use Planning Advice around large scale petrol storage sites"
- Hazardous Industry Planning Advisory Paper No 4 NSW Government Planning (2011) 'Risk Criteria for Land Use Safety Planning
- Mr Alexander Envirocom report "Donahys Aerosol Project 69 Bradshaw St South Dunedin".

31. Mr Rawson also provided post-adjudgment evidence in the form of a memorandum dated March 2018 and titled hazardous substances, sensitive activities and sensitive environments.

32. Other DCC evidence:

Urban Land Supply and Natural Environment decision reports), in accordance with Part 2 of the Act (particularly s6(a), (d) and (e)).

732. Therefore, we have decided to amend the Shape rule in the residential zones (Rule 15.7.6), rural zones (Rule 16.7.5), rural residential zones (Rule 17.7.6), commercial and mixed use zones (Rule 18.7.5), industrial zones (Rule 19.7.5) and Campus Zone (Rule 34.7.5), which require "for unreticulated areas, resultant sites must provide for a waste disposal area to be located at least 50m from any water body and Mean High Water Springs."
733. See Appendix 1 amendment reference (PHS1071.56).

3.10 Performance Standards and related policies

734. The following are requests for changes to individual performance standards and related policies.

3.10.1 Policy 9.2.2.8 (Fence height performance standard)

735. Policy 9.2.2.8 states:
"Require fences to be designed to allow a visual connection between buildings and public places, to enable opportunities for informal surveillance."
736. *Paul Pedofski* (OS234.2) requested that Policy 9.2.2.8 be removed as there is no evidence to suggest that providing a visual connection from the street through low or permeable fences will reduce harm or increase safety (Submission, p. 2).
737. *University of Otago* (OS308.216) requested that Policy 9.2.2.8 be amended to avoid unnecessary requirements and describe that many University buildings will not provide informal surveillance (e.g. storage and loading areas, non-windowed parts of buildings) and it would be inappropriate to have a blanket requirement for visually permeable fencing (Submission, p. 19).
738. *Federated Farmers of New Zealand* (OS919.17) requested amendments to reference that Policy 9.2.2.8 is related to fences within urban areas, to address concerns in the urban zones, and should be qualified as such (Submission, p. 26).
739. The Reporting Officer relied on the evidence of Mr Peter Christos, DCC Urban Designer at the Residential Hearing, about the urban design principles relating to passive surveillance and custodianship (s42A Report, Section 5.4.12, p.73; Statement of Evidence, p.3).
740. The Reporting Officer also noted that the National Guidelines for Crime Prevention through Environmental Design in New Zealand by the Ministry of Justice provides guidelines on the importance of designing fences (and other structures) to allow a visual connection between buildings and public places, to enable opportunities for informal surveillance (s42A Report, Section 5.4.12, p. 73).
741. He recommended that *Paul Pedofski's* (OS234.2) submission be rejected and instead recommended that the submissions of *University of Otago* (OS308.216) and *Federated Farmers of New Zealand* (OS919.17) be accepted in part and Policy 9.2.2.8 be amended as follows:

"Require fences, in residential, recreation and some major facility zones, to be designed to allow a visual connection between buildings and public places, to enable opportunities for informal surveillance."

742. *University of Otago* (OS308.216) called Mr Murray Brass (planner) who considered that the s42A Report recommendations will improve clarity, and noted that the specific zone provisions were addressed as part of the hearing on the Campus Zone Fence Height and Design performance standard (Rule 34.6.3) (Statement of Evidence, p. 4).

3.10.1.1 Decision and reasons

743. We accept the submissions of *Federated Farmers of New Zealand* (OS919.17), and the *University of Otago* (OS308.216) in part, and reject the submission of *Paul Pedofski* (OS234.2).
744. Our reasons are that we agree with the Reporting Officer, and the evidence of Mr Christos at the Residential Hearing, that it is appropriate to require fences to be designed to allow a visual connection between buildings and public places, to enable opportunities for informal surveillance.
745. We also agree that it is appropriate to amend Policy 9.2.2.8 to reflect that the application of these restrictions is in residential, recreation and some major facility zones where the fence height and design performance standard applies, as shown below:

"Require fences in residential, recreation and some major facility zones {PHS 919.17 and 306.216} to be designed to allow a visual connection between buildings and public places, to enable opportunities for informal surveillance."

746. We have also made consequential amendments to Rule 9.4.3.7 Assessment of performance standard contraventions - Fence height and design, where Policy 9.2.2.8 is referenced. See Appendix 1 amendment reference PHS919.17 and PHS308.216.

3.10.2 Rule 9.3.2 Electrical Interference

747. The Electrical Interference rule states:

*"9.3.2 Electrical Interference
Activities must be designed and located to ensure that there are no effects from electrical interference on surrounding sites."*

748. *Transpower New Zealand Limited* (OS806.43) and *Powernet Limited* (FS2264.8) seek clarification regarding the meaning of this provision, particularly how "electrical interference" is to be measured and how a restricted discretionary application will be triggered, and assessed.
749. *Transpower New Zealand Limited* (OS806.53) and *Powernet Limited* (FS2264.9) also sought the removal of the land use performance standards for management zones that hyperlink to the Electrical Interference rule.
750. *Allan Douglas McLeary, Sylvia Violet McLeary and Farry & Co Trustees Limited (on behalf of McLeary Family Trust)* (OS832.10) sought the retention of the Electrical Interference rule, but did not provide any reasons.
751. The Reporting Officer agreed with *Transpower New Zealand Limited* (OS806.43 and OS806.53) and *Powernet Limited* (FS2264.8 and FS2264.9) that the guidance on how electrical interference is to be measured and how a restricted discretionary application will be triggered, and assessed, is limited in the 2GP.
752. The Reporting Officer advised that Radio Spectrum Management, a subsidiary group of the Ministry of Business, Innovation and Employment, is the leading government agency on this subject and monitors and manages the radio spectrum. He clarified



**SECOND
GENERATION
DISTRICT PLAN**

**Major Facilities
(excluding Port & Mercy Hospital)
Decision of Hearings Panel**

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

7 November 2018

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135. We accept in part the submissions from the *University* (OS308.343), and *Otago Polytechnic* (FS2448.24) that Policy 34.2.2.8 should not require positive effects and have amended Policy 34.2.2.8 to remove this aspect and to better link it to Policy 2.4.1.4 in the strategic directions which is concerned with adverse effects on views from Dunedin's inner hill suburbs across the harbour towards the Otago Peninsula. The amendments to Policy 34.2.2.8 are shown below and in Appendix 1, attributed to submitter reference MF 308.343.

