DOUBLE SIDED ORIGINAL

Decision No: C194/2000

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal under section 120 and 121 of the Act

BETWEEN **RAVENSDOWN GROWING MEDIA LIMITED**
(formerly Australasian Peat Ltd)

RMA: 184/99

Appellant

AND **THE SOUTHLAND REGIONAL COUNCIL**

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge J A Smith
Environment Commissioner I G McIntyre
Environment Commissioner N J Johnson

HEARING at INVERCARGILL on 4, 5, 6, 7 and 8th days of September 2000

APPEARANCES

Mr K G Smith for the applicant
Mr B J Slowley for the respondent
Mr W Goldsmith for W R Heads
Mrs D F Heads in person

INTERIM DECISION

Introduction

[1] This is an appeal under section 120 and 121 of the Resource Management Act 1991 (**the Act**) by Ravensdown Growing Media Limited (formerly Australasian Peat Limited). The appeal relates to certain

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conditions of an air discharge permit (**air permit**) granted by the respondent, The Southland Regional Council (**The Regional Council**). The air permit relates to peat harvesting operations undertaken by the appellant at a site in the Browns/Hokonui area of central Southland at Tanner Road, map reference D45:177:627 being Section 248 Block XVI Forest Hill Hundred.

[2] The respondent opposes granting the changes to conditions sought on appeal as do Mr W R (Ross) Heads and his parents, Mr and Mrs D F Heads, both section 271A parties. Mr W R Heads lives on and operates a farming property adjoining the subject site along its southern boundary. Mrs Heads is the mother of Mr W R Heads and has an interest, together with her husband, in her son's farming operation.

[3] The appeal originally also sought changes to the consent period for the air permit and water discharge permits but those aspects of the appeal have now been withdrawn. No party opposed the withdrawal or sought costs.

The Scope of the appeal

[4] The appeal as it subsists relates to condition 3 of the permit as granted which reads:

> *"After 30 April 2000 there shall be no emissions of wind borne peat from the site onto or over property beyond the boundary of the consent holder's property as a result of the consent holder's management of the site."*

It was acknowledged by all parties before the Court that the appeal related to conditions only and accordingly the Court was constrained to consider

only appropriate conditions rather than the grant of the consent itself. It was the appellant's submission to the Court that having granted consent, the conditions cannot negate the consent granted. Counsel relied upon ***Taranaki Regional Council v Willan***[1] and ***Residential Management Limited v Papatoetoe Borough Council***[2]. Neither the respondent nor the section 271A parties argued that the conditions could negate the consent and all parties seemed to acknowledge that the activity should be able to continue on the site provided appropriate conditions were in place.

[5] The peat harvesting operation itself is subject to existing use rights and also holds water permits as well as the air discharge permit. In accordance with the existing use rights the applicant is entitled to harvest peat on the site. The air discharge permit is granted on conditions the subject of this appeal and permits the discharge of contaminants to air. We have therefore concluded that we are constrained to the extent that we are not able to interfere with the right:

(a) of the appellant to harvest peat on the site; and
(b) to allow contaminants to be discharged to the air.

We conclude our role is restricted to a consideration of appropriate conditions to avoid, remedy or mitigate the adverse effects of the activity.

[6] On its normal and natural construction the existing condition 3 cannot stand. The condition purports after April 2000 to not permit any discharge to air over the boundaries and therefore effectively countermands the consent granted in the air discharge permit. The respondent expert witness accepted the nil limitations as being impossible to achieve. It transpired

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1 W150/96.
2 A62/86.

that the Council officers' evidence supported a more general condition largely similar to that sought by the appellant.

[7] Mr Slowley, counsel for The Regional Council accepted in opening that condition 3 was not intended to control secondary dust sources on the site such as stockpiles, roads and "the sticks" (an area of unharvested bog to the southwestern side of the site). We shall refer to these discharge sources as the **ancillary areas.** Mr Slowley indicated that the intention was only to impose a restriction on peat particulate discharge to air from the harvested bog area. He also indicated that the condition was not intended to catch minimal discharges from the peat bog, notwithstanding the wording of the consent clause. The Regional Council accepted immediately the restrictions on the wording of condition 3. The Court notes that condition 3 imposed on the consent granted was not in accordance with The Regional Council's expert advice or supported by evidence from the respondent before the Court.

