

**BEFORE THE OTAGO REGIONAL
COUNCIL**

IN THE MATTER of the Resource Management Act
1991

AND

IN THE MATTER of an application for resource
consents for Project Next
Generation

BY **PORT OTAGO LIMITED**

Applicant

SUBMISSIONS IN REPLY

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I INTRODUCTION

- 1.1 The commissioners can be satisfied that it is important not just to the community but also to Port Otago that this project is carried out successfully.
- 1.2 The partnerships that have been forged with the Manawhenua and DOC underlie this long term commitment which is reflected in both the conditions offered and the Environmental Management Plan (“EMP”).
- 1.3 It is fundamentally in Port Otago’s interest as well as that of the community for Port Otago to manage the project to avoid adverse effects.
- 1.4 It is fundamental to the port’s operation that it can operate efficiently, flexibly and 24 hours a day. It is an integrated site and any restriction on the use of parts of the site creates inefficiencies (particularly more ship time in port and more noise) with corresponding adverse effects.

II DREDGING IN THE HARBOUR

- 2.1 The combination of the conditions of consent and the adaptive management provisions in the EMP will ensure that sediment levels from the dredging as received by sensitive areas of the harbour will not exceed levels that carefully considered expert evidence shows will not cause environment harm.
- 2.2 Southern Clams’ concerns about the Tuaki/cockles have been met:
 - (a) Mark James has confirmed Tuaki/cockles can tolerate periodic high suspended levels (par 85) and much higher than the proposed consent limits;
 - (b) Dredging will be throughout the channel which will further reduce levels experienced in any one area of the harbour;
 - (c) Otago Harbour has large cockle beds notwithstanding constant maintenance dredging and periods of significant capital dredging without the controls now proposed;
 - (d) The NTU “triggers” for Otago Harbour was established from actual measurements;
 - (e) The Norkko report which Ms Black relied on related to different materials particularly being very fine terrigenous clay material.

- 2.3 Port Otago's natural desire to utilise equipment for the maximum days possible to reduce down-time costs means that it is in Port Otago's interest to ensure minimum practicable sediment discharges from the dredge operation.

III ALTERNATIVES TO DISPOSAL AT SEA

- 3.1 The volume of material being removed and the complete lack of alternatives mean that the only available option is to dispose at sea.
- 3.2 Further reclamation within the harbour is not permitted without a resource consent and whilst there are isolated groups who support further reclamation in the harbour, it is not an available option at this time, and others (significantly the Otakou Runanga) oppose it.
- 3.3 An important consideration in choosing the site for the disposal ground included **“avoiding significant effects on fishing and aquaculture” (Lincoln Coe paragraph 131).**
- 3.4 It is accepted that there will be some effect on fishermen but the evidence of Rick Boyd (**paragraph 148**) is that this will be minor and of limited duration:

“due to the small area affected compared to the wide overall distribution of fish and shellfish and other commercial fishery.”

- 3.5 Mr Little from the Port Chalmers Fisherman's Co-operative Society criticises Mr Boyd for not identifying the amount of catch caught at A0 (par 4.2). Mr Bryce sees this as a significant omission (par 6.17). However the only people who have this exact information are the fishermen submitters and they have chosen not to provide any detailed information that could challenge Rick Boyd's conclusion. It has been submitted that fishing may become uneconomic, fishermen may be put out of business and/or fisherman may be required to relocate. However, these submissions are not supported by any probative evidence.

IV EFFECTS OF DISPOSAL AT SEA

- 4.1 Expert evidence has been provided that depositing at A0 will not have significant adverse effects.
- 4.2 The major concerns raised by submitters are concerns as to unforeseen effects. This is dealt with not only by the adaptive management

provisions in the EMP but also by the oversight provided by the Technical Group which ensures that the monitoring data is shared and considered by stakeholders. It is involved in all aspects of consideration of the effects of the project with the consequence that the knowledge of key stakeholders at all times is the same as that of Port Otago. The commissioners can be reassured by the conclusion of DOC that **“this agreement to a robust and independent monitoring regime addresses a number of the Director General’s concerns, particularly relating to unknown actual and potential adverse effects”**.

4.3 The Technical Group follows from the successful working party approach which is operating in relation to the maintenance dredging disposal. It is comprised of stakeholders being:

- (a) Representatives of Otago and Puketeraki Runanga;
- (b) The Department of Conservation;
- (c) Port Otago Limited;
- (d) Otago Regional Council.

