



13 November 2007

Canterbury Regional Council
58 Kilmore Street
Christchurch

Dear Sir/Madam

RECEPTION	
EC - CHCH	
FILE REF: NRRP/2005/1.3/NDG/ENV/2C	
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J Glennie	
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**Canterbury Meat Packers Limited v Canterbury Regional Council – Appeal
against a decision on the Proposed Canterbury Natural Resources
Development Plan Chapter 3 Air Quality**

1. We are instructed by Canterbury Meat Packers Limited.
2. Please find **enclosed** by way of service a Notice of Appeal against a decision on the Proposed Canterbury Natural Resources Development Plan Chapter 3 Air Quality.
3. If you would like to discuss the above please do not hesitate to contact the writer directly.

Yours faithfully
Lane Neave

David Caldwell / Julie McAndrew
Partner / Senior Solicitor

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1. **CANTERBURY MEAT PACKERS LIMITED (CMP)** appeals against part of a decision made by the **CANTERBURY REGIONAL COUNCIL (CRC)** on the Proposed Canterbury Natural Resources Regional Plan Chapter 3 Air Quality (**Air Plan**).
2. CMP made an original submission on the Air Plan dated 30 August 2002 (copy **attached** marked "**A**") and a further submission dated 30 May 2003 (copy **attached** marked "**B**").
3. CMP received notice of the decision on 2 October 2007 (copy relevant parts of the decision **attached** marked "**C**").
4. The decision was made by the CRC.
5. **The part of the decision that CMP is appealing is:**
 - 5.1. Rule AQL 26 and Rule AQL 27 relating to large scale fuel burning devices outside of the Christchurch Clean Air Zones 1 and 2
 - 5.2. The decision not to amend Rules AQL 26 and AQL 27 as set out in CMP's submissions.
6. **The reasons for the appeal are:**
 - 6.1. CMP have consent to discharge contaminants to air from a 5.6 MW coal fired boiler at its Seafield plant.
 - 6.2. Discretionary activity status for the external combustion of solid fuel greater than 3 MW is not necessary to adequately avoid or mitigate the adverse effects that may be generated by these large scale burning devices.
 - 6.3. The 1 MW to 3MW heat capacity range provided for by the Plan is arbitrary and not based on any relevant effects criteria.
 - 6.4. Any effects from these large scale burning devices can be adequately avoided or mitigated through the imposition of a controlled activity status with appropriate Standards/Terms and with CRC reserving control of other pertinent matters such as stack design, fuel quality and combustion conditions.

6.5. The Rules as they relate to the external combustion of solid fuel outside Christchurch Clean Air Zones 1 and 2:-

6.5.1. Are not in accordance with Part 2 of the Resource Management Act 1991 and, in particular, do not enable people and the community to provide for the social and economic wellbeing;

6.5.2. Will not result in an efficient use of existing resources;

6.5.3. Are not an efficient or economic means of achieving the purpose of the Act;

6.5.4. Do not meet the requirements of Part 2 of the Resource Management Act 1991 in that they are not necessary or appropriate to give effect to the purpose of the Act.

6.6. Refer to general reasons for relief at paragraph 20.

7. CMP seeks the following relief:

7.1. That the discharge of contaminants into air from burning, outside the Christchurch Clean Air Zones 1 and 2, of coal, wood, or light fuel oil in any external combustion equipment having a net combined heat output capacity within one property of greater than 1 MW is a controlled activity.

7.2. Such other consequential and incidental amendments, deletions, or additions to the objectives and policies, issues and methods, definitions, rules, information to be provided with resource consent applications, explanation and principal reasons for methods and any other part of the Plan as may be necessary or expedient to give effect to the purposes and intent of the relief sought in the above paragraph.

8. The part of the decision that CMP is appealing is:

8.1. Policy AQL 5

- 8.2. Appendix AQL 5
- 8.3. The decision by CRC not to amend Policy AQL 5 and Appendix AQL 5 as set out in CMP's submissions.