Policy 34.2.2.8

Only allow buildings greater than 25m in height where ~~adverse effects on them~~ contribute positively to the skyline vista of the city, particularly as viewed from Dunedin's inner hill suburbs across the harbour towards the Otago Peninsula, are minimised as far as practicable through use of ~~by being of a quality and contextually appropriate architectural design.~~

136. Although the submission was only in relation to the Campus Zone, similar policies occur in the Otago Museum Zone (Policy 29.2.2.6), the Dunedin Hospital Zone (Policy 23.2.2.2), and in the Stadium Zone (Policy 32.2.2.2). For plan consistency, we make the same or similar change in all zones. Scope is provided under the University's submission (OS308.497) which states "Where a submission point relates to a specific provision, and there are other equivalent or similar provisions elsewhere in the Proposed Plan, the submission is intended to cover all of those provisions." The amendments to policies 29.2.2.6, 23.2.2.2, and 32.2.2.2 are shown in Appendix 1 attributed to submission point MF 308.343 and 308.497.
137. We also make consequential changes to correctly reference the policies in:
- Rules 34.9.4.1, 23.8.4.9, 29.9.4.9, and 32.8.4.9 (assessment of development performance standards – maximum height)
 - Rules 34.11.4.2, 23.10.3.2, and 32.10.3.3 (assessment of discretionary performance standard contraventions – Maximum Height (buildings over specified size))
138. As we have addressed the concerns raised in relation to the policies, we reject the alternate submission from the *University* (OS308.378) and retain Rule 34.6.7 without amendment, for the reasons given above by the Reporting Officer.

3.1.7 Development performance standards

3.1.7.1 Rule 34.6.1 Boundary Treatments and Other Landscaping

139. Rule 34.6.1 states:

1. For any site or part of a site being developed for anything other than standard residential activity, landscaping must be provided as follows:
 - a. where a building is not built to the street frontage, a landscaping area with a minimum 1.5m width must be provided along the full length of any road frontage (except for where vehicle access is provided), with an average of one tree for every 5m of frontage;
 - b. within any car parking area greater than 200m² (excluding loading areas), a minimum of 1m² of landscaped area must be provided for every car parking space, with an average of one tree per 10m² of landscaping
2. Landscaping

- a. must be fully and densely planted with trees, shrubs and ground cover plants, with total coverage of the ground area in planting (when mature) required except for 10% of the area, which may be used for pedestrian paths;
 - b. must not have more than 10% cover in permeable surfaces (to allow for pedestrian paths);
 - c. must have a physical barrier (border or curb) that prevents cars from ~~accidentally driving into or~~ {PO 360.213} damaging plants; and
 - d. as required, use trees that are at least 1.5m height at the time of planting and capable of growing to a minimum {PO 360.213} height of 5m within 10 years of planting.
3. Planting associated with new buildings or site development must be completed prior to occupation or completion of the relevant building(s) or site development.
 4. The landscaping areas must be maintained to a high standard, including keeping areas free of rubbish and weeds, and ensuring trees and under-planting are healthy.
 5. Any road boundary fences provided must be placed on the property side of road frontage landscaping.
140. The *University* (OS308.373) requested the performance standard be removed because it considered the University already successfully manages landscaping across its entire campus in an integrated way. The *University* considered the proposed provisions to be unnecessary and would cut across the existing landscaping work and lead to a reduction in amenity.
141. The Reporting Officer noted that Rule 34.6.1 was intended to ensure a minimum standard of landscaping between buildings and streets (other than those for standard residential activities), and large areas of car parking. She acknowledged that the campus was a high amenity area, and the landscaping and other development work undertaken by the University achieved and maintained this level of amenity. She thought that if the University had landscaping approaches which were different from the proposed minimum landscaping, then they could potentially be incorporated into the performance standard. Also, while the University was the main owner of land in the Campus Zone, there were other landowners in the Campus Zone who may not aspire to the same levels of amenity landscaping as the University did, and so Rule 34.6.1 is required (s42A Report, Section 5.13.16, p. 151).
142. Mr Brass noted that within the Campus Zone the University managed landscaping across its entire campus in an integrated way, rather than site-by-site. He noted that if the rule was followed to the letter in terms of the requirement for 1 tree per 5m of frontage, the University would be required to plant a further 6 trees elsewhere on the frontage just to make up for retaining the large, protected, Horse Chestnut tree on the corner of Union Street and Anzac Avenue (which occupies approximately 35m of frontage).
143. He suggested that rather than the deletion sought in the original submission, it would be appropriate to remove the landscaping requirement from Campus activity only, in recognition of the fact that the University and Otago Polytechnic do have their own landscaping regimes. So rather than attempting to codify these as performance standards, the rule would instead simply tie it back to those organisations. This would retain the proposed controls over landscaping on any private development in the Campus zone. A suggested wording was:

"For any site or part of a site being developed for anything other than standard residential activity or campus activity, landscaping must be provided as follows:..."

3.1.7.1.1 *Decision and reasons*

144. We accept the submission from the *University* (OS308.373) and amend the rule to exclude Campus activity, as recommended by Mr Brass. The amendments to Rule 34.6.1 are shown in Appendix 1 attributed to submitter reference MF 308.373.
145. The reasons for this decision are that we accept Mr Brass's evidence with respect to this point. This will allow greater flexibility for the University in carrying out its landscaping regime and will ensure a good amenity outcome in our view, while retaining the rule for landscaping carried out by other activities in the zone.
146. In considering this submission we have amended the policy associated with this rule (Policy 34.2.2.4) as we consider it repeats some aspects of the performance standards and does not include other aspects of it. We do not consider this level of detail is necessary in the policy and have amended it to read "Require development activities to maintain a reasonable level of visual and environmental amenity adjacent to public roads" as an amendment under clause 16 of the RMA.

3.1.7.2 Rule 34.6.3 Fence Height and Design

147. The Fence Height and Design performance standard requires:

1. "Fences must not exceed the following height limits, except as provided for below:

Location		Maximum height
a.	Along the road boundary with a state highway	2m
b.	Along all other road boundaries	1.4m
c.	Along a side or rear boundary with a residential zone	1.4m
d.	Along all other side and rear boundaries	2m

2. Fences along boundaries include fences that are not exactly on the boundary but are within the boundary setbacks required by Rule 20.6.12.1.
3. Where the maximum height of a fence is 1.4m, the height of a fence may be increased to a maximum height of 2m provided that a minimum of 40% of the entire structure is visually permeable (see-through), or the portion above 1.4m height is visually permeable. Visually permeable refers to construction using trellis, lattice, wrought iron, or spaced palings (palings maximum width 150mm, spacing minimum width 25mm) or other materials that provide gaps that can be seen-through (see Figure 15.6D and Figure 15.6E).
4. For the purposes of calculating maximum height, where a fence or wall is erected atop a retaining wall, the height will be calculated as the combined height measured from ground level to the top of the fence or wall.

148. The *University* (OS308.375) sought to amend Rule 34.6.3 to avoid unnecessary requirements. It considered within the Campus Zone there are very few solid fences, and the fences that are there generally surround service areas, such as storage or loading areas. The *University* considered there were no community benefits in making these fences visually permeable, and there may be a loss of amenity and safety and note that it also conflicts with Rule 34.6.8.
149. The Reporting Officer said the intention of this standard was to provide for passive surveillance and contribute to the amenity of residential areas. Fences not on the boundary are not controlled by this performance standard and are managed as a structure which must comply with Rule 34.6.7.1, which limits their height and location. She did not consider this requirement unduly limited the ability of the *University* to use fencing to screen service areas (s42A Report, Section 5.13.17, p. 154).
150. Ms Rodgers acknowledged there was a minor conflict between Rules 34.6.3 and 34.6.8 in that if a landowner had an outdoor storage area that required screening, and sought to achieve this with a boundary fence over 1.4m on a road boundary, or a side or rear boundary with a residential zone, then in complying with the permeability requirement for the extra height it would fail the screening requirement. She recommended that the performance standard, and similar standards in the Residential and Recreation sections, be amended to provide for an exception from the permeability requirement in this situation by adding at the end of the rule:

"...The visually permeable requirement does not apply to fencing used to meet Rule 34.6.8 Location and Screening of Outdoor Storage."