Issues for Determination

[8] As a result of this positioning statement by the respondent, the parties had further discussions and were able to advise the Court that appropriate conditions for the operation of the ancillary areas could be agreed between the parties. A draft management plan was produced and the Court was advised that with expansion that draft document could control the ancillary discharges on site. The Court was advised that the best practicable option approach could be adopted in respect of those ancillary discharges. For the reasons given later in this decision we agree that the best practicable option is appropriate for the ancillary areas.

[9] This left in dispute before the Court the appropriate air discharge conditions in respect of the peat bog itself - an area now reduced from

some 50 hectares to 33 hectares. The applicant seeks and accepts a condition restricting the area of the harvested bog to 33 hectares and this position was accepted by the other parties. The major concern of Mr Heads relates to the harvesting method used which he believes makes the bog more susceptible to wind erosion.

The Method of Harvesting Peat

[10] The harvesting method was described to the Court by Mr Stephen Smith for the applicant. He is the manager of the subject site although another person is responsible for the day to day operation and management of the site. Mr Smith described the peat bog itself and also the operation. The bog is of a type derived from sphagnum moss known geologically as a High Moor Peat Bog. He noted the formation as follows:

> *"This generally means that the peat bogs have grown on their clay base and are raised up above the surrounding landforms in a dome type formation. There is little or no water ingress from the surrounding land to these peat bogs resulting in a silt free environment. This leads to the development of a particularly pure grade of sphagnum peat.*
>
> *Sphagnum moss peat is capable of absorbing something in the region of 26 times its own dry weight in moisture. Due to this, it is an extremely versatile product."*

He further advised:

> *"The mushroom industry quality demands are such that the only peat identified in New Zealand able to meet the specifications of top mushroom growers is from the Tanner Road peat bog owned by RGM*

[Ravensdown]. Alternative product of similar quality and quantity is imported Canadian or Irish peat. Due to the higher price constraints of the imported product, RGM's market share in this sector is approximately 90%."

He added:

"The Tanner Road peat product is used exclusively by the mushroom industry. The peat quality means that it is demanded nationally by mushroom growers. Peat is harvested, stockpiled and loaded out in bulk, directly to all New Zealand customers."

The harvesting operation itself was described as follows:

"Peat harvesting at the Tanner Road site occurs during spring, summer and autumn. The bog is then dry enough to allow vehicle access. Last year RGM harvested for a total of 40 days, during this period."

The peat bog is drained in sections, these sections are 30 metres wide and 600 metres long. Each one is called a "land". The lands are harvested for peat.

The top 25 to 50 millimetres of peat is cultivated using a spin tiller and then allowed to partially dry.

At approximately 70 to 80% of wet weight by volume the partially dried peat is propelled by a standard agricultural forage harvester into a covered and modified silage trailer pulled by 4WD tractor. When the trailer is full it is transported to a stockpile area on site. ...

During the 1999/2000 season RGM harvested 24,247 cubic metres of peat from the Tanner Road site.

The stockpiled material is trucked off-site during the course of the year, for use in the mushroom industry, depending on their weekly requirements. RGM is currently selling its entire harvested stock within one year of harvest. The entire Tanner Road peat product stocks are despatched to New Zealand mushroom growers."

All parties accepted this as an outline of the operation. We now move to consider the particular issues raised by this appeal. First we should refer to the earlier consent subject to determination by the Court in 1997.

The previous consent

[11] This operation has been the subject of a previous determination by the Environment Court - Decision No: C44/96[3]. The appeals the subject of that determination included the question of air discharge and adopted a best practicable option approach to the control of dust. By consent the term was short to enable the appellant's undertaking to be reviewed. Many of the conditions agreed between the parties related to dust control over the storage heaps and the common access road which are now identified in this hearing as the ancillary areas. Condition 5 contained in decision C44/96 and agreed between the parties reads:

"Condition 5.
Harvesting of peat shall not take place when weather conditions are such that adjacent owners and occupiers are likely to be significantly

[3] ***Australasian Peat Limited v Southland Regional Council.***

adversely affected by suspended or deposited peat particulate matter."

What transpired at this hearing is that even that condition which apparently relates to the bog is considered as relating to an ancillary discharge of the harvesting operation itself rather than particulate matter coming off the bog area itself.

