

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER OF a suite of applications for
resource consents for
Project Next Generation

BY Port Otago Limited

**STATEMENT OF EVIDENCE OF SUZANNE MARIE WATT
ON BEHALF OF THE OTAGO REGIONAL COUNCIL
19 APRIL 2011**

Introduction

1. My name is Suzanne Marie Watt and I am a Senior Resource Officer here at the Otago Regional Council. I have held this position since December 2007 and have worked in the Consent Team here since 2005.
2. I hold a Master of Science with Honours and a Bachelor of Science in Geography from the University of Canterbury. I completed my Masters Thesis in Coastal Processes and Geomorphology in 2002 under the guidance of both Professor Bob Kirk and Dr Martin Single.
3. I would like to disclose to the Panel, the applicant and members of the public that although I studied under Dr Single who has prepared reports for Port Otago Limited (the applicant) and has presented evidence in support of their application, I have not undertaken any work with Dr Single since 2002, nor have I undertaken any work, research or had any involvement with him in relation to Otago coastal processes and in particular any matters for these applications.
4. In preparing this evidence I have assumed that the Panel will take the jointly written section 42A Staff recommending report as read. The report and recommended consent conditions were prepared by Peter Christophers, Principal Resource Officer of the Consent Team and myself, unfortunately he is unable to be here for the duration of this hearing.

Layout of the Evidence

5. I have prepared this evidence on behalf of the Otago Regional Council in relation to the evidence presented prior to and during this hearing by the applicant, and the various submitters who have taken part in this resource consent process. My evidence is in relation to the suite of applications by the applicant for Project Next Generation.
6. This evidence will address matters which have arisen since the release of the recommending report and as a result of evidence presented in this hearing. Matters to follow are:
 - Existing Consent
 - Dredging and Disposal sites
 - Other Uses of Dredge Spoil
 - Wharf and Jetty matters
 - Statutory matters
 - Future requirements

- Consents and conditions
- Conclusion
- References

The Existing Consent 2000.472

The existing near-shore disposal sites

7. Throughout this hearing there have been a number of discussions in regard to the actual volumes of dredge spoil disposed of at the near-shore disposal sites and whether increasing the actual amount disposed of, to that which has been consented, would have any additional effects. Further consent conditions or changes to existing conditions have also been proffered from various submitters (specifically FROTH – submitter 179 and R Reeves submitter 147).
8. The original consent was a restricted coastal activity under the Regional Plan Coast for Otago and the NZCPS 1994, and was granted by the Minister of Conservation in Wellington in 2002. In the processing of the consent, and the granting of it by the Minister, the effects of the full volume of dredge spoil being deposited at the three near-shore disposal sites was assessed. Therefore increasing the actual amount of dredge spoil at the existing disposal sites will have no additional effects over and above those which have already been considered and consented.
9. I do not believe that it is appropriate that this matter receives any more attention, other than to reiterate that coastal permit 2000.472 expires on 1 December 2011 and the applicant intends to apply for a replacement consent. The effects of the volumes can be reassessed at that time as there will be more information available as to the actual effects that have been determined. I believe Dr Single mentioned he was currently working on information relating to the replacement of that consent.

Compliance with the existing consent

10. Several submitters have passed comment on the Otago Regional Council's enforcement of conditions on current Coastal Permits held by the applicant. I sought comment from the council's Compliance and Environmental Services Units in regard to compliance with existing consents and they have advised me that the applicant's performance is monitored in relation to conditions requiring reporting, of which there are no outstanding issues, and that there have not been any complaints received in relation to the applicant's consents under the Otago Regional Council's jurisdiction so an audit of the consents has not been required.

The variation application

11. The applicant has also applied for a variation to the coastal permit for the near-shore disposal sites. Conditions on the existing consent should not be altered unless they directly relate to the proposed variation, otherwise they are beyond the scope of the variation. Thus what the applicant has applied for, and what may be considered in this hearing, is limited to the terminology of the reason for dredge spoil disposal, not specifically the source of it or the volumes of material. The existing sites already receive dredge spoil from the New Era for maintenance dredging, and the applicant is wishing to expand the terminology of the consent to include capital dredging which is more intensive. It does not relate to the volume of material being disposed of as this is not being varied, and could not as it would result in a new consent being required.
12. Therefore the alterations to conditions that were proffered by FROTH are not able to be considered by the Panel as they are beyond the scope of the variation applied for.

Replacing the near-shore disposal site consent

13. I now refer to you back to discussions held on Monday the 4th of April which arose from the evidence presented by Mr Andersen, Counsel for the applicant. Paragraph 18 of Mr Andersen's evidence discusses the right to continue operating under a consent whilst a replacement application is lodged. This is in specific reference to Coastal Permit 2000.472, which has been applied to be varied and which expires on 1 December 2011.
14. Mr Anderson was correct in stating that if the applicant applies for a replacement consent before 1 June 2011 (6 months before expiry) then they may continue to dispose of dredge spoil at the three near-shore disposal sites until the decision is made on the replacement application and any appeals are resolved.
15. He is also correct in that if an application is made in the period being between 6 and 3 months before the expiry of the consent (i.e. between 1 June and 1 September 2011) they will only be permitted to continue to dump dredge spoil at the near-shore sites at the Otago Regional Council's discretion.
16. If they lodge a replacement application to the Otago Regional Council within three months prior to the expiry date (after 1 September 2011), then the council no longer has any discretion to enable disposal to continue and all disposal to those sites must cease on 1 December 2011.

Dredging and Disposal sites

Permitted Baseline

17. The evidence of Mr Mitchell (Page 4, para 3.6) and that of Mr Andersen (page 18 para 67-70) discusses the permitted baseline of the Regional Plan Coast in relation to the existing dredging and its associated discharge of dredge water, not spoil disposal. I agree with their evidence in that Rules 10.5.6.1 and 9.5.2.3 permit maintenance dredging to specific depths (as the harbour exists now) without restricting the duration, intensity, or the effects on the environment particularly turbidity and sedimentation and noise.
18. With the capital dredging proposals, the work would be permitted on a 24 hour basis even with the larger dredge if it was being used for maintenance purposes and only to the depths stated in the Regional Plan: Coast. But as it is proposed to use it for deepening and widening the harbour channel beyond the level of depth that is permitted, consent is required and the effects can and are being considered.

