

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

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

To The Registrar
 Environment Court
 Christchurch

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

I made a submission on that plan.

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

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

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

The decision I am appealing is:

The zoning of the land occupied by warehouses on the northern side of the Steamer Basin on the Harbourside of Fryatt Street as “Industrial Port” and not “Harbourside Edge”.

The reasons for the appeal are:

The warehouses on the north side of the Steamer Basin adjoining Fryatt Street are being demolished and there is no viable use for the area if it is not zoned Harbourside Edge because the Industrial Port Zone rules are too restrictive to allow the development of that area.

I seek the following relief:

Extending the Harbourside Edge Zone so that it includes all the land on the northern side of the Steamer Basin between the harbour and Fryatt Street.

I attach the following documents to this notice:

- (a) a copy of my submission and further submissions (with a copy of the submissions opposed or supported by my further submission):

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



.....
L A Andersen
Counsel for Appellant

17/12/18
.....
Date

Address for service of appellant:

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

Telephone: Phone (03) 477 2238
Fax: Fax (03) 474 5588

Contact Person: Mr Len Andersen (counsel for appellant)
P O Box 5117, Dunedin;
Telephone: (03) 4773488;
Fax: (03) 4740012;
Email: len@barristerschambers.co.nz

Note to Appellant

You may appeal only if - -

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

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

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

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

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

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

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

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

Advice to recipients of copy of notice of appeal

How to become party to proceedings

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

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

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

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

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

How to obtain copies of documents relating to appeal

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

Advice

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

Form 5

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

To:

Submission on 2GP
Dunedin City Council
PO Box 5045
DUNEDIN

Name of submitter

Port Otago Limited
PO Box 8
Port Chalmers

Address for Service:

Lesley McLachlan
Port Otago Limited
PO Box 8
Port Chalmers
LMcLachlan@portotago.co.nz
Phone (03) 472 7890

Trade Competition
Declaration

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

Hearing

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

INTRODUCTION

Overview of Port Otago Limited

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

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

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

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

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

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

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

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

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

Current Capital Works Programme

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

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

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

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

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

Relevance of 2GP to Port Otago

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

SUBMISSION POINTS

Summary of key submission points

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

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

Policy 9 Ports

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

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

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

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

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

Our specific submissions are set out in the table below.

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

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

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

2GP Reference	Support/Oppose/Amend	Decision Sought	Reasons for Submission
		may lead to reverse sensitivity issues.	
Policy 2.3.2.3	Amend	Amend as follows: <i>Manage the existing and proposed harbourside edge mixed use areas around the edge of the CBD through zones that provide for a compatible mix of activities that support rather than detract from the vibrancy and vitality of the CBD and centres (Warehouse Precinct, Princes, Parry and Harrow Street Zone, Smith Street and York Place Zone and Harbourside Edge Zone), and that:</i> <i>1. for the Warehouse Precinct, support the retention of scheduled heritage buildings and heritage precinct values; and</i> <i>2. for the Harbourside Edge Zone, allow for a transition toward a mixed-use environment, with enhanced public connection to and along the coast, focused on <u>office</u>, residential, visitor accommodation, restaurant and entertainment and exhibition activities, alongside</i>	Office use is sought for the Harbourside Edge Zone to allow for an adequate range of activities necessary to support redevelopment.

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

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

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

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

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

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

2GP Reference	Support/Oppose/Amend	Decision Sought	Reasons for Submission
		<i>provided for unless:</i> a. <i>it is an ancillary and secondary component of a retail or office activity that is undertaken in a scheduled heritage building as provided for by Policy 13.2.1.9 on the same or adjacent site; or</i> b. <i>there is a significant and sustained increase in the amount of retail activity across the city and it can be demonstrated that as a result there is a medium to longer term under-supply of retail land across all the areas where general retail is provided for; or</i> c. <i>in the HE Zone, it is associated with port, industrial or marine related activities operating in the area or is it is part of a comprehensive mixed use development; or</i> d. <i>in the PPH Zone it is associated with campus activities; or</i> e. <i>in the CEC Zone it is associated with campus or hospital activities.</i>	this zone. Not providing for offices within this zone would severely limit the scope of future development and potentially threaten development feasibility.