Conditions to Control Peat Particulate Discharge

[12] The Court understands the core issue of concern relates to control of the dust from the surface of the peat bog itself during the harvesting season. The only wind direction that seems to have been of concern to the parties is the wind from the northwesterly direction. In certain circumstances this wind can have the effect of lifting peat particulate from the surface of the bog and driving it onto Mr Heads' property which is directly downwind of the site. Evidence was given by the respondent and Mr Heads that the conditions imposed by agreement on the last occasion had not been effective in avoiding the discharge of peat particulate from the bog surface onto Mr Heads' property and into his home.

[13] The applicant for its part accepts that there have been occasions when there has been significant peat particulate deposition onto Mr Heads' property and also into his house but said:

(a) that that situation was historical and that significant improvements in the management and operation changed the likelihood of the severity of that occurrence; and
(b) that it occurred only in extreme conditions; and
(c) that there were further steps that could be taken to mitigate, although not avoid, the effects on Mr Heads' property.

[14] The applicant's position is that the matter should properly be controlled by conditions which seek to adopt the best practicable option (as amended from time to time). An appropriately strict management plan and review conditions would also be necessary to ensure the best practicable option was in place. This was accepted by the applicant as an appropriate approach.

[15] The Regional Council's position is that the conditions should seek to avoid or minimise the effect on Mr Heads. However their expert witness also accepts that the best practicable option approach is appropriate in the circumstances.

[16] For Mr Heads, the position is that Ravensdown's current peat harvesting method gives rise to inevitable adverse effects and impacts on Mr Heads and his property which are unacceptable. Mr Heads contends that the discharge permit granted should be subject to a condition or conditions necessary to ensure that those unacceptable effects and impacts do not occur. Mr Goldsmith, counsel for Mr Heads, made it clear that Mr Heads agreed the matter of ancillary areas discharges could be resolved by consent. In Mr Head's view the core issue is that there should be minimal peat particulate discharged from the peat bog surface itself during north westerly winds.

[17] Mr Heads' position is that the consent should be subject to conditions which require a change of harvesting method to avoid the spin tilling of the peat bog surface. His evidence was that spin tilling allows the peat to dry on the surface and therefore become subject to lifting in north westerly winds. Mr Heads however does accept that the applicant should be able to harvest the peat from the site provided the method is changed so that peat

particulate discharge in north westerly winds does not significantly affect his property or person.

[18] Mr Heads contended that the existing condition 3 of the Council consent was appropriate to the extent that it sought to prevent the emission of peat particulate from the bog surface onto his property. An alternative approach suggested on behalf of Mr Heads was to require a change in harvesting method. That issue was the subject of evidence and submission before the Court and is covered in more detail later in this decision.

[19] The Regional Council and Mr Heads sought a decision only on the conditions relative to emission of peat particulate from the bog surface. The parties agreed that an interim decision is sought to enable the parties to consider final conditions in light of the decision.

Distinguishing emissions from ancillary areas

[20] We are concerned as to whether emissions from ancillary areas can be distinguished from emissions from the bog surface or other general emissions in the district which may pass across this land in a north westerly wind. Although it is common ground that some peat particulate which can become airborne is quite large, it was also accepted that there could be peat particulate material which could vary in size down to less than 10 microns.

[21] Evidence given before us satisfied us that it would not be possible with any known form of condition to differentiate between emissions from ancillary sources and from the peat bog surface itself. This evidence is confirmed in a number of photographs that were shown to the Court, many of which seemed to involve emissions from the stockpile and access road areas (ancillary areas) as the main contributors to the "dust emissions" depicted.

Evidence as to peat particular emissions

[22] Mr Roger Cudmore, an air quality management consultant, was the expert called by the applicant in respect of emissions issues. He gave evidence as to the emissions from the ancillary areas which are no longer in contention for the reasons already given.

He stated that the peat bog retains high moisture content, being harvested when its moisture content by weight was between 60 and 80%. It was his view that it was generally necessary for north westerly winds of approximately 70 kmh or higher to blow before there could be significant peat dust erosion from the bog surface. Where there had been a recent substantial rainfall event he would expect the erosion from the bog surface to be minimal even with winds gusting over 100 kmh. In his opinion there was a requirement for sustained drying conditions for a day or more followed by a strong north westerly wind before substantial erosion of the peat bog would occur.

[23] He accepted that in those circumstances substantial erosion across the peat bog can occur. In such conditions there is likely to be a visible dusty plume that extends across the boundary of the Ravensdown site. His view was that having regard to the rarity and short duration of that combination of climatic events the effects overall are only of minor consequence.