Noise

19. In regard to dredge noise in the incremental and capital works phase, two conditions have been recommended in the draft conditions. (refer to 2010.193 conditions 10 and 11). These are stated below:

All activities other than Major Capital Works or the use of explosives shall comply with NZS 6803:1999 Construction Noise Standard.

Major Capital Works between the hours of 7.30 am and 8.00 pm during weekdays and 7.30 am and 6.00 pm on Saturdays shall comply with NZS 6803:1999 Construction Noise Standard. At other times the dredge equipment will operate such that the Construction Noise Standard night time level of 45 dBA Leq shall not be exceeded within 15 metres of a residential dwelling, except:

- (a) Where the residential dwelling has been acoustically treated; or*
- (b) Where the occupier of the residential dwelling has consented in writing to the work taking place.*

20. On the 24th of April 1996, the Otago Regional Council transferred to the Dunedin City Council all its enforcement functions, powers and duties in respect of the emission of noise and the mitigation of the effects of noise ¹in the coastal marine area or adjoining the district of the Dunedin City Council.

¹ Section (30)(1)(d)(vi) Resource Management Act 1991

21. As this Deed of Transfer (of powers) has not been revoked or relinquished by either party, then the sole responsibility for enforcement of noise in the coastal marine area lies with the Dunedin City Council and not the Otago Regional Council.

Pilots Wharf

22. A few of the submissions and some of the evidence presented during this hearing have created discussions on the old Pilots Wharf on the end of the Aramoana spit. Discussions have ranged from its current state of repair to potential uses for it into the future. One aspect that is now clear is that the Dunedin City Council have accepted responsibility for the structure.
23. The structure is in a dilapidated state and there is signage in place advising that the structure is unsafe for use. Figures 1 and 2 show the pilots wharf in its current state and the safety signage.



Figure 1: The warning sign on the Pilots Wharf (photo taken 17 April 2011 - S Watt).



Figure 2: The current state of the Pilots Wharf (photo taken 17 April 2011 - S Watt)

Long Mac

24. Long Mac was first mentioned in the applicant's AEE documents (Single *et al* 2010) as being a rock wall constructed in conjunction with the Mole for alignment and protection of the harbour channel. It has also been raised in several discussions of evidence such as that of the Aramoana League. Long Mac is evident in aerial photographs of the site and is shown in Figure 3.



Figure 3: Aerial view of Long Mac at the Aramoana spit (photo from the evidence provided by Kai Tahu ki Otago Limited and Te rūnanga o Ōtākou)

25. In the report by Bunting *et al* (2003a) the North Spit Wall (locally known as Long Mac) was completed in 1906 to stabilise the shipping channel. In later years (1910-1912, 1929-1935, 1945-1946) it was increased in height above the tide level.

26. The development of Long Mac also slowed the retreat of Shelley Beach which had become sediment starved after the construction of the Mole, which acts to block the longshore drift of sediments to the south. The Bunting *et al* (2003a) report stated that Shelly Beach was prograding rapidly prior to the construction of the Mole, eroded severely after construction of the Mole (double what it had prograded) and after the construction of Long Mac, erosion rates more than halved. Renourishment of Shelly Beach through deposition of dredge spoil into the Shelly Beach near-shore system has reduced erosion rates (Bunting *et al* 2003b).
27. Long Mac not only works with the Mole to prevent infilling of the harbour and in particular the harbour channel, it is also acting to protect the very end of the Aramoana Spit from significant wave action, whether that be man made or natural. However, Long Mac is also in a serious state of disrepair and again no owner of the structure is clear.
28. I acknowledge that Long Mac was not discussed in any manner in the Officers Report, and that I now believe is an omission. Deepening of the harbour channel adjacent to Long Mac has the potential to undermine the toe of the structure as it would the rock revetment under the multipurpose wharf. Undermining the toe support of a weakened structure such as Long Mac will result in its ultimate destruction. As a result I believe there is the potential for increased erosion effects (man made or natural) on the tip of the Aramoana spit and the Ecological Area behind.
29. Although I am not proposing that the applicant repair the structure, I do believe that more investigation into the role of the wall, particularly the protection of the tip of the spit and ecological area, needs to be undertaken. I recommend that the Panel require this either before any channel works consents are granted, or prior to works commencing.
30. If research into Long Mac is undertaken and it shows that it has and is (despite its deteriorating state) protecting the Spit tip and Ecological area then I would expect that The applicant would be responsible for ensuring the toe of the structure is reinforced during the dredging works as they are the rock revetment under the multipurpose wharf.
31. I recommend the following condition for coastal permit 2010.193 to support this investigation and potential integrity protection works of Long Mac.

Prior to any incremental or capital dredging within 200 metres of Long Mac commencing, the consent holder shall undertake research into the

coastal processes and the role or function of Long Mac as it was after construction and as it is now. If the research indicates that Long Mac has been or is working to provide protection to either the spit tip, Aramoana Ecological Area or maintain alignment of the harbour channel, then the consent holder shall, at minimum, undertake works necessary to protect and reinforce the toe of Long Mac to protect its integrity with a deepened channel.

32. Obviously if the applicant determined that Long Mac has a vital function in protecting the harbour channel, spit tip or Aramoana Ecological Area, they may choose to repair the entire structure. But this is a decision of theirs left until the function of Long Mac has been determined.
33. I have discussed this consent condition with the applicant and they are in agreement that the condition be imposed. It has been incorporated as a condition of consent in the draft suite of consent that the applicant has provided.

Surf Breaks

34. There were a number of submissions in relation to three national recognised surf breaks and the protection of them from increased sediment supply altering the break pattern of the waves. Many of these concerns were from the disposal of incremental dredge spoil at the three near-shore sites.
35. As discussed earlier in my evidence, the effects of the volume of sediment disposed of at these sites was consented in 2002 and can not be discussed at this hearing. This issue should be addressed by the applicant when they lodge applications to replace the existing permit 2000.472.