9. **The reasons for the appeal are:-**

Policy AQL 5

- 9.1. Policy AQL 5 is poorly written and confusing. The use of the mandatory term "shall" in clause (a) is inappropriate.
- 9.2. This use of the word 'prevent' in (a) is inappropriate as it infers prohibition. There may be circumstances where the discharge is appropriate and necessary in the overall judgment
- 9.3. Clause (b) is both contradictory and circular
- 9.4. The wording should be consistent throughout and consistent with the RMA.

Appendix AQL 5

- 9.5. Despite Policy AQL 5 recognising the importance of regard being had to reverse sensitivity issues, the relevant assessment criteria in Appendix AQL 5 does not include these important issues as an element of assessment.
- 9.6. It is submitted that regard should be had to reverse sensitivity issues in assessing whether a discharge is offensive or objectionable and that this should include, but not be limited to, consideration of when the sensitive activity became part of the receiving environment as compared with the length of time the air discharge generating activity has been operating from its location, so as not to penalise legitimate existing activities.
- 9.7. It is considered that inclusion of such criteria would better give effect to the objectives and policies of the Plan as well as the purposes and principles of the RMA as they relate to sustainable management and efficient use of existing resources.

- 9.8. The provisions of the Plan as they relate to discharges of odour:
- 9.9. Are not in accordance with Part 2 of the Resource Management Act 1991 and, in particular, do not enable people and the community to provide for the social and economic wellbeing;
- 9.10. Will not be an efficient use of existing resources;
- 9.11. Is not an efficient or economic means of achieving the purpose of the Act;
- 9.12. Do not meet the requirements of Part 2 of the Resource Management Act 1991 in that they are not necessary or appropriate to give effect to the purpose of the Act;
- 9.13. In respect of Policy AQL 5 and Appendix AQL 5, refer to general reasons for relief at paragraph 20.

10. **CMP seeks the following relief:**

10.1. **That Policy AQL 5 be deleted or amended as follows or similar (using tracking to indicate the proposed amendments) (“using tracking”):-**

- (a) ~~Prevent any discharge of odour from new activities that discharge contaminants into air, such that it does not cause offensive or objectionable effects beyond the boundary of any site where it originates. The discharge of odour shall not be noxious, dangerous, objectionable or offensive. Where evidence indicates a new activity is unable to do this comply with this policy then that activity shall should locate away from sensitive areas and activity. ;er~~
- (ii) ~~Locate in areas where odour emissions beyond the boundary do not cause offensive or objectionable effects.~~
- (b) *Promote the adoption of the best practicable option to prevent or minimise events of objectionable effects of odour discharged from existing activities that discharge contaminants into air, such that it does not cause offensive or objectionable effects beyond the boundary of any site where it originates.*
- (c) *Avoid encroachment of sensitive activities on existing activities discharging odourous contaminants into air, unless adverse effects of the odour can be avoided or mitigated by the encroaching activity.*

For the purposes of this policy; new activities are those activities which are established after the date of notification of the Proposed NRRP or not lawfully established before the date of notification of the Proposed NRRP; and existing activities are those activities which are lawfully established at the date of notification of the Proposed NRRP.

- 10.2. That the assessment criteria in Appendice AQL 5 be deleted or amended to expressly require regard to be had to reverse sensitivity issues, including but not limited to the length of time the discharge activity has been operating from its location and when the sensitive activity(ies) was established relative to when the discharging activity was established.
- 10.3. Such other consequential and incidental amendments, deletions, or additions to the objectives and policies, issues and methods, definitions, rules, information to be provided with resource consent applications, explanation and principle reasons for methods and any other part of the Plan as may be necessary or expedient to give effect to the purposes and intent of the relief sought in the above paragraph.

