

Port Noise Mitigation Plan Lyttelton Port of Christchurch

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1 Definitions and Interpretation

1.1 Definitions: In this Mitigation Plan unless the context otherwise requires:

A-Weighting means A-frequency weighting and approximates the response of the human ear to sound pressure

Acoustic Treatment means the measures that are to be detailed in the Port Noise Mitigation Plan and includes any design and construction work including any associated expert advice, required to acoustically insulate habitable rooms of a Noise Affected Property to mitigate noise to achieve the internal design sound level or any other method to mitigate noise as agreed by the owner of the Noise Affected Property and the Lyttelton Port of Christchurch

dBA means A- weighted decibel and it is a scale of measurement that emulates human auditory response. A decibel is a dimensionless unit used to compare the magnitudes of sound pressure squared relative to a reference sound pressure of 20 micropascals (approximately the quietest sound a person can hear)

dBA Ldn Contour Lines means the noise contours shown on the Port Noise Contour Map provided as part of this Port Noise Management Plan in accordance with Annexure A, and that may change over time following the development of noise modelling, monitoring and measurement procedures for the purpose of identifying Noise Affected Properties. The contours shall be determined in accordance with the methodology of *NZS 6809:1999 Port Noise Management and Land Use Planning* but shall exclude noise from the operation of the Dry Dock Facilities

District Plan means the proposed or operative Banks Peninsula District Plan and any amendments

L_{dn} means the day-night average sound level, or day /night level. That is the time-average sound level, in decibels, over a 24 hour period (from midnight to midnight), obtained after the addition of 10 decibels to sound levels in the night (from midnight to 7.00a.m. and from 10.00p.m. to midnight)

Mechanical Ventilation means a mechanical system or systems designed, installed, and operating so that a habitable room, or habitable rooms (with windows and doors closed) are ventilated with outdoor air in accordance with the Building Code under the Building Act, 2004

Noise Affected Property means any property occupied by an existing dwelling within the Residential Zone or the Residential Conservation Zone of the District Plan that is partly or wholly contained within the area seaward of the 65 dBA Ldn contour line shown on the Port Noise Contour Map attached in Annexure A and then any Port Noise Contour Map as amended from time to time in accordance with the Port Noise Management Plan

Port Noise means noise from:

- i. ships at berth
- ii. handling of cargo and passengers in the Lyttelton Port Zone and in the coastal marine area
- iii. administrative, repair, storage, or maintenance activities, trains, trucks, or other machinery located in the Lyttelton Port Zone

but excludes noise from:

- iv. ships not at berth
- v. construction of permanent port facilities
- vi. designated roads or railway lines
- vii. emergency situations

Working Days means Monday to Friday excluding any public holidays.

2 Introduction

- 2.1 This Plan executes the commitment of Lyttelton Port of Christchurch (LPC) to prepare, in conjunction with the Port Liaison Committee, a Port Noise Mitigation Plan. This Plan focuses on the Acoustic Treatment programme which was identified in the Proposed Banks Peninsula District Plan.

3 Acoustic Treatment Programme

- 3.1 LPC agrees to commit an annual budget for the appropriate and reasonable funding for Acoustic Treatment of Noise Affected Properties in accordance with Section 5 of this Plan.
- 3.2 The Acoustic Treatment programme shall be staged over ten years. This means a limited number of Noise Affected Properties will be treated in any one year. The Port Liaison Committee is to prioritise applications in accordance with Clauses 4.2 and 4.3 of this Plan.
- 3.3 The Acoustic Treatment programme budget money will be deemed to have been spent on Acoustic Treatment, when a contract has been signed between a Noise Affected Property owner and LPC.
- 3.4 The Acoustic Treatment programme budget allocated by LPC will not be carried over to the next financial year and a new budget will be set for each financial year.
- 3.5 The Port Liaison Committee may each year evaluate the Noise Affected Properties, using those factors set out in Clause 4.3 to determine which are considered to be of priority for Acoustic Treatment. Those owners or occupiers of properties considered to be of priority will be informed of the Acoustic Treatment programme.

4. Application for Acoustic Treatment

- 4.1 An owner or occupier of a Noise Affected Property may apply to the Port Liaison Committee for Acoustic Treatment at any time.
- 4.2 Before accepting an application for Acoustic Treatment, the Port Liaison Committee is to determine that the application is attributable to on-going Port Noise.