Compensation

36. The Resource Management Act (1991) does not provide for compensation as a measure of mitigation of effects on affected parties. The evidence of Mr Mitchell (pages 24 and 29, paragraphs 3.98-3.99 and 5.2 point 5) outlines the case law surrounding this aspect of contention. Compensation is something that would be a private matter between the applicant and the relevant parties if they choose to do so.

Records of dredge spoil

37. In the evidence present by Dr Bell (page 46, paragraph 174), it was recommended that a couple of additional pieces of information to be gathered at the time that dredging and disposal activities are occurring. I have reviewed the additional information that he believes would be relevant and valuable for

providing background information for the correlation of monitoring data for assessment and associated mitigation responses of the actual effects of the dredging and disposal activities. I would like to recommend to the Panel, if you are of the mind to grant the consents, that the following information be included in the requirements of condition 22 of 2010.193 and proposed condition 9 of 2010.198.

(d) GPS location and chart reference of the area (including start and end points) of the dredging where the material is sourced.

(e) The date and time of dredging and the associated disposal.

38. The applicant is also in agreement with this inclusion and it too is incorporated in the draft suite of consents.

Monitoring at Site A0

39. Monitoring the dredge spoil disposal activities at site A0 is a crucial aspect of any disposal consent for this activity, if it is granted. Evidence presented during this hearing and prior to it, is clear in that there will be effects as a result of the deposition. This matter is not in contention. What is in contention is the nature and scale of the effects and whether the scientific research will be found to be an accurate representation of the actual effects that are experienced at the time that dredging disposal occurs, and afterwards over time.
40. Evidence has been presented by a number of submitters which express the cultural concerns over the potential damage to cultural values and in particular the effects on Kaimoana, guardianship and the social and economic well being of the affected rūnanga.
41. One of the concerns is that there is significant modelling and research that indicates that the effects of sediment disposal at site A0 should be minor, and in many cases not noticeable over and above natural sedimentary processes. But the questions have been raised of “what if the modelling is wrong and effects appear to be more than what is expected. What happens then to mitigate the effects and protect the cultural values and the environment?”
42. The recommending report prepared by myself and Mr Christophers has provided a suite of monitoring conditions to guide the Panel if they are of the mind to grant consent 2010.198 for the disposal of dredge spoil at site A0.
43. Bathymetric surveys are one requirement of the monitoring conditions that I recommend to the Panel. The frequency of which is been devised to reflect the intensity of the varying intensity of capital works and disposal. However, given

the applicant could and would most likely undertake all of the major capital dredging and disposal in the shortest time possible (primarily for economic and shipping reasons): i.e. 7-8 months, I recommend to the Panel that the bathymetric survey frequency is increased during and immediately following the major capital dredging and disposal activities.

44. At present there are only required to do bathymetric surveys on a 6 monthly basis during major capital works. If the major capital works occurs over a 7-8 month period then this is clearly insufficient to monitor changes in the environment during the most intensive disposal at site A0. I therefore recommend the Panel amend condition 10(b)(ii) of 2010.198 to reflect a minimum three monthly high intensity bathymetric survey. I would also like to add to condition 10 (b) subsection (iv) that bathymetric surveys in accordance with the high intensity scheme continue on an annual basis for three years after the cessation of major capital disposal. This will enable monitoring of seafloor changes of sediment movement. Some of which may be clearly linked to sediments movement from site A0.
45. I believe this monitoring is appropriate in scale and mirrors the biological monitoring already proposed in the suite of consents.

Environmental management plan

46. I recommend that the Environmental Management Plan developed by the applicant for the disposal site A0 includes a monitoring and management strategy. If the Panel adopt this recommendation, then condition 8 of 2010.198 should have an additional provision added

a description of management and monitoring of Site A0 and those areas affected by site A0 as shown in the bathymetric surveys undertaken under condition 10 of this consent.

47. Such a condition will provide more certainty to parties who may potentially be affected by the movement of sediments from the disposal site. The applicant is in agreement with this condition.

Hydrodynamic modelling

48. Although the applicant has provided robust hydrodynamic modelling of the effects from the disposal site in relation to sediment transport, there is no ability at this stage (as consent has not been granted) for them to verify the accuracy of the modelling results. Such verification will provide certainty over the direction and volumes of sediment and its movement in the marine environment.

49. One of the conditions agreed to by both the Director General of Conservation and the applicant requires such model verification (DOC condition 10). I have reviewed this condition and believe it is appropriate and valuable for the robustness of the suite of conditions. I recommend it be included by the Panel if consent is granted. The condition I refer to is included as condition 13 of 2010.198 on the draft suite of conditions provided by the applicant today.

Sediment Size at Disposal Site A0

50. Dr Bell presented evidence in regard to the sizes of sediments appropriate for disposal at site A0 (page 54 para 195). Dr Bell is concerned that condition 6 of Coastal Permit 2010.198 (for the disposal site) is not consistent with the purpose of having site A0 which is to be for the disposal site for sands and silt sized sediment classes. The consent condition proposed was intended to ensure that no rocks or unnatural materials are disposed of at A0 where the size would be out of character with the existing environment.

51. Condition 6 restricts the sediment size to all sediments less than 2 millimetres in particle sizes. This includes sediments with the following sedimentary descriptions in accordance with the Wentworth Scale:

- Granules
- Very coarse sand
- Coarse sand
- Medium sand
- Fine sand
- Very fine sand
- Coarse silt
- Medium silt
- Fine silt
- Very fine silt
- Clay

52. For clarification for members of the public unfamiliar with the Wentworth Scale, it was published by Chester Wentworth in 1922 and provides a grading scale for different particle sizes. It is widely still widely used in the geological and geomorphological professions despite other variations being available.

53. Given that silts, clays and all sand particles sizes are provided for in condition 6 as I had proposed, the applicant should have confidence that the disposal site A0 is able to be used for the proposed purpose and that the consent condition is appropriate. I believe the consent condition as it stands should alleviate Dr Bells concerns.