11. The part of the decision that CMP is appealing is:-

- 11.1. Policy AQL 8
- 11.2. The decision not to delete or amend Policy ALQ 8 as set out in CMP's submission.

12. The reasons for the appeal are:

- 12.1. The application of the precautionary principle should follow the terms set out in the New Zealand Coastal Policy Statement.
- 12.2. Inclusion of a reference to the precautionary approach and the definition provided of that approach is neither necessary or appropriate. The approach is incorporated into the Act and need not be defined in the Plan.

- 12.3. The concept of reverse sensitivity should be recognised, as it is important for industrial or trade premises and processes that the encroachment of sensitive activities does not occur.
- 12.4. In respect of the reverse sensitivity issue, the Commissioner's view was that it does not fit within the ambit of Policy AQL8 which is to control discharges of contaminants to air. The Commissioner's went on to say that what was being sought was control on land use, not a discharge to air. Because the issue is already the focus of Chapter 13 Policy AQL5 (b), and Method 2 in the RPS, no change was recommended by the Commissioners.
- 12.5. Refer to general reasons for relief at paragraph 20.

13. CMP seeks the following relief:

- 13.1. That Policy AQL 8 be deleted or amended as follows or similar:**
control of contaminants to air not specifically provided for in Policies AQL1 to AQL7 by:

(c) applying the precautionary principle to the discharge of *Where hazardous air pollutants identified in Schedules AQL1 and AQL2 have unknown but potentially significant adverse effects on the environment then the precautionary principle is to be applied.*

(d) avoiding encroachment of sensitive activities on existing activities discharging contaminants to air, unless adverse effects of the contaminant can be avoided or mitigated by the encroaching activity.

- 13.2. That the following paragraphs be added to the explanation and principle reasons of Policy AQL8:-**

Discharges of localised contaminants to air are often associated with land use activities. Therefore, the issue of reverse sensitivity can be addressed by requiring sensitive activities to locate well away from activities that may cause objectionable or offensive emissions. This will minimise problems associated with encroachment of residential and other development on existing industrial and trade processes. In general, existing industrial and trade activities have been

developed in areas that are removed from sensitive areas and activities. Poor land use planning shall not diminish the value of the investment of the existing industrial and trade activities.

The concept of reverse sensitivity is an important policy tool to separate incompatible new activities with established activities. This concept recognises the importance of land use planning to, where possible, ensure activities discharging objectionable or offensive levels of contaminants into the air are kept separate from sensitive land use activities such as residential use or vice versa.

Schedule AQL1 lists the priority hazardous air pollutants for which national ambient air quality guidelines are proposed. Schedule AQL2 lists other hazardous air pollutants identified by the Ministry for the Environment, which are either known or suspected to cause acute human health effects or other significant adverse effects on the environment. In assessing acceptable levels of hazardous air pollutants in discharges, a precautionary approach will be applied when there are unknown but potentially significant adverse effects, having particular regard to available information, including any guidelines.

- 13.3. Such other consequential and incidental amendments, deletions, or additions to the objectives and policies, issues and methods, definitions, rules, information to be provided with resource consent applications, explanation and principal reasons for methods and any other part of the Plan as may be necessary or expedient to give effect to the purposes and intent of the relief sought in the above paragraphs.

14. The part of the decision that CMP is appealing is:

- 14.1. Appendix AQL 3
- 14.2. Appendix AQL 4
- 14.3. Appendix AQL 5
- 14.4. The decision not to delete or amend Appendices AQL3, AQL 4 and AQL 5 as set out in CMP's submission.