- 4.3 Should the Port Liaison Committee accept an application for Acoustic Treatment, the Committee must decide on the priority of that request, having regard to:
- i. The property's position on the Port Noise Contour Map
 - ii. The frequency that the dwelling has been subject to on-going Port Noise
 - iii. The degree of exposure of a dwelling to port noise or conversely the degree of shielding of a dwelling from nearby buildings or topographical features
 - iv. The likely internal noise levels in the kitchen, dining area, living room, study or bedrooms of the dwelling and the likely effect this has had on occupiers of the dwelling
 - v. Any other factor that the committee considers to be relevant or of assistance
 - vi. The money available in the Acoustic Treatment programme budget, taking into account other priorities set by the Committee and other actual or likely requests for assistance.
- 4.4 The Port Liaison Committee may recommend that LPC obtain an assessment of the property by a suitably qualified acoustic consultant prior to any recommendation being made as to Acoustic Treatment of the property under clauses 4.2 and 4.3.
- 4.5 The Port Liaison Committee shall inform LPC of its acceptance of an application for Acoustic Treatment, and shall recommend that LPC carry out the Acoustic Treatment in accordance with those methods set out under Section 5 of this plan. The Port Liaison Committee shall also recommend the priority for the intended Acoustic Treatment work.
- 4.6 The Port Liaison Committee shall oversee Acoustic Treatment projects and may liaise with an owner of a Noise Affected Property receiving Acoustic Treatment and LPC as necessary.

5. Implementation of Acoustic Treatment

5.1 LPC's Obligations

- 5.1.1 Subject to a Noise Affected Property owner performing their obligations under Clause 5.2 of this Plan, LPC shall complete the Acoustic Treatment of dwelling in the manner described below.
- 5.1.2 All habitable rooms subject to Acoustic Treatment shall have an internal design sound of 40 dBA Ldn (5-day) with windows and doors closed and mechanical ventilation installed and operating or with ventilating windows open whichever is the more cost effective; except that the above internal design sound level does not need to be achieved in the following circumstances:
- i. The Noise Affected Property Owner seeks, with the agreement of LPC, a form or level of acoustic treatment or mitigation that results in a different internal design sound level.

- ii. It is impracticable to achieve the internal design sound level due to the desirability of maintaining the heritage features of a dwelling. Instead the internal design sound level of the habitable rooms will be reduced as far as practicable.
 - iii. It is impracticable to achieve the specified internal design sound level of the habitable rooms in the dwelling at a cost of \$60,000 (inclusive of GST). Instead the internal design sound level of the habitable rooms will be reduced as far as practicable while not exceeding the cost of \$60,000 (inclusive of GST).
- 5.1.3 LPC shall regularly consult with the Noise Affected Property Owner to discuss the Acoustic Treatment work. LPC will ensure all Acoustic Treatment work is carried out in a cost effective manner but at the same time does not significantly compromise the character of the dwelling.
- 5.1.4 LPC shall as necessary inform the Port Liaison Committee on the progress of the Acoustic Treatment work and any difficulties encountered with the Acoustic Treatment work.
- 5.1.5
- i. LPC shall engage a suitably qualified acoustic consultant to specify the Acoustic Treatment necessary to obtain the desired internal design sound levels
 - ii. The acoustic consultant shall, when determining the appropriate internal design sound level, calculate the external noise environment from nearest Ldn contour line shown on the Port Noise Contour Map that is to be attached to the Port Noise Management Plan
 - iii. LPC will obtain a certificate from the acoustic consultant, certifying the design internal sound level that the specified Acoustic Treatment work will achieve
- 5.1.6 LPC shall select a builder to carry out the Acoustic Treatment work, and ensure the builder carries out the work to the appropriate standard.
- 5.1.7 Where necessary LPC will seek the advice of an appropriately qualified acoustic consultant to assist in the verification of the internal design sound level.
- 5.1.8 LPC shall organise the payment of the necessary costs for the Acoustic Treatment providing the cost does not exceed a maximum of \$60,000 (inclusive of GST).
- 5.1.9 All monetary values specified in this section are to be inflation adjusted annually from September 2007 by the percentage increase in the CPI index.

5.2 Noise Affected Property Owner's Obligations

- 5.2.1 The Noise Affected Property owner shall enter into a contract with LPC for the completion of the Acoustic Treatment.

5.2.2 The Noise Affected Property owner, in entering into a contract with LPC, is acknowledging that they understand and agree to the intended Acoustic Treatment work.

5.2.3 The Noise Affected Property Owner shall enter into a civil no-complaints covenant with LPC generally in accordance with the covenant attached as Appendix 1. Such a covenant must apply to existing and successive property owners and occupiers.

