Before an Independent Hearings Panel
appointed by Christchurch City Council

under: the Resource Management Act 1991

in the matter of: the hearing of submissions on Plan Change 14 (Housing and Business Choice) to the Christchurch District Plan

and: **Lyttelton Port Company Limited**
Submitter 853

Statement of Evidence of Andrew Purves (planning)

Dated: 20 September 2023

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STATEMENT OF EVIDENCE OF ANDREW PURVES

INTRODUCTION

1 My full name is Andrew Mark Purves.

2 I am a planning consultant on my own account.

3 I hold a Master of Science with First Class Honours. I have been employed in the practise of Planning and Resource Management for 33 years. I am a full member of the New Zealand Planning Institute.

4 I have provided planning advice to Lyttelton Port Company Limited (*LPC*) for many years, including advice and evidence on the Canterbury Regional Policy Statement, the Christchurch District Plan (*CDP*) and various Regional Plans.

5 I was also involved in the process leading to the Lyttelton Port Recovery Plan which was gazetted by the Minister for Canterbury Earthquake Recovery in November 2015.

CODE OF CONDUCT

5 Although this is not an Environment Court hearing, I note that in preparing my evidence I have reviewed the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023. I have complied with it in preparing my evidence on technical matters. I confirm that the technical matters on which I give evidence are within my area of expertise, except where relying on the opinion or evidence of other witnesses. I have not omitted to consider material facts known to me that might alter or detract from my opinions expressed.

SCOPE OF EVIDENCE

6 I have been asked to comment on the relief sought by LPC in relation to the proposed Plan Change 14 (Housing and Business Choice) to the Christchurch District Plan (*PC14*).

7 My evidence will address:

7.1 The need to carry over an Lyttelton Port Influences Overlay with associated provisions to manage reverse sensitivity effects;

7.2 The need to introduce an Inland Port Influences Overlay and associated provisions to manage reverse sensitivity effects;

7.3 The need to expand the Industrial Interface Qualifying Matter adjoining the Inland Port;

7.4 Why the Tsunami Risk Management Area over the Inland Port needs to be removed and why Policy 5.2.2.5.2 needs to be amended; and

7.5 An unlikely but potential issue of industrial brownfield development and papakainga housing causing reverse sensitivity effects on the Lyttelton Port or the Inland Port.

8 In preparing my evidence, I have reviewed and considered the following:

8.1 The evidence of **Crystal Lenky** and **Nevil Hegley**;

8.2 Relevant parts of the s32 report; and

8.3 Relevant parts of the s42A report and supporting documents.

SUMMARY AND CONCLUSIONS

9 Lyttelton Port and the Inland Port are identified as strategic infrastructure under the CDP.

10 The CDP policy framework is for the role and function of strategic infrastructure to be protected from incompatible development and activities. Reverse sensitivity effects are to be avoided.

11 The carrying over of Lyttelton Port Influences Overlay and the associated land-use provisions that seek to avoid reverse sensitive effects on port activities at Lyttelton Port in PC14 is consistent with this policy framework and is supported.

12 PC14 could also result in the intensification of residential activity on Port Hills Road opposite the Inland Port and residents may be exposed to levels of noise that they were not expecting. This poses an increased risk of reverse sensitivity effects to the Inland Port.

13 Therefore, an Inland Port Influences Overlay is proposed with provisions that require an appropriate internal sound design level for new or extensions to existing habitable spaces in order to reduce the potential for reverse sensitivity effects. There is likely to be no or minimal impacts to residential intensification. With the above in place there is no need to amend the extent of the Industrial Interface Qualifying Matter adjoining the Inland Port

14 It appears the s42A Report is recommending removal of the Tsunami Risk Management Area from the Inland Port which is supported. However, Policy 5.2.2.5.2 (a) should be amended so the clause only focuses on those zones that maybe the subject of residential intensification and subject to impact from a major

tsunami event, and the reasons why residential intensification is to be avoided is set out in Policy 5.2.2.5.2 (b).

15 The potential issue of industrial brownfield development and papakainga housing causing reverse sensitivity effects on the Lyttelton Port or the Inland Port have been adequately addressed in the s42A report, subject to minor amendment to the industrial policy on brownfield development.

STATUTORY CONTEXT OF LYTTELTON PORT AND THE INLAND PORT AT WOOLSTON

16 The importance of Lyttelton Port as a transportation gateway is discussed by **Ms Lenky** and is reflected in various higher-order statutory documents.

17 Policy 9.1 of the New Zealand Coastal Policy Statement recognises that a sustainable transport system requires an efficient network of safe ports, servicing national and international shipping.

18 The Canterbury Regional Policy Statement (*CRPS*) lists Lyttelton Port as 'strategic infrastructure;' and, by definition, strategic infrastructure is deemed to be regionally significant infrastructure.

19 More recently, the National Policy Statement on Urban Development (*NPS-UD*) defines port facilities of a port company as nationally significant infrastructure.

20 Consistent with these higher order documents, the CDP defines Lyttelton Port of Christchurch as strategic infrastructure. Strategic Objective 3.3.13 in summary enables the efficient and effective operation and development of the Port, and seeks that the role and function of strategic infrastructure is protected from incompatible development and activities by avoiding adverse effects from them, including reverse sensitivity effects.

21 Similarly, Residential Objective 14.2.4 and Policy 14.2.4.1 are unambiguously directive: that is development of sensitive activities does not adversely affect the efficient operation, use and development of strategic infrastructure and reverse sensitivity effects on strategic infrastructure are to be avoided.

22 Lyttelton Port is subject to a Specific Purpose Zone, which is shown on Planning Maps 52, 53, 58, and 59. The provisions are found in Chapter 13.8 of the CDP. The zone rules in essence permit 'port activities' subject to a number of built form standards, including the management of port noise.

23 The Inland Port at Woolston (called CityDepot) is zoned Industrial Heavy (*IH*) apart from an approximately one-hectare block at the

western end of the property adjoining Port Hills Road, which is zoned Industrial General (*IG*), as shown on Planning Map 47.

24 The zone rules permit 'industrial activities' and 'warehousing and distribution' activities and 'ancillary offices' subject to built form standards. These rules capture the activities that occur within the Inland Port.

25 As discussed by **Ms Lenky**, the Inland Port container hub is an integral and integrated component within the infrastructure of Lyttelton Port. Therefore, the Inland Port can be considered being part of the Lyttelton Port of Christchurch infrastructure and is therefore also deemed to be 'strategic infrastructure' under the CDP.

26 I note this is confirmed by Industrial Policy 16.2.1.6 which recognises the Inland Port as being regionally significant infrastructure. That policy enables the Inland Port to operate and develop efficiently while avoiding the potential for reverse sensitivity effects associated with sensitive land uses impacting on the Inland Port.

27 Therefore, I conclude that the Lyttelton Port Influences Overlay and an Inland Port Influences Overlay should be introduced as Qualifying Matters if there is a need to avoid reverse sensitivity effects. The details of the provisions sought by LPC are described in the following sections of my evidence.

28 The s42A Report has recommended that the existing Lyttelton Port Influences Overlay and associated provisions to avoid reverse sensitivity effects be adopted but the report fails to consider LPC's submission requesting an Inland Port Influences Overlay with associated provisions relating to acoustic treatment of habitable spaces of residential units.

MANAGING PORT NOISE AND REVERSE SENSITIVITY AT LYTTELTON PORT

Introduction

29 The CDP contains three sections on managing port noise and reverse sensitivity at Lyttelton Port within the CDP.[1] The first section requires LPC to prepare a Port Noise Management Plan; which details:

29.1 How port noise is to be modelled;

[1] There is a fourth section that relates to construction noise but is not relevant to Plan Change 14.

29.2 How port noise is to be managed at source; and

29.3 The functions of a Port Liaison Committee.[2]

30 The second section requires LPC to prepare a Port Noise Mitigation Plan, which details how an acoustic treatment programme for port noise affected residential properties is to be carried out.[3]

31 The third section, which is of particular relevance to these proceedings, contains land-use controls on activities potentially sensitive to Port Noise that are located within the Lyttelton Port Influences Overlay.

32 The provisions were agreed to be inserted into the former Banks Peninsula District Plan after protracted mediation between community representatives and LPC. Former Environment Court Judge Peter Skelton was appointed by the Court as the Mediator.

33 The agreed provisions were however outside the scope of the Appellant's submissions, and therefore the Court determined that the provisions should be considered by way of alteration under s293 of the Resource Management Act 1991.

34 The Court in its final decision concluded that the new provisions represented the best opportunity for parties to seek a long-term resolution to the fairly intractable issues of noise in a port such as Lyttelton, where residential development is very close to the port.[4]

35 The Port Liaison Committee, consisting of community, council and LPC representatives was established in 2008 after the Court decision and the Port Noise Management and Port Noise Mitigation Plans were developed and ratified by the Committee.

36 As discussed by **Ms Lenky**, the Committee has continued to function since then, which includes overseeing the acoustic treatment programme being undertaken on noise affected properties. Noise affected properties are those residential properties within the Residential Banks Peninsula Zone that are located seaward of the 65 dBA Ldn contour line, which is shown on a port noise contour map that is regularly reviewed and attached to the Port Noise Management Plan.[5]

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[2] See Chapter 13, Appendix 13.8.6.7 of the CDP.

[3] See Chapter 13, Appendix 13.8.6.8 of the CDP.

[4] *J N Frater vs Christchurch City Council*: Decision C38/2007.

[5] The noise contours are based on a 5-day busy period at a Port in accordance with NZ Standard NZS6809:1999, Acoustics - Port Noise Management and Land Use Planning. NZ Standard NZS6809:1999 states that the contours developed allow

Provisions Relating to the Lyttelton Port Influences Overlay

37 The land-use controls within the Lyttelton Port Influences Overlay are of relevance to PC14 because they have been carried through as a Qualifying Matter for the Residential Banks Peninsula Zone.

38 The landward boundary of the Lyttelton Port Influences Overlay is defined by the 65 dBA Ldn contour line.

39 If the 65 dBA Ldn contour shifts inland then any new noise affected property owners would become eligible for acoustic treatment. The intention would also be for the Lyttelton Port Influences Overlay to be amended in due course to align with the new position of the 65 dBA Ldn contour through a Plan Change or the next Review of the Plan. There has however been minimal movement of the contour and the extent of the Lyttelton Port Influences Overlay has not been changed.

40 The Residential Banks Peninsula Zone contains the following additional rules that apply to properties located within the Lyttelton Port Influences Overlay:

40.1 Any replacement of a dwelling, or an extension to an existing dwelling is permitted, provided the dwelling is of a similar size and all new or extended habitable rooms are acoustically insulated to an internal sound design level of 40 dB Ldn (5 day) with windows closed and mechanical ventilation operating (Rules 14.8.3.1.1 and 14.8.3.2.1);

40.2 Any replacement dwelling or extension that is proposed to substantially increase in size requires a resource consent, which is classified as a restricted discretionary activity provided the internal sound design level is complied with (Rule 14.8.3.1.3);

40.3 Any replacement dwelling or extension that is proposed to substantially increase in size and does not meet the internal sound design level, or the applicant chooses not to enter into a no-complaints covenant in favour of LPC, requires a resource consent which is classified as a non-complying activity (Rule 14.8.3.14); and

40.4 Any other new sensitive activities (as defined in the CDP) are listed as non-complying activities (Rule 14.8.3.1.5).

41 Subdivision within the Lyttelton Port Influences Overlay is a non-complying activity unless a condition is proposed prohibiting noise

for a period of port growth and a minimum period of ten years is considered appropriate.

sensitive activities on each allotment, and is to be complied with on a continuing basis via a consent notice to be issued by the Council (Rule 8.5.1.5).

42 For completeness, I record that any new sensitive activities proposed on land zoned Commercial Banks Peninsula or IG and within the Lyttelton Port Influences Overlay is classified as a non-complying activity (Rules 15.7.1.5 and 16.4.1.5).

43 The s42A report prepared by **Ms Sarah Oliver** (para 12.94) recommends that the package of provisions summarised above relating to land zoned Residential Banks Peninsula and within the Lyttelton Port Influences Overlay should be retained. I agree with the recommendation and observe that the package of provisions to manage port noise have operated well and that most residential properties are small with terrain and access issues that limit the potential for residential intensification in any event.

44 I therefore conclude that the Lyttelton Port Influences Overlay should be carried through pursuant to sections 77K (l) (a) to (d) of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021.

MANAGING PORT NOISE AND REVERSE SENSTIVITY AT THE INLAND PORT (CITYDEPOT)

Introduction

45 The Inland Port has a different planning history from that of the Lyttelton Port. The site was purchased by LPC in 1995 and integration of the existing container operation at the site into Lyttelton Port's wider container operation commenced. Prior to 2009, however, the Inland Port could not be well integrated with the cargo handling operations at Lyttelton Port because of night-time constraints associated with the noise limits contained in the former City Plan.

46 In short, the noise limits at the time were set at the boundary of the Business 4 Zone (now IG Zone).[6] This is because that zone can contain legacy residential units used for custodial purposes.[7]

[6] The rules have since been amended so the noise generated by a proposal needs to be assessed against any site receiving the noise and the zone noise limits that apply to the site.

[7] A new residential unit proposed for the zone would now require resource consent as a full discretionary activity; and, would not be anticipated if it had the potential to cause reverse sensitivity effects on the Inland Port – see earlier discussion on Industrial Policy 16.2.1.6.

47 LPC needed a consent so that a reasonable level of activity associated with the receival and dispatch of containers could occur at night, including trains using the rail siding.

48 Because the application was for a non-complying activity an assessment of all effects on the receiving environment was required, and this included an assessment of those residents residing in dwellings on the opposite side of Port Hills Road.

49 LPC was issued a resource consent from the Council (RMA92013975) which is attached in **Appendix A** of my evidence. There are a range of conditions on the consent, which includes:

49.1 No nighttime operations (2200-0700 hours) within the Inland Port zoned Industrial General Zone;

49.2 Requirement for a noise management plan and associated techniques to mitigate noise, including screening as required;

49.3 Different noise limits applying to sites within the Business Zones, to sites within the Living Hills Zone and to the road boundary of selected sites within the Living Hills Zone opposite Port Hills Road;[8]

49.4 Different noise limits applying to the repairing of containers; and

49.5 A limit to four trains visiting the site during any night.

50 **Ms Lenky** discusses how Inland Port Noise is managed. Despite, there being no apparent noise issues at present, PC14 could well see the intensification of residential activity on Port Hills Road opposite the Inland Port. More residential occupants being subject to noise from the Inland Port overtime would, in my opinion, increase risk of exposing the Inland Port to reverse sensitivity effects from complaint, particularly given the Inland Port operations are 24/7 for five and a half days a week. My preference would have therefore been to incorporate density controls.

51 However, as **Ms Lenky** discusses, LPC has decided on balance that the requirements for acoustic attenuation for new, and extensions to existing, habitable spaces would be acceptable for these at properties in this instance.

[8] Now Residential Hills Zone and in future Medium Density Residential Zone if adopted.

LPC's Relief Sought

52 Following the above discussion, the relief sought by LPC is limited to the requirement for acoustic treatment of new habitable spaces, as follows:

a. *Any new or extensions to existing habitable space of any development located within the Inland Port Influences Overlay shall be designed and constructed so that noise in any habitable space from the Inland Port will not exceed internal sound design level of 30dB LAeq with ventilating windows or doors open or with windows or doors closed and mechanical ventilation installed and operating*.

b. *Determination of the internal design sound levels required under Clause (a), including any calculations, shall be based on noise from the Inland Port as follows*:

i. 50dB LAeq on any façade facing north to north-east towards the Inland Port;

ii. 47dB LAeq on any façade within 90 degrees of facing north to north-east and has partial line of sight to any part of Inland Port;

c. Compliance with this rule shall be demonstrated by providing the Council with a design report prior to the issue of the building consent, which is prepared by a suitably qualified acoustics specialist, stating that the design proposed will meet the required internal noise levels.

53 A map showing the extent of the Inland Port Influences Overlay was attached with the submission and is shown in **Appendix B** of my evidence.

54 **Mr Hegley** observes that the compliance for condition 6 of RMA92013975 is set at the boundary of the Living Hills Zone, which is being achieved through selective screening using containers. However, new habitable spaces or extensions to existing habitable spaces that cannot be screened would mean occupiers would be receiving noise beyond what would be expected and could result in reverse sensitivity effects on activities at the Inland Port.

55 In my view, the introduction of the above proposed standard would at least reduce (but not necessarily avoid) the potential for reverse sensitivity effects.

56 I consider the proposed standard should be introduced under Rule 15.5.2 (Built Form Standards) and any non-compliance with the

standard should be classified as a non-complying activity under Rule 15.5.1.5.

57 As noted by **Mr Hegley** there are similar acoustic treatment requirements applying to sensitive activities that reside within 100 metres of Port Hills Road because it is a state highway (see Rule 6.1.7.2.1 as amended by Plan Change 5). A setback of 100 metres would effectively cover the Inland Port Influences Overlay but LPC should not be reliant on another rule that could be amended or deleted at some future date.

58 I conclude that the Inland Port Influences Overlay and the associated acoustic treatment provisions should be introduced pursuant to s77J (3) of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021.

59 The provisions would only limit development capacity pursuant to s77J (b) if a developer decided not to incorporate acoustic treatment in accordance with the proposed standards and instead sought a resource consent, which was subsequently declined. Such a scenario is remote. As **Mr Hegley** states the internal design sound would be met providing ventilation is incorporated into the build.

60 Given the low number of potential houses involved and the comparatively low costs of compliance then the broader impacts of the proposed rule in terms of what PC14 is trying to achieve is minimal.

61 Finally, I consider it is important to identify the Inland Port on the Planning Maps as that defines the boundary of where the noise generating activities from the Inland Port are located, as distinct from adjoining industrial users. There is no need for this at Lyttelton because the Port has a separate specific purpose zone.

INDUSTRIAL INTERFACE QUALIFYING MATTER APPYING TO THE PROPERITES ALONG PORT HILLS ROAD

62 The Industrial Interface Qualifying Matter, which now applies to the residential properties on the other side of Port Hills Road, could be best described as being introduced in a circuitous manner.

63 PC14, as notified, continued to zone the residential properties on the other side of Port Hills Road 'Residential Hills'. The Council however submitted that the Residential Hills Zone be replaced by the Medium Density Residential Zone which, by definition, means the Industrial Interface Qualifying Matter would now apply to those properties.

64 Rule 14.5.2.3 9 under the Medium Density Residential Zone, as notified, controls the height of building. Clause (a) (iv) states that the building height and maximum number of storeys within the

Industrial Interface Qualifying matter be limited to 7 metres or two storeys, whichever is the lesser.[9]

65 The s32 report (Part 2 – Qualifying Matters) refers to the Industrial Interface being 40 metres in width and presumably planning maps reflect this distance.

66 LPC submitted that while a new Inland Port Influences Overlay is the preferred relief, the Industrial Interface Qualifying Matter could afford some protection for the Inland Port and could be adopted subject to the Industrial Interface boundary being shifted to coincide with Inland Port Influences Overlay – see again the map attached in **Appendix B** of my evidence.

67 The s42A report prepared by **Ms Brittany Ratka**, relying on the evidence of **Dr Jeremy Trevathan**, recommends that the submission be declined. The reason to decline the submission is there is no basis from a noise point of view to extend a buffer to cover properties based as noise is not constrained by site boundaries.

68 The report by **Ms Ratka** has not considered the consenting history of the Inland Port described earlier nor has it acknowledged that the Inland Port is strategic infrastructure for which any potential increase in reverse sensitivity effects is to be avoided.

69 However, because LPC's primary position is that only standards on acoustic treatment be introduced within the Inland Port Influences Overlay, and the incorporation of density-related controls was not sought, then LPC does not wish to pursue this matter in evidence. LPC would accept that the width of the Industrial Interface Qualifying Matter is left as is on the basis that the acoustic treatment standards sought for the Inland Port Influences Overlay are accepted.

TSUNAMI RISK MANAGEMENT AREA

70 LPC submitted that that the Tsunami Management Area Qualifying Matter be removed from the Inland Port. The reasons in the submissions were:

70.1 The application of a Tsunami Management Area to the Inland Port is out of scope of PC14;

70.2 There is no rationale for its application given residential activities are not provided for in the "Industrial General Zone"

[9] The s42A report has since recommended the height be increased to 8 metres.

nor the "Industrial Heavy Zone" which currently apply to the Inland Port; and

70.3 The proposed Qualifying Matter may unintentionally restrict its ability to operate, maintain and upgrade the Inland facilities in the future.

71 The s42A Report prepared by **Ms Oliver** appears to have accepted the relief sought from LPC where she states in para 13.36:

It is also my recommendation that the Tsunami Risk Management Area only apply to the relevant residential zones and those commercial centres located within the Tsunami Risk Management Area. PC12 will address the response required (i.e. extension of the TMA) for all other zones.

72 At the time of writing my evidence I have not seen an updated set of Planning Maps that shows the removal of the Overlay from the Inland Port (Planning Map 47). I assume this has been done or will be completed in due course.

73 LPC lodged further submissions in support or opposition of other submitters to ensure the provisions related to only residential intensification.[10] I consider the amendments proposed by **Ms Oliver** have correctly tightened the tsunami-related provisions so that they only apply to residential intensification, with one exception.

74 The exception concerns how Policy 5.2.2.5.2 (a) and Policy 5.2.2.5.2 (b) operate together. Clauses (a) and (b) contained in the s42A Report state the following:

"a. Map areas where in a major tsunami event the risk to life will be unacceptable and the extent of property damage will be significant, in accordance with the thresholds as set out in Table 5.2.2.5.2a:

…….

b. Within the Tsunami Risk Management Area, avoid residential intensification."

75 I have two concerns about Clause (a). Firstly, the clause is making assumptions about the degree of loss of life that will occur and the degree of property damage that will occur. In my opinion, the clause should more properly focus on the identification of the

[10] Further submissions on CCC's submissions 751.3, 751.7, Transpower NZ Ltd submission 878.3, Winstone Wallbirds Limited Submission 369.2 and 3

natural hazard and leave the assessment around the degree of impact on residential intensification to Clause (b) of Policy 5.2.2.5.2.

76 Secondly, Clause (a) applies to all activities within the tsunami management area rather than activities associated with residential intensification. The clause is inconsistent with the heading to Policy 5.2.2.5.2 which is now concerned with managing residential intensification, and is also inconsistent with Policy 5.2.2.5.1 (a) that is concerned with mapping areas at risk from coastal hazards in order to manage residential intensification.

77 With respect to the Inland Port, which is located at the landward end of the Overlay, I suspect the assumptions that risk to life would be unacceptable and damage to property will be significant might not stand up to scrutiny in relation to the activities and structures at the Inland Port. Likewise, the assumptions behind the thresholds considered to justify the Overlay at the Inland Port may need to be further tested. The appropriate time for this scrutiny would be during the forthcoming Plan Change 12.

78 I recommend that Policy 5.2.2.5.2 read as follows (or similar):

"5.2.2.5.2 Policy – Managing residential intensification development within Qualifying Matter Tsunami Risk Management Area

*a. ~~Map areas where in a major tsunami event the risk to life will be unacceptable and the extent of property damage will be significant,~~ **Identify and map areas of potential residential intensification that are vulnerable to the risk of a major tsunami event** in accordance with the thresholds as set out in Table 5.2.2.5.2a:*

…….

*b. Within the Tsunami Risk Management Area, avoid residential intensification **due to the risk to life of life being assessed as unacceptable and the extent of property damage to residential development being significant**."*

79 If the Panel are of a mind to keep the tenor of how Clauses (a) and (b) operate, then I recommend at the very least Clause (a) be amended as follows:

*a. Map areas where in a major tsunami event the risk to life **from residential intensification** will be unacceptable and the **increased** extent of property damage from **residential intensification** will be significant, in accordance with the thresholds as set out in Table 5.2.2.5.2a:"*

OTHER MATTERS

80 Williams Corporation (submission 663.1) sought to amend Industrial Policy 16.2.2.2 (c) (i) so that any brownfield development causes only "significant" reverse sensitivity effects on industrial activities rather than any reverse sensitivity effects. LPC lodged a further submission in opposition in case a brownfield development involving sensitive activities were to occur in the industrial zone near the Inland Port.

81 The s42A Report prepared by **Mr Ike Kleynbos** assesses the submission (para 8.4.92-8.4.98) and accepts the relief sought in part and has amended the relevant clauses so they read:

> "*c. Brownfield regeneration redevelopment proposals as provided for in sub-clause a. and b. above shall also ensure that:*
>
> *i. any development will not give rise to:*
>
> *a. significant reverse sensitivity effects on existing industrial activities, or other effects, that may hinder or constrain the establishment or ongoing operation or development of industrial activities*
>
> *b. reverse sensitivity effects on and strategic infrastructure;….."*

82 In my view introducing the word "significant" does not really assist a decision-maker given the test is the extent of hinderance or constraint to the existing industrial activity. Nevertheless, I am satisfied that introducing a new clause (b) for strategic infrastructure addresses LPC's concern in principle although for consistency I recommend the second part of clause (a) be also inserted into clause (b) i.e.

> *b. reverse sensitivity effects on and strategic infrastructure; or other effects, that may hinder or constrain the establishment or ongoing operation or development of strategic infrastructure"*

83 Te Hapū o Ngāti Wheke (submission 695) sought amendments to the policy and rules to provide for papakainga housing within the Residential Banks Peninsula Zone in Lyttelton and elsewhere. LPC lodged a further submission stating that the company does not oppose the intent of the submission providing any amended provisions do not override the rules that apply to the Lyttelton Port Influences Overlay.

84 The S42A Report prepared by **Mr Kleynbos** assesses the submission (para 10.1.441-10.1.451) and accepts the relief sought

in part by amending the relevant built form standard by including the housing needs for Ngāi Tahu whānui as an assessment matter; and by amending Objective 14.2.5 and Policy 14.2.5.8 in the same way. The s42A report states further detailed consideration of this matter is however required through a separate plan change process.

85 I am satisfied that any issues associated with the Lyttelton Port Influences Overlay, should they arise, can be addressed during that process.

Andrew Purves

20 September 2023

Appendix A – Copy of RMA92013975 (Decision and Conditions)

THE RESOURCE MANAGEMENT ACT 1991

APPLICANT:	**LYTTELTON PORT COMPANY LIMITED**
LOCAL AUTHORITY:	**CHRISTCHURCH CITY COUNCIL**
SUBJECT MATTER:	Night-time operations – Opawa Container Depot (CityDepot)
SITE DESCRIPTION:	Lots 1, 2, 4 & 5 DP34728; Pt Lot 1 DP16224; Lot 1 DP 78981; Lot 1 DP 79210; Lot 1 DP 79211; Lots 7 & 10 DP 52953; and Lot 13 DP 65469 – Chapmans Road
REFERENCE:	**RMA 92013975**
HEARING DATE:	13 & 14 October, 2009

Appearances:

- J Appleyard for the applicant **Lyttelton Port Company Limited**
- A Prebble for **A Saunders & G Ebborn, T & S Scott** and **I R C & J A Palmer**
- **K N Clinton**
- C Barr and L A Moore to present s42A reports

DECISION OF THE COMMISIONER

Introduction

In late 1995 the applicant acquired an existing container handling operation at Chapmans Road, Opawa, located on land within the Business 4 and 5 zones of the (relevantly) operative City Plan. My understanding is that the operation was commenced and now continues as a permitted activity. The applicant sees the facility as an essential part of its Lyttelton port operations, container handling within which is constrained by the lack of available flat land.

The applicant's position is that, as a major South Island port facility, it is increasingly required to operate on a 24 hour / 7 days a week basis. It contends – and this was not disputed – that such a mode of operation cannot be achieved without a corresponding availability of facilities such as those now provided by CityDepot. The impediment to 24/7 operation of the subject land is the noise rules of the City Plan which, it seems, cannot be met during night-time hours (2200-0700)

Accordingly, and on 8 May, 2009, the applicant sought consent to the use of *part* of its CityDepot land holdings for night-time operations. That application places some emphasis upon what is said will be differences in operational practice during the night-time (a partial restriction on some activities, the use of less noisy equipment and the adoption of a noise management plan) but so far as Plan requirements are concerned the differences come down to;

(a) The acceptance of a different set of noise limitations; and

(b) An exclusion, from the land in respect of which this consent was sought, of that having frontage to Port Hills Road and within the Business 4 zone.

As will become apparent, the second of these has consequences to the identification of applicable Plan rules.

At the time of the application the applicant had obtained a number of approvals from persons who, it was then thought, might be adversely affected by the proposal. At that time its contention was that, having regard to those approvals, the application should proceed on a non-notified basis and with no notification to other persons. In the event, further potentially affected persons were identified, and notice was required to be given to all. Central to the 'notification' decision was the finding that the proposed (additional) activity would have no more than a minor adverse effect upon the environment.

Seven submissions in opposition were received and on September 18, 2009, I was appointed "as Commissioner to consider the resource consent application to extend the hours of operation of the existing container activities at the subject site [and] to make a decision on the application ..."

Section 113(1) of the Act (in the form applicable to this application) requires that "[e]very decision on an application for a resource consent shall be in writing and state ... [amongst other things] ... a summary of the evidence heard". That is to be found as Appendix A to this decision. The other matters required by s113(1) to be stated will be found in the body of this decision.

Noise rules and the status of activities

Speaking generally, and in terms of the City Plan, the status of activities within zones depends upon compliance with relevant 'standards'. Uncertainties as to status can arise in the case of requirements that go to future performance and which are expressed as maxima – this because the likelihood of *future* compliance can be, at best, only a matter of informed opinion. In the present case the night-time activities for which consent is sought would have the status of 'permitted activities' *if, in the future*, the noise generated by them turns does not exceed Plan-specified levels.

Those levels are set out in Table 1 of Clause 11-1.3.3 of the Plan. That table operates by placing zone in one of three groups: the Living zones in Group 1, Business 4 in Group 2 and Business 5 in Group 3. For each group daytime and night-time noise maxima are prescribed using the L_{10}, L_{eq} and L_{max} descriptors. In order to meet the relevant standard an activity must generate no more than the prescribed level, measured at the boundary of or beyond the 'site' in which the noise-generating activity occurs.

The position is complicated somewhat by three further provisions. The first is that, where a site in one group adjoins that in another, the applicable standard is that most restrictive of noise generation. The second prevents roads being treated as 'sites', so that sites separated only be a road are to be treated as adjoining. The third provides that zone boundaries are to function as 'site' dividers. The applicant's exclusion from the ambit of the present application of that part of CityDepot as lies within the Business 4 zone takes advantage of the last – as a result the 'site' of the subject land cannot be said to adjoin the Living Hills Zone and is thus not subject to the standards of that zone. However, and as the subject land adjoins the excluded part of CityDepot (in terms of the Plan, a separate 'site') it is subject to Group 2 standards.

The position is as follows: activities within the Living Hills zone are permitted if (*inter alia*) they do not create night-time noise greater than 42dBA L_{10}, 41dBA L_{eq} and 65dBA L_{max} – measured as described above. At higher levels activities become 'discretionary' or 'non-complying', depending on the noise actually created. By contrast activities in the Business 4 zone *and those within the land the subject of this application* are 'permitted' only if generated noise is at or below 48dBA L_{10}, 49dBA L_{eq} and 75dBA L_{max} – again measured at or beyond the boundary of the 'site' of the relevant activity. Otherwise that activity is 'non-complying'.

The applicant accepts that the activity now proposed will most likely not meet those standards in relation to some places within the Business 4 zone. As a result it accepts that its application falls to be considered as 'non-complying'. This has the following consequences:

(i) Before consent may be granted I must be satisfied that

> (a) the adverse effects of the activity on the environment … will be minor; or
> (b) the application is for an activity that will not be contrary to the objectives and policies of … the relevant plan … (s 104D(1))

Although these are disjunctive requirements the first is critical – if I conclude that the adverse effects on the environment were *more* than minor the present proposal cannot advance absent public notification – s104(3)d.

(ii) Non-complying activity status carries with it a presumption that consent will not be forthcoming absent Part 2 based reasons justifying that course. This may be inferred from the hierarchy of permissibility established by that Act; Ms Appleyard expressly accepts the correctness of that inference, at least for the purposes of the present proceedings.

Section 104 requirements

Section 104(1) reads:

> When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to–
> (a) any actual and potential effects on the environment of allowing the activity; and
> (b) any relevant provisions of—
> (i) a national policy statement:
> (ii) a New Zealand coastal policy statement:
> (iii) a regional policy statement or proposed regional policy statement:
> (iv) a plan or proposed plan; and

(c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

To 'have regard' to something is to bring it in to consideration and there give it the weight that circumstances require. The words "subject to Part 2" imply that the matters set out in clauses (a) to (c) are to be integrated by an overall judgment as to whether the (single) purpose of the Act – as amplified by sections 6 to 8 – would better be served by the grant of consent, or by its refusal.

Actual and potential effects upon the environment

What is to be included?

Unlike s5(2), which speaks of avoiding, mitigating or remedying *adverse* effects on the environment, this part of s104 requires a consideration of all environmental effects, adverse or otherwise. In the case of such adverse effects as there may be, however, subsections (2) and (3) of s104 provide two qualifications. Subsection 2 reads:

> When forming an opinion for the purposes of subsection (1)(a), a consent authority *may* disregard an adverse effect of the activity *on the environment* if the plan permits an activity with that effect. [my emphases]

This provision replaces the former 'permitted baseline' doctrine developed by the Courts, compliance with which was mandatory. In contrast to the former law the present provision imports a discretion, to be exercised in a principled (and non-arbitrary) way. Despite this legislative intervention, however, the 'public interest' justification for the original doctrine remains – consent applications should not re-litigate matters already determined in the course of plan preparation, submission, decision and appeal. In my view, therefore, the discretion should be exercised in favour of 'disregarding' an effect to which the sub-section applies unless some cogent argument can be found to the contrary.

Additionally, and as the provision itself makes clear, the fact that an effect is the consequence of an activity permitted by the relevant plan does not imply that the effect in question is non-adverse – it is only permitted *adverse* effects that may be disregarded.

Section 104(3) is as follows:

> A consent authority *must not* ...when considering an application, have regard to any effect *on a person* who has given written approval to the application [my emphases]

Two points may be made: The first is that effects on persons need not be seen as effects on the environment. At various places within the Act – and at times in different contexts – decision-makers are required to consider (i) the effects of activities, (ii) the effects of activities on the environment and (iii) the effects of activities on persons. Clearly, these differences of expression indicate differing objects of consideration. While overlaps exist, the differences between these objects of consideration are important. Thus it cannot *necessarily* be inferred that an effect on one or more persons *of itself* implies an effect on 'the environment', a different and more broadly focused 'receiver'. In my view s104(3) is to be understood in something like the following way: although effects on persons may provide some evidence of a corresponding effect on the environment (particularly where the effect is profound or the persons numerous), that evidence

(i) may be insufficient and (ii) is to be excluded insofar as it relates to those who have given written approval.

The relevant environment

What must here be considered is the environment as it is, hypothetically modified by developments of a kind authorised by the relevant plan. Although this will often come down to an enquiry as to the kind of future environment contemplated for the zone (so that the relevant 'environment' may well be seen a less desirable than that which presently exists) there may be circumstances in which the question becomes rather more complex. This is one such.

The zoning pattern for the area places land intended for residential occupation in close proximity to that intended for industrial use – in the case of the Business 5 zone, heavy industrial use. The Business and Living Hills areas are separated (only) by a State Highway carrying heavy traffic, and there is an important railway (and private railway siding) in the neighbourhood. Roads and railways are expressly exempted from the noise-control rules. Whatever may be said about the intentions of the Plan for Living zones generally (and the Living Hills zone in particular) the facts are:

(i) The Plan intends that these potentially conflicting activities are to continue in close conjunction; and

(ii) The *existing* environment (and in particular, the existing noise environment) of all is dominated by the effects of industry and traffic – including rail traffic.

Thus what the relevant environment *is*, and what residents within the relevant part of the Living Hills zone may reasonably expect it to be, are alike intrinsically less attractive for residential occupation than is the case in other parts of the City.

Field measurements demonstrate this. Graphs forming part of Mr Hegley's evidence (accepted by Dr Trevathan as representative and as providing a proper basis for consideration) show night-time noise levels in Desi Place (within the B4 zone) reaching about 64 dBA L_{max} and 46 dBA L_{eq}. From these, and from L_{95} measurements and a comparison with measurements at other sites, Mr Hegley expressed his opinion to be that the night-time noise environment of that area was largely dominated by nose from industrial and rail activities. As is apparent, present noise levels are well below the night-time maxima for the zone.

In contrast, measurements taken at a point on the Port hills Road frontage of the Living Hills Area show an existing night-time noise environment having levels reaching about 75-80 dBA L_{max} and 50-60 dBA $L_{eq,}$ significantly above the maxima for activities permitted within that zone. In Mr Hegley's opinion this environment is dominated by noise from traffic on Port Hills Road, industrial and rail activities having lesser impact.

The effects of the proposed activity

The principal issue is that of noise likely to be generated by the proposed activity. Subsidiary concerns – such as those of additional road traffic, dust, glare and the visual unattractiveness of stacked containers – are all things that may arise from permitted activities and may, I think, properly be disregarded under s104(2), particularly as the conditions of any consent will be

framed so as to require compliance with relevant Plan standards. Additionally, and in the case of road traffic movements through the Brighlings Road entrance, the expressed concerns of Living Hills residents came down to an objection to the on-site activity giving rise to those movements, rather than to the movements themselves.

In Mr Hegley's opinion the proposed activities may result in some exceedences within the Business 4 zone of the Plan's night-time noise maxima for permitted activities in that zone. More significantly, however, residential occupations within that zone may well be subjected to night-time noise levels in excess of those contemplated for a 'living' environment. Most potentially 'affected persons' within that zone have signified their approval. Further, and in Mr Hegley's opinion, noise impacts on land in the Living Hills zone are unlikely to exceed the Plan maxima for permitted activities within that zone.

It is important to note that Mr Hegley's predictions (largely accepted in the s42A reports) assumed the effectiveness of noise mitigation measures proposed by the applicant and indicated in a 'noise management plan' presented at the hearing – the application contained an earlier version. Mr Hegley is confident that the measures indicated in that plan will have the desired effect – that is, that actual levels will be within his predicted maxima – and he thus supports conditions placing limits on noise as it affects adjacent properties. The proposed limits are:

(a) Within nominated 'affected' properties in the Living Hills Zone :- 68 dBA L_{max} and 41 dBA L_{eq} (1 hour); and

(b) Within other parts of the Living Hills Zone:- 65 dBA L_{max} and 41 dBA L_{eq} (1 hour); and

(c) Within the Business 4 and 5 zones where approvals have not been obtained:- 75 dBA L_{max} and 49 dBA L_{eq} (1 hour).

Part of the rationale appears to be that, although those from whom approvals have been obtained will not directly protected by conditions relating to noise as experienced by them, they will experience some benefit from mitigation measures designed ensure compliance with the proposed conditions.

Dr Trevathan, who concentrated on the predictions for the Living Hills area, was not confident that adherence to the noise management plan could be relied upon to preserve, for the residents of the Living 1 zone, "the level of protection afforded to other residents in Living Zones throughout the city ..." Nevertheless, and following his consideration of the evidence that Mr Hegley was then yet to present, he was of the opinion that:

> "If road use is ignored and all conditions are complied with, then the noise experienced at Living Hills residences is likely to be at or about the top end of the Group 1 maxima. Exceedences beyond that of 3-5 dBA may occur"

Unlike Mr Hegley he did not regard this as reasonable, particularly in the case of "impact noise (that measurable using the L_{max} descriptor), a potent disruptor of sleep. Mr Hegley, however, relied upon national and internationally accepted standards for his conclusion that, particularly in the local circumstances, the condition levels should not be regarded as permitting an unreasonable level of noise.

What may be 'disregarded'

My first consideration here is the consequence of approvals obtained from owners and occupiers of land within the Business zones – I note that the owners and occupiers of 11 Nuttall Drive originally gave their approval, but that of a tenant has since been withdrawn. The Plan permits residential occupation within the Business zones for custodial and management purposed. It was suggested to me that at least some of the present occupations of that sort within the noise affected area of those zones was not of the permitted character. I cannot resolve that issue and I am inclined to think that, so far as the question of affected *persons* is concerned, I doesn't make a difference – residents may be affected even if not in lawful occupation,

On Mr Hegley's evidence – and that of the s42A report writers, none of the persons upon whom notice was served who have *not* given approval are likely to be subjected to noise above the relevant Plan maxima. I am required by s104(3) not to have regard to the effects on those who have given approval. When it comes to my consideration of the effects of the proposal upon the environment of the Business zones, I can see no reason not to disregard 'permitted' noise. I come to this conclusion for three reasons:

(a) Given that industrial activity is contemplated for these zones and residential occupation of them is permitted only for custodial and management purposes, those who are resident within them can have no expectation of a non-industrial environment;

(b) Within such an environment noise levels closely approaching prescribed maxima are likely to occur in some places and over time; and

(c) Whatever may be the case with existing residences in the Business zones, it is reasonable to expect that future residential provision within those zones will be designed and constructed so as to provide a suitable living environment, even if 'external' noise approaches the permitted maxima.

In my view, however, a decision to 'disregard' in circumstances such as the present should not rest on an expression of opinion. For this reason that step, and any consent granted as a consequence, must be on the basis that the Plan rules continue in effect except to the extent expressly stated in the conditions of consent

I have a different view so far as the Residential Hills Land is concerned. Firstly, no approvals have been forthcoming from owners and occupiers within that zone. Secondly, and even assuming that noise experienced within that zone will be within the maxima prescribed for activities in it, I do not think it reasonable to infer that noise levels at or about the maxima are either non-adverse or made tolerable by some form of deeming process. I remain of the view expressed in my 'notification' decision – quoted back at me by Dr Trevathan:

> At a (perhaps) simplistic level, it is not at all obvious to me that the experience of *more* L_{max} events is to be regarded as insignificant and/or non-adverse merely because several are already being experienced at or about the same level.

Further, I do not think it reasonable to suppose that, within a Living Zone, noise generators are likely to establish that push the noise envelope, as it were.

For these reasons I would not exercise the s102(2) discretion to 'disregard' these as 'permitted' effects, even if I were satisfied that the noise generated by the proposed activities will be experienced within the Living Hills zone at levels within the Plan maxima. While those maxima are relevant to the question of the weight to be given the effects in question, they should not operate to take them out of the evaluative process.

The evaluation of effects

It is necessary to consider the extent to which these effects may properly be seen as adverse effects *on the environment*. I accept the view of Living Hills residents, supported by Dr Trevathan, that noise from night-time operations – particularly impact noise – will be of disturbance to them. Ms Clinton went so far as to say that if consent is given she may need to consider moving from the area. Nevertheless the night-time noise environment that they have at present is far from ideal. When considered in the context of *that* environment I think that additional contributions from the applicant's night-time activities, while adverse, may properly be characterised as minor. For reasons already given I would characterise the effects of the proposal on the relevant part of the Business 4 as either non-adverse or insignificant.

These conclusions overcome both the need to return to the notification phase – s 104(3)d – and the limitations of s 104D(1). It does not remove, however, the need to give further consideration to the effects on residential occupiers, considered as part of the question of what amounts to the enablement of people and communities to provide for their own wellbeing, health and safety. I will return to this.

For the present, however, I should note that these conclusions depend upon performance of the conditions proffered by the applicant and upon the success of the noise (and other) mitigation measures that it has indicated it will undertake. All may be understood as measures of avoidance and/or mitigation for the purposes of s5(2).

Relevant provisions of statutory documents

Both Mr Barr and Mr Bonis (a planner called for the applicant) are of the view that the proposal

(i) Is, in general, consistent with the objectives and policies of the City Plan - or, at worst, not inconsistent with them;

(ii) Accords with the Canterbury Regional Policy Statement;

(iii) Finds some support in the Canterbury Land Development Strategy 2008-2018; and

(iv) Is unaffected by any other relevant statutory document.

No submitter has sought to argue to the contrary.

Other relevant matters

Apart from the matter arising in the discussion to follow I can think of none.

The overall consideration

This requires an answer to the question: Will the (single) purpose of the Act be better fulfilled by a grant of consent (with appropriate conditions) or by refusal? Of particular importance in this case is the first part of section 5 of the Act where 'sustainable management' is defined (in part) to mean:

> ... managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety ...

Undoubtedly the residential inhabitants of nearby Business and Living Hill zones are relevant people who may constitute one or more relevant communities. Equally clearly, the management of the resource represented by the subject land in the way now proposed will not better enable those inhabitants to provide for their wellbeing (etc). The not insignificant effects on them must weigh in the balance.

There are, however, other considerations – concerning, in particular, the sustainable management of the infrastructural resource constituted by the Port of Lyttelton. Part 2 considerations impinging on this are to be found in clauses (b) and (ba) of section 7. I accept Mr Donnelly's opinion that a 24/7 operation of CityDepot as proposed contributes towards the efficient use and development of the port, and that is does so to a greater extent than any alternative apart from the prohibitively expensive establishment of alternative facilities within Lyttelton itself. I am also of the view that such an operation, with its reliance on railway transport, is a greater contributor to efficiency in the end use of energy than would be all feasible alternatives.

Additionally, there is a wider understanding of relevant people and communities that needs to be brought in to play. Again I accept Mr Donnelly's evidence that the continued efficient functioning of the Port of Lyttelton is a matter of importance to the citizens of the nation, the Canterbury region and the Christchurch. I accept the applicant's argument that a grant of consent will further enable those wider "people and communities" to provide for their wellbeing. On balance I am of the view that this factor markedly outweighs the countervailing elements discussed above. Further, I think that a grant of consent will go some way to fulfilling the objective of s5(2)a, that of:

> [s]ustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations

The 'future generations' here are those whose needs will be met by an efficiently functioning port.

The remaining s5 element is that in subsection (2)b – the requirement to avoid, remedy or mitigate adverse effects on the environment. The Act is not a 'no adverse effects' regime: what is required is that such adverse effects as there are be *appropriately* avoided, remedied or mitigated. Part 2 considerations relating to this question are clauses (c) and (f) of section 7. I accept that the operations of CityDepot.do not contribute to the maintenance and enhancement of amenity values or of the quality of the environment. Questions of noise aside, residential occupiers and others may well find that container stacking in order to provide noise attenuation is something that detracts from visual amenity. This is not, however, necessarily a consequence of night-time activity – the same result may occur from activities that do not require consent.

I have earlier concluded that the adverse noise effects of the proposal *on the environment* are quite small – this as the result of what I consider to be appropriate measures of avoidance and mitigation proposed by the applicant. On the other hand, the contribution that the present proposal will make towards the 'enabling' part of the purpose of the Act is substantial – to the extent that the presumption referred to earlier is well overcome. Apart from those discussed above there are no Part 2 matters of relevance. For the reasons already given I conclude, by a significant margin, that the single purpose of the Act will be better met by a grant of the consent sought (subject to appropriate conditions) than by its refusal.

Conditions

Mr Barr's s42A report contained a set of recommended conditions. Proposed condition 3 was:

> There shall be no road freight associated with the activities authorised by this resource consent.

This reflects passages in the application and AEE in which emphasis was placed on the applicant's intention to service its night-time operations (CityDepot to Lyttelton and return) by rail. Although the applicant did not resile from this it questioned the absoluteness of the proposed condition. What would the position be, it asked, in the case of temporary closure of the line, perhaps as the result of derailment? In its place Mr Bonis suggested:

> There shall be no additional road freight associated by the activities authorised by this resource consent other than in unforeseen emergencies such as derailment.

The uncertainties implicit in this alternative led me to question the need for any condition, particularly given the fact that the proposal was premised upon rail connection. What, I asked, would be the consequences if, on occasions, truck transport was employed? In the end it seemed that this was unlikely to make a difference, either to the submitters or the wider community. I have decided that no resource management purpose would be served by either version.

As previously mentioned the application was accompanied by a draft noise management plan. Ms Appleyard made it clear that the purpose of this plan was to indicate the procedures by which the applicant proposed to perform the conditions of consent, and that these procedures might well alter as the result of experience and following further consultation. It is thus not appropriate, as a condition of consent, to required compliance with the plan in its present form. The best that can be done is to require that the applicant have a plan which should contain, at a minimum, provisions of the sort that it now contains. I think that the same can be said about some of the matters appearing as suggested conditions 8 to 16 in Mr Barr's report.

Noise level conditions were proposed in general accordance with those suggested in the application. As previously indicated, the conditions provide noise limits within the B4 zone that differ depending upon whether or not the approval of relevant owners and occupiers has been obtained. A plan was presented at the hearing showing the properties in respect of which all relevant consents had been obtained. Prior to the hearing, however, the consent of the tenant of 11 Nuttall drive was withdrawn. There are some suggestions that the position may again change. A plan attached to this decision shows the location of 'approval' properties as at the date of the hearing

The reason for this withdrawal of approval is unclear and is, in any event, not a matter into which I may properly enquire. Nevertheless the application was notified on the basis that this approval was available. For this reason I think it appropriate to modify the suggested condition so as to enable the applicant to have the advantage of the more relaxed limits if all relevant consents in relation to that land can be obtained.

During the hearing I canvassed the possibility that the same more relaxed controls should apply in the case of other properties in respect of which subsequent approvals are obtained. On reflection I think this inappropriate, principally because I do not think that the applicant should be placed in a better position vis-à-vis residential occupiers than appeared likely at the date that notice of the application was given to them.

Formal Decision

For the foregoing reasons, consent is granted to the use of that part of the subject land as is within the Business 5 zone of the City Plan for the purposes an inland container depot in a manner that exceeds the applicable night-time noise standards of the City Plan *subject to, and only to the extent authorised by, the following conditions:*

General

1. Except as otherwise stated by the following conditions of consent, the activity shall proceed in accordance with the information submitted with the application including the additional information by Hegley Acoustic Consultants submitted on the 12 June 2009. The approved application and plans and the noise management plan referred to in condition 8 are entered into Council records as RMA92013975.

2. There shall be no night-time (2200-0700 hours) operations within any part of the site having a Business 4 zoning.

3. There shall be a maximum of four complete rail shuttle trips (eight movements) between the site and the Lyttelton Container Terminal between the hours of 2200-0700 (City Plan night time noise period).

Noise levels at sites within Business Zone, where neighbours have not provided their approval

5. The noise emissions associated with the authorised activities between 2200 and 0700 hours the next day shall not exceed 49 dBA Leq (1 hour) or 75 dBA Lmax at any site in the Business 4 or Business 5 zones where the written approval of the owners and occupiers of that site has not been obtained. The sites within the Business zones in respect of which approvals have been obtained are identified on the plan attached to this decision. If all relevant approvals are obtained in respect of 11 Nuttall Drive (between 15 Nuttall Drive and 2 & 2B Desi Place) then that site may be excluded from those to which this condition applies.

Noise levels at sites within Living Zones

6. Noise emissions associated with the authorised activities shall not exceed 41 dBA Leq (1 hour) or 68 dBA Lmax between 2200 and 0700 hours the next day at the road boundary of the following Living Hills zoned sites:

- 311 Port Hills Road
- 313 Port Hills Road
- 315 Port Hills Road
- 317 Port Hills Road
- 319 Port Hills Road
- 319A Port Hills Road
- 321 Port Hills Road
- 323 Port Hills Road

7. Other than the sites identified in Condition 6, the noise emissions associated with the authorised activities at any site zoned Living Hills shall not exceed 41 dBA Leq (1 hour) or 65 dBA Lmax.

Container repairs

8. Container repairs undertaken between 2200 and 0700 hours shall not generate noise emissions that exceed 75dBA Lmax and 49dBA Leq (1 hour) measured at or beyond the boundary of the 'site' to which this consent applies.

Noise Management Plan

9. Prior to the commencement of activities authorised by this consent the applicant shall adopt, and thereafter maintain and keep under review, a noise management plan. This plan is to detail the measures to be undertaken by the applicant so as to secure the performance by it of the conditions of this consent. At a minimum, the first and subsequent versions of that plan are to contain information and adopt approaches of the kind found in the version presented at the hearing and entered in to Council records identified as in condition 1 hereof. In particular, all current versions of the plan are to make provision for, and to contain an undertaking to comply with monitoring, complaints and community liaison group regimes no less onerous to the applicant than those shown in the version presented at the hearing, and are in addition to provide for regular monitoring by the applicant to occur:

- At positions representative of the most significant noise generating activities on the subject land, and in any event at or adjacent to the road boundary of 11 Nuttall Drive;

- Within ten days of the first exercise of this consent; and

- At intervals not exceeding 2 months thereafter, or intervals not exceeding 6 months if the three previous successive monitoring rounds have indicated that the conditions of consent are being complied with; and

All such monitoring is to be undertaken by a person experienced in noise monitoring and assessment and in general accordance with NZS 6801:1991.

10. The consent holder shall maintain a written record of the monitoring sites adopted and the results of noise level monitoring undertaken in accordance with the relevant noise management plan.

11. Copies of the year's monitoring records shall be provided to the Christchurch City Council's Enforcement Team Leader by January 31 of the following year.

12. Upon request by a Christchurch City Council Officer a copy of a particular noise monitoring record shall be provided within five working days.

John Milligan
Commissioner
October 21, 2009

Advice notes:

i) The Council will require payment of its administrative charges in relation to monitoring, as authorised by the provisions of section 36 of the Resource Management Act 1991. At present the monitoring charges include:
   - A monitoring fee of $100.00 to cover the cost of setting up a monitoring programme and carrying out a site inspections to ensure compliance with the conditions of this consent; and
   - Time charged at an hourly rate where additional monitoring is required.

ii) The consent holder is advised that any outdoor lighting installed at the site should be in accordance with the City Plan's rules, specifically the requirements set out in the section titled "Control of Glare" in the Health and Safety Section, Part 11 of Volume 3.

APPENDIX A
Summary of evidence heard – application by Lyttelton Port Co Ltd

P M Davie: Chief Executive of the applicant, a body the principle statutory objective of which is to operate as a successful business.

- The City has stated that the port is of long term strategic benefit to the citizens of Christchurch;
- Lyttelton is the SIs major commercial deep-water port – 3rd largest in NZ and a vital NZ link; operates on a 24hr basis; the main regional contributor to national import and export activity; increasing at about 6% annually; 400 staff; needs to remain competitive;
- Discusses 'strategic vision';
- No available land within Lyttelton for a container handling facility; there, reclamation is the only possibility, but the cost of this prohibitive;
- As an operator within the Lyttelton residential area, is sensitive to noise concerns;
- Because of the demands of shipping services (especially) 24/7 is an essential requirement;

D J Bain: Chief Information Officer and CityDepot Manager, LPC

- 2005/5 LPC purchased site of existing freight handling operation at Chapmans Road – this the most economic location for a LPC container handling depot;
- In economic terms the closer a container depot can be to the port the better – establishment in Lyttelton cost-prohibitive;
- The rail link depot-Lyttelton can replace 45,000 truck journeys pa;
- Describes depot operations – applicant intends to increase the area of paving, replace older machinery and undertake other operational upgrades (including noise and dust management);

P Donnelly: Applied Economist of 40 years experience;

- A continued ability to trade internationally is of vital importance to the national economy, and thus to national wellbeing;
- Ports, and port efficiency, is necessary to that;
- Considered from a regional standpoint Canterbury needs to maintain its competitive advantage; Lyttelton is Canterbury's main contributor to the facilitation of international trade;
- Quantifies to contribution of Lyttelton – including the indirect creation of about 11,000 jobs and the facilitation of about 32,000 more;
- In capital and operational terms the CityDepot site is preferable to all available alternatives – by a significant margin;
- The operation as proposed will decrease – or at least reduce the increase of – road traffic movements associated with the site;
- "By facilitating the growth in the export container trade, a 24/7 operation will help New Zealand to improve its standard of living and improve growth in GDP and jobs"

M Ferriss: Container Services Manager, CityDepot

- Describes operations – a MAF certified inspection facility;
- Other transport operations adjoin.

M Bonis: Planner; 13 years experience NZ and UK

- Describes application, background and circumstances;
- Accepts non-complying activity status; refers to Plan provisions re custodial occupation and to consultation;
- Focuses on environmental effects – dust glare and traffic largely discounted; concludes that, in context, "the potential and actual effects of the proposal will be less than minor";
- Discusses provisions of relevant plans (and Canterbury Regional Land Transport Strategy) – concludes that proposal is consistent with all relevant documents;
- Is of the view that the proposal fulfils the requirements of Part 2 of the Act.

N Hegley: Acoustic consultant of 35 years experience – former member and Chairman of relevant Standards sub-committee.

- Refers to the zoning pattern of the area and to the zoning of the application site; notes Plan controls and their rationale; refers to noise measurements;
- Says that in the present circumstances the appropriate determinants are L_{eq} and L_{max}, and that, in relation to the Plan controls, the proposal will probably comply;
- AS far as the LH zone is concerned, the existing night-time noise environment is dominated by traffic on Port Hills Road, with general industrial noise and (to a lesser extent) railway noise contributing. The closeness of the L_{eq} and L_{95} readings at Desi Place shows that it traffic noise does not dominate that environment;
- Is of the view that heavy vehicles are a feature of night-time traffic and night-time road noise – and thus dominates night-time L_{eq} readings;
- The noise from forklifts is affected by the way in which they are used, so that with proper training of drivers noise generation will be lower than at present;
- Predictions of noise attenuation (assuming proper use) enables the development of screening. Nevertheless single event exceedences may occur as the result of high stacking of containers.
- The existing night-time noise environment of the RH area is high – appropriate noise levels *in this locality* are 45dBA L_{eq} and 75dBA L_{max};
- Agrees (in general) with the recommendation in the s42A report – The levels proposed by the applicant (45dBA L_{eq} and 75dBA L_{max}) are within national and internationally accepted guidelines, and are unlikely to be noticeable in the existing noise environment.