Turbidity Monitoring

54. I accept the applicant's reasoning for the new turbidity monitoring control site and also recommend that the Panel adopt this site and replace Plan 11251 in Appendix 1 of 2010.195 with this new location.
55. Evidence presented by Dr James (page 44-45, paragraph 162-163: 177 and 178) states that he does not believe condition 5(c) of 2010.195 is necessary as long as incremental capital dredging is periodically undertaken within the vicinity of the key monitoring areas over the 6 month period.
56. In regard to condition 5(c) the intent of my condition is to ensure that the sensitive areas are monitored when effects could be experienced. Tidal flow at the time of dredging is a key point in this regard and the down tide² area specifically should be monitored as a result.
57. The sensitive areas are an important part of both the natural and human use values of the Otago Harbour and need appropriate protection. My initial concerns were that monitoring under conditions 5(a) and (b) may simply reflect that there has been no dredging near or uptide of a specific area (for example the Aramoana Ecological Area) during the first six months of the incremental capital works commencing. Therefore the monitoring regime may be ceased. If this is the case then when the incremental capital dredging occurs near one of the identified sensitive areas then there is no way to determine the effects of the dredging and implement mitigation measures in any manner, for example ceasing the dredging at that time.
58. In reviewing Dr James evidence I am satisfied that the applicant's proposed condition is appropriate but I recommend that the word vicinity is specified more clearly as the word is ambiguous.

Contaminants in sediments at Sawyers Bay

59. A number of submitters have raised concerns over the contaminants in harbour sediments in Sawyers Bay. The concerns relate to the mobilisation of these contaminants when dredging occurs. I would like to clarify for the Panel that mobilisation of these contaminants from dredging activities is unlikely to be an issue in relation to the proposed dredging area. The applicant has proposed to dredge the lower harbour which incorporates the Port Chalmers swinging and berthing area. They have not proposed any dredging in the vicinity of Sawyers Bay and I have attached the following figure 4 to assist.

² down tide means towards the Tairaroa Head in an ebb tide and towards Dunedin in a flood tide

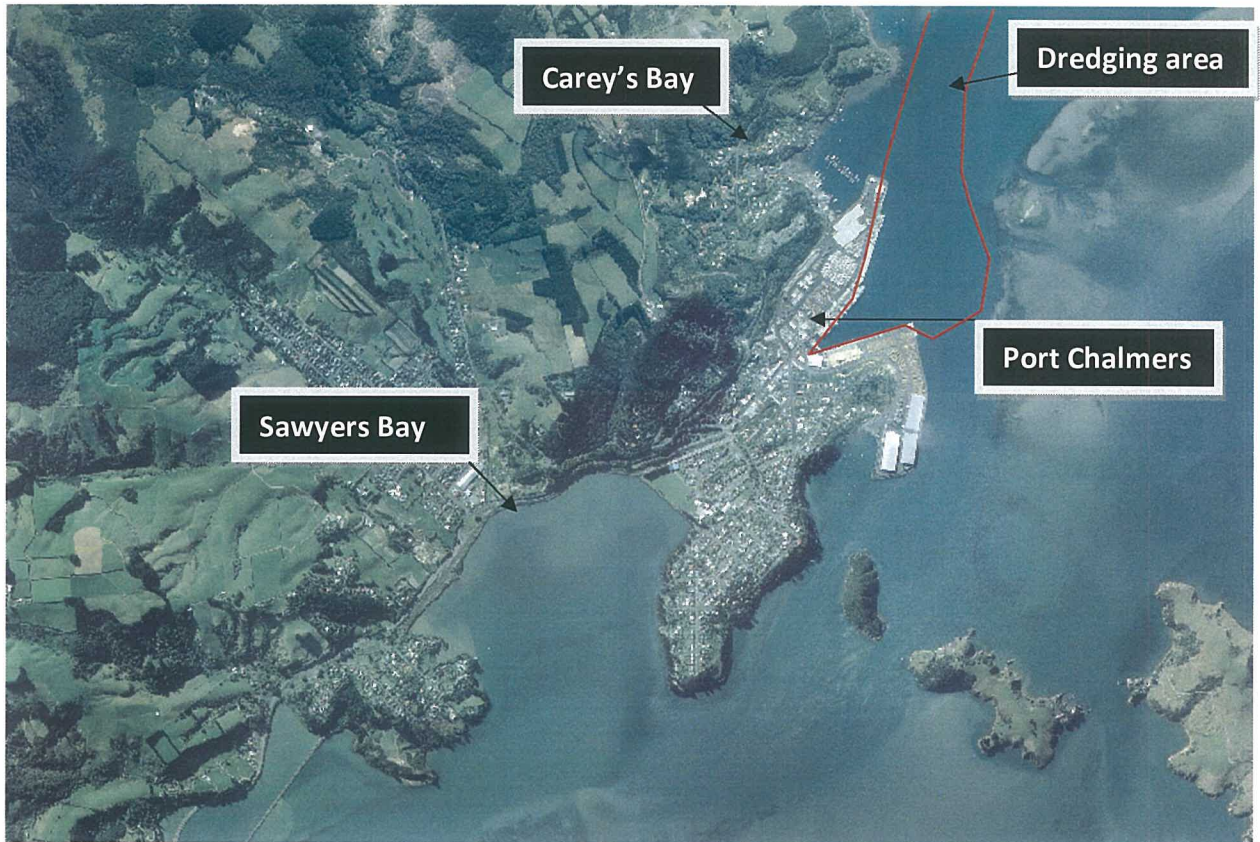


Figure 4: Location of Sawyers Bay in relation to the proposed dredging area.

Other Uses of Dredge Spoil

60. A number of submitters have presented evidence at this hearing that suggests the potential for the use of dredge spoil as a resource for other activities and features, for example the creation of artificial islands, road works, construction and reclamations. The use of the dredge spoil is a matter that is beyond the scope of this hearing as the proposals are for the dredging of the harbour and for potential disposal of dredge material at site A0.
61. I have however, been careful in the proposed conditions to make sure that the applicant is not restricted in its ability to use the dredge spoil for other purposes. There are no conditions that state dredge spoil must be disposed of at site A0 or the near shore sites, or that dredge spoil at site A0 must be of a volume of 7.3 million cubic metres. So the applicant is enabled to reduce the amount of dredge spoil taken to the relevant disposal sites and use the spoil for other purposes or as a resource.

Wharf and Jetty matters

Noise

62. After reviewing submissions and hearing all the evidence presented it is undoubtably clear that noise at the port is an issue. There are a significant

number of concerns in relation to operational port noise relating to berthed vessels, loading and unloading, vehicles and their safety beeping and operating refrigerator containers and the bumping and moving of empty containers.