6.0 Offer of Purchase (70dBA Ldn or greater)

6.1 Where any Noise Affected Property is partly or wholly contained within the area seaward of a contour line that is 70 dBA Ldn or greater, as shown on the Port Noise Contour Map, then the Port Liaison Committee shall write to the property owner, informing them that they may request LPC to make an offer of purchase on their property.

6.2 Upon receiving a written request for an offer of purchase, the Port Liaison Committee shall inform LPC in writing of the request, and within 40 Working Days of receiving the request LPC shall make an offer to the property owner after obtaining a market valuation which shall be submitted with the offer.

6.3 The property owner shall have 60 Working Days in which to notify LPC whether it accepts or rejects the offer made under clause 6.2.

6.4 In the event the property owner rejects the offer from LPC, he/she can submit its own assessment of the value of the property together with a market valuation to LPC.

6.5 In the event LPC and the property owner cannot agree on a purchase price, the price shall be determined by an independent registered valuer appointed by the party's respective valuers.

6.6 Market valuations must be from registered valuers. LPC and the property owner shall pay the cost of valuations obtained by them respectively. LPC and the property owner shall pay half the cost of any independent registered valuer appointed by the party's respective valuers.

6.7 Following agreement on the purchase price by the parties or determination of the purchase price by the independent valuer, the property owner shall have 10 working days in which to notify LPC in writing that it does not wish to proceed with the sale and purchase, otherwise the parties shall enter into an agreement for sale and purchase in accordance with the then current form of Sale and Purchase agreement as approved by the Real Estate Institute of New Zealand and Auckland District Law Society.

6.8 A fair market value of the property shall be determined as if the property was situated in Lyttelton, not taking into account the effect of port noise.

6.9 There are no time limits placed on the process set out in clauses 6.4-6.8 however both LPC and the property owner shall give their best endeavours to follow the process in an expeditious manner.

- 6.10 In the event that a property owner decides not to make a written request for an offer of purchase under clause 6.2, it shall not invalidate them from making a request at a later date.

7. Alterations to This Plan

- 7.1 This Plan may be altered by the Port Liaison Committee.

Appendix 1

Civil Covenant to be entered into between LPC and a Noise Affected Property owner to receive Acoustic Treatment

Deed of Covenant

[]

LYTTELTON PORT COMPANY LIMITED

DATE**2008****PARTIES**

[] (Grantor)

LYTTELTON PORT COMPANY LIMITED (Grantee)

BACKGROUND

- A. The Grantee is the registered proprietor of the property more particularly described in the First Schedule (**Dominant Tenement**) and is entitled to use the Dominant Tenement and associated facilities and areas as the Port as that term is defined in the Third Schedule.
- B. The Grantee has agreed to pay the sum of \$[] (**Acoustic Grant**) towards the cost of acoustic treatment to the building(s) or other structures on the Grantor's property more particularly described in the Second Schedule (**Servient Tenement**).
- C. The Grantee conducts Port Operations as that term is defined in the Third Schedule on and from the Dominant Tenement. The Port Operations result and are likely to result in noise, vibration, bright lights, disturbance, reduced air quality and the other usual incidences of Port activity which may have consequences beyond the boundaries of the Port including upon the Servient Tenement. The purpose of the Acoustic treatment is to ameliorate any effects that the Port Operations may have on the Servient Tenement.
- D. The Grantor has agreed to enter into the covenants contained in this Deed in consideration of the Grantee paying the Acoustic Grant to the Grantor.
- E. The parties wish to record their agreement.

THIS DEED RECORDS that:

1. The Grantor acknowledges that the Servient Tenement is immediately adjacent to and overlooks part of the Port upon which the Grantee undertakes the Port Operations on a 24 hour basis and that the Port Operations necessarily involve noise, lights and other environmental effects which local residents may find disturbing and inconvenient.
2. The Grantor acknowledges that the Grantee is entitled to carry out the Port Operations at the Port.
3. The Grantee agrees to pay the Acoustic Grant to the builder engaged by the Grantee to undertake the acoustic treatment immediately upon execution of this Deed by the parties.
4. The Grantor covenants and agrees that the Grantor will not:
 - 4.1 Object to, complain about, bring or contribute to any proceedings (whether in contract, tort (including negligence), equity, nuisance, public nuisance, under any statute or otherwise, and whether seeking damages, injunctive or other relief or any order), or otherwise oppose any adverse environmental effects, including noise, dust, traffic, vibration, glare or odour, resulting from any lawfully established port activities (including without limitation any Port Operations) undertaken by the Grantee and/or its contractors and lessees.