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

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

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

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

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

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

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

2GP Reference	Support/Oppose/Amend	Decision Sought	Reasons for Submission
		properties 65dBA and above <i>The port operator must offer to purchase or provide acoustic treatment for noise affected properties which receive at any point within their boundary levels of port noise equal to or greater than an assessed 65 dBA Ldn (5 day average) or an assessed 65 dBA Leq (15 min, 10pm – 7am) on more than three occasions (more than 24 hours apart) during any rolling 12 month period. The conditions and standards in 9.3.1.2 to 9.3.1.4 <u>30B.1.1 to 30B.1.4</u> apply to the offer to purchase or provide acoustic treatment.</i> <u>30B.1.21</u> Owner to decide <i>The owner of each such noise affected property must have the right to elect whether to accept either purchase or acoustic treatment and there is no time limit on the owner's acceptance of the offer.</i>	
Appendix 30B Port Noise Mitigation Plan	Amend	Amend text in 30B.2 as follows: <i>30B.2 Mitigation for noise affected properties 60dBA and above</i> <i>The port operator must contribute to the costs of acoustic treatment for noise</i>	There is a referencing error in this clause.

2GP Reference	Support/Oppose/Amend	Decision Sought	Reasons for Submission
		<i>affected properties or may offer to purchase noise affected properties which are shown on the current port noise contour map as receiving at any point within their boundary port noise levels equal to or greater than 60 dBA Ldn (5 day average). The conditions and standards in 9.3.1.2 to 9.3.1.4 <u>30B.2.1 to 30B.2.2</u> apply to any offer to provide acoustic treatment.</i>	
Appendix 30B Port Noise Mitigation Plan	Amend	Amend text in 30B.2 as follows: <i>30B.3 Mitigation for noise affected properties 55dBA to 60dBA</i> <i>The port noise liaison committee will provide technical advice to noise affected properties.</i> <i>In special circumstances the port noise liaison committee utilising its annual mitigation budget may offer to contribute to the costs of acoustic treatment for noise affected properties which are shown on the current Port Noise Contour Map as receiving at any point within their boundary port noise levels equal to or greater than 55 dBA Ldn (5 day average). The conditions and standards in 10.2.3.1 to 10.2.3.2 <u>30B.3.1 to 30B.3.2</u> apply to the provision of</i>	There is a referencing error in this clause.

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

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

CONCLUSION

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



Lincoln Coe (signature)
for Port Otago Limited
Date: 24 November 2015

4.7.7 Rural Centre Zone

994. *Dunedin City Council* (OS360.190) sought to change the zoning of 2 Waikouaiti-Waitati Road from Rural Coastal Zone to Rural Centre Zone. This was identified as being appropriate prior to notification, after consideration of transport and hazards issues, but was inadvertently missed off the mapping.
995. The Reporting Officer noted that the land is unused and the original rezoning request indicated it may be used for landscaping supply or as a café. No submissions were received in opposition. DCC's Water and Waste Services noted that there is insufficient capacity in the drinking water network and there are poor fire flows. However, there is no expectation that this area would be serviced by the DCC water networks (s42A Report, section 5.9.9, pp. 252 – 253).

4.7.7.1 Decisions and reasons

996. We accept *Dunedin City Council's* submission (OS360.190) and change the zoning of 2 Waikouaiti-Waitati Road from Rural Coastal Zone to Rural Centre Zone, for the reasons given by the Reporting Officer.