63. Unfortunately the Otago Regional Council is bound by the Resource Management Act and provisions in the District and Regional Planning documents and in this cross boundary case does not have jurisdiction to consider the effects of noise occurring outside the coastal marine area. This is the role of the Dunedin City Council and the Port Noise Management and Mitigation Plans.
64. I would like to make it clear that if the Panel is of the mind to grant the consents, in line with my recommendation, they are only consenting the actual noise in relation to the activities being consented. In this manner I mean that for the extension of the multipurpose wharf, the consents, if granted, would be consenting and restricting only the noise generated during its construction. It does not consent port operational noise in the use of the extended portion of the multipurpose wharf. The operational use aspects raised through this consent process are actually covered by the Dunedin City Councils District Plan (Rule 21.5.2), the Port Noise Management Plan and Port Noise Mitigation Plan.
65. For the extension of the multipurpose wharf and construction of the fishing jetty, I have recommended conditions on coastal permits 2010.197, 2010.200 and 2010.202 which limit the construction noise to the New Zealand Standard 6803 (1999).

Visual Amenity

66. Visual amenity is a primary concern raised by submitters in regard to the extension of the multipurpose wharf having adverse effects on the character of Carey's Bay, light spoil and light pollution of the night sky, the presence of stacked containers blocking views and the presence of the large 60T cranes. Many of these submissions raised the potential for increased visual impacts and suggested restrictions be imposed on the development.
67. Again many of the aspects that are causing concern and stress to submitters are those occurring on land and under the jurisdiction of the Dunedin City Council, particularly that of container storage and vehicle movements.
68. As the consents applied for here are solely for the construction of the multipurpose wharf extension, and not for its occupation of the Coastal Marine Area nor for its use, the Otago Regional Council has little ability to impose conditions on the applicant's activities once the wharf is extended. Even if

conditions of this nature are imposed by the Panel, at the end of the consent term for construction (10 years) the consent will expire and such conditions would not need to be adhered to. This matter may be best addressed when a building permit for the structure is applied for.

69. As the Otago Regional Council is responsible for consenting the wharf structure and the wharf structure alone. Therefore the visual amenity effects considered here are simply relating to the construction and design of the multipurpose wharf and fishing jetty.
70. The designs of both structures are in keeping with the existing environment, being the existing multipurpose wharf and port area, and the fishing jetty being in keeping with the existing marina at Carey's Bay. Therefore the effects on visual amenity of these structures is no more than minor as stated in the Officers Report.

Discharge of Contaminants to Air

71. Several submissions and evidence raised the issue of the discharge of contaminants to air from the ships berthed at Port Chalmers. Although the Regional Plan: Air for Otago governs discharges to air in the coastal marine area it falls silent on the matter of the discharge from ships. Therefore the default mechanism for protection of the environment is section 15B of the Resource Management Act 1991.

72. Section 15B states: (as abbreviated to maintain the relevant points)

No person may, in the coastal marine area, discharge a contaminant, from a ship, into air unless-

*The discharge is permitted or controlled by regulations made under this Act, a rule in a regional coastal plan, regional plan or a resource consent:
or*

The contaminant, when discharged to air, is not likely to be noxious, dangerous, offensive or objectionable to such an extent that it has or is likely to have adverse effect on the environment.

73. If the ships can not comply with the provisions of section 15B, then enforcement action can be taken.

Occupation of the coastal marine areas by the fishing jetty

74. There has been significant discussion during this hearing about the occupation of the coastal marine area and public access and restrictions as part of the establishment of a public use fishing jetty.

75. As stated in the recommending report (paragraph 102, page 18) the applicant currently holds a Coastal Permit for the occupation of the coastal marine area to carry out port related commercial undertakings. Although the fishing jetty is being constructed by the applicant, it will not act as a jetty for any port related commercial undertakings as it is being constructed exclusively for public recreational use. Thus coastal permit RM10.193.01 has been added to this suite of consents to provide for the occupation of the coastal marine area for this jetty.
76. With this occupation permit come a number of issues which have been raised and discussed throughout this hearing. Most of these issues relate to the fact that the fishing jetty, although potentially being consented for its own occupation of the coastal marine area and for public use, would actually occupy part of an area of the coastal marine area that is part of The applicant's occupation permit for port related commercial undertakings. As a result this poses significant challenges for a public use structure in this area.
77. I do not believe it is unreasonable for the applicant to request a consent condition on a consent that they hold that enables them to exclude the public for safety reasons in connection with port operations. In this regard I recommend to the Panel that the following condition be included on coastal permit RM10.193.01, if the Panel decide to grant the consent:

The fishing jetty shall be available to the public at all times except where the Port Otago Limited needs to exclude the public pursuant to its rights under its existing Coastal Permit 2010.011 over the same area (such exclusion only being permitted for operational or safety reasons.

78. Policy 9 of the New Zealand Coastal Policy Statement (2010) also supports a condition of this nature in that it states:
"a) ensuring that development in the coastal environment does not adversely affect the efficient and safe operation of these ports..."
79. Issue 7.2.2 of the Regional Plan Coast highlights that
"Some activities in the coastal marine area require occupation and can result in a reduction in public access to and along the coastal marine area."
80. The explanation of this issue acknowledges that although Section 6 of the Act requires public access to be maintained or enhanced, some activities in the coastal marine area will result in a restriction of access. Some activities such as port operations may require occupation for safety reasons. The Health and Safety in Employment Act 1992 makes the safety of the people within the area

where public are restricted the responsibility of the persons requiring the restrictions on public access.

81. Policy 7.4.3 of the Regional Plan Coast relates to this matter and in its explanation it states that public access should not be restricted unless there is a need to protect public health and safety. Within the Otago Harbour, such a restriction may be required for safety and navigational reasons in the areas surrounding the commercial port areas given the movement of large ships in confined spaces. Such restrictions are also consistent with the Harbours Act 1950, which controls the movement of ships and any consequential temporary restriction of public access for safety and navigational reasons.
82. I note that if the public are berthed at the fishing jetty and no consent condition exists for the applicant to exclude the general public, the Harbour Master may still request that they move for safety reasons under the Harbours Act 1950.