4.4 Whilst there is no direct representative of the East Otago Taiapure Management Committee, it was felt the Puketeraki Runanga was the appropriate group to decide representation.

4.5 The Technical Group along with the adaptive management regime achieves the result that DOC required i.e. **“that adverse effects on the environments are identified and the applicant makes prompt changes to the way that the activity is undertaken to avoid, remedy or mitigate any significant adverse effects”**.

V EXISTING DISPOSAL GROUND

5.1 The consent for the existing disposal ground does not alter the permitted base line for the particular sites and there are only two issues:

- (a) Disposing of the rock at Heyward Point; and
- (b) Permitting Incremental Capital dredging (as opposed to maintenance dredging) material to be placed at the site. The important issue with regard to such dredging is the composition of the dredged material and this is adequately protected by the 90% sand requirement.

- 5.2 A working party has been assessing the suitability of those disposal sites as part of an ongoing monitoring programme and those issues will be further considered as part of the application to renew those maintenance consents.

VI THE FISHING JETTY

- 6.1 There is opposition to the fishing jetty from some in Careys Bay. This appears to be because of concern about the motives of Port Otago, notwithstanding the design of the jetty making it completely unsuitable for port operations.
- 6.2 Port Otago is building the jetty to fulfil a commitment made not just to Port Chalmers and Careys Bay residents but to the wider Dunedin and Otago communities. It should be noted that the noise levels experienced by Port Chalmers residents receive from the operation of the port are much higher than those received at Careys Bay.

VII OPERATIONS OF THE PORT INCLUDING NOISE

- 7.1 Most of the noise emanating from the port areas is unavoidable and a necessary part of the operations of the port. This was the issue faced at the hearings over the noise provisions in the Dunedin City District Plan which resulted in the 2004 Environment Court decision. I addressed this in detail in opening. The unsubstantiated claim by Grant Miller of a loss of \$150,000 in his property value needs to be seen against the background that his house has a QV for rating purposes of \$130,000.
- 7.2 Port Otago cannot operate as a successful export port if there were noise limits that did not permit ships to be loaded and unloaded in port. That position was accepted by the Careys Bay Association Inc at the Environment Court hearings over noise and the challenge before the Court was to prescribe a regime which allowed the port to continue to operate (including the real possibility that it would get louder in the future) while providing a reasonable degree of compensation to the residents. Implicit in this regime was the absence of noise limits that could result in the port being required to cease operations. Port Otago's willingness to embrace that noise regime included four important factors:
- (a) Port Otago accepted responsibility for port noise as a totality (i.e. its liability was not limited to noise from its activities) whereas any enforcement regime would need to identify and separate out the maker of any noise that breaches a specified limit (the limit applies for each noise source and cannot limit total noise

from a number of different sources if the individual sources do not breach the limit);

- (b) Port Otago agreed to monitor noise and make the results available and it is this monitoring that has provided an accurate and constant picture of not just the amount of port noise received by residents but also any changes to port noise;
- (c) Port Otago agreed to a mitigation programme;
- (d) Port Otago has accepted community involvement in setting priorities for noise mitigation.

7.3 Complaints about noise fall into two broad categories:

- (a) Complaints about the level of port noise (including ship noise) which are a reflection of the inevitable loss of residential amenity; and
- (b) Complaints about avoidable port noise i.e. matters such as banging of containers etc which relate to work processes which Port Otago along with the Port Environment committee seek to minimise.

7.4 One of the difficulties with noise is people's sensitivity to noise is different. This is reflected in the complaints of noise made at Port Chalmers as, in a typical year, about 80% of the noise complaints will come from three complainants.

7.5 The existence of the port at Port Chalmers means that residents in Port Chalmers (including Careys Bay) will experience port noise. The port will be able to be heard during outside living and that is unavoidable.

7.6 Dr Hall, Ms Nicolau and Mr Stevenson feel aggrieved that their residential amenity is affected by port noise. They are in a different position to some residents who have lived in Port Chalmers and Careys Bay for a longer period of time, because they bought their properties in 2002, 2001 and 2003 and the noise levels have not increased significantly since that time. The reality is that the level of port noise received by all three of them is only a fraction of the noise received by the people in Port Chalmers who are most affected by port noise and is below the level considered by the Environment Court to be appropriate for mitigation. Specific issues can be addressed (e.g. dropping containers) but in so far as their complaints are that the port is noisy there is very little that can be done.