3.1.7.2.1 *Decision and reasons*

151. We accept the *University's* submission (OS308.375) to resolve the conflict between the fencing and screening of outdoor storage standards. We note that the *University* has stated that there are very few solid fences therefore we consider that no other changes are required. Accordingly, we have amended Rule 34.6.3 to exclude fencing required to meet Rule 34.6.8 (Location and Screening of Outdoor Storage) from meeting the visual permeability component of the rules. These changes are attributed to submission point MF 308.375.
152. Although the submission was only in relation to the Campus Zone, similar rules apply in the Recreation Zone (Rule 20.6.2) and the Residential Zone (Rule 15.6.3). For plan consistency, we make the same change in these zones. Scope is provided under the *University's* submission (OS308.497) which states "Where a submission point relates to a specific provision, and there are other equivalent or similar provisions elsewhere in the Proposed Plan, the submission is intended to cover all of those provisions." Amendments to rules 20.6.2 and 15.6.3 are shown in Appendix 1 attributed to submission point MF 308.375 and 308.497.
153. We also note there are changes in the format of the Fence Height and Design standard as a result of a clause 16 change and we have made amendments to the visual permeability component of the rules to only require visual permeability above 1.4m for fences along 50% of the road frontage. These changes are discussed in the Residential decision.

3.1.8 **Rule 34.6.13 Maximum Building Site Coverage and Impermeable Surfaces**

154. The *University* (OS308.385), supported by *Otago Polytechnic* (FS2448.32) requested that the Maximum Building Site Coverage and Impermeable Surfaces performance standard (Rule 34.6.13) be deleted. It stated that the table the rule refers to does not include the Campus Zone, and so the rule is redundant.

265. At the hearing Ms Carruthers tabled legal submissions for ANZL and reiterated their request for:

- a) Confirmation that early childhood facilities are non-complying activities in the Dunedin International Airport Zone;
- b) The retention of controls relating to noise sensitive activities, such as the non-complying activity status for residential activities in the Dunedin International Airport Zone.

3.4.5.1 Decision and reasons

266. We accept in part the submission from ANZL (OS1046.1) insofar as the 2GP already provides for the request. We retain Rule 24.3 without amendment.

3.4.6 Rule 24.6.2.4 Landscaping requirements for any parking areas greater than 200m²

267. Rule 24.6.2 Boundary Treatments and Other Landscaping states:

1. *For all parking areas, new buildings and outdoor storage areas within 5m of Miller Road, Otokia Road, Centre Road or a rural zone, a landscaping area with a minimum width of 1.5m must be provided along the full length of the road frontage (except for where vehicle access is provided).*
2. *Landscaping areas must[gives details around design of landscaping]*
3. *Any road boundary fences provided must be placed on the property side of any required road frontage landscaping.*
4. *For any parking areas greater than 200m² (excluding loading areas) a minimum of 1m² of additional landscaped area must be provided for every parking space, either within or adjoining the parking area.*

268. *DIAL* (OS724.13) requested removal of the requirement for provision of landscaping associated with large car parking areas (Rule 24.6.2.4). The submitter did not believe there should be controls on internal amenity at the Airport.

269. The Reporting Officer said that Rule 24.6.2 related to landscaping on the external boundaries and interpreted the requirement for the additional 1m² per carpark for larger parking areas to also relate to external boundaries (s42AReport, section 5.7.13, p. 72).

270. Mr Page said that *DIAL* supported the landscape provisions in so far as they related to external amenity of the Dunedin International Airport Zone, but it also applied to car parking and footpaths which are internal matters. He argued that it was not appropriate to require landscaping throughout the car park as it raised issues with customers such as birds fouling cars. He noted that the Dunedin International Airport Zone was already fully landscaped outside of the hard-paved areas and questioned where more landscaping would go.

271. He also noted that it was unusual for Council to require landscaping for car parking and the only other example in the major facility zones subject to such requirements was the Campus Zone (Rule 34.6.1). He requested that Development Performance Standard 24.6.2.4 be deleted.

3.4.6.1 Decision and reasons

272. We accept the submission from *DIAL* (OS724.13) and remove the requirement for the provision of additional landscaping for large parking areas (Rule 24.6.2.4). The amendment to Rule 24.6.2 is shown in Appendix 1 attributed to MF 724.13.

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
34. Campus	Assessment of Controlled Activities	6.8A	6.9		Amend guidance to reflect change to activity status for Student Hostels (add reference)	MF 308.353	3.1.11.2	5.13.12
9. Public Health and Safety	Assessment of Restricted Discretionary Activities	9.5.2.2	9.6.2.2		Amend guidance to reflect change to activity status for Student Hostels (remove reference)	MF 308.353	3.1.11.2	5.13.12
34. Campus	Assessment of Controlled Activities	9.3A	9.4		Amend guidance to reflect change to activity status for Student Hostels (add reference)	MF 308.353	3.1.11.2	5.13.12
10. Natural Environment	City Wide Performance Standard	10.3.3		Setbacks from coast and water bodies	Amend exception to setbacks for buildings associated with the Marine Studies Centre, so it refers to the new mapped area rather than describing the land parcels	MF 308.283	3.11	5.16.13
11. Natural Hazards	Introduction	11.1.3		Hazard provisions sensitivity classification	Add 'New Zealand Marine Studies Centre' to list of natural hazards potentially sensitive activities	MF 308.283	3.11	5.16.13
15. Residential Zones	Development Performance Standard	15.6.3.2	15.6.2.2	Fence height and design - Visual Permeability	Amend performance standard to exempt fences required to meet Rule 20.6.8 (Location and	MF 308.375 and 308.497	3.1.7.2	5.13.17

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
					(amend reference to clarify does not apply to that activity)			
20. Recreation Zone	Development Performance Standard	20.6.2.2	20.6.1.2	Fence height and design - Visual Permeability	Amend performance standard to exempt fences required to meet Rule 34.6.8 (Location and Screening of Outdoor Storage)	MF 308.375 and 308.497	3.1.7.2	5.13.17
22. Dunedin Botanic Gardens	Activity Status	22.3.3.X	22.3.3.6	Sport and recreation not involving a motor vehicle	Split off from 'all other activities in the community activities category' sport and recreation not involving a motor vehicle and change the activity status from D to P	MF 360.105	3.9.1	5.5.1
22. Dunedin Botanic Gardens	Assessment of D Activities	22.11.2.1	delete	all discretionary activities	Exclude sport and recreation not involving a motor vehicle from the all commercial activities category to reflect the change in activity status	MF 360.105	3.9.1	5.5.1