Statutory Matters

Section 105 of the Act

83. The Officers report has not provided an analysis of Section 105 of the Act. However I agree with the assessment made by Mr Mitchell in Section 4 of his evidence.

Section 107 of the Act

84. The Officers Report has not done analysis of Section 107 of the Act as I do not believe it is relevant to these applications. I do acknowledge however, that it would have been beneficial that some comment on its relevance was made in the report.
85. Section 107 applies when something will contravene section 15 or 15A of the Resource Management Act 1991. The discharge of contaminants from ships, are governed by section 15B and not 15 or 15A.

Section 104E of the Act

86. There have been several discussions during this hearing about the carbon footprint of port activities and whether or not the larger ships would reduce the carbon footprint. I would like to draw your attention to section 104E of the Resource Management Act 1991. This section relates to the discharge of greenhouse gases. Section 104E states:

“when considering an application for a coastal permit to do something that would otherwise contravene section 15 of the Act in relation to the

discharge into air of greenhouse gases, a consent authority must not have regard to the effects of such a discharge on climate change, except to the extent that the use and development of renewable energy enables a reduction in the discharge into air of greenhouse gases either

(a) In absolute terms

(b) Relative to the use and development of non-renewable energy.”

87. In *Genesis Power Ltd v Greenpeace NZ Inc*³ [2008] 1NZLR 803 ISELRNZI NZRMA 125 the court of Appeal declared that the exception, which allows greenhouse gases and climate change to be considered, applies only to resource consent applications involving the use of renewable sources of energy production. The decision of the Court of Appeal was upheld by the Supreme Court.
88. The Court of Appeal noted that the underlying policy of the Act is to “require the negative effects of greenhouse gases causing climate change to be addressed not on a local basis but on a national basis, while enabling the positive effects of the use of renewable energy to be assessed locally or regionally”.
89. For these applications the Panel must not give regard to the discharge of greenhouse gases or their effects on climate change.

New Zealand Coastal Policy Statement

90. These applications have been processed under the New Zealand Coastal Policy Statement 2010, not the original New Zealand Coastal Policy Statement 1994. I acknowledge that the applications were lodged prior to the NZCPS 2010 becoming operative and that processing under the Plans at the time of application is the appropriate method of practice. However, the new NZCPS is not dissimilar to the original NZCPS but has removed specific application of Restricted Coastal Activities. It has introduced other aspects like recognised surf breaks that the original NZCPS did not contain.
91. In a recent hearing held at the Otago Regional Council offices for another suite of coastal permit applications, of which the processing also straddled the implementation of the new NZCPS, the Minister of Conservation representative (Dr Hamish Rennie) argued that the new NZCPS should be given the most weight as it has adopted the significant values of the original NZCPS and has gone further to identify significant coastal features and landscapes requiring protection. The new NZCPS 2010 is also the policy statement that will

³ Brookers Resource Management 2008

be in governance throughout the terms of consent if that Panel chose to grant them. Thus these applications were processed under the new NZCPS 2010.

Future Consent Requirements

Navigation Beacons

92. Re-alignment of the lower harbour channel as a result of the widening of various sections of the channel will need to occur as part of Project Next Generation. As a result the applicant will likely need to move many of the Navigational beacons (aids) which line the boundary of the harbour channel.
93. Although the movement of these navigational beacons has not been discussed and does not form part of this consent or hearing process, it is important that the applicant are aware of the additional consents that will be required.
94. The Regional Plan Coast: for Otago contains specific rules in relation to structures in the coastal marine area, and specifically for navigational aids. Rule 8.5.2.1 on page 84 states:
The extension, alteration, replacement or reconstruction of any navigational aide is a permitted activity provided:
 - (a) *Written notice of the proposed extension, alteration, replacement or reconstruction is given to the Otago Regional Council*
 - (b) *The Naval Hydrographer is informed of any change in size or position of the aid.*
95. The rules in the Regional Plan Coast do not provide any permitted activities for the placement of a structure which means that the placement of a structure of a navigational aid (in its new location) will need to be applied for.
96. The Regional Plan Coast may also require consent to be applied for in regard to the removal of the existing navigational aids which are to be shifted. This depends on the construction of the structure and is not something I currently have knowledge about. Rules 8.5.3.1 and 8.5.3.2 apply in this case.
97. I also note that in accordance with the Harbours Act 1950, The applicant will be required to contact the Director of Maritime Transport for approval of the following:
 - (a) Any change to a navigational aid has written permission obtained from the Director before undertaking the work; and
 - (b) Approval for reconstruction or change in the size of a structure within two weeks of completing the work.

(c) The Hydrographer of the Royal New Zealand Navy is informed of the demolition or removal of a structure within 2 weeks of completion so that navigational charts can be updated.

98. The occupation of the coastal marine area with the new navigational aids will also require consent under rule 7.5.1.5.

Turbidity Monitors

99. The recommended conditions of consent require monitoring of turbidity at in the lower harbour and any at the off shore disposal site. As discussed in the evidence of Dr James, the turbidity meters are to be fixed to the sea bed for the duration of each monitoring phase. For this, consent will be required for the placement and occupation of the sea bed by the turbidity meters under rules 8.5.1.7 and 7.5.1.5 of the Regional Plan Coast.

Stormwater

100. The discharge of stormwater off the extension of the multipurpose wharf is likely to fall under the permitted activity provision of the Regional Plan Coast Rule 10.5.3.1. The wharf does not comfortably fit the definition of an industrial or trade premise as it is a coastal structure and all other provisions of the rule can be met.

101. Furthermore the Otago Regional council does not consent poor management practices, so if consent is required, it is preferable that the applicant manages stormwater in such a way that the discharge is *de minimus*.

Consents

Ultra vires conditions

102. In the interests of proposing consent conditions that are contained within my report, I have taken particular care to involve other relevant authoritative bodies and interest groups, without rendering the conditions as *ultra vires*. My wording of several conditions has been careful in this regard.