- 7.7 Mr Stevenson has been involved in considerable correspondence with the Dunedin City Council and Port Otago claiming that Port Otago was in breach of its obligations and does not accept that the port is acting lawfully. That is palpably incorrect.
- 7.8 The noise model has been both verified by Mr Ballagh and peer reviewed by a specialist acoustic consultant, Mr Nevil Hegley. The ability to have L_{eq} readings provides protection for property owners.
- 7.9 Port Otago is committed to implementing the Dunedin City District Plan provisions and this is the proper mechanism for dealing with noise resulting from the ports operations.

VIII DUNEDIN CITY COUNCIL SUBMISSIONS ON NOISE

- 8.1 These submissions do not seek any conditions on this application but only an advice note. It is appropriate to explain Port Otago's position even though the issue is solely one for the Dunedin City Council and it is aware of the position without the necessity of an advice note.
- 8.2 The purpose of the outer contour line at Port Chalmers is to alert property owners as to the noisy environment and to impose restrictions on the erection of new houses. Significantly, it does not give any entitlement to mitigation as that arises through the Port Noise Management Plan and Port Noise Mitigation Plan.
- 8.3 Port Otago will support any change to the Plan to adjust the contour equating to the 55 dBA level if change is necessary. However, this may not occur for some time and so it would be premature to implement such a change before the effects are known, bearing in mind it is the property owner and not Port Otago who is adversely affected by any such change.
- 8.4 The issue of whether mitigation should be made available to properties outside the residential zone is a complex one relating to priorities as the commercial area in Port Chalmers receives high levels of noise and there are some properties used for residential purposes within that zone.

IX CONTAINERS ON BOILER POINT

- 9.1 Various Careys Bay submitters have complained Port Otago has not complied with its resource consent in relation to stacking containers at Boiler Point.

- 9.2 The Careys Bay Association unsuccessfully opposed Port Otago's application to stack empty containers 5 high and neither Port Otago nor the Dunedin City Council agree with the claim that "short term" relates to size of the stack rather than the duration of time the container spends at Boiler Point. The short term provision was designed to ensure the empty containers did not stay on Boiler point but were constantly being moved.

X TE RAUONE BEACH

- 10.1 Causes of the problems at Te Rauone Beach are complex and as explained by Lincoln Coe.
- 10.2 It is not appropriate or necessary that there be any conditions relating to the beach as that matter is to be dealt with in a separate resource consent application.

XI SECTION 107 RMA

- 11.1 There are three sections that are relevant in considering Section 107 in this application:
- (a) Section 15;
 - (b) Section 15A; and
 - (c) Section 15B.
- 11.2 Section 15 states:

15 Discharge of contaminants into environment

(1) No person may discharge any—

- (a) Contaminant or water into water; or**
- (b) Contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water; or**
- (c) Contaminant from any industrial or trade premises into air; or**

- (d) Contaminant from any industrial or trade premises onto or into land—**

unless the discharge is expressly allowed by a [national environmental standard or other regulations, a rule in a regional plan as well as a rule in a proposed regional plan for the same region (if there is one), or a resource consent].

11.3 Section 15A provides:

15A Restrictions on dumping and incineration of waste or other matter in coastal marine area

- (1) No person may, in the coastal marine area,—**
- (a) Dump any waste or other from any ship, aircraft, or offshore installation; or**
- (b) Incinerate any waste or other matter in any marine incineration facility—**

unless the dumping or incineration is expressly allowed by a resource consent.

- (2) No person may dump, in the coastal marine area, any ship, aircraft, or offshore installation unless expressly allowable to do so by a resource consent.**
- (3) Nothing in this section permits the dumping of radioactive waste or radioactive matter (to which section 15C applies) or any discharge of a harmful substance that would contravene section 15B.**

11.4 Section 15B provides:

15B Discharge of harmful substances from ships or offshore installations

- (1) No person may, in the coastal marine area, discharge a harmful substance or contaminant, from a ship or offshore installation into water, onto or into land, or into air, unless—**