- 4.2 Grant any lease, licence, residential tenancy or other right to occupy (**Occupation Right**) all or any part of the Servient Tenement which does not include a covenant (enforceable by the Grantee) requiring the recipient of the Occupation Right to observe and/or perform the terms of the covenants and restrictions specified in clause 4.1.
- 5. The Grantor will at all times hereafter keep harmless and indemnified the Grantee from all proceedings, costs, claims and demands in respect of breaches by the Grantor and/or the recipient of an Occupation Right of the covenants and restrictions herein contained or implied on behalf of the Grantor which occurred while the Grantor was the registered proprietor of the Servient Tenement.
- 6. Any provision in this Deed requiring performance of two or more persons shall bind those persons jointly and severally.

EXECUTED as a Deed

Signed by
[]
as Grantor in the presence of

Director/Authorised Signatory

Director/Authorised Signatory

Witness signature

Full name

Occupation

Address

Signed on behalf of
LYTTELTON PORT COMPANY LIMITED
as Grantee in the presence of

Director/Authorised Signatory

Director/Authorised Signatory

Witness signature

Full name

Occupation

Address

Schedule 1 -

All that land presently comprised in Certificates of Title CB177189, 46B/266, 46B/267, 42D/881, 41B/808, 41B/810, 31B/1190, 284/234, 400/168, 400/149, 148846, 6B/891, 1D/558, 27F/680, 11K/1455, 782/25, 782/26, 3D/237, 782/25, 32F/307, 33F/102, 25K/493, 42D/30, 42D/28, 34C/176, 400/183, 9A/1217, 33F/930, 41B/811, 33F/929, 42B/13, 5C/35 and 20B/45 (Canterbury Registry) and any other land that the Grantee may hereafter acquire and use for the purposes of Port Activities.

Schedule 2 -

[Grantors property particulars]

Schedule 3 -

In this Deed unless the context otherwise requires:

Amenity values means those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.

Effect includes

- (a) any positive or adverse effect; and
- (b) any temporary or permanent effect; and
- (c) any past, present, or future effect; and
- (d) any cumulative effect which arises over time or in combination with other effects – regardless of the scale, intensity, duration, or frequency of the effect, and also includes –
- (e) any potential effect of high probability; and
- (f) any potential effect of low probability which has a high potential impact.

Environment includes

- (a) ecosystems and their constituent parts, including people and communities; and
- (b) all natural and physical resources; and
- (c) amenity values; and
- (d) the social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) or which are affected by those matters.

Grantee means Lyttelton Port Company Limited, its successors and assigns and the registered proprietor for the time being of the Dominant Tenement or any part or parts thereof.

Grantor means the party named in this Deed as Grantor and his/her executors, administrators and assigns or other the registered proprietor for the time being of the Servient Tenement or any part or parts thereof.

Port means all that land comprising the Dominant Tenement together with any other land, structures, seabed and areas of water which may be used by the Grantee from time to time for Port activity and/or zoned or included in a management area or set aside for Port activity in any District Plan or Regional Coastal Plan which relates to the Port of Lyttelton from time to time.

Port Operations means all customary commercial and leisure activities, works, uses and occupations carried on at an international sea port (including the Port of Lyttelton) at any time in accordance with prevailing practices and trends for the time being, whether involved in the use of light or heavy machinery, equipment, vehicles, vessels or otherwise including (without limitation):

- (a) Berthing, departure and surface movement of vessels.
- (b) Embarking and disembarking passengers, crew, visitors, contractors or other persons from any vessel.
- (c) Loading or unloading cargo from any vessel, train or vehicle.
- (d) Transporting cargo, passengers, crew or other persons to or from any vessel, train, vehicle or wharf.
- (e) Processing, consolidating and deconsolidating cargo, passengers or other persons.
- (f) Cleaning, repairing, replacing, altering or maintaining a vessel or improvements at the Port.
- (g) Dredging or otherwise dealing with the seabed.
- (h) Demolition, reclamation and construction of improvements and earthworks associated with reclamation at the Port.
- (i) Activities ancillary to or associated with any of the above, whether conducted at the Port or elsewhere.

Resource Management Act 1991 means the Resource Management Act 1991 as amended or substituted and/or any other enactment or regulation imposing the need for consent to an activity or practice conducted at or from the Port, including (without restriction) any Port Operations.