

12. APPEAL REGARDING CHAPTER 3 OF NRRP

General Manager responsible:	General Manager Strategy and Planning, DDI 941-8071
Officer responsible:	Programme Manager Healthy Environments
Author:	Terence Moody

PURPOSE OF REPORT

1. To obtain retrospective approval of a notice of appeal as attached to the Environment Court on some provisions of Environment Canterbury's Proposed Canterbury Natural Resources Regional Plan Chapter 3: Air Quality.

EXECUTIVE SUMMARY

2. The Christchurch City Council in 2002 made submissions to Environment Canterbury ("ECan") on some provisions of the Natural Resources Regional Plan ("NRRP") Chapter 3: Air Quality. The Council had submitted on previously presented discussion papers and proposals and met with Environment Canterbury to discuss the 2001 adopted policy ECan was intending to use as the basis for the air chapter. It was indicated at that time that while some matters to be included in the air plan would be supported some issues remained to be resolved. The suggestion of a total prohibition of solid fuel burners was of concern, particularly in relation to new wood burners. The matters requiring territorial authorities to control traffic pollution and reverse sensitivity by land use controls in relation to odours, agrichemical spray drift, and industrial operations was another issue that the Council considered needed to be addressed. Considerable concern was expressed regarding the failure of the Plan to address the use of emergency generators for load shedding purposes which had both environmental and economic implications.
3. The decisions of the Commissioners were adopted by Environment Canterbury on 19 September 2007 and published on 29 September 2007. Copies of the CD containing the decisions and recommended changes to the Plan were received on 1 October 2007. Any appeal to the Environment Court must be on matters that were referred to in submissions made originally to the Plan. Such appeals must be made within 30 working days of the date of service of notice of the decision(s). While not all of the matters submitted on by the Council were accepted, a number of substantive matters were accepted in part to the extent that it was not considered further appeal was necessary. Following staff discussions, two issues were considered should be appealed. These are included in the attached notice of appeal and relate firstly to the use of "emergency" generators for load shedding purposes which have significant economic and environmental advantages, and secondly to changes to an Appendix relating to odour control to reflect the provisions of the Ministry for the Environment Odour Guide. The latter has significance in relation to the operation of the Council's waste treatment activities among other Council waste activities.
4. Due to the time factor in the preparation and lodging of the appeal occurring at the time when suitable Council meetings were not available to consider the appeal, the opportunity now exists for the Council to retrospectively approve the notice of appeal or request its withdrawal. It should be noted that no matters can be added to the notice of appeal at this time. It may be that some other appellants may be indicating support for the approach taken by this Council in regard to the load shedding issues in particular.

FINANCIAL IMPLICATIONS

5. The continuation of the proposed rules AQL15 and AQL16 as advised would have financial implications for the Council's operations. The cessation of electricity generation for peak load shedding would increase the Christchurch City Council's energy budget by approximately \$1M per annum. This is because the cost structure for electricity for major sites comprises energy cost on a kw/hr basis consumed and line and transmission costs paid to Orion. The most significant part is the penalty for peak demand times. This can be avoided by removing the electricity used through the Orion system by operating the generators to cover peak periods and therefore avoid penalty costs. In addition the Christchurch community (residents and businesses) would incur heavy expenses associated with the loss of electricity generation and, subsequently, a reduction in security of electricity supply. In order to compensate for such a reduction, substantial capital investments into transmission lines and local distribution network may be required, which would result in increases in electricity prices in the Christchurch area.

Do the Recommendations of this Report Align with 2006-16 LTCCP budgets?

6. The cost of preparing and presenting submissions is covered by existing unit budgets. While there is no guarantee that the appeals will be granted, if successful the amendments sought would reduce the cost of electricity used by the City Council and be more environmentally and economically sustainable.

LEGAL CONSIDERATIONS

7. The appeal has been prepared by experienced legal counsel under contract to the Legal Services Unit. The Local Government Act 2002 requires local authorities to take a sustainable development approach by taking into account a range of factors that directly relate to the use of energy sources. The Resource Management Act 1991 has as its purpose to promote the sustainable management of natural and physical resources. In achieving this purpose, the Act states that all persons exercising functions and powers under it shall have, amongst other things, particular regard to the efficiency of the end use of energy.

Have you considered the legal implications of the issue under consideration?

8. Yes

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

9. Energy issues are included in the LTCCP under its two strategic directions: *Healthy Environment* and *Prosperous Economy*. The Sustainable Energy Strategy defines the Council's role in achieving the Community Outcomes under its Strategic Directions, and the specific action plan for achieving its goals and objectives.

Do the recommendations of this report support a level of service or project in the 2006-16 LTCCP?

10. The appeal aims to assist the Council in meeting demand for energy at a reasonable cost, and to ensure that Council's wastewater operations can continue to operate within the MFe Odour Guide, without being subject to additionally stringent and expensive requirements.

ALIGNMENT WITH STRATEGIES

11. Sustainable Energy Strategy 2008-2018. Energy issues are included in the LTCCP under its two strategic directions: *Healthy Environment* and *Prosperous Economy*. In particular: *Implement **distributed power generation** on a city-wide scale using emergency diesel generators (combined capacity almost 10 MW –enough to power 2,000 homes) – to help Orion to manage the city peak electricity demand.*

Do the recommendations align with the Council's strategies?

12. See above.

CONSULTATION FULFILMENT

13. Discussions have been held with the Council's Energy Manager, the Operations and Maintenance Manager City Water and Waste, and the Energy Projects Manager of Orion.

STAFF RECOMMENDATION

It is recommended that the Council approve the attached Notice of Appeal to the Environment Court on the provisions of the Proposed Canterbury Natural Resources Regional Plan, Chapter 3: Air Quality lodged on 9 November 2007, as attached.

BACKGROUND (THE ISSUES)

14. The Christchurch City Council made submissions to ECan on a number of provisions of the NRRP Chapter 3: Air Quality in 2002. It was indicated that while a number of matters included in the Plan could be supported, some issues that had previously been discussed with ECan, remained to be resolved. A copy of the submission dated 30 August 2002 is attached. The submission indicated that the *Council had previously indicated that it would support some provisions such as:*
- *the phasing out of open fireplaces;*
 - *the provisions relating to the phasing out of non complying solid fuel heaters after 15 years;*
 - *allowing only the installation of “1.5 g/kg” or better solid fuel burners;*
 - *the exemptions for designated heritage buildings;*
 - *provisions relating to motor vehicle emissions and industrial and trade premises;*
 - *support for public information campaigns;*
 - *the introduction of an assistance and incentives programme.*
15. It was also indicated that *there were a few (matters) that caused concerns, notably those relating to the proposal to prohibit solid fuel burning, largely related to wood burning appliances, in a large number of cases.* In addition there were issues relating to requirements being placed on this Council to undertake land use controls for reverse sensitivity and transport planning which were considered excessive. Other matters of concern related to the rules relating to emergency generators which ignored their use for electrical load shedding and some issues relating to controls over odours.
16. Following receipt of the ECan *Proposed Canterbury Natural Resources Plan Chapters 1 to 3 Decisions on Submissions and minor changes*, in October 2007, an examination of how the submissions made by the Council were treated was undertaken. In a number of cases the Commissioners accepted, in whole or in part, the submissions made by the Council to the extent that it was not considered suitable grounds for further appeal were available. A similar situation was found to exist in the cases where the submission was rejected. In some of the latter cases changes in circumstances since the introduction of the Proposed Plan, for example the introduction of National Environmental Standards for air pollutants, set clearly regulated timetables for compliance, and the operation of the Clean Heat Project had changed some of number of solid fuel appliances in the air shed. The acceptance of low emission pellet fires had created further options for solid fuel use in the domestic sector. In discussions with the appropriate officers it was considered that two matters were of significance that could be the subject of appeal to the Environment Court.
17. The first related to provisions under Policy AQL 5 Avoid Odour Nuisance. The submission had expressed concerns that the odour assessment criteria contained in Appendix AQL 5 do not reflect the matters contained in the Ministry for the Environment *Good Practice Guide for Assessing and Managing Odour in New Zealand* which was pending publication at the time the Plan was notified but published in 2003. Subsequent evidence on this matter was provided by a consultant on behalf of the Council as it may relate to odour issues from Council operations such as the waste treatment plant. While the decisions of Environment Canterbury did update references to the guide and accepted some other submissions it did not totally include the matters covered by the New Zealand guidelines. These particularly relate to the acceptance of the Best Practicable Option approach which has some practical use in regard to existing possible sources of odours.
18. The second issue was considered a more significant matter and related to Rules AQL15 and AQL 16 setting conditions on the use of emergency diesel, petrol, kerosene, or gas generators for the purposes of electrical load shedding purposes. The purpose of the Council's submission was to ensure that the use of properly installed diesel generators could be used for electricity network load shedding. The submission applied to all of the above rules. The use of both diesel, and in the case of the City Council methane fired generators to provide electricity into the network, has a number of cost benefits rather than using such electricity merely to transfer it into heat, which would then be dissipated in most cases. It is not considered this aspect has

been adequately considered in either the Section 32 Report, the Plan, or in the Officer Report. It is understood other submitters, in perhaps more detail, will also present on these matters. It was pointed out in the original submission that calculated PM₁₀ emissions of all diesel generators operating on a typical winter day would be 0.03 per cent of total PM₁₀ emissions in Christchurch. That figure may be arguable but overall the emissions would be much less than 1 per cent. The Council submission stated; *It seems unreasonable to consider such an effect as significant.*

19. The officer report to the Commissioners stated that, in his view, such generators created “potentially significant localised impact” when the evidence for such a statement in reality does not seem to be contained in either the Section 32 Report or the Plan. There have been a considerable number¹ of Assessments of Environmental Effects undertaken for resource consents for such generators in which evidence has been produced that emissions of all considered air pollutants (carbon monoxide, nitrogen oxides, particulate matter, and sulphur dioxide) are seldom at a level, as maximum ground level concentrations, that would be considered to create adverse environmental effects.² They are all significantly below those levels set down in national guidelines and the recently introduced national standards where these are appropriate. The use of generators for such purposes for load shedding is clearly to reduce load on the electricity distribution system at times of peak load, or in times of shortage of supply, and has an environmental sustainability component as well as an economic benefit if this occurs at the time of peak costs. An estimate of the cost to the Council alone if such load shedding could not continue is \$1M per year. This is because the cost structure for electricity for major sites comprises energy cost on a kw/hr basis consumed and line and transmission costs paid to Orion. The most significant part is the penalty for peak demand times. This can be avoided by removing the electricity used through the Orion system by operating the generators to cover peak periods and therefore avoid penalty costs. In addition, the Christchurch community (residents and businesses) would incur heavy expenses associated with the loss of electricity generation and subsequently a reduction in security of electricity supply. In order to compensate for such a reduction, substantial capital investments into transmission lines and local distribution network may be required, which would result in increases in electricity prices in the Christchurch area.
20. Taking into account the significance of benefits of distributed power generation, cogeneration, renewable energy and the relative insignificance of their negative environmental effects, the Council made the submission that the conditions of the proposed rules are excessively restrictive, unnecessary and incompatible with the sustainability aims of both world best environmental protection practices and the National Energy Efficiency and Conservation Strategy and therefore should be removed. Furthermore, Environment Canterbury should encourage organisations and companies in the region to apply distributed power generation and cogeneration as the most sustainable environmental solution.

¹ Some of these are those undertaken for CWF Hamilton and Company Ltd, Lunns Road by AP Consulting Services, May 2003 and those undertaken by Sinclair Knight Merz Ltd for Orion, Belfast and 77 Ruru Road, in October 2003.

² See also “Assessment of Environmental Effects – Emergency Generators”, URS, 20 August 2001.