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
					from D to P			
34. Campus	Activity Status	34.3.3.Z	34.3.3.14	Registered health practitioners	Amend the activity status of registered health practitioners from D to P	MF 308.349	3.1.4	5.6.5, 5.6.13, 5.6.1, 5.1.5, 5.13.3, 5.6.5
34. Campus	Activity Status	34.3			Do not amend as requested	MF 308.476, MF267.1 and others	3.1.4	5.6.5, 5.9.1, 5.9.2
34. Campus	Land Use Performance Standard	34.5.5		Minimum Car Parking	Amend policy to reflect change in activity status for registered health practitioners	MF 308.349	3.1.4	5.6.5, 5.6.13, 5.6.1, 5.1.5, 5.13.3, 5.6.5
34. Campus	Development Performance Standard	34.6.1		Boundary Treatments and Other Landscaping	Amend performance standard to exempt campus activity from the standard	MF 308.373	3.1.7.1	5.13.16
34. Campus	Development Performance Standard	34.6.3.2	34.6.2.2	Fence height and design - Visual Permeability	Amend performance standard to exempt developments for campus activity from the performance standard	MF 308.375	3.1.7.2	5.13.17
34. Campus	Development Performance Standard	34.6.7.2	34.6.6.2	Maximum height	Do not amend as requested	MF 308.378	3.1.6	5.13.10

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
34. Campus	Development Performance Standard	34.6.10.3	34.6.9.3	Freestanding Signs	Amend performance standard so that it only applies to development of sites used for standard residential activity	MF 308.382	3.1.9	5.13.20
34. Campus	Development Performance Standard	34.6.13	34.6.12	Maximum Building Site Coverage and Impermeable Surfaces	Amend performance standard to exempt fences required to meet Rule 15.6.9 (Location and Screening of Outdoor Storage)	MF 308.385	3.1.8	5.13.21
34. Campus	Subdivision Performance Standard	34.7.5		Shape	Do not amend as requested	MF 308.334 and MF 308.386	3.1.5	5.13.6, 5.13.22
34. Campus	Assessment of Controlled Activities	34.8.2.2 (new)			Amend guidance to reflect change to activity status for Student Hostels (add reference)	MF 308.353	3.1.11.2	5.17.2
34. Campus	Assessment of Restricted Discretionary Performance Standard Contraventions	34.9.4.1			Amend guidance to reflect change in Policy 34.2.2.8	MF 308.343	3.1.6	5.13.10
34. Campus	Assessment of Restricted Discretionary Performance Standard Contraventions	34.10.3.2	NA deleted		Amend guidance to reflect change to activity status for Student Hostels (remove reference)	MF 308.353	3.1.11.2	5.17.2



**SECOND
GENERATION
DISTRICT PLAN**

Heritage

Decision of the Hearings Panel

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

7 November 2018

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"Require repairs and maintenance, restoration and earthquake strengthening of a character-contributing building, where the work is visible from an adjoining public place, to be undertaken in a way that maintains or enhances the heritage streetscape character of the precinct by using appropriate materials and design."

166. The *Property Council New Zealand* (OS317.14) partially supported the policy but sought to replace 'Require' with 'Encourage'. Its reasons were that it supported refurbishment of character-contributing buildings, but a business case should be developed for every character building that outlines whether it is economically viable to refurbish and earthquake strengthen it. The submitter believed DCC should encourage refurbishment and earthquake strengthening instead of requiring it.
167. The Reporting Officer noted that the policy did not require refurbishing or earthquake strengthening (s42A Report, Section 5.11.3, p. 81). The requirement for earthquake strengthening was governed by the Building Act 2004. The policy required that when certain activities were undertaken, they were undertaken in a manner that maintained or enhanced the heritage streetscape character of the precinct.
168. She therefore recommended that the submission be rejected.

3.4.2.1. Decisions and reasons

169. We reject the submission by The *Property Council New Zealand* for the reasons outlined by the Reporting Officer as explained above.

3.4.3. Policy 13.2.3.2 and 13.2.3.3 – Development in Heritage Precincts

170. Policy 13.2.3.2 is to:

"Require development within residential heritage precincts to maintain or enhance heritage streetscape character, including by ensuring:

- a. garages and carports do not dominate the street;*
- b. off-street car parking is located at the rear of buildings, or where this is not feasible due to the location of the buildings, is set back from the street frontage;*
- c. building heights, boundary setbacks, and scale reflect heritage streetscape character;*
- d. network utility structures are appropriately located; and*
- e. fences do not screen buildings from view."*

171. Policy 13.2.3.3 is as follows:

"Require development within commercial heritage precincts to maintain or enhance heritage streetscape character by ensuring:

- a. off-street car parking is located within or behind buildings;*
- b. building heights, boundary setbacks, and scale reflect heritage streetscape character;*
- c. vehicle crossings are kept to a minimum, including avoiding commercial drive-through facilities; and*
- d. network utility structures are appropriately located.*

3.4.3.1. Submissions on network utilities

172. *Vodafone NZ Ltd* (OS576.71, 72), *Spark New Zealand Trading Ltd* (OS923.71, 72) and *Chorus New Zealand Limited* (Chorus) (OS925.71, 72) supported policies 13.2.3.2 and 13.2.3.3, in particular clause (d) of each, as they considered they recognise that network utilities are required to service development in heritage precincts.

173. *Aurora Energy Ltd* (OS457.38, 39) sought to amend clause (d) as follows:

“d. *network utility structures are appropriately located, taking into consideration operational and technical requirements.*”

174. No specific reasons were given.

175. The Reporting Officer had no strong concerns about *Aurora's* proposed amendment to clause (d) as operational requirements had to be considered in the location of network utility structures. However, she considered that Policy 13.2.3.2(d), and its equivalent in commercial precincts (Policy 13.2.3.3.d) effectively duplicate Policy 13.2.3.10: “Only allow public amenities and network utilities activities where these are located and designed to minimise, as far as practicable, any adverse effects on heritage streetscape character”.

176. She therefore suggested that clause (d) was deleted from Policy 13.2.3.2 and Policy 13.2.3.3 (see section 5.11.7), and Policy 13.2.3.10 remain.

3.4.3.1.1. *Decisions and reasons*

177. We note that clause (d) of the two policies is irregular in that it refers to network utilities, while the policy is intended to refer to development activities only (network utilities are a city-wide activity, not a development activity). We were advised by the Senior Planner following the hearing that the policy was intended to apply to what was eventually termed ‘building utilities’ which, during plan formulation, were originally a subset of network utilities. There is therefore no overlap with Policy 13.2.3.10.

178. We consider that clause (d) should be amended under clause 16 to correctly refer to ‘building utilities’, and retained. We also agree with *Aurora* that adding the phrase ‘taking into consideration operational and technical requirements’ is appropriate, and we accept their submissions.

