



13 November 2007

The Chief Executive  
Canterbury Regional Council  
PO Box 345  
Christchurch

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Dear Sir

**Proposed Canterbury Natural Resources Regional Plan Chapter 3 Air Quality -  
Lyttelton Port Company Limited v Canterbury Regional Council**

We enclose a copy of the appeal by Lyttelton Port Company Limited filed in the Environment Court on 13 November 2007 and served on you by fax on the same day.

Yours faithfully  
**Lane Neave**

**Jackie Barrow**  
Legal Assistant

Direct Dial: 353 8000 ext 870

Direct Fax: 379 8214

Email: jackie.barrow@laneneave.co.nz

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1. **LYTTELTON PORT COMPANY LIMITED (LPC)** 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. LPC made an original submission on the Air Plan dated 30 August 2002 (copy **attached** marked "**A**") and a further submission dated 28 May 2003 (copy **attached** marked "**B**").
3. LPC received notice of the decision on 1 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 LPC is appealing is:**
  - 5.1. **Policy AQL 6: Avoid dust nuisance**
  - 5.2. The decision not to amend the Policy as set out in LPC's submission.
6. **The reasons for the appeal are:**
  - 6.1. Clause (a) of the Policy fails to recognise that Lyttelton Port of Christchurch has no other option but to load or unload bulk materials at its existing locations in the foreseeable future.
  - 6.2. Bulk materials such as fertilisers are critical to the economy of the Region.
  - 6.3. A new clause in the Policy and a new paragraph in the explanation are appropriate to recognise and provide for the unique function and location of the Port.
  - 6.4. Refer to general reasons for the appeal at paragraph 26.

**7. LPC seeks the following relief:**

- 7.1. **Delete Policy AQL 6 or amend Policy AQL6 and the**

**Explanation and Principal reasons as follows or similar:**

- (a) ~~Any dust discharge shall not cause corrosion, be noxious or dangerous, or cause objectionable or offensive dispersal or deposition of particles beyond the boundary of the site where the discharge originates. The dispersal and deposition of dust from any discharge should not cause corrosion, and should not be noxious, dangerous, objectionable or offensive.~~
- (b) Avoid the encroachment of sensitive activities on existing activities discharging dust into air, unless adverse effects of the discharge can be avoided or mitigated by the encroaching activity.
- (c) Recognise and provide for the handling of bulk materials at Lyttelton Port while avoiding and mitigating adverse effects on the environment caused from the associated discharges of dust.

For the purposes of this policy existing activities are those activities which are lawfully established at the date of notification of the Proposed NRRP.

**Explanation and Principal Reasons**

~~Repetitive discharges of dust, causing soiling of clean surfaces and therefore visual impacts, can constitute a nuisance. Dust nuisance has adverse impacts on amenity values, such as the soiling of clean surfaces, and it has visual impacts. Few forms of dust would be classified as "noxious" or "dangerous" but most can may be "offensive" or "objectionable" depending on the sensitivity of the receiving environment and the nature of the dust that is discharged, and the frequency, intensity or duration of the discharges.~~

~~Dust associated with activities such as loading and unloading bulk materials at ports, abrasive sandblasting, quarries, flour milling, saw milling, seed cleaning, and coal and fertiliser storage, is of significant concern.~~

Good practice can minimise emissions so that neighbours do not experience significant nuisance effects. For example, dust controls such as watering surfaces and erecting windbreaks can prevent objectionable or offensive concentrations of dust at neighbouring properties.

Policy 6(c) recognises the economic importance to the region of Lyttelton Port being able to load and unload bulk materials. Such operations are anticipated, provided the best practicable measures are undertaken to avoid or mitigate adverse effects.

~~Dust nuisance problems 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 processes resulting in activities that may cause objectionable or~~

*offensive dust emissions. This will minimise problems associated with gradual 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 to ~~remedy or mitigate the adverse effects of established activities~~ 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.*

- 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, explanations 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.

8. **The part of the decision that LPC is appealing is:**

8.1. **Policy AQL 8 – Control all other discharges to air**

- 8.2. The decision not to accept LPC's submission to amend clause (c) of the Policy and add a new clause (d) to the Policy.