4.7.8 Harbourside Edge Zone

4.7.8.1 Fryatt Street

997. *Port Otago Limited* (OS737.40) and *Chalmers Properties Ltd* (OS749.18) sought to include the southern side of Fryatt Street adjoining Steamer Basin (part of 50 Fryatt Street) within the Harbourside Edge Zone. The area is currently zoned Industrial Port.
998. *Ms Elizabeth Kerr* (OS743.49) questioned the appropriateness of Industrial Port zoning for encouraging adaptive re-use and redevelopment of the heritage properties at 31-33 Thomas Burns Street (B106), 21 Fryatt Street (B754), 25-27 Fryatt Street (B755) and 5 Willis Street. *Chalmers Properties Limited* (FS2321.7) supported this submission.
999. *Ms Kerr* (OS743.48) also sought to amend the boundary of the Harbourside Edge Public Walkway to include the above properties, the two heritage wharf sheds on Fryatt Wharf, and the associated wharf.
1000. The southern side of Fryatt Street is not included in the operative Harbourside Zone or the 2GP Harbourside Edge Zone. The s42A Report noted that it was originally included in the Harbourside plan change, along with a larger area of land to the north of Steamer Basin, but was removed during the plan change process, following opposition from nearby land owners and users (s42A Report, section 5.6.2, p. 123).
1001. The Reporting Officer recognised the suitability of the locations identified by the submitters for Harbourside Edge development, but had concerns regarding potential reverse sensitivity effects on adjoining industrial users, and impacts on the CBD. She expressed concern that surrounding landowners were unaware of the proposal and recommended that a subsequent plan change was appropriate to address this, both to enable consultation as well as to determine appropriate rules to apply the area (s42A Report, section 5.6.2, p. 123).
1002. Ms O'Callahan, planning consultant called by *Chalmers Properties*, considered that the issues raised by the Reporting Officer could be addressed through planning controls, including limiting the range of activities in the area to address concerns on the effects on the CBD (para 46). She did not elaborate on which activities might be appropriate or inappropriate. Ms O'Callahan suggested reverse sensitivity effects could be addressed through the noise insulation requirements, and 'no complaints' covenants. An integrated transportation assessment was recommended as a consent requirement to address transport issues.
1003. Mr Butcher, economics consultant called by *Chalmers Properties*, considered that the area's small size meant it is likely that commercial development would result in only

minor effects on the CBD, but would be positive for visitors. Retaining the area for industrial use was in his view inefficient (Statement of Evidence, para 45).

1004. In response, Mr Foy expressed the view that although the area is small, cumulatively it would contribute to a general weakening of the CBD by creating another alternative destination for commercial businesses. Additionally, if the available land in the Harbourside Edge Zone is too large, development may be too fragmented to generate a critical mass of development. Mr Foy recommended an incremental release of land rather than the larger area proposed (First Supplementary Brief of Evidence, para 3.5).
1005. At the hearing, Mr Plunket, Chief Executive of *Port Otago*, noted that the existing wharf buildings are inappropriate for industrial use, and redevelopment for industrial use is not commercially viable. If redevelopment was not permitted, the sheds would likely fall into disrepair, given the difficulties in obtaining consent for a non-complying use (Evidence, para 6.3).
1006. Mr Plunket also commented that *Port Otago* is satisfied that the 2GP's acoustic requirements (which apply to noise sensitive activities within 40m of an Industrial Zone) would be sufficient to prevent reverse sensitivity in the area, and that residential development in the "inner part of the north side of the Harbour Basin" (which we infer to mean the wharf shed area that is the subject of the submission) was unlikely, as it is colder and has a less attractive outlook (Evidence, para 5.4).
1007. The Reporting Officer maintained her recommendation, adding that development would put further demands on, as yet, unfunded amenity infrastructure.
1008. Following the hearing, we sought additional information from *Chalmers Properties* on the state of the wharf and wharf sheds, and the feasibility of replacement or repair. In response, a property inspection report from Hadley and Robinson Ltd was provided, which assessed the structural condition of the wharf. This concluded that from a structural point of view, the wharf may not be feasible to refurbish, due to factors including:
- significant damage requiring replacement of a significant part of the deck, and a major proportion of the substructure
 - the future life, if refurbished, being 20–30 years, compared to the life of a new structure being 50 years plus
 - the cost of refurbishment of the wharf being likely to be more than the cost of replacement.
1009. It also concluded that if the existing buildings were to change use, significant upgrades would be required, which would not be economically feasible

4.7.8.1.1 Decisions and reasons

1010. We accept *Ms Kerr's* submission to include the heritage properties at 31-33 Thomas Burns Street (B106), 21 Fryatt Street (B754), 25-27 Fryatt Street (B755) and 5 Willis Street within the Harbourside Edge Zone (CMU OS743.49). We understand that resource consent has been issued to allow residential use in 31 – 33 Thomas Burns Street (the Loan and Mercantile building), which is an activity anticipated in the Harbourside Edge Zone.
1011. We reject the submission of *Chalmers Properties* to extend the zone along the southern side of Fryatt Street, to include the wharf sheds. As discussed above in relation to the request that all of the Harbourside Edge Zone is made available for commercial activities immediately, we consider a staged approach is best in this area, and rezoning additional land should be a possible further stage following completion of the zoned redevelopment area. As there are significant issues about sensitive activities establishing adjacent to existing industrial activities this should be implemented through a plan change allowing full public participation.