179. We have made the following changes (see Appendix 1, submission points Her 457.38 and Her 457.39):

- amended policies 13.2.3.2.d and 13.2.3.3.d to read: ‘~~network building~~ (cl. 16) ~~utilityies structures~~ are appropriately located taking into consideration operational and technical requirements’
- amended assessment rule 13.6.4.2 (assessment of additions and alterations to character-contributing buildings) to add reference to policies 13.2.3.2.d and 13.2.3.3.d
- amended assessment rule 13.5.4.8 (contravention of Location (network utility activities) performance standard) to refer to Policy 13.2.3.10, rather than policies 13.2.3.2.d and 13.2.3.3.d (clause 16 amendment).

3.4.3.2. Submissions on fences – Residential Heritage Precincts

180. *Property Council New Zealand* (OS317.15) sought to remove clause (e) of Policy 13.2.3.2, as it considered that fences could be used to screen buildings from view. Fences provide privacy and delineate boundaries.

181. The Reporting Officer noted that clause (e) was intended to ensure that streetscape values were not diminished by high fences. Fences can still delineate boundaries, and alternative landscaping, such as hedging, can be used if privacy is important (s42A Report, section 5.11.6, p. 89). She noted that Rule 15.6.3, which implements the policy, sets a lower height limit of 1.4m only along the road boundary and any side boundary within the road boundary setback. A maximum height of 2m applies along other side and rear boundaries.

3.13.3.1. Decision and decision reasons

793. We accept Elizabeth Kerr's submission in part, as we have decided to create a new heritage precinct over the Windle Settlement (see section 3.13.1). In our view, all other areas have adequate heritage protection within the 2GP already.

3.13.4. Adam Street

794. *Joy Ruth McMiken* (OS1038.2), supported by *Rosalind Whiting* (FS2050.5), sought to include 4–18 Adam Street in a new heritage precinct. She stated that all six owners were in agreement. She noted the terrace was designed by Edmund Anscombe. The submission included historical documented information regarding the houses.
795. *Robert Thornton* (OS907.1), supported by *Alison Beck* and *Philip Ward* (FS2380.3), also sought to extend heritage protection over Adam Street.
796. Dr Hazelton and Mr Christos assessed the merits of including this area as a heritage precinct (see Appendix D5 of Dr Hazelton's evidence). Due to the small size of the area they recommended that a heritage precinct would not be appropriate; however, including the buildings in Schedule A1.1 would be appropriate. The recommended protection was of the "façade to Adam Street including fenestration, timber joinery, weatherboards, timber balconies and architectural details, low fences and retaining walls".
797. In her evidence presented at the hearing, *Ms McMiken* referred to the 'Painted Ladies' of San Francisco as an example of historic residential heritage promoting tourism, something she considered was possible in Dunedin (Statement of Evidence, pp. 1–2). She noticed that two of the properties are accommodation providers already. She provided approval from the owners of all of the properties for heritage protection of the façades.
798. In the revised recommendations session, the Reporting Officer noted she had clarified with the submitter that scheduling the buildings was preferred and that the owners of the properties had given their approval on this basis. She recommended scheduling the façades to Adam Street (numbers 4–18) and Russell Street (number 4 Adam Street).

3.13.4.1. Decisions and reasons

799. We accept *Ms McMiken's* submission in part, and accept Mr Thornton's submission to schedule the façades of 4, 4A, 8, 12, 14 and 18 Adam Street to Adam and Russell Street, as recommended by the Reporting Officer. We therefore accept the submission by *Mr Thornton*, who also requested extending heritage protection over Adam Street. We note the support of the property owners, which makes it much more likely that the purpose of listing will be achieved than it is when imposed on unsupportive owners

3.13.5. Lower Stafford Street

800. *Heritage New Zealand* (OS547.63), supported by *Elizabeth Kerr* (2429.54), sought to include lower Stafford Street within a heritage precinct. It noted there was a somewhat anomalous situation as the area is not included within any of the three adjoining heritage precincts. The area contains three scheduled heritage buildings and has an attractive streetscape, with several buildings that *Heritage New Zealand* considered to be worthy of character-contributing status. *Heritage New Zealand* requested that the DCC moves the precinct boundary of either the High Street Residential Heritage Precinct, the Princes Street – Exchange Commercial Heritage Precinct or the South Princes Street Commercial Heritage Precinct to include lower Stafford Street (between Hope Street and Princes Street).
801. The submission was opposed by *John's Furniture Warehouse* (FS2065.1), which owns several buildings in the area and has operated businesses there for 25 years. It noted that none of the buildings occupied by the business is currently listed, protected or deemed character-contributing. The further submitter considered that a blanket change

are considered to have heritage streetscape values worth protecting, and development within these areas is managed. She noted that controlling development over wider areas of the city is not justified or appropriate in terms of the purpose of the RMA. She did not recommend any changes to the Plan as a result of this submission (s42A Report, Section 5.2.2, p. 38).

928. At the hearing, *Ms Willis* endorsed the submission by *Royal/Pitt/Heriot Residential Heritage Precinct Protection Inc*, which proposed a number of amendments to the 'features and characteristics' in Appendix A2. She also provided photographs to demonstrate the effects of high-density living and how protection of heritage values in the area has been neglected (Evidence, p. 1–6).

3.14.1.1. Decisions and reasons

929. We have considered specific requests to amend the values and characteristics in later sections of this decision. We therefore accept *Arthur Street Neighbourhood Support's* and *Athol Parks'* submissions in part.

3.14.2. Description of precincts

930. *Jackie Gillies & Associates* (OS959.8) sought to amend the description of the Dundas – Castle Street Residential Heritage Precinct to recognise the different character of Castle Street.
931. *Elizabeth Kerr* (OS743.22) sought to amend the 'Description of area' for all heritage precincts, to improve text editing and include more astute critical content. No specific changes were suggested.
932. *Kāti Huirapa Rūnaka ki Puketeraki* and *Te Rūnanga o Ōtākou* (OS1071.111, OS1071.114 and OS1071.116) requested that additional comments are included in the description of the Princes Street – Exchange, South Princes and Port Chalmers precincts to highlight the Kāi Tahu history of the areas.
933. Dr Hazelton and Mr Christos recommended that *Jackie Gillies & Associates'* submission should be accepted and that the following paragraph from "A2.1.3.1 Description of area" should be amended to better reference the character of Castle Street (Appendix E1 of Dr Hazelton's evidence):

"While the over-riding theme in the architectural character of the area is its working-class housing stock, there are a number of styles represented. The most common forms are the double bay villa, bungalow, and terrace. The terrace style is strongly represented in the area, with a number of large blocks located on the northern side of Dundas Street giving this area a distinctive character within Dunedin and within the campus area itself. Fences and hedges are an integral part of the road frontage and in this part of the precinct buildings are generally two storeys at the road frontage. On Castle Street, the single-storey villa is the most common form. Fences and hedges are an integral part of the road frontage."