103. In response to Page 6 of the evidence presented by Mr Reeves (on behalf of FROTH) he has proposed a re-write of condition 8 on 2010.193. His proposal states “ In the Area adjacent to Taiaroa Head and shown in Appendix 6 of this consent, no capital dredging should take place from 15 September to 30 November and 1 January to 1 March, except with the approval of the Department of Conservation”

104. Unfortunately the re-write of the condition requires an action of a third party (in this case the Department of Conservation) which renders this condition as *ultra vires*, which Mr Reeves was trying to avoid, and should not be included as a final condition of consent. I recommend that my condition, as originally written, should remain as it enables the Department of Conservations participation and does not render the condition *ultra vires*.
105. I do note however, that this condition refers to Appendix 6 and should refer to Appendix 5. This has been updated in the draft conditions attached as Appendix 1.

Conditions agreed between the applicant and the Department of Conservation (on behalf of the Director General of Conservation)

106. The evidence of Mr Hill on behalf of the Director General of Conservation explained that an agreement has been reached between the applicant and the Director-General in relation to the various consents, if they are to be granted.
107. I have had a chance to review the conditions that have been agreed and I now make comment in relation to them on behalf of the Otago Regional Council.

DGC 1- Definitions as conditions of consent

108. The definitions for Incremental Capital and Major Capital have been proposed to be included as conditions rather than as advice notes. The agreement also includes a provision that navigation of vessels is not being governed by the consents.
109. It is not and has never been council practice to include definitions of activities as specific consent conditions. They have always been included, if needed, as advice notes, and thus has been done so for these consents. But if the Panel are of the mind to include them as conditions of consent then I am agreeable to that.

DGC 2 – coastal permit 2010.193 condition 8

110. The agreed conditions specify that no dredging shall be undertaken over two time periods, one of which is between 1 January and 14 February. This is actually consistent with the condition proposed in the Officer's report and associated draft conditions. What was not tracked in the condition was that the end of the condition has been amended.
111. My original condition stated:
"except with the approval of the Consent Authority in consultation with the Department of Conservation"

112. The proposed new condition states:
“except with the approval of the Consent Authority who will have particular regard to the views of the Department of Conservation”
113. My interpretation of this agreed change is that the Department of Conservation do not want to be consulted specifically, but instead are ok with the Consent Authority making the decision provided their views are given regard to. It is unclear to me what the actual intent of the change is.
114. In the interests of making the condition certain, particularly from a Compliance perspective, my preference is to remain with my original wording for the condition as it requires the Consent Authority to consult with the Department of Consultation before making any decisions.

DGC 3 – coastal Permit 2010.193 condition 9

115. I have no concerns with the deletion of the words “feeding and” from this condition. In the copy of the draft conditions that the applicant provided to me on Sunday night there is also the deletion of the words “Incremental Capital Works” of which it appear the DGC agreed to. It is unclear where this deletion has arisen from as it was not highlighted in the evidence of Mr Hill, but I assume it is in relation to the fact that incremental capital works undertaken by the New Era are similar in relation to effects on bird species to that of the current maintenance dredging. I have no concerns with the removal of Incremental capital works from this condition.

DGC 4 – coastal permit 2010.195 condition 13

116. The inclusion of the requirement for a “suitably qualified person or organisation” to undertake biological monitoring surveys of the relevant areas is reasonable and will also provide a degree of confidence to many submitters over the validity of the results. I am happy for this to be included.

DGC 5 – coastal permit 2010.198 new condition

117. *“The consent holder will ensure that aggregations of feeding birds and marine mammals which might be present in the disposal ground are avoided at all times by ensuring that a competent observer is on board the dredge and that the Master takes advice to ensure avoidance.”*
118. This is a new condition proposed by the two parties and I also recommend it be adopted.

DGC 6 –coastal permit 2010.198 condition 8 Environmental Management Plan

119. This agreed amendment incorporates the new condition (immediately above) into a requirement within the Environmental Management Plan. I think this is appropriate and should be adopted.

DGC 7 – coastal permit 2010.198 condition 9

120. In regard to the recording of information about the disposal at site A0 and defining of the approximate portions of clay, silt and sand that are disposed of. I fully support it's inclusion in this condition.

DGC 8 – coastal permits 2000.472 V1, 2010.193 - 2010.198

121. In the evidence of Mr Coe (page 48 – paragraph 265) he stated that the Environmental Management Plan has a detailed requirement for the formation of a Manawhenua Consultative Group to provide a forum in which ongoing consultation and involvement in the monitoring and reporting associated with the project can be undertaken. Mr Coe highlighted that the applicant would strongly support the inclusion of this level of detail in consent conditions.
122. Evidence also presented to the Panel by Mr Ellison and Mr Vial identifies and strongly shows their belief that such an open and consultative approach between the applicant and the appropriate groups is needed into the future to safeguard their cultural and environmental values (particularly kaimoana and exercise of guardianship) from adverse effects of the proposed activities.
123. In response to this I believe that the inclusion of the Manawhenua Consultative Group as a condition of consent certainly reflects the efforts of both parties to ensure good communication pathways into the future and in relation to the values requiring protection and management to avoid adverse effects.
124. The conditions recommended is contained on the relevant consents in the draft suite that you now have.
125. I also believe that the proposal to include Project and Technical consultative groups and involve them in the project through the consent conditions is invaluable to the success of the proposed activities. The conditions are those proposed by the applicant, agreed to by the Director General of Conservation and other stake holder groups.
126. I do believe that members of the fishing co-operative or collective and local community interest groups are able to participate in the project consultative group and that this should be encouraged.

127. The Otago Regional Council is fully supportive of consultation and the reporting of monitoring information to consultation parties being undertaken throughout the term of any consents granted. As a result, I recommend that the conditions be imposed on consents 2010.193 - 2010.198. However, 2000.472_V1 is another matter. The inclusion of Technical, Manawhenua and Project Consultative groups on this variation is outside the scope of the variation. Instead I recommend that the applicant proposes such a condition when the replacement applications for the near-shore sites are lodged.