1012. Consequently, we reject Ms Kerr's submission to extend the Harbourside Edge walkway along Fryatt Street.

4.7.8.2 Rezone area covered by Transitional Overlay Zone

1013. *Chalmers Properties* (OS749.14), supported by the *Otago Regional Council* (FS2381.512) sought to remove the Transitional Overlay Zone and immediately rezone the area covered by this overlay as Harbourside Edge Zone. The submitter considered that the overlay zone significantly reduced development rights.
1014. Mr Foy (consultant economist called by DCC) considered that immediately rezoning this area would provide development capacity in excess of what is required to leverage off the Harbourside location. Such an approach could adversely affect the vitality of the CBD in his view (Statement of Evidence, para 7.21).
1015. Based on this advice, the Reporting Officer recommended rejecting the submission (s42A Report, section 5.6.2, p. 121).
1016. *Chalmers Properties* called Ms O'Callahan to give planning evidence. She noted that the site was already identified for mixed use development and that the site's attractiveness would bring new investment to the city, rather than draw investment away from the CBD (Statement of Evidence, para 39).
1017. Mr Butcher, economics consultant for *Chalmers Properties*, believed that the most efficient use of the land resource would be achieved by allowing developers to decide on the order of development, rather than being constrained by the overlay zone (Statement of Evidence, p. 8).
1018. Ms Justice, planning consultant, gave evidence for *ORC*. She criticised the overlay zone as being 'ambiguous' and uncertain for developers (Primary Evidence, para 4.43). She further observed that the overlay may discourage development within the HE Zone given that development across Birch and Kitchener Streets will not be required to achieve the higher amenity requirements applicable in the HE Zone.
1019. Mr Foy responded to this evidence by noting that without a controlled release of development land there was the potential for development to be undertaken sparsely and haphazardly. Without a concentration of development in the area, there was a risk that it would take longer for a 'critical mass' to be reached (Supplementary Evidence, para 3.4-3.5).
1020. The Reporting Officer also questioned whether it was realistic to assume that developers were deterred from the area simply due to the overlay zone. She recommended that the Transitional Overlay Zone be retained (Right of Reply, p.4).
1021. *Chalmers Properties'* counsel Mr Len Andersen submitted that Rule 12.3.2, which allows the release of the overlay zone land, to be *ultra vires*, as it allows the Council to effect a plan change (to convert the land to Harbourside Edge Zone) by way of Council resolution, rather than through the proper RMA processes (Legal submissions, para 2.5(a)).
1022. We note that the legality of the rule's wording has been addressed in the Urban Land Supply topic decision, with the result that we amended the wording of Policy 12.2.2.1 which enables the 'release' of land for Harbourside Edge development, so that the 'trigger' is certification by the Chief Executive Officer once there is agreement with the developer on any infrastructure issues, and at least 70% of the zone is being used for residential or commercial activities. A Council resolution is no longer required. This change addresses the point made by Mr Andersen, because no discretion has to be exercised. The Council's CEO simply has the role of certifying when the circumstances defined in the rule exist.

4.7.8.2.1 Decisions and reasons

1023. We have visited the area concerned several times so as to better understand the evidence. We reject *Chalmers Properties'* submission to remove the overlay zone and

**Names and addresses of persons to be served with a copy of Notice of Appeal:
Harbourside Edge Zone**

1. The Dunedin City Council, 2gpappeals@dcc.govt.nz
2. Chalmers Properties Ltd, rhibbs@chalmersproperties.nz
3. Elizabeth Kerr, ejkerr@ihug.co.nz