934. The Reporting Officer accepted Dr Hazelton's and Mr Christos' advice and recommended that the above amendment is made (s42A Report, Section 5.19.2, p. 322).
935. In response to *Ms Kerr's* submission, the Reporting Officer noted that no specific wording changes were suggested, so she was uncertain where changes were required. In the absence of more information, she recommended that the submission was rejected (s42A Report, Section 5.19.2, p. 323).
936. The Reporting Officer recommended that the description of the Princes Street – Exchange, South Princes and Port Chalmers precincts are amended as requested by *Kāti Huirapa Rūnaka ki Puketeraki* and *Te Rūnanga o Ōtākou* (s42A Report, Section 5.19.2, pp. 323–324).
937. In evidence presented at the hearing, *Ms Kerr* expanded on her submission that improvements needed to be made to the text editing in the s42A Report, stating that

areas can be described more “cohesively yet succinctly” for public and planning use (Statement of Evidence, p. 6).

3.14.2.1. Decisions and reasons

938. We accept the submission by *Jackie Gillies & Associates* (OS959.8) and agree with the amended description of the Dundas – Castle Street Residential Heritage Precinct recommended by the Reporting Officer. See Appendix 1 (amendment attributed to submission reference Her 959.8).
939. We agree with the recommendation by the Reporting Officer not to amend the description for all heritage precincts, due to an absence of information provided by the submitter. We subsequently reject the submission by *Elizabeth Kerr* (OS743.22).
940. We accept the recommendations made by the Reporting Officer to amend the descriptions of the Princes Street – Exchange, South Princes and Port Chalmers precincts as requested by *Kāti Huirapa Rūnaka ki Puketeraki* and *Te Rūnanga o Ōtākou*. See Appendix 1 (amendment attributed to submission reference Her 1071.111, Her 1071.114, Her 1071.116).

3.14.3. Values to be protected

941. *Southern Heritage Trust* and *City Rise Up* (OS293.164), *Rosemary & Malcolm McQueen* (OS299.127) and *John and Clare Pascoe* (OS444.105) sought to add a new value to be protected to A2.1.1.2 (York Place – Stuart Street – Arthur Street precinct):
- “sunlight, harbour views and garden outlooks are values to be protected”.
942. *Arthur Street Neighbourhood Support* (OS843.5), supported by *Liz Angelo* (FS2489.5), sought to amend A2.1.1.2 to add:
- “gardens, trees and green spaces”.
943. *Southern Heritage Trust* and *City Rise Up* (OS293.171) and *Rosemary & Malcolm McQueen* (OS299.133) sought to add new values to be protected to A2.1.2.2 (Royal Terrace – Pitt Street – Heriot Row precinct) as follows:
- “the high number of character-contributing buildings where they help explain the significance of the heritage building”
 - “visual relationship across the city to harbour and peninsula”
944. *Southern Heritage Trust* and *City Rise Up* (OS293.177), *Rosemary and Malcolm McQueen* (OS299.139), and *John and Clare Pascoe* (OS444.112) requested to add a new value to be protected to A2.1.6.2 (Queen Street precinct):
- “the view across the flat out to the harbour and peninsula across the flat is an important aspect of the character of the precinct”
945. *Kāti Huirapa Rūnaka ki Puketeraki* and *Te Rūnanga o Ōtākou* (OS1071.112) sought to add a new value to be protected to A2.2.5.2 (Princes Street – Exchange precinct):
- “Kāi Tahu Values”
946. Dr Hazelton and Mr Christos considered that it was not practicable to protect sunlight without potentially constraining all development on some sites (Appendix E1 of Dr Hazelton’s evidence, p. 1). Any development on some sites would reduce sunlight to neighbours, and existing buildings already block sunlight. Rules on height were the best control for this matter. It was not practicable to protect harbour views, given they could be affected by development outside the area, and could result in the inability to develop some sites at all. Protecting garden outlooks was problematic, as DCC did not require people to maintain a garden through plan rules.

in the case of Art Deco buildings whose roofs may be flat or nearly flat or hidden behind a parapet. Pitch may be lower where the roof is concealed behind a parapet".

991. The same submitters also sought to change this guidance from 'suggested' to 'preferred' (OS293.168, OS299.134, OS444.109, respectively).
992. Dr Hazelton and Mr Christos (Dr Hazelton's Evidence, Appendix E1) rejected the amended wording, noting that new buildings may seek to build a roof behind the parapet, but were not 'art deco' buildings *per se*. The existing wording provided for both existing art deco buildings and new buildings.
993. Dr Hazelton and Mr Christos recommended that a change from 'suggested' to 'preferred' was acceptable, as they considered that roof pitch was one of the more important design characteristics in the precinct, noting that new, low pitched roofs stand out from a distance.
994. The Reporting Officer accepted their advice and recommended that the guidance for roof pitch is amended to 'preferred' (s42A Report, Section 5.19.6, p. 340).

3.14.6.7. Road facing façades

995. The guidance is: "Road-facing façades should clearly look like the front of a building."
996. *Southern Heritage Trust and City Rise Up* (OS293.175), *Rosemary & Malcolm McQueen* (OS299.138) sought to amend this guidance from 'suggested' to 'preferred' for the Dundas – Castle Street precinct.
997. Dr Hazelton and Mr Christos noted that the guidance is already 'preferred' for the Dundas–Castle precinct. Therefore, no decision is required.

3.14.6.8. Decisions and reasons

998. We accept submissions *Southern Heritage Trust and City Rise Up* (OS293.168, 180), *Rosemary & Malcolm McQueen* (OS299.134, 142) and *John and Clare Pascoe* (OS444.109, 115) to amend the guidance in Appendix A2 as follows, for the reasons given in the submissions and in the officers' evidence:
- York Place – Stuart Street – Arthur Street Residential Heritage Precinct:
A2.1.1.4 Design: Roof pitch should be between 30° and 45°. Pitch may be lower where the roof is concealed behind a parapet – ~~Suggested~~ Preferred
 - Royal Terrace – Pitt Street – Heriot Row Residential Heritage Precinct:
A2.1.2.4 Design: Roof pitch should be between 30° and 45°. Pitch may be lower where the roof is concealed behind a parapet – ~~Suggested~~ Preferred
999. We reject the submissions by the same submitters, to amend the wording of the roof pitch guidance, and the guidance on sympathetic design, design cues, vertical dimension and symmetrical façade, for the reasons outlined by the Dr Hazelton and My Christos. We make no changes to the Queen Street precinct's values as we have removed this precinct (section 3.12.9).

3.14.7. Residential Heritage Precinct Values – Fences

3.14.7.1. Similar materials for fences

1000. The design guidance in Appendix A2 is:

"Fences should be made from similar materials to those traditionally associated with scheduled heritage and character-contributing buildings in the

area e.g. wrought iron, timber, brick or stone. Concrete block and basic pool fencing should be avoided – Suggested”.

1001. *Southern Heritage Trust and City Rise Up* (OS293.170), *Rosemary & Malcolm McQueen* (OS299.132), *John and Clare Pascoe* (OS444.111), the *Royal/Pitt/Heriot Residential Heritage Precinct Protection Inc* (OS571.12) and *Marilyn Willis* (OS582.6), supported by *Elizabeth Kerr* (FS2429.160, FS2429.166) variously sought that this guidance should be changed from ‘suggested’ to ‘preferred’ for following precincts:
- York Place – Stuart Street – Arthur Street
 - Royal Terrace – Pitt Street – Heriot Row
 - Queen Street
 - North Ground
1002. Dr Hazelton and Mr Christos (Dr Hazelton’s Evidence, Appendix E1) considered that this change would excessively constrain the options, where other materials may be able to be used to good effect.
1003. The Reporting Officer accepted this advice and recommended that no amendment should be made (s42A Report, Section 5.19.7, p. 344).

