

8. LYTTTELTON PORT NOISE – AMENDMENT TO COVENANT

General Manager responsible:	General Manager Strategy and Planning, DDI 941-8177
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PURPOSE OF REPORT

1. The purpose of this report is to obtain the Council's approval of a proposed amendment to a clause in an existing deed to which the Council is a signatory.

EXECUTIVE SUMMARY

2. At its meeting on 24 August 2006, the Council adopted a report which set out new measures for managing the effects of Lyttelton port activities, particularly noise, on the township of Lyttelton. The new measures were arrived at following 18 months of mediation with parties who had appealed the noise provisions of the Banks Peninsula District Plan.
3. The new measures involved reducing port noise at its source, acoustically treating some existing residential properties, and discouraging intensification of residential development in close proximity to the port. These measures are referred to in the District Plan and a separate deed that sets out the obligations of the various parties.
4. In terms of the existing residential properties, the Lyttelton Port Company is expected to fully fund the acoustic treatment of those properties subjected to a high level of port noise. In return the property owners are expected to sign a covenant which prevents them from complaining about lawful port activities. A copy of the covenant is attached to this report with the relevant clause being 4.1.
5. The Port Liaison Committee, which was set up in 2007 to administer and implement these measures, now considers it is necessary to change this clause on the basis that is overly restrictive. It effectively prevents the owner/occupier from complaining about non-related port activities such as a recent proposal by the Port to remove the pedestrian overbridge to the Diamond Harbour ferry terminal. This was not the intention of the clause and Lyttelton Port Company has subsequently provided a less restrictive alternative which is consistent with another covenant already referred to in the District Plan which is required for new residential development. The proposed amendments are shown as tracked changes in the attachment.
6. As a signatory to the original deed any subsequent changes require formal approval of the Council. All of the other signatories to the deed support the proposed change. They include Environment Canterbury, Lyttelton Port Company, Solid Energy, Lyttelton Community Association, and a number of Lyttelton residents and business owners.

FINANCIAL IMPLICATIONS

7. There are no direct financial considerations. Indirectly, it could, however, result in more complaints about port activities therefore resulting in additional costs for the Lyttelton Port Company.

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

8. This recommendation has no implications for the LTCCP budgets.

LEGAL CONSIDERATIONS

9. The wording of the covenant should be legally certain in order to avoid future confusion or legal dispute over what activities residents are prevented from complaining about.

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

10. The amendment has been reviewed by the Council's legal advisers and they have not expressed any concerns about the proposed wording.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

11. The proposal has no impact on the LTCCP or activity management plans.

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

12. Not applicable.

ALIGNMENT WITH STRATEGIES

13. Not applicable.

Do the recommendations align with the Council's strategies?

14. Not applicable.

CONSULTATION FULFILMENT

15. There is no statutory requirement for public consultation. The only parties that need to be consulted are those who were original signatories to the deed. All of these parties have indicated their support for the proposed change.

STAFF RECOMMENDATION

It is recommended that the Council approve the proposed amendments to the deed of covenant as set out in the attachment.