DGC 9, 10, 11, 12 and 13

128. I am satisfied with the agreed conditions and believe their inclusion will ensure the consents are robust.

The draft consents co-ordinates

129. With the implementation of a new mapping system called New Zealand Transverse Mercator Projection 2000 (NZTM 2000), a conversion to NZTM from the Chart reference was required to ensure that all parties would be able to easily locate the sites of the proposed applications. In my conversions I successfully managed to located the Otago Harbour and off shore disposal site in the vicinity of St Bathans. Although I thought I had corrected this for the coastal permits it appears I may not have. Below in Table 1 are what I now believe to be the correct co-ordinates (not in St Bathans) and the applicant has also reviewed these co-ordinates and is in agreement that they are accurate.

Table 1: The co-ordinates for the consents

| Consent Number | Co-ordinate System | Northing | Easting |
|----------------|--------------------|-------------|--------------|
| 2010.193 | NZTM 2000 | 4931086N | 1423206E |
| | | 4923932N | 1415958E |
| | WGS84 (Chart) | 45°45'04" S | 170°43'37" E |
| | | 45°48'49" S | 170°37'52" E |
| 2010.194 | NZTM 2000 | 4931086N | 1423206E |
| | | 4923932N | 1415958E |
| | WGS84 (Chart) | 45°45'04" S | 170°43'37" E |
| | | 45°48'49" S | 170°37'52" E |
| 2010.195 | NZTM 2000 | 4931086N | 1423206E |
| | | 4923932N | 1415958E |
| | WGS84 (Chart) | 45°45'04" S | 170°43'37" E |
| | | 45°48'49" S | 170°37'52" E |
| 2010.196 | NZTM 2000 | 4931086N | 1423206E |

| | | | |
|----------|---------------|-------------|--------------|
| | | 4923932N | 1415958E |
| | WGS84 (Chart) | 45°45'04" S | 170°43'37" E |
| | | 45°48'49" S | 170°37'52" E |
| 2010.197 | NZTM 2000 | 4924419N | 1415706E |
| | WGS84 (Chart) | 45°48'33" S | 170°37'41" E |
| 2010.198 | NZTM 2000 | 4932950N | 1428763E |
| | WGS84 (Chart) | 45°44'8" S | 170°47'56" E |
| 2010.199 | NZTM 2000 | 4924506N | 1415734E |
| | WGS84 (Chart) | 45°48'30" S | 170°37'42" E |
| 2010.200 | NZTM 2000 | 4924419N | 1415706E |
| | WGS84 (Chart) | 45°48'33" S | 170°37'41" E |
| 2010.202 | NZTM 2000 | 4924419N | 1415706E |
| M/P | WGS84 (Chart) | 45°48'33" S | 170°37'41" E |
| 2010.202 | NZTM 2000 | 4924506N | 1415734E |
| Fishing | WGS84 (Chart) | 45°48'30" S | 170°37'42" E |
| 2010.203 | NZTM 2000 | 4924419N | 1415706E |
| M/P | WGS84 (Chart) | 45°48'33" S | 170°37'41" E |
| 2010.203 | NZTM 2000 | 4924506N | 1415734E |
| Fishing | WGS84 (Chart) | 45°48'30" S | 170°37'42" E |

130. I recommend that the Panel adopt these co-ordinates on the relevant permits if they make the decision to grant them.

Management Plans

131. In the draft consents for 2010.193, 2010.194 and 2010.200 I have recommended Environmental Management Plans are developed for the relevant aspects of Project Next Generation (conditions 13, 7 and 5 respectively). I note that I have given different time periods for their development and submission to the Consent Authority and would like to recommend to the Panel that they review the time periods for these consents to read

“The consent holder shall prepare, in consultation with the Consent Authority, and submit to the Consent Authority **at least one month prior to any works commencing** and Environmental Management Plan...”

132. Amending the consent conditions will ensure that the applicant is not required to prepare a management plan upon issue of any of these consents when the reality is that the actual works may not commence for a number of years. By

this I mean that the Major and Incremental Capital works may not commence for a number of years depending on the need for the project to go ahead.

Typos

133. As with all written work, you tend to find a few typos here and there despite your best efforts and peer reviews. In consent 2010.193 condition 4(c) says meters but should say metres. This also applies to 2010.195 condition 5.
134. 2010.193 condition 25 should say “shall take **all practicable** precautions to protect public safety”.
135. 2010.193 condition 26 should say “...marine biota are minimised **to the extent practicable** in accordance with the Environmental Management Plan”
136. 2010.198 condition 10 refers to Appendix 3, but should refer to Appendix 2.
137. 2010.200 condition 8 the ‘c’ is missing from the word construction and is recommended to be included

Consent numbering

138. There may be some questions as to why the consent numbering is a little odd for example many of them being labelled 2010.193 and the latest being RM10.193.01. The reason is that during the processing of this suite of consents the Council implemented a new database for management of consent information. The new database provides a new numbering regime which is where the RM and the .01 are derived.
139. Also consent numbers are not sequential and this is due to some consents not being required after they were originally thought to have been and the order in which they were first entered into our original database system. I have attempted to get this ordering changed, but the difficulties in doing so with the migration to our new system render this task as significantly challenging and time consuming, so much so that I have let sleeping dogs lie, so to speak.

Error in collation of report

140. In my copy of the Officer’s report coastal permit 2010.198 has Appendix 1 of 2010.197 inserted in the middle of the permit. This is an error in collation of the report upon printing.

Conclusion

141. In conclusion I uphold my recommendation that these consents be granted, with conditions. However, I recommend minor amendments to some original

conditions and the inclusion of additional conditions on the various consents to ensure that the effects of the activities remain minor and aspects of concern within the Council's jurisdiction are more tightly controlled.

142. I acknowledge that the Environmental Management Plan is adaptive and the need for it to be so is clear. But there needs to be a good level of certainty for of specific activities or monitoring to provide a degree of confidence that potential effects are being adequately monitored during the project, and most importantly that if effects are occurring, that mitigation is in place immediately to protect the natural and human use values of the Otago Harbour and Otago coastal environment.

Suzanne Watt

References

Bunting, K; Single MB; Kirk RM: (2003a) Sediment transport pathways around Otago Harbour and north to Karitane Peninsula. Report for The applicant Limited. Land and Water International Limited. 75p.

Bunting, K; Single MB; Kirk RM: (2003b) Effects of Dredge spoil at Shelly Beach , Otago Harbour. Report for The applicant Limited. Land and Water International Limited. 31p.