3.14.7.2. Retaining walls

1004. The design guidance reads as follows:

“Retaining walls should be constructed of materials such as rendered concrete block, crib walling or stone, rather than gabion baskets, timber or sheet materials such as iron – Suggested”.

1005. *Southern Heritage Trust and City Rise Up* (OS293.173), *Rosemary & Malcolm McQueen* (OS299.135), the *Royal/Pitt/Heriot Residential Heritage Precinct Protection Inc* (OS571.13) and *Marilyn Willis* (OS582.7), supported by *Elizabeth Kerr* (FS2429.161, FS2429.167) sought that this guidance is changed from ‘suggested’ to ‘preferred’ for the Royal Terrace – Pitt Street – Heriot Row precinct.
1006. Dr Hazelton and Mr Christos recommended rejecting these submissions as it would constrain the options too much, where other materials might be able to be used to good effect (Dr Hazelton’s Evidence, Appendix E1). The Reporting Officer accepted their advice and recommended that “Retaining walls” is retained as ‘suggested’ (s42A Report, Section 5.19.7, p. 344).

3.14.7.3. Permeable fencing

1007. The design guidance reads as follows:

“Front fences should preferably be no higher than 1400mm on road frontages to protect views of buildings. Side fences should only go higher once they have passed the building setback. Fences higher than 1400mm should be visually impermeable.”

1008. *Southern Heritage Trust and City Rise Up* (OS293.169), *Rosemary & Malcolm McQueen* (OS299.131) and *John and Clare Pascoe* (OS444.110) noted that ‘impermeable’ should be ‘permeable’ and requested this error be corrected as it relates to the York Place, Royal Terrace and North Ground precincts.
1009. The Reporting Officer noted that this was also an error in the Dundas – Castle Street precinct. She recommended that it was corrected in all precincts (s42A Report, Section 5.19.7, p. 344).

3.14.7.4. Decisions and reasons

1010. We accept the submissions by *Southern Heritage Trust and City Rise Up* (OS293.169), *Rosemary & Malcolm McQueen* (OS299.135), the *Royal/Pitt/Heriot Residential Heritage*



**SECOND
GENERATION
DISTRICT PLAN**

Commercial and Mixed-Use Zones Decision of Hearings Panel

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

7 November 2018

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1.0 Introduction

1. This document details the decisions of the Proposed Dunedin City District Plan Hearings Panel/Te Paepae Kaiwawao Motuhake O Te 2GP with regards to the submissions and evidence considered at the Commercial and Mixed-Use Zones hearing, held on 3 – 12 August and 30 November 2017 at the 2GP Hearings Centre.

1.1 Scope of Decision

2. This Decision Report addresses the original and further submission points addressed in the Commercial and Mixed-Use Zone s42A report. In addition, it addresses the following points:
 - a. submission OS308.484) by the *University of Otago* and *Radio New Zealand* Limited (OS918.65) supporting Policy 2.2.2.4, which were included in the Urban Land Supply s42A Report; and
 - b. submission OS930.11 by *Calder Stewart Ltd* to amend Rule 19.5.5 to exempt retail sales that are primarily designed to service trade related business activities from the 10% floor area limit, which was heard in the Industrial hearing.

1.1.1 Section 42A Report

3. The Commercial and Mixed Use (CMU) s42A Report deals primarily with plan provisions included in the CMU Zones section of the 2GP. The CMU Zone contains provisions which link to most other parts of the 2GP; of particular relevance are Transportation (Section 6), Public Health and Safety (Section 9) and Heritage (Section 13). The decisions on those topics should be read in conjunction with this decision.

1.1.2 Structure of Report

4. The decision report is structured by topic. The report does not necessarily discuss every individual submitter or submission point; instead it discusses the matters raised in submissions and records our decisions and reasons on the provisions relevant to each topic¹. Appendix 3 at the end of the report summarises our decision on each provision where there was a request for an amendment. The table in Appendix 3 includes provisions changed as a consequence to other decisions.
5. 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).
6. 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.
7. 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.

1.2 Section 32AA Evaluation

8. Section 32 of the Resource Management Act 1991 (RMA) establishes the framework for assessing proposed objectives, policies and rules. Section 32AA of the RMA requires a

¹ In accordance with Schedule 1, Section 10 of the RMA

commercial imagery, are unlikely to have adverse effects on amenity. We note a similar recommendation was made in respect to similar submission in the major facilities zones.

729. While accepting these recommendations in principle, we have made amendments that are different to those recommended to improve the clarity and simplicity of the provisions.
730. We have also made these amendments to related provisions in all management and major facilities zones, for plan consistency¹⁰. We are satisfied that making these amendments in all zones is minor in nature and does not prejudice anyone.
731. To amendments required for this decision include (see Appendix 1, amendments attributed to CMU 271.18):
- Amend Rule 18.6.14.1 (Number, Location and Design of Ancillary Signs) to state that "...except that regulatory signs, directional signs and warning signs that do not exceed 0.25m² are exempt from these standards" and make similar amendments in all other management and major facility zones
 - Add a new definition of Regulatory Signs that reads "Signs that give information about required or prohibited actions (for example parking signs)"
 - Add a new definition of Warning Signs that reads "Signs that provide information about hazards or other health and safety matters"
 - Add a new definition of Directional Signs that reads "Signs that identify the location of routes, entrances, or direction and/or distance to destinations"
 - Make a consequential change to the definition of Road Signs to remove the words that duplicate the information now included in the new definitions of Regulatory Signs, Warning Signs, and Directional Signs.

4.6.9.4 Rule 18.6.14.5 Portable freestanding signs on footpaths

732. Rule 18.6.14.5 sets standards for portable freestanding signs on footpaths. The rule limits signs to premises with no ground floor frontage and requires that they are spaced at least 5m apart. Rule 6.7.2, which is referenced in Rule 18.6.14.1, states where signs may be located on the footpath.

Rule 6.7.2.2. states:

"Public amenities, temporary signs and portable freestanding signs located on public footpaths must:

- a. be located in line with any other permanent or temporary obstruction present on the footpath at that location, otherwise at the kerb edge of the footpath; and*
- b. not be located within 2.0m of an intersection or pedestrian crossing location; and*
- c. not be located at the kerb directly adjacent to a bus top, taxi stand, mobility parking or an Authorised Vehicles Only parking space; and*
- d. signs must not be painted, drawn, chalked or otherwise created on the surface of any footpath."*

733. The *Disabled Persons Assembly Dunedin and Districts* (OS265.3) sought to amend Rule 18.6.14.5 to add a new rule requiring freestanding signs on footpaths to be placed on

¹⁰ Rules 16.6.8.1.b, 17.6.7.1.b, 19.6.8.1.a, 20.6.10.1.a, 21.6.6.1.a, 22.6.10.1.a, 23.6.8.1.b, 24.6.9.1.a, 25.6.7.1.a, 26.6.7.1.a, 27.6.10.1.a, 28.6.9.1.a, 29.6.8.1.a, 30.6.5.1.a, 31.6.9.1.a, 32.6.7.1.a, 33.6.8.1.a, 34.6.10.1.a, 35.6.8.1.a

the inward, or store side, of the footpath and not opposite it, to ensure unobstructed access for all pedestrians including those with disabilities and those pushing children's strollers.