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

- 9.1. The description of the precautionary approach, as generally adopted for Policy 10, should be consistent with the meaning in the New Zealand Coastal Policy Statement.
- 9.2. The application of the precautionary principle should follow the terms sets out in the New Zealand Coastal Policy Statement.
- 9.3. The concept of reverse sensitivity should also be recognised within the Policy as it is important that encroachment of sensitive activities does not occur in relation to facilities such as the Port.

9.4. Refer to general reasons for the appeal at paragraph 26.

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

**10.1. That Policy AQL 8 be deleted or in the alternative be amended as follows or similar:-**

*Control discharges of contaminants to air not specifically provided for in Policies AQL1 to AQL7 by:..*

*(c) applying the precautionary approach to the discharge of hazardous air pollutants identified in Schedules AQL1 and AQL2 where they have unknown but potentially significant adverse effects on the environment.*

*(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.*

**10.2. That the following paragraphs be added to the explanation and principal reasons of Policy AQL8 or similar:-**

*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.*

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, explanations 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.

11. **The part of the decision that LPC is appealing is:**

11.1. **Policy AQL12: Set emission standards for large scale fuel burning devices**

11.2. The decision to retain the Policy as publicly notified.

12. **The reasons for the appeal are:**

12.1. The Policy is difficult to understand.

12.2. It is not appropriate for the Policy to refer to Section 70(2) to require the adoption of a best practicable option when the associated rules do not in fact follow that approach.

12.3. The adoption may not be appropriate if good information on the effects of a discharge on ambient air quality is available.

12.4. A dedicated policy is required to address internal combustion equipment.

12.5. Refer to general reasons for the appeal at paragraph 26.

13. **LPC seeks the following relief:**

13.1. **Delete policy AQL12 or in the alternative amend AQL12 as follows or similar:**

*Policy AQL12: set emission standards for Large scale fuel burning outside the Christchurch Clean Air Zones 1 and 2.*

*Where a resource consent is required and where it is appropriate,*

~~Require the need adoption of the best practicable option to prevent or minimise the adverse effects on the environment from the discharge to air of primary air pollutants identified in schedule AQL1, from the combustion of fuel in large scale external combustion fuel burning devices located outside the Christchurch Clean Air Zones 1 and 2.~~

*Explanation and principal reasons*

~~Policy AQL12 recognises that within the Christchurch Clean Air Zones 1 and 2 there are already elevated concentrations of PM10 above the alert target in the Regional Ambient Air Quality Targets (RAAQT). A specific management regime has therefore been adopted for the Christchurch Clean Air Zones 1 and 2. Because large scale fuel burning equipment contributes to a small percentage of this problem, specific direction has been provided for large scale fuel burning equipment.~~

~~Outside of the Christchurch Clean Air Zones 1 and 2 it is maybe appropriate that discharges of PM10 from large scale fuel burning equipment which require a resource consent, shall be minimised or prevented by the adoption of the adopt the best practicable option to be minimised or prevented adverse effects on the environment.~~

~~Section 70(2) of the RMA states that before the Council adopts a rule in a plan requiring the adoption of the best practicable option to prevent or minimise adverse effects on the environment of any discharge of a contaminant, the Council must be satisfied that having regard to:~~

- ~~(a) The nature of the discharge and the receiving environment; and~~
- ~~(b) Other alternatives, including a rule requiring the observance of minimum standards;~~
- ~~(c) The rule is the most efficient and effective means of preventing or minimising those adverse effects.~~

~~Having considered these matters, Environment Canterbury is satisfied that it has met the requirements of Section 70(2) of the RMA. Further consideration of Environment Canterbury's reasoning for including best practicable option requirements in the Proposed NRRP is contained in the "Section 32 Report"~~

- 13.2. 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 paragraphs.

14. **The part of the decision that LPC is appealing is:**
- 14.1. **New Policy relating to internal combustion equipment that provides for load shedding and emergency situations.**
- 14.2. The decision not to include a Policy as set out in LPC's submission.
15. **The reasons for the appeal are:**
- 15.1. Such a policy would appropriately recognise the importance of such equipment.
- 15.2. Refer to general reasons for the appeal at paragraph 26.

16. **LPC seeks the following relief:**

- 16.1. **Add the following new policy or similar that gives effect to the rules sought by LPC:**

***New Policy***

*To recognise and provide for internal combustion equipment that provides electricity network load shedding during times of peak electricity demand and/or for emergency situations; while, avoiding and mitigating adverse effects on the localised environment.*

***Explanation and Principal Reasons***

*This policy recognises the important contribution to the region made by internal combustion equipment (e.g. diesel generators), which provides electricity for network load shedding during times of peak electricity demand and/or for emergency situations.*

*The use of the internal combustion equipment to generate electricity by institutions (e.g. hospitals, police and councils) and businesses helps reduce the peak demand for electricity from the local grid, usually greatest on cold, wet southerly days. This practice not only assists in avoiding the need to upgrade electricity networks, with consequent savings to the community, but also substantially reduces power charges to those institutions or businesses using the equipment.*

*The ability to use the internal combustion equipment for network load shedding also means the equipment is likely to be better maintained, which is critical, if the equipment is to be used successfully during times of electricity shortages or outages.*

*Notwithstanding the importance of internal combustion equipment for these purposes, controls are required for diesel generators either within the Christchurch Air Clean Zones or for generators*

*outside the Clean Air Zones but within close proximity of sensitive activities in order to avoid or mitigate any localised air quality problems identified in Policy AQL8. These controls may include chimney height and design, emission velocity, and equipment maintenance to avoid or mitigate any potential localised adverse effects from the air emissions.*

- 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 paragraphs.

**17. The part of the decision that LPC is appealing is:**

- 17.1. **New Policy 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 LPC's submission.

**18. The reasons for the appeal are:**

- 18.1. The Plan does not recognise that industrial and trade premises including the Lyttelton Port of Christchurch which is a facility of regional significance are an important contributor to the regional economy and costs of avoiding or mitigating adverse effects from discharges of contaminant to air may be considerable given the historical location of the port and its investment in existing assets.

- 18.2. Refer to general reasons for the appeal at paragraph 26.

**19. LPC seeks the following relief:**

- 19.1. **That a new policy or similar be introduced as follows or similar:**

*To recognise and provide for the discharge of contaminants to air from business activities while avoiding, remedying and mitigating the adverse effects of these discharges on the environment.*

*Explanation and Principal Reasons*

*This policy recognises that the discharge of contaminants to air is an integral part of processes associated with business activities. Such activities 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 premises and other businesses 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 them. However where such discharges have the potential to create significant adverse effects on the environment, these effects should be avoided, remedied and mitigated.*

- 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 paragraphs.

20. **The part of the decision that LPC is appealing is:**

- 20.1. **Rule AQL25 Internal combustion of diesel, petrol or gas 300 kW or less outside of the Christchurch Clean Air Zones 1 and 2 – permitted activity**
- 20.2. **Rule AQL26 .... Internal combustion of diesel, petrol or gas greater than 300 kW .... outside of the Christchurch Clean Air Zones 1 and 2 – controlled activity**
- 20.3. The decision not to accept the amendments to the Rules as set out in LPC's submission.

21. **The reasons for the appeal are:**

- 21.1. The amended rules do not recognise the positive benefits of generators for "load shedding", back up for power outages and emergencies.

- 21.2. The decision and the amended rules do not recognise or distinguish between areas inside and outside of the Christchurch Clean Air Zones 1 and 2.
- 21.3. It is not reasonable to require resource consents in these circumstances especially for existing generators.
- 21.4. Rule AQL25 is a "claytons" permitted activity status rule. The standards and terms effectively mean that resource consents will be required. The standards and terms cannot be justified in resource management terms as they are unreasonable and unnecessary.
- 21.5. The amended rules are not in accordance with Part 2 of the Act and are not the most appropriate way to achieve the relevant objectives.
- 21.6. Refer to general reasons for the appeal at paragraph 26.

**22. LPC seeks the following relief:**

**22.1. AQL 25 and AQL 26**

22.2. *That the use of internal combustion equipment outside the Christchurch Clean Air Zones be a permitted activity or in the alternative be a permitted activity subject to 2 conditions:*

(a) *That the location of any generator shall be at least 100m from a sensitive activity.*

(b) *Beyond the boundary of the property where the discharge originates the dispersal or deposition of smoke particles shall not be dangerous, noxious, objectionable or offensive.*

22.3. 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, explanations 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.

23. **The part of the decision that LPC is appealing is:**

23.1. **AQL42 Bulk materials – permitted**

23.2. The decision not to amend AQL 42 as set out in LPC's submission.

24. **The reasons for the appeal are:**

24.1. The definition of “bulk materials” in the Plan is very broad and the bulk material rule would apply to a large range of bulk cargo because of the quantities of material handled in the Port even where very little dust is produced and/or the activities are well away from residential areas.

24.2. This warrants a rule specifically to provide for the handling of bulk materials at the Port.

24.3. It does not appear the CRC considered the submission by LPC to include a new rule relating the discharge of bulk materials at Lyttelton Port.

24.4. Refer to general reasons for the appeal at paragraph 26.

25. **LPC seeks the following relief:**

25.1. **New Rule – Bulk Materials at Lyttelton Port**

25.2. That the discharge of bulk material from Lyttelton Port be a **permitted activity or in the alternative the following new rule or similar** be introduced in the appropriate rule columns:-

(a) *The discharge into air from handling, conveying transporting or storage of all bulk materials, other than phosphate, fertiliser, gypsum, sulphur, grains, wood chips and coal, within Lyttelton Port is a permitted activity.*

*Condition*

*That the dispersal or deposition of dust shall not be objectionable or offensive beyond the boundary of the Property where the discharge originates.*

(b) *The discharge into air from handling, conveying, transporting or storage of phosphate, fertiliser, gypsum, sulphur, grains, wood chips within Lyttelton Port is a non-notified controlled activity*

*The Council Reserves control over the following matters:*

- (i) Measures to avoid or mitigate discharges of dust.*
- (ii) Controlling bulk handling operations in certain climatic conditions.*
- (iii) Requirement for management plans.*
- (c) The discharge into air from handling, conveying transporting or storage of coal within Lyttelton Port is a restricted discretionary activity.*

*The Council limits its discretion to the following matters:*

- (i) The actual or potential adverse effects of coal dust on residential properties and the methods and means to avoid or mitigate and monitor their adverse effects.*

*For the purposes of this rule the extent of Lyttelton Port is defined by Lyttelton Port Zone in the Proposed Banks Peninsula District Plan and the Operational Area of the Port of Lyttelton in Variations 1 to 9 of the Proposed Regional Coastal Environment Plan for the Canterbury Region.*

- 25.3. 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, explanations 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.

**26. The general reasons for the appeal are:**

26.1. The decisions of the CRC referred to in paragraphs 5 to 25 above;

26.1.1. will not promote the sustainable management of resources and therefore will not meet the purpose of the Act as set out in Part 2;

26.1.2. do not represent the efficient use and development of natural and physical resources;

26.1.3. is not consistent with the Regional Policy Statement;

26.1.4. are not necessary to avoid remedy or mitigate the adverse effects of the activities undertaken at the Port and elsewhere;

26.1.5. do not meet the tests contained in Section 32 of the Act.

**27. LPC attaches the following documents to this notice:**

27.1. Copy submission marked "A".

27.2. Copy further submission marked "B".

27.3. Copy relevant parts of the decision marked "C".

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

**LYTTELTON PORT COMPANY  
LIMITED** by its solicitors and  
authorised agents **LANE NEAVE**

Per:



Amanda C Dewar

13 November 2007

Date:

**Address for service of appellant:**

Lyttelton Port Company Limited  
C/- Lane Neave  
Lawyers  
PO Box 13 149  
Christchurch

Telephone: 03 364 6451  
Fax: 03 379 8214  
Email: amanda.dewar@laneneave.co.nz

Contact person: Amanda Dewar

## **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 27 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.