15. The reasons for the appeal are:

- 15.1. Many of the rules throughout the Plan are subject to criteria based on “*offensive or objectionable*” effects beyond the boundary of the property from which the discharge originates. Appendices AQL3, AQL 4 and AQL5 guide how an assessment of “*offensive or objectionable*” is to be made in relation to smoke, dust and odour.
- 15.2. Despite Policies AQL 5 and 6 recognising the importance of regard being had to reverse sensitivity issues, the relevant assessment criteria do not include these important issues as an element of assessment.
- 15.3. Regard should be had to reverse sensitivity issues in assessing whether a discharge is offensive or objectionable and that this should include, but not be limited to, consideration of when the sensitive activity became part of the receiving environment as compared with the length of time the air discharge generating activity has been operating from its location, so as not to penalise legitimate existing activities.
- 15.4. Inclusion of such criteria would better give effect to the objectives and policies of the Plan as well as the purpose and principals of the RMA as they relate to sustainable management and efficient use of existing resources.
- 15.5. The provisions of the Plan as they relate to the assessment of offensive or objectionable discharges of smoke, dust or odour:
 - 15.5.1. Are not in accordance with Part 2 of the Resource Management Act 1991 and, in particular, do not enable people and the community to provide for their social and economic well being;
 - 15.5.2. Will not be an efficient use of existing resources;
 - 15.5.3. Are not an efficient or economic means of achieving the purpose of the Act;
 - 15.5.4. Do not meet the requirements of Section 32 of the Resource Management Act 1991 (RMA).
- 15.6. Refer to general reasons for relief at paragraph 20.

16. CMP seeks the following relief:

- 16.1. That the assessment criteria in Appendices AQL 3, 4 and 5 be deleted or alternatively amended to expressly require regard to be had to reverse sensitivity issues, including but not limited to the length of time the discharge activity has been operating from its location and when the sensitive activity was established relative to when the discharging activity was established.
- 16.2. Such other consequential and incidental amendments, deletions, or additions to the objectives and policies, issues and methods, definitions, rules, information to be provided with resource consent applications, explanation and principal reasons for methods and any other part of the Plan as may be necessary or expedient to give effect to the purposes and intent of the relief sought in the above paragraph.

17. The part of the decision that CMP is appealing is:

- 17.1. New Policy relating to recognising that industrial and trade premises are important contributors to the Regional economy.
- 17.2. The decision not to include a new Policy as set out in CMP's submission.

18. The reasons for the appeal are:

- 18.1. The Plan fails to recognise the significant contribution that industrial and trade premises and processes make to the regional economy, and to the social and economic wellbeing of people and communities within the Region.

- 18.2. Discharges of contaminants to air are an integral part of many of the processes associated with industrial and trade premises and should be provided for appropriately where the adverse effects associated with their discharges can be avoided, remedied or mitigated.
- 18.3. The Plan's failure to recognise the contribution that industry and trade make to the Region and provide for their activities accordingly:
- 18.3.1. Are not in accordance with Part 2 of the Resource Management Act 1991 and, in particular, do not enable people and the community to provide for their social and economic well being;
- 18.3.2. Will not be an efficient use of existing resources;
- 18.3.3. Are not an efficient or economic means of achieving the purpose of the Act; and
- 18.3.4. Do not meet the requirements of Section 32 of the Resource Management Act 1991 (RMA).
- 18.4. Refer to general reasons for relief at paragraph 20.

19. CMP seeks the following relief:

- 19.1. That the following new policy or similar be inserted to recognise the importance of industry and trade in the Canterbury Region and the legitimacy of their activities, that can entail various discharges to air, where they can be appropriately avoided, remedied or mitigated:

New Policy

To recognise and provide for the discharge of contaminants to air from industrial and trade premise processes while avoiding, remedying and mitigating the adverse effects of these discharges on the environment.

Explanation and Reasons

This policy recognises that the discharge of contaminants to air are an integral part of processes associated with industrial and trade premises. Such premises

make a significant contribution to the regional economy by generating significant employment opportunities and economic activity which contributes to the social and economic well-being of the communities within the Canterbury Region.

Most discharges associated with industrial and trade premise processes are likely to be no more than minor having regard to the type, volume and location of the discharge activity and in this case are acceptable to the community given the benefits that derive from industrial and trade premises. However where such discharges have the potential to create significant adverse effects on the environment, these effects should be avoided, remedied or mitigated.