734. The Reporting Officer drew attention to section 5.2 of the Council's *Commercial Use of Footpaths Policy 2012*, which states that "portable signs shall be outside the premises to which they relate, in close proximity to the kerb and, where appropriate, in line with other permanent obstructions on the footpath, e.g. lamp standards, rubbish receptacles" (s42A Report, section 5.7.17, p. 180).
735. The Reporting Officer also noted that NZTA's *Pedestrian Planning and Design Guide* states that where portable signs are used for displaying advertising signs and boards "there should be no interference, obstruction or hazard for pedestrians". The NZTA's *Road Traffic Standard RTS 14 - Guidelines for facilities for blind and vision impaired pedestrians 2015* states that while advertising signs on the footpath should be avoided if possible, where they are permitted they "shall be located away from the continuous accessible path of travel, i.e. on the kerb edge".
736. The Reporting Officer noted that signs adjacent to buildings, on the opposite side of the footpath to lamp posts, traffic signs etcetera, appeared to create an even narrower through-route. As this was contrary to both NZTA's standard and the DCC's footpath policy, she reserved her recommendation until having heard the submitter.
737. The *Disabled Persons Assembly Dunedin and Districts* were represented by Mr Chris Ford, who gave evidence that the fewer sandwich board signs on the footpath the better. In response to a question about the reasoning behind the submission, Mr Ford responded that he would need to seek further information from the person who had raised the issue.

4.6.9.4.1 Decisions and reasons

738. We reject the submission from the *Disabled Persons Assembly Dunedin and Districts*. While we are sympathetic to the need to avoid signage that can impede the passage of wheelchairs, we note that the proposed amendment conflicts with the DCC bylaw and with the NZTA standard, and that no strong evidence was presented at the hearing to justify amending the rule.

4.6.10 Rule 18.6.17 Setbacks

739. The setbacks performance standard (Rule 18.6.17) details the setback requirements from road boundaries, residential and recreation zoned sites, scheduled trees, coast and water bodies, and the national grid.

4.6.10.1 Supermarkets

740. *Progressive Enterprises Ltd* (OS877.10) sought to exempt supermarkets from the setbacks from road boundaries performance standard (Rule 18.6.17.1), which details the setback requirements for buildings along primary and secondary pedestrian frontage areas. The submitter noted that supermarkets have specific operational and functional requirements and would be unable to comply with such a rule.
741. Mr Christos advised that traditionally supermarkets are of a scale where they tend to be dominant, although there is a move away from this in higher density urban environments where they are often better integrated. Mr Christos noted that central to any building integrating with the existing urban form is reducing the negative effects of car parking and blank façades along street boundaries. He considered that the proposed performance standard is appropriate to encourage a better built form with regards to the traditional supermarket model (statement of Evidence for the DCC, p. 11).
742. The Reporting Officer noted that existing supermarkets in Dunedin that are within a primary or secondary pedestrian street frontage and are built to the road boundary include Pak'n'Save South Dunedin, New World North Dunedin, Four Square Caversham,

Four Square Port Chalmers, Countdown Mosgiel, and On The Spot Waikouaiti. On this basis, she observed that the operational requirements could therefore not be insurmountable (s42A Report, section 5.7.18, p. 182).

- 743. The Reporting Officer recommended no change to the rule.
- 744. *Progressive's* legal counsel Ms Dewar and Mr Leckie submitted that the rule was one of several urban design-related rules which unnecessarily constrained *Progressive's* ability to redevelop its existing sites, or develop new sites, without creating operational and functional issues.
- 745. Mr Foster, called by *Progressive* to give planning evidence, refuted comments in the s42A Report, suggesting that some of the examples of supermarkets built to the road boundary were "small, relatively old stores of a very traditional style" (Statement of Evidence for *Progressive*, p. 10).
- 746. Mr Knott, *Progressive's* urban design expert, suggested that the setback rule would make it almost impossible for *Progressive* to redevelop some of their existing sites, and did not agree with Mr Christos' view that it is not possible to create an attractive and vibrant interface with footpaths if parking is given priority. He suggested that it was more likely that an appropriate design response which also provides for *Progressive's* operational requirements was more likely if a site is planned holistically and not artificially constrained by such rules (Statement of Evidence for *Progressive*, p.12).
- 747. Mr Munro tabled an additional statement of evidence for the DCC on supermarket design at the hearing, and referred to two examples of supermarket development with street frontage provisions, which in his opinion were superior to Mr Knott's "more basic 'box'". In Mr Munro's opinion the success of these two developments was due to their developers' willingness to engage with the specific urban design requirements. Finally, Mr Munro made the point that given the size of supermarket development a consenting process is likely to be engaged regardless of urban design rules, and therefore their imposition cannot be seen as creating a need for a consent process. Rather, they prioritise policies and assessment matters (Statement of Evidence tabled at hearing for DCC, paras. 1.9 to 1.14).

4.6.10.1.1 Decisions and reasons

- 748. We reject the submission from *Progressive Enterprises Ltd* (OS877.10) to exempt supermarkets from the setback from road boundaries performance standard (Rule 18.6.17.1).
- 749. The evidence did not persuade us that the rule would seriously impede development and redevelopment of supermarkets. We consider the standard is an appropriate mechanism to encourage better built form, including for supermarkets.

4.6.10.2 Setback from boundary of residential or recreation zone

- 750. *Michael Ovens* (OS740.7) sought to remove the setbacks Rule 18.6.17.2, which requires new buildings and additions and alterations to buildings to be set back 3m from the boundaries of residential or recreation zones, due to the unnecessary and onerous nature of the standard.
- 751. Mr Christos' evidence was that the proposed standard offers a minimum separation to deal with negative effects of shading and bulk, and that Rule 18.6.17.2 should be retained as a basic requirement (Statement of Evidence for the DCC, p. 11).
- 752. The Reporting Officer advised that the intent of the setback standard is to manage reverse sensitivity effects and effects on the residential or recreational amenity. She noted that the standard only applies when a site adjoins a residential or recreation zone, and that the majority of sites in the commercial areas will not be affected. She added that the setback is greater than that which applies within the residential zones, due to the different nature, and bulk and location, of activity likely to be occurring within the commercial areas (s42A Report, section 5.7.18, p. 183).

List of Submitters to be served

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Craig Horne Surveyors Limited	704.2	Allan Cubitt	Attention: Allan Cubitt 11 Bedford Street St Clair Dunedin 9012	
CTW Holdings Limited	742.2	Allan Cubitt	Attention: Allan Cubitt 11 Bedford Street St Clair Dunedin 9012	
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