

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH
I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI**

Decision No. [2022] NZEnvC 142

IN THE MATTER of the Resource Management Act 1991

AND appeals under clause 14 of the First
Schedule of the Act

BETWEEN CAREYS BAY ASSOCIATION
INCORPORATED

(ENV-2018-CHC-223)

AND PORT OTAGO LIMITED

(ENV-2018-CHC-245 - 247)

Appellants

AND DUNEDIN CITY COUNCIL

Respondent

Environment Judge P A Steven – sitting alone under s279 of the Act

In Chambers at Christchurch

Date of Consent Order: 4 August 2022

CONSENT ORDER

A: Under s279(1)(b) of the Resource Management Act 1991, the Environment
Court, by consent, orders that:

(1) the appeal is allowed to the extent that Dunedin City Council is

CAREYS BAY ASSN INC & ANOR v DCC – 2GP – CONSENT ORDER



directed to make the amendments to the provisions of the proposed Dunedin City Second Generation District Plan as shown in Appendix 1, attached to and forming part of this order;

- (2) the parts of the appeal by Port Otago Limited allocated DCC Reference numbers 23 and 25 are resolved, the appeal remains extant with the remaining part to be dealt with at a later date;
- (3) the parts of the appeal by Careys Bay Association Incorporated allocated DCC Reference numbers 34 and 35 are recorded as withdrawn; and
- (4) the part of the appeal by Careys Bay Association Incorporated allocated DCC Reference number 27 is resolved and the appeal is otherwise dismissed.

B: Under s285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

[1] This proceeding concerns appeals by Careys Bay Association Incorporated and Port Otago Limited against the decision of the Dunedin City Council approving the proposed Dunedin City Second Generation Plan ("2GP"). The appeals relate to the provisions regarding noise and amenity in the Port Zone.

[2] I have read and considered the consent memorandum of the parties dated 6 July 2022 which details the agreement reached by the parties to resolve the relevant appeal points.¹ The agreement reached involves:

¹ Allocated DCC Reference numbers 23, 25, 27, 34 and 35.

- (a) amendments to Policy 30.2.2.1 and the associated assessment rule 30.8.4.1 to add 'character' so these provisions reference visual amenity and character in Port Chalmers and Careys Bay; and
- (b) amendments to the Appendices of Chapter 30 Port Zone to improve the measurement and monitoring of port noise.

[3] I have also read and considered the affidavit of Mr Rawson who has satisfied me that the amendments proposed are a suitable alternative to the status quo and that granting the relief sought will not impact on the resolution of any other proceeding.²

Other relevant matters

[4] Several parties have given notice of an intention to become a party to these appeals under s274 of the Resource Management Act 1991 ('the RMA' or 'the Act'). All those with a relevant interest in this topic have signed the memorandum setting out the relief sought.

[5] The parties agree that costs should lie where they fall, accordingly no order for costs is sought.


[6] The parties advise that all matters proposed for the court's endorsement fall within the court's jurisdiction and conform to the relevant requirements and objectives of the Act including, in particular, Pt 2.

Outcome

[7] All parties to the proceeding have executed the memorandum requesting the orders. On the information provided to the court, I am satisfied that the orders

² Affidavit of P B Rawson affirmed 20 July 2022 at [41], [42], [48] and [50]-[51].

will promote the purpose of the Act so I will make the orders sought.



P A Steven
Environment Judge



Appendix 1

- 1 Amend Policy 30.2.2.1, as follows:

Policy 30.2.2.1

Require buildings, structures and outdoor storage, including shipping containers, to be of a height that avoids or mitigates significant adverse effects on visual amenity and character in Port Chalmers and Careys Bay, as far as practicable. **{Careys Bay Association Incorporated 27}**

- 2 Amend Rule 30.8.4.1 Assessment of development performance standard Contraventions – Maximum height, as follows:

30.8.4 Assessment of development performance standard contraventions			
Performance standard		Matters of discretion	Guidance on the assessment of resource consents
1.	Maximum height	a. Effects on amenity <u>and character</u> of surrounding residential zones	<p><i>Relevant objectives and policies:</i></p> <p>i. Objective 30.2.2</p> <p>ii. Buildings, structures and outdoor storage, including shipping containers, are of a height that avoids or mitigates significant adverse effects on visual amenity <u>and character</u> in Port Chalmers and Careys Bay as far as practicable (Policy 30.2.2.1). {Careys Bay Association Incorporated 27}</p>

- 3 Amend clause 1a under the heading "Appendices" in Chapter 30 Port Zone, as follows:

Appendices

The following must be observed in relation to any measurements or assessments of port noise required by these Appendices:

1. *Unless stated otherwise, port noise must be measured in accordance with NZS 6801:2008 Acoustics –*

Measurement of Environmental Sound and assessed in accordance with NZS 6809:1999 Acoustics – Port Noise Management and Land Use Planning, provided that:

- a. ~~subject to Rule 9.3.6.7.a, the rating level described in clause 7.3 of NZS6809:1999 Acoustics – Port Noise Management and Land Use Planning must be determined for the sole purpose of defining any Leq (15 min) sound level, required for the purposes of Appendices 30A and 30B Measured Leq (15 minute) levels shall be adjusted for special audible characteristics in accordance with clause 7.3 and A6 of NZS6809:1999 except where the sound of interest arises from log handling or container handling activities; and {Port Otago Limited 23}~~

- 4 Amend Appendix 30A. Port Noise Management Plan - 30A.2 Minimum monitoring and reporting requirements (clauses 1 and 2), as follows:

30A.2 Minimum monitoring and reporting requirements

1. The Port Operator must maintain, at its expense, sound level monitoring equipment to ensure the continuous measurement of port noise emanating from port related activities 24 hours a day and seven days a week, including at least one monitor in a location representative of the Careys Bay residential community. All community noise monitors must record calibrated audio of noise events measured above 75 dB LAFmax between 10pm and 7am.
 2. The Port Operator must provide the results of sound level monitoring to Council and the Port Noise Liaison Committee in a summary form showing Leq, calculated Ldn sound exposure and ~~all attended~~ Lmax levels not less than four times a year. This monitoring must:
 4. highlight significant port noise emissions and correlate these with port activity (using port CCTV imagery and equipment logs) and wind speed and wind direction data; and
 2. ~~include attended Lmax readings taken during night time at sites in residential zones (including within Careys Bay) while container handling is taking place at Port Chalmers. These results must be presented as a continuous graphical record of 15 minute samples of dBA levels recorded and presented on a 1 second by 1 second basis and include annotations indicating the types of port activities observed to be causing the maxima shown on the graphs. {Port Otago Limited 25}~~
- 5 Make any consequential changes to plan numbering as required as a result of the above amendments. Minor referencing and style changes may also be made for consistency with the 2GP formatting