[24] He suggested that whether the ongoing situation should be deemed offensive or objectionable includes the FIDOL factors, namely frequency, intensity, duration, offensiveness and location. Having regard to the fact that extreme winds over 70 kmh occurred some .05% of the time, i.e. a few hours per year, he looked at the issue on a holistic basis concluding that the temporary loss of amenity value is not unreasonable. He pointed to the distance of around 1 kilometre to the actual home of Mr Heads - the only

home apparently affected - and the minor impact of the dust on pastures and stock.

[25] Dr Terence Brady gave evidence as to air quality matters and in particular on the wind strengths in the area. Although an interpolation of data sets from Lumsden site was required this appeared to equate with the evidence of the other parties in that winds above 50 kmh would be required before any problems had been noted. Again Dr Brady did not specifically differentiate between particulate emissions from ancillary areas and from the peat bog. However Dr Brady's evidence was that it was the ancillary areas that were more susceptible to dust emission than the peat bog itself. Mr Smith, the manager for the applicant, suggested there may be dust emissions from winds over 50 kmh but it was unclear whether this applied just to the peat bog or to the entire area including all ancillary dust emission sources.

[26] The Regional Council called two witnesses relating to specific events that had occurred. Mr Ian Welsh, water quality officer with the Regional Council, gave evidence of visiting the property on three occasions. In October 1997 winds were in excess of 50 km/h. On the second occasion, 7 November 1997, he attended the property and estimated the winds to be 70 to 80 km/h. On the third occasion, 18 October 1998, he described a strong wind. He did accept that this had been an occasion on which there were significant gale force winds later in the day with power lines and trees falling. Mr Paul Reid, environmental compliance officer with the Regional Council, described his attendance on the property on 3 October 1997. He described substantial peat deposits in the boundary drain.

[27] This evidence was again confirmed with similar evidence from Mr Heads, the neighbour to the south. Although not describing exact wind speeds Mr Heads' evidence accepted that peat dust occurred in more

extreme conditions. The photographs produced represented high wind or extreme wind conditions. The video shown to the Court appears to have been taken when winds were significantly higher than 50 kmh.

Conclusions on Evidence as to Emissions

[28] In our view the evidence of the witnesses was consistent; that peat particulate off the bog surface could begin to mobilise at wind speeds above 50 kmh provided the right preliminary conditions existed, including a drying wind, no rain and strong north westerly winds.

[29] It also seemed to be accepted by all witnesses that in circumstances where peat became mobilised by these extreme conditions it was difficult to contain. Although evidence was given about the ability for some of the rolling peat to be reduced with plantations and trees being grown we conclude that it is unlikely to have any significant effect on the dust plume (the finer particles) once they are airborne. We accept from having seen the photographic and video evidence that the dust plume consists of a wide range of particle sizes with the smaller finer particles mobilised well into the air above the height of any screening that could be erected. It is this particulate, particularly the very fine dust, which has the nuisance effect on Mr Heads' home.

Avoid remedy or mitigate

[30] Having established that there is an adverse effect from peat particulate from the bog in certain conditions, particularly with wind speeds over 50 kmh from the north west, we must then consider the primary obligation on the consent holder to avoid, remedy or mitigate the effect.

[31] Evidence was given by Mr Heads that there was a necessity for a change of harvesting method if there was to be any realistic prospect of avoiding the effect. Having heard Mr Heads and Mr Smith on this issue we are satisfied that there is at present no viable alternative method of harvesting. Mr Heads' position was that he could not suggest any alternative harvesting method but suggested it was for the applicant to discover one.

[32] We accept that the applicant has sought expert advice in this area and has undertaken research to identify alternative methods of extraction. We agree with Mr Heads that an alternative method of extraction which did not till the peat bog surface would be preferable. We also accept the applicant's position that no viable alternative is currently available.

[33] On this basis the applicant presently cannot avoid all emissions of peat particulate from the bog surface itself. Similarly, in light of all the evidence we have heard including that of Mr Heads, we conclude that some adverse effect in the circumstances described can not be avoided entirely. There will still be high to extreme wind events where there is an adverse effect on the Heads' property. As has already been noted by the Court this is not a situation where the Court has available the option of declining consent on the basis of the inability to avoid the adverse effects. The consent has already been granted and the only issue for this Court is the conditions relevant to that appeal.

