

Before an Independent Hearings Panel  
appointed by Christchurch City Council

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*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

Legal Submissions on behalf of Lyttelton Port Company  
Limited

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Dated: 11 April 2024

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## MAY IT PLEASE THE INDEPENDENT HEARINGS PANEL

### INTRODUCTION

- 1 These legal submissions are presented on behalf of Lyttelton Port Company Limited (*LPC*). *LPC* is a submitter and further submitter on Plan Change 14 (Housing and Business Choice) to the Christchurch District Plan (*PC14*) (submitter 853).
- 2 These legal submissions relate to the Qualifying Matter topic (*QM topic*). We have previously filed opening legal submissions on behalf of Christchurch International Airport Limited, *LPC* and Orion New Zealand Limited (together the *Infrastructure Submitters*) for the Strategic Overview topic.<sup>1</sup> Those submissions are also relevant to *LPC*'s position on the *QM* topic.
- 3 *LPC* is calling evidence from:
  - 3.1 **Dr Crystal Lenky** – in relation to *LPC* operations and approach to port noise management;
  - 3.2 **Mr Nevil Hegley** – in relation to acoustics; and
  - 3.3 **Mr Andrew Purves** – in relation to planning.
- 4 *LPC* supports the qualifying matter proposed in relation to Lyttelton Port. However, *LPC* also seeks that *PC14* contain provisions in relation to its Inland Port facilities. We observe that the rule framework to give effect to *LPC*'s relief is agreed between Council and *LPC*'s experts.

### OVERVIEW OF PLANNING FRAMEWORK

- 5 The legal submissions filed for the Infrastructure Submitters at the Strategic Overview hearing outline, at a high level, the legislative framework that is the context for *PC14*. Below we expand on those legal submissions in the specific context of *LPC*'s relief.
- 6 The importance of *LPC*'s port infrastructure is reflected in a number of regional and national planning documents. Importantly in the context of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (*Amendment Act*), the National Policy Statement on Urban Development 2020 (*NPS UD*) defines port facilities of a port company as nationally significant infrastructure.

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<sup>1</sup> *Opening Legal Submissions for the Infrastructure Submitters*, dated 11 October 2023.

- 7 In the context of Policy 1 of the NPS UD, it is submitted that a well-functioning urban environment is one in which:
- 7.1 infrastructure – particularly nationally significant infrastructure such as LPC’s port facilities – is not adversely affected by incompatible activities; and
  - 7.2 urban growth is planned with infrastructure provisions in mind, recognising that the two run hand-in-hand.
- 8 The NPS UD requires councils to increase density and realise as much development capacity as possible in urban environments,<sup>2</sup> but allows height or density requirements to be modified to the extent necessary to accommodate a qualifying matter.<sup>3</sup> Relevantly, qualifying matters include:
- any matter for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure.*
- 9 The Amendment Act provides discrete pathways for evaluating different types of qualifying matters. The specific section(s) that are relevant to each aspect of LPC’s relief are addressed in turn below.

#### **LYTTELTON PORT INFLUENCES OVERLAY**

- 10 Where a qualifying matter is already provided for in an operative district plan, it is defined as an “existing qualifying matter”. This results in a more streamlined process for determining whether the qualifying matter should appropriately limit the application of the medium density residential standards (*MDRS*) in the relevant district plan.<sup>4</sup> The framework for “existing qualifying matters” is relevant to LPC’s Lyttelton Port facility.
- 11 As explained by Mr Purves, PC14 as notified applied the Lyttelton Port Influences Overlay and associated land use provisions from the operative Christchurch District Plan (*District Plan*) by way of a qualifying matter (*Lyttelton Port QM*) for the Residential Banks Peninsula Zone.
- 12 The Lyttelton Port QM restricts residential intensification to the levels currently provided for in the District Plan and does not allow that density to increase. Residential intensification is limited to existing levels within the same geographical area as the Lyttelton Port Influences Overlay.

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<sup>2</sup> NPS UD Policy 3.

<sup>3</sup> NPS UD Policy 4.

<sup>4</sup> Amendment Act section 77K.

- 13 The Lyttelton Port QM is supported by the Council Officer,<sup>5</sup> LPC and its witnesses as it is consistent with the direction<sup>6</sup> to avoid noise sensitive activities within the Lyttelton Port Influences Overlay.
- 14 As the Lyttelton Port QM is agreed between LPC and Council, and there are no submitters in opposition, we do not intend to address the provisions associated with Lyttelton Port in any further detail. However, counsel and LPC's witnesses are happy to expand verbally at the hearing if it would assist the Hearings Panel.

### **INLAND PORT INFLUENCES OVERLAY**

- 15 As explained in Dr Lenky's evidence, LPC's Inland Port facility at Woolston is a critical component of LPC's overall port operations and infrastructure.
- 16 There is no overlay associated with the Inland Port in the operative District Plan. This is as a result of the consenting history of the Inland Port site and because LPC has had limited opportunity to consider and pursue this planning matter with its focus in recent years firmly directed to the recovery of Lyttelton Port after the Canterbury earthquake sequence.
- 17 LPC's submission sought that, within an area described as the "Inland Port Influences Overlay", a qualifying matter be applied requiring noise mitigation for habitable spaces in certain circumstances. We note two matters here:
- 17.1 LPC deliberately chose not to pursue density controls within the Inland Port Influences Overlay through PC14; an approach which it would ordinarily take in order to ensure the potential for reverse sensitivity effects is appropriately recognised. In the context of what PC14 provides for, specifically in relation to the area on the other side of Port Hills Road, LPC considers that noise mitigation alone is sufficient in this case.
- 17.2 Since the Strategic Overview hearing, counsel and LPC have reconsidered the legislative framework that most appropriately gives effect to LPC's relief in relation to the Inland Port Influences Overlay. This follows counsel's discussions with the Hearings Panel at the hearing whereby it was suggested that LPC's relief may more neatly fit into "related provisions".