- (a) The discharge is permitted or controlled by regulations made under this Act, a rule in a regional coastal plan, proposed regional coastal plan, regional plan, proposed regional plan, or a resource consent; or**
- (b) After reasonable mixing, the harmful substance or contaminant discharged (either by itself or in combination with any other discharge) is not likely to give rise to all or any of the following effects in the receiving waters:
 - (i) The production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials:**
 - (ii) Any conspicuous change of colour or visual clarity:**
 - (iii) Any emission of objectionable odour:**
 - (iv) Any significant adverse effects on aquatic life; or****
- (c) The harmful substance or contaminant, when discharged into air, is not likely to be noxious, dangerous, offensive, or objectionable to such an extent that it has or is likely to have a significant adverse effect on the environment.**

11.5 The wide definitions of contaminants and waste mean the applications could arguably breach the following sections without a resource consent:

- (a) The decant water from the dredge could breach s15 and s15B;
- (b) The disposal of the soil could breach s15 and s15A;
- (c) Discharges from the construction of the wharf could breach s15.

11.6 Section 107 RMA provides:

107 Restriction on grant of certain discharge permits

(1) Except as provided in subsection (2), a consent authority shall not grant a discharge permit [or a coastal permit to do something that would otherwise contravene section 15] [or section 15A] allowing—

(a) The discharge of a contaminant or water into water; or ...

if, after reasonable mixing, the contaminant or water discharged (either by itself or in combination with the same, similar, or other contaminants or water), is likely to give rise to all or any of the following effects in the receiving waters:

(c) The production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials:

(d) Any conspicuous change in the colour or visual clarity:

(e) Any emission of objectionable odour:

(f) The rendering of fresh water unsuitable for consumption by farm animals:

(g) Any significant adverse effects on aquatic life.

(2) A consent authority may grant a discharge permit or a coastal permit to do something that would otherwise contravene section 15 [or section 15A] that may allow any of the effects described in subsection (1) if it is satisfied—

(a) That exceptional circumstances justify the granting of the permit; or

(b) That the discharge is of a temporary nature; or

(c) That the discharge is associated with necessary maintenance work—

and that it is consistent with the purpose of this Act to do so.

(3) In addition to any other conditions imposed under this Act, a discharge permit or coastal permit may include conditions requiring the holder of the permit to undertake such works in such stages throughout the term of the permit as will ensure that upon the expiry of the permit the holder can meet the requirements of subsection (1) and of any relevant regional rules.

11.7 S107 is designed to protect water quality after reasonable mixing and there is nothing in the consents applied for that is a threat to water quality.

11.8 It is a well established law that what constitutes reasonable mixing requires a case by case evaluation of all the relevant facts that exist. In this case the evidence is very clear that the levels of turbidity are such that there will be no significant adverse effects, and such effects will be localized and temporary. Put simply, it would be entirely unreasonable not to grant the consents sought.

XII CLAIM THAT COCKLE QUOTA IS REQUIRED TO MOVE SPOIL

12.1 This issue was raised because section 89(1) Fisheries Act 1996 provides:

No person shall take any fish, aquatic life, or seaweed by any method unless the person does so under the authority of and in accordance with a current fishing permit.

12.2 The reason this section doesn't apply is the definition of taking which is defined in the Act as "fishing". Consequently, there are no quota issues as the removal of fish or aquatic life is an indirect consequence of the act of dredging.

XIII RESPONSE TO PROFESSOR BARKER

- 13.1 Port Otago does not see the necessity to monitor both Quarantine Island and Pudding Rock.
- 13.2 Incremental Capital works are expected to have the same effects as the existing permitted activity which is why the 3 year biological monitoring is proposed.
- 13.3 The 1:1 relationship of NTU and mg/l answers the concern that 24 NTU is too high.
- 13.4 Port Otago does not accept the degree of sampling suggested is required. The adaptive management provisions of the EMP are designed to identify and respond to actual concerns.

XIV CONCLUSION

- 14.1 There are compelling reasons why resource consents for this proposal should be granted, as set out in the evidence called by Port Otago. The proposal will promote the purpose of the Act and ensure that adverse effects on the environment will be appropriately avoided, remedied or mitigated.
- 14.2 The comprehensive conditions proposed, coupled with the EMP and adaptive management philosophy they embody, provide the community with ongoing access to information and for the opportunity to have ongoing input to the proposal.
- 14.3 On behalf of the applicant, I would like to conclude by thanking the commissioners for the way this hearing has been undertaken.