[34] The Court is also directed to the potential for the adverse effect to be remedied. There does, in these circumstances, seem to be some potential for remedying adverse effects. The applicant whose parent company is a major fertiliser producer, suggested to Mr Heads that it might be possible to supply fertiliser to overcome any loss in production from the pasture due to the particulate emission. It also suggested the potential for meeting the

costs of cleaning Mr Heads' home after an extreme wind event. Some remedial benefit may also be seen in the future as the planting undertaken by the applicant grows and prevent the larger particulate moving across the boundary. However, not all adverse effects can be remedied.

Mitigation and best practicable option

[35] The Court is also directed to the potential for mitigation of adverse effects. It was in this regard the Court believes there is scope for conditions that may mitigate and remedy the effect on the Heads' property.

[36] Section 108(2)(e) of the Act provides:

> *Subject to subsection (8), in respect of a discharge permit or a coastal permit to do something that would otherwise contravene section 15 (relating to the discharge of contaminants) or section 15B, a condition requiring the holder to adopt the best practicable option to prevent or minimise any actual or likely adverse effect on the environment of the discharge and other discharges (if any) made by the person from the same site or source.*

Subsection (8) provides:

> *Before deciding to grant a discharge permit ... to do something that would otherwise contravene section 15 (relating to the discharge of contaminants) ... subject to a condition described in subsection (2)(e) the consent authority shall be satisfied that, in the particular circumstances and having regard to -*
>
> *(a) The nature of the discharge and the receiving environment; and*

(b) Other alternatives, including any condition requiring the observance of minimum standards of quality of the receiving environment -

the inclusion of that condition is the most efficient and effective means of preventing or minimising any actual or likely adverse effect on the environment.

[37] It was the case for the applicants on appeal that the criteria of section 108(8) were met and that a condition adopting the best practicable option could be utilised in this case. They pressed such an approach upon the Court on the basis that it was difficult to stipulate minimum conditions in respect of the receiving environment which had any realistic application. They pointed to the fact that in extreme wind conditions there would be significant wind erosion throughout the district. They pointed for example to the storm of 18 October 1998 when there was considerable wind damage including falling trees and power outages.

[38] We note that no party suggested any alternative conditions that might be imposed on the grant of this application which would in themselves mitigate the effect upon the Heads' property. Mr Heads' position was that this was an issue for the applicant to resolve. For its part the applicant said that the earlier conditions that it sought to include in the appeal notice were not appropriate for all situations and could be exceeded in sufficiently severe storm events. The appellant suggested that compliance with such conditions was not necessarily a sign of good or best performance by the company. Conditions which provided for emission levels to meet storm events could be utilised for emissions in light conditions when nil emissions should be achieved.

[39] The Regional Council through its expert accepted that a nil limit as imposed by the Council consent was not capable of compliance and there

were difficulties with the assessment of fixed emission limits as suggested in the original appeal. His suggestion was largely the same as the applicant's which was to impose a condition to avoid offensive or objectionable emissions.

[40] In our view sub-paragraph (b) of subsection (8) of 108 is met. We have considered all of the evidence provided and believe that there are significant difficulties in drafting minimum conditions of consent which would:

(a) achieve ongoing improvement by the applicant in its management practices on the site;
(b) be sufficiently flexible to provide for the various range of events that might occur; and
(c) pick up unreasonable emissions by the company. This is to ensure that emissions that were not due to extreme wind events were controlled while at the same time providing for the extreme events which may occur.

[41] We have also given consideration to the nature of the discharge on the receiving environment. There is no doubt that the bog particulate emission has an effect on the amenity of the Heads' property. We are satisfied that section 108(8)(a) criteria are met because:

(a) the events are of short duration and infrequent;
(b) there is no evidence of adverse environmental or health effects;
(c) the substance is one naturally occurring in the area.

[42] We have concluded a best practicable option approach is the most efficient and effective means of preventing or minimising actual or likely adverse effects. In saying this we recognise that in this case the ability to

use the best practicable option approach to improve management and extraction methods more properly meets the obligation under section 5(2) of the Act to avoid, remedy or mitigate adverse effects.

[43] In our view the appropriate approach in such a case is the development of a management plan and conditions based around regular reviews of the conditions to ensure environmental outcomes are being achieved. Such an approach requires regular reviews of the conditions of consent to enable the Regional Council to review progress and if necessary take action to alter the consent granted.