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<sup>5</sup> *Planning Officer's Report of Sarah-Jane Oliver under Section 42A of the Resource Management Act 1991 - Strategic Overview, Strategic Directions Chapter 3, Qualifying Matters relating to Strategic and City Infrastructure and Coastal Hazards* dated 11 August 2023 at paragraphs 12.90 to 12.94.

<sup>6</sup> Objective 3.3.12 in the Christchurch District Plan.

- 18 On this basis, while the relief LPC is seeking in relation to the Inland Port remains exactly the same, in these submissions we address the different statutory framework that applies (i.e. under section 80E of the Resource Management Act 1991 (*RMA*)).

**The test for “related provisions”**

- 19 Section 77I of the Amendment Act provides that a specified territorial authority may make the MDRS and the relevant building height or density requirements less enabling where a qualifying matter applies. The relief sought by LPC in relation to the Inland Port Influences Overlay does not relate to the MDRS, building height nor density. Rather, it relates to ventilation and building material requirements.
- 20 Accordingly, counsel and LPC agree that the LPC’s relief more appropriately sits in the category of “related provisions” under section 80E(1)(b)(iii) that support or are consequential on the MDRS. It is submitted that the relief sought by LPC is required as a consequence of enabling MDRS in close proximity to its Inland Port facilities. LPC’s evidence, while originally tailored to the qualifying matter test, justifies this amended approach.
- 21 Firstly, it is important to reiterate that the Inland Port is, in NPS UD terms, of national significance in the same way that Lyttelton Port is. The only difference is the way in which they are treated the operative District Plan and this can be explained by the context of the Inland Port site outlined at paragraph 7 above.
- 22 As explained by Mr Purves, intensification of residential activity on Port Hills Road (opposite the Inland Port) would result in more residential occupants being subject to noise from port operations and would increase the risk of reverse sensitivity effects. On this basis operations at the Inland Port and the MDRS are incompatible unless acoustic attenuation for new, and extensions to existing, habitable spaces is provided for.
- 23 The spatial extent of the Inland Port Influences Overlay, and the associated planning provisions, is suggested to cover specified properties in the nearby Residential Hills Zone. Mr Purves has undertaken a further evaluation report under Section 32AA of the RMA as part of preparing for this hearing. This will be attached to his summary statement at the hearing to assist the Panel’s consideration and decision on the LPC’s relief for its Inland Port facility.
- 24 It is submitted that the costs of imposing noise mitigation requirements for a relatively discrete portion of land on Port Hills Road are minor when compared to the importance of protecting nationally significant infrastructure (such as the Inland Port) from reverse sensitivity effects.

- 25 We have previously addressed the Panel on the jurisdiction of its decision-making in a memorandum dated 21 December 2023. As outlined in that memorandum, the Panel has broad powers under the Amendment Act when making its recommendations on PC14. Counsel considers that protection for Inland Port operations, as nationally significant infrastructure, is well within contemplation of the “related provisions” section of the Amendment Act. LPC’s relief is therefore squarely within the scope of PC14.

**The rule framework for the Inland Port Influences Overlay is agreed**

- 26 The rule framework for acoustic attenuation that is proposed to apply within the Inland Port Influences Overlay was a matter that was addressed, and agreed, in expert conferencing. **Dr Jeremy Trevathan** on behalf of Council and Mr Hegley on behalf of LPC undertook expert conferencing on the topic of noise and vibration; specifically related to port noise at the Inland Port:
- 26.1 The experts agree that the rule proposed in Mr Hegley’s evidence is appropriate to mitigate the potential reverse sensitivity effect if existing dwellings on the opposite side of Port Hills Road were increased beyond a single storey (which would be enabled under MDRS) at the elevated rear of the sites.
- 26.2 The rule proposed (and agreed) would require new habitable spaces that overlook Inland Port to be provided with ventilation and for new spaces to avoid light weight building elements.
- 26.3 The experts agree that compliance with that rule would avoid reverse sensitivity effects.
- 27 In so far as there are scope considerations for LPC’s relief, we again refer to our memorandum dated 21 December 2023 and emphasise that the Panel’s power to make recommendations is broad. The position agreed in the Joint Witness Statement (*JWS*) in terms of the rule framework achieves the intent of LPC’s submission; it does not go beyond the substance of what was sought in the submission.
- 28 Furthermore, provided attenuation requirements are met (where relevant), development capacity is not impacted. In fact, LPC’s proposed approach (agreed with Council) aligns with the requirements of the Amendment Act to restrict development only to the minimum possible.

**OTHER MINOR AMENDMENTS SOUGHT**

- 29 There are a number of other amendments that were sought in LPC’s submission and are adequately rectified in the relevant Council

Officer's report. Mr Purves has addressed these amendments in his evidence and will speak to them at the hearing if required.

**CONCLUSION**

- 30 LPC seeks that PC14 implement:
- 30.1 the Lyttelton Port QM as proposed by Ms Oliver and Mr Purves; and
  - 30.2 related provisions for the Inland Port Influences Overlay as contained in the JWS.

Dated 11 April 2024



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