Methods

The methods used or to be used to implement the policy are:

Method (a) Information and promotion

Environment Canterbury will produce and disseminate information and educational material that recognises the contribution industrial and trade premises make to the economy of the Canterbury Region, and encourages the adoption of appropriate methods by industrial and trade premises to avoid, remedy or mitigate the effects of air discharges on the environment.

Method (b) Regional Rules

Environment Canterbury will apply Regional Rules AQL12 to AQL57 and AQL69 in Section 3.3 to control the discharge of contaminants from industrial or trade premises and processes.

Method (c) Resource Consents

Resource consents may be granted for activities which discharge contaminants into air. These may involve discharges into air which are specified as controlled, limited discretionary, or discretionary activities.

Method (d) Compliance and enforcement

Environment Canterbury may apply for enforcement orders, issue abatement notices and use other enforcement mechanisms in Part XII of the RMA, where there are adverse effects of the discharge of contaminants to air. Such adverse effects may arise out of a breach of the rules set out in the Proposed NRRP, or a breach of resource consent conditions. It is appropriate for Environment Canterbury to take such enforcement action as necessary to prevent a recurrence of any discharge, or to mitigate the effects of any discharge.

Method (e) Response to complaints and enquires

Environment Canterbury will:

- (i) provide a 24- hour pollution hotline to respond to any complaints about discharges to air from industrial or trade processes or industrial or trade premises; and*
- (ii) provide a database to record the details of any complaints received about discharges to air from industrial and trade processes or industrial or trade premises and to verify, where practicable, any complaints; and*
- (iii) provide a customer service line during office hours to respond to any enquiries about discharges from industrial or trade processes or industrial or trade premises; and*
- (iv) in association with territorial authorities, Crown Public Health Limited and other authorities that receive complaints, develop and implement a procedure to investigate and resolve complaints regarding discharges to air from industrial or trade processes or industrial or trade premises and investigate any other methods to jointly address complaints about*

- discharges to air from industrial or trade processes or industrial or trade premises; and*
- (v) *undertake enforcement of the provisions of the Proposed NRRP where necessary.*

19.2. Such other consequential and incidental amendments, deletions, or additions to the objectives and policies, issues and methods, definitions, rules, information to be provided with resource consent applications, explanation and principal reasons for methods and any other part of the Plan as may be necessary or expedient to give effect to the purposes and intent of the relief sought in the above paragraph.

20. The general reasons for the appeal are:

- 20.1. The decisions of the CRC referred to in paragraphs 5 to 19 above;
- 20.1.1. will not promote the sustainable management of resources and therefore will not meet the purpose of the Act as set out in Part 2;
- 20.1.2. do not represent the efficient use and development of natural and physical resources;
- 20.1.3. is not consistent with the Regional Policy Statement;
- 20.1.4. are not necessary to avoid remedy or mitigate the adverse effects of the activities undertaken at CMP and elsewhere;
- 20.1.5. do not meet the tests contained in Section 32 of the Act .


21. CMP attaches the following documents to this notice:

- 21.1. Copy submission marked "A".
- 21.2. Copy further submission marked "B".
- 21.3. Copy relevant parts of the decision marked "C".

21.4. A list of the names and addresses of persons to be served with a copy of this appeal marked "D".

CANTERBURY MEAT PACKERS LIMITED
by its solicitors and
authorised agents **LANE NEAVE**

Per:



DAVID C CALDWELL

13 November 2007

Date:

Address for service of appellant:

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Lawyers
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Email: david.caldwell@laneneave.co.nz

Contact person: David Caldwell

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court within 30 working days after this notice was lodged with the Environment Court.

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

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach copies of the documents referred to in paragraph 20 of the appeal. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court Unit of the Department for Courts in Auckland, Wellington, or Christchurch.