Dr J W Trevathan: Acoustic Engineer and director of Acoustic Engineering Services Ltd. 7 years experience.

- Comments on Hegley evidence (previously made available);
- Compliance with the proposed limits will not guarantee absence of annoyance "particularly when windows are open during the night time";
- Largely an interpretation of Hegley's data using assumptions about noise causation;
- Concentrates on 'impact noise'
- "If road use is ignored and all conditions are complied with, then the noise experienced at Living Hills residences is likely to be at or about the top end of the Group 1 maxima. Exceedences beyond that of 3-5 dBA may occur";
- Is concerned that the management plan may not be sufficient to secure compliance with the proffered conditions;
- Proposes some alterations to the NMP (in its 'application' form).

R Palmer 7 Nuttal Drive; Business owner and 'custodial' resident;

- Lives there for convenience and 'family' reasons; finds the area "relatively quiet";
- Doubts that the proposed conditions can be complied with or that the NMP will be effective;
- Argues for an extension of the noise barrier;
- Says that dust is a present problem – one that is not fully controlled by water spraying;
- If consent granted would like to see the formation of a liaison committee;
- Concerned that he will be unable to have the necessary sleep to enable the running of a small business.

A Saunders: Co-owner of Quarry Cottage, Port Hills Road. The CityDepot operations are in full view.

- Seeks a variety of conditions, some of which would amount to a denial of consent – and some which are either covered by those proffered or are a consequence of the Act;
- Attaches road counts that show a reduction in traffic 2200-0600, and infers that road noise is of no real concern during that period.

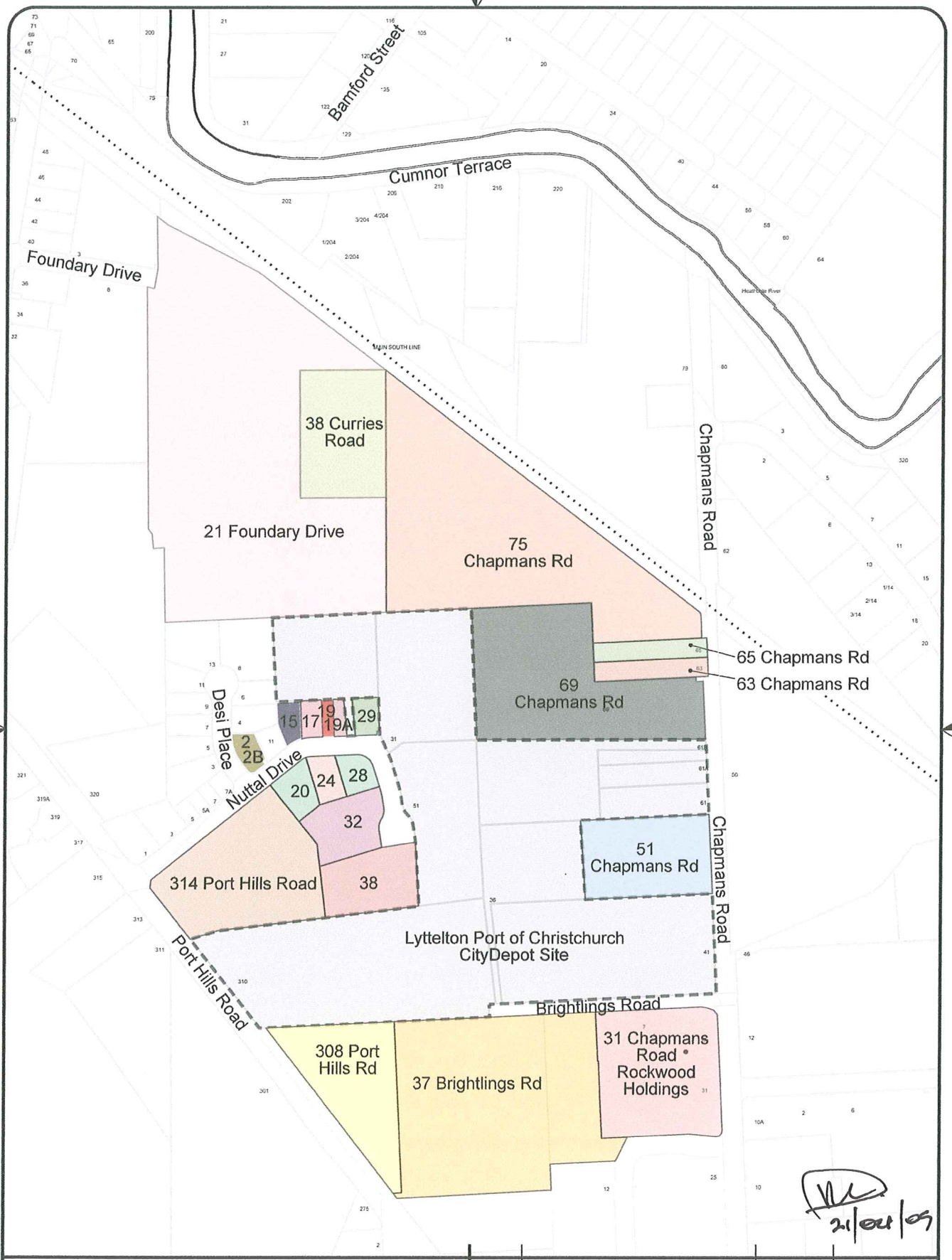
T L Scott: Resident 32 years at 317 Port Hills Road (and owns 319) and a 50n year resident of the area.

- Refers to existing noise nuisances from a variety of sources;
- Is opposed to the night-time operation of CityDepot – noise will have more than a minor adverse effect on the amenity of his residential properties;
- Regards the standards in the Plan as providing for an outer limit of tolerability;
- Does not accept the efficacy of the proposed noise management practices;
- Argues – with others – for the relocation of the railway siding so that a permanent continuous acoustic barrier can be built;
- Concerned about the possibility of dust and light spill.

K Clinton: 315 Port Hills Road.

- My property is as directly in line with the proposal as anyone – across the road from Nuttal Drive. There is no ability to provide a noise barrier between the railway siding and Nuttal Drive, so noise created there cannot be attenuated by structures;
- Daughter's bedroom is directly exposed – when she gets tired there may be an increased tendency to accident. Bedrooms on upper storey;
- Does not accept that noise from night-time activity will be acceptable – this, she thinks, is confirmed by the s42A reports;
- Does not accept that the applicant can manage noise in the way that it proposed;
- Is already affected by traffic noise, but not so much in the weekends and at public holidays. Traffic noise has a pattern and will not mask noise of a different kind and more uniform occurrence;
- Noise from the daytime operations gains dominance as one gets further up the hill;
- Thinks that over a period of time wildlife (esp. birds) will be affected in a detrimental way – "There will inevitably be an environmental effect";
- Objects to the exclusion of Avoca Valley residents from the process, and tables material from some of them;
- Concerned about the possibility of light spill;
- Bought her property to create a lifestyle and hopes that she can use it to care for animals in some way;

- Says that container movements create vibration;
- Objects, generally, to industrial growth in the area and t the aesthetic consequences of that;
- Takes issue with the aesthetic consequences of the container stacks proposed as a noise attenuation measure; says that residents may feel themselves trapped in a reflective corridor between the stacks and the hill;
- Will have to look at moving if consent is given.



21/07/09

Lyttelton Port of Christchurch	No	Revision Details	By	Date
Drawing Title: CityDepot Resource consent application. Plan of adjacent properties where written approvals obtained	Scales 1:5000	Drawn	PK	25.06.09
		Checked		
		Approved		
	Sheet 1 of 1	Drawing No C-A4-5867-C		
		File		

Original Scale mm

Plotted: $DATE$ $TIME$

Appendix B – Map attached with the submission showing the Proposed Inland Port and the Inland Port Influences Overlays