General condition as to offensive and objectionable emissions

[44] The applicant and the Regional Council suggested that there should be a general condition that there is to be no emissions of peat particulate from the bog area of the site which is, or is likely to be noxious, dangerous, offensive or objectionable. This wording is picked up from section 17(3)(a) of the Act.

[45] The Environment Court has previously considered the issue as to whether it is appropriate to deal with consents by way of generalised conditions such as this with a secondary set of standards.[4] In ***Turner et al v Allison et al***[5] the Court of Appeal considered whether conditions that provided for works to be undertaken to the satisfaction of a Council employee were valid. Where the condition only requires certification then such condition is valid. Where arbitral powers are delegated however such a condition is invalid. As Richmond J said in ***Turner***[6]***:***

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4 ***Walker & Carruthers et al v Manukau City Council*** C213/99 at 70-71, ***Wood and Ors v West Coast Regional Council*** 2000 NZRMA 193.

5 4 NZTPA 104.

6 Supra at 129.

In my view the effect of conditions 2, 5 and 7 is to impose conditions whereby the external appearance of the supermarket and landscaping and planting are required to be carried out to standards set by Miss Northcroft by reference to her own skill and experience. They do not purport to confer upon her an arbitral status.

[46] Any management plan cannot go so far as to provide any arbitral power to the authority in respect of its contents. However, in our view a standards/management plan approach can meet these requirements if coupled with review conditions as provided for in section 128 of the Act.

[47] Although the management plan should be scrutinised by the Court we have concluded that it should not be included as a condition of consent at this time. This gives flexibility to explore ongoing improvements and alternative harvesting methods if any become available. Each case must be considered on its facts but in this case the Court is satisfied that coupled with extensive review provisions and a management plan approved by the Court, this best practicable option approach is appropriate in the circumstances.

[48] The parties have asked that we issue an interim decision to allow the parties to discuss the potential implementation of this decision. The appropriate approach would include the following elements -

Conditions

1. There shall be no peat particulate emission from the Peat Bog Area which is or is likely to be noxious, dangerous, offensive or objectionable.

2. The applicant shall adopt the best practicable option to prevent or minimise any peat particulate discharge from the site. Such best practicable options shall be set out in a management plan revised in November and May of each year and provided to the Regional Council.

3. The peat bog surface shall be limited to no more than 33ha at any time and be identified both on the bog itself and in the Management Plan.

4.

(i) The Regional Council may review the conditions of consent pursuant to the Resource Management Act at regular 6 monthly intervals and in reviewing compliance with the best practicable options may consider

(a) Management Plan and compliance
(b) Monitoring or other data
(c) Emission events
(d) Complaints received
(e) Any other information relevant to the avoidance of adverse effect from peat particulate emission on site.

(ii) The Regional Council may on review:-

(a) require the applicant to undertake further works or amend the management plan so as to mitigate, remedy or avoid peat particulate discharge from the site;
(b) propose or invite the applicant to propose new consent conditions.

(iii) In addition to any other obligation to notify, Mr W R Heads shall be notified and entitled to give evidence and/or submissions at any such review.

Management Plan

1. Proper identification of the peat bog area with relevant monitoring.

2. Provision for independent monitoring of emissions from the site together with provision of a weather station to provide records including wind strength, direction and moisture level on the bog surface.

3. The comprehensive management plan would set out how the peat bog would be operated, steps to be taken in adverse or potentially adverse conditions, measurements, frequency for supply of information to The Regional Council, notification to Mr Heads and other matters.

4. Method of categorising and comparing emission events.

5. Provision for ongoing research into extraction methods.

Records

- Recording all emission events
- Method to identify whether the emission is from peat bog or from ancillary areas
- Regular reporting to Council
- Independent preparation and reporting.

[49] Having indicated the appropriate approach we now ask for written submissions as to appropriate final orders conditions and a draft initial management plan.

[50] If parties can agree a joint memorandum should be filed within 21 days. If not the applicant shall file within 21 days a memorandum, replies to be filed within 14 days thereafter and applicant's final memoranda 7 days thereafter. The memorandum of the applicant should have attached a draft initial management plan and draft consent conditions.

Costs are at this stage reserved.

DATED at CHRISTCHURCH this 5TH day of DECEMBER 2000.

J A Smith
Environment Judge

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND