

BEFORE THE CANTERBURY REGIONAL COUNCIL

In the matter of The Resource Management Act 1991

and

In the matter of The Proposed Canterbury Air Regional Plan

**BRIEF OF EVIDENCE OF DANIEL JAMES MURRAY
(PLANNING)**

18 September 2015

INTRODUCTION

1. My full name is Daniel James Murray.
2. I hold a Bachelor of Resource Studies with First Class Honours, majoring in Natural Resources Engineering, obtained from Lincoln University in 1997. In 1999 I obtained a Certificate of Proficiency in Advanced Planning Theory and Practice from the University of Auckland. I am a Full Member of the New Zealand Planning Institute and a Member of the Resource Management Law Association (RMLA).
3. Currently I am an Associate Director with AECOM New Zealand Limited and have been with that company and its predecessor, URS New Zealand Limited, for ten years. In the preceding five years I was employed as a consultant planner with the Christchurch office of Opus International Consultants Limited. Prior to that, I worked for two years as a planner at a territorial authority.
4. I have worked throughout the South Island, assisting both private and public sector clients with statutory approvals, environmental impact assessment, policy analysis, and other resource management matters. I have undertaken the planner role on numerous projects involving air discharges, including with respect to particulate and odour emissions from activities including primary production, mining and infrastructure construction and maintenance. Clients for these activities have included Fulton Hogan Limited, Solid Energy Limited, Meridian Energy Limited, the New Zealand Transport Agency, and local authorities.
5. I confirm I have read and agree to comply with the Code of Conduct of Expert Witnesses (December 2014). This evidence is within my area of expertise, except where I state I am relying on what I have been told by other persons. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

SCOPE OF EVIDENCE

6. I have been asked to present this planning evidence on behalf of J.Swap Contractors Limited (J.Swap).
7. I have grouped my discussion according to the following topics:
 - 7.1 Definition of bulk solid materials;
 - 7.2 Rates of handling and storage;
 - 7.3 Requirement for management plans in permitted activity standards;
 - 7.4 Setbacks from sensitive sites in permitted activity standards; and

- 7.5 Proposed amendments to permitted activity rules.
8. In preparing this evidence I have read and familiarised myself with:
- 8.1 The Canterbury Regional Policy Statement 2013 (RPS)
- 8.2 The notified Proposed Canterbury Air Regional Plan (Proposed Plan)
- 8.3 The predecessor to the Proposed Plan, Chapter 3 of the Natural Resources Regional Plan (NRRP);
- 8.4 The Section 32 and 42A reports;
- 8.5 The evidence prepared by Mr Donovan Van Kekem.

BULK SOLID MATERIALS

9. “Bulk solid materials” is a term used in permitted activity rules 7.37 and 7.38 of the Proposed Plan, but is otherwise undefined. In the NRRP the term “bulk materials” was used in similar rules and was defined as follows:
- Bulk materials** include all materials consisting of fragments or particles that could be discharged as dust or particulate. These materials include, but are not limited to: gravel, quarried rock, fertiliser, coal, cement, flour, rock aggregate, grains and wood chips.*
10. J.Swap’s interests in Canterbury lie primarily in the handling and storage of seeds, grains and stock feed. In the absence of a definition in the Proposed Plan these materials could conceivably be considered a bulk solid material (indeed “grain” is specifically itemised in the NRRP definition), and therefore be subject to Rules 7.37 and 7.38. However, permitted activity Rule 7.39 regulates the handling and storage of “seeds”, and in that regard, there is uncertainty and confusion as to which rule regulates this particular material.
11. Mr van Kekem has outlined that the storage and handling of food products such as seeds, grains and stock feed have, relative to bulk solid materials generally, less potential to discharge dust or particulate in a manner which would cause adverse effects in the environment. Primarily this is because these particular materials are handled, processed and stored largely indoors or through an otherwise contained process. Such requirements stem from the need to keep the materials dry and clean, to limit exposure to potential contamination and pests, and to carefully manage health and safety in relation to the potential explosive properties of the materials. Furthermore, the particle size of seeds, grains and stock feed is not conducive to the same degree of adverse effects as finer materials (such as flour, silt, etc)

12. For the foregoing reasons it is my view that seeds, grain and stock feed require a lesser degree of regulation and management than bulk solid materials generally. I therefore propose that a definition of bulk solid material is introduced to the plan, but that it excludes seeds, grain and stock feed. This then allows the structure of the relevant permitted activity rules (as notified) to be largely retained, namely:

12.1 Rules 7.37 and 7.38 regulate bulk solid materials generally; and

12.2 Rule 7.39 regulates seeds, grains and stock feed (noting that the rule is currently limited to seeds so would need to be amended to allow for the other materials).

13. I note that the s.42A report supports the inclusion of a definition of “bulk solids materials” in Chapter 2, in a similar vein as the NRRP definition. As per the above I suggest the following amendments to the s.42A definition:

Bulk solid materials Means materials consisting of, or including, fragments that could be discharged as dust or particulate. These materials include but are not limited to: Gravel, quarried rock, fertiliser, coal, cement, flour, rock aggregate, ~~grains~~ and woodchip. Materials specifically excluded from the definition of bulk solid materials are seeds, grains and stock feed.

14. Later in my evidence I outline my proposed changes to the permitted activity rules.

RATES OF HANDLING AND VOLUMES OF STORAGE

15. J.Swap submitted that permitted activity standards should not contain hourly rates or storage volumes for bulk solid materials due to being arbitrary and unnecessarily restricting activities. In my experience, it is ultimately the degree to which good management practices are implemented which determines the degree of adverse effects. In other words, it is quite feasible that a large-scale operation with robust handling and storage procedures, and appropriate measures in place to limit discharges to air, would have much lesser impacts than a smaller-scale operation with no management controls. I therefore agree with the sentiment of the submission that rates and volumes are not necessarily a good management tool for limiting adverse effects.

16. That said, subject to my suggestion that seeds, grains and stock feed are excluded from the definition of bulk solid materials, and that the scope of Rule 7.39 be widened from seeds to include grains and stock feed, the question of rates and limits on these materials becomes a moot point. This is because Rule 7.39 already recognises that inclusion of rates and volume limitations is unnecessary for seed products. I also note that the NRRP already permits seed cleaning without limitations on handling rates or storage volumes.

DUST MANAGEMENT PLANS

17. J.Swap's original submission sought that the requirement for dust management plans, where there are discharges beyond the boundary of property of origin, be deleted from permitted activity rules. In my view permitted activity rules must be clear on what is allowed without a further assessment step or discretionary approval by the consent authority.
18. In line with my discussion on rates and volumes above, I agree with the s.42A assessment that the DMP condition (which appears in many permitted activity rules throughout the Proposed Plan) is an appropriate tool to ensure any adverse effects beyond property boundaries are appropriately managed. On this basis, I would accept the use of DMPs in this regard.
19. Notwithstanding this, I do not support any modification to the conditions to require any approval or auditing of the DMP by Environment Canterbury, as in my view such a requirement in a permitted activity standard would be ultra vires.

SENSITIVE SITES

20. Permitted activity standards 6 and 5 on Rules 7.37 and 7.38 respectively contain setback distances from sensitive activities, wāhi tapu, wāhi taonga or site of significance to Ngāi Tahu. J.Swap made further submissions supporting the position of Lyttelton Port Company and Winstone Wallboards that such standards are void for certainty.
21. With the exception of 'sensitive activity', which is defined in the plan, the other sites are undefined/unmapped and therefore the Proposed Plan provides no certainty to plan users. On that basis in my view those other sites should be removed from the condition. Potentially they could be reinstated, but only subject to a plan change/variation process to allow plan users to consider potential implications and make any necessary submissions.

PERMITTED ACTIVITY RULES RELATING TO BULK SOLID MATERIALS

22. As above, J. Swap's submission sought the deletion of arbitrary rate and volume thresholds being used where there is no correlation with adverse environmental effects. I support this sentiment. However, in any event I have suggested that these thresholds not apply to seeds, grain and stock feed and therefore my evidence has not focussed on removal of such thresholds from Rule 7.37.
23. I therefore propose that Rule 7.37 and 7.38 continue to regulate bulk solid materials, subject to the definition proposed earlier and other minor amendments.

7.37 The discharge of contaminants into air from the cleaning, conveying, packaging, processing, handling, treatment or storage of bulk solid materials, is a permitted activity provided the following conditions are met:

1. The rate of handling does not exceed 100t per hour; or
2. Where handling occurs on less than 21 days per ~~calendar~~ calendar year, the rate of handling does not exceed 250t per hour; and
3. The discharge does not cause a noxious or dangerous effect; and
4. Where the rate of handling exceeds 20t per hour, a dust management plan prepared in accordance with Schedule 2 must be held and implemented by the persons responsible for the discharge into air; and
5. The dust management plan is supplied to the CRC on request; and
6. The discharge does not occur within 200m of a sensitive activity, ~~wāhi tapu, wāhi taonga or site of significance to Ngāi Tahu.~~

7.38 The discharge of contaminants into air from the outdoor storage of bulk solid materials is a permitted activity provided the following conditions are met:

1. The amount of material stored does not exceed 1000t when it has an average particle size of less than 3.5mm; and
2. The discharge does not cause a noxious or dangerous effect; and
3. Where the storage exceeds 200t, a dust management plan prepared in accordance with Schedule 2 must be held and implemented by the persons responsible for the discharge into air; and
4. The dust management plan is supplied to the CRC on request; and
5. The discharge does not occur within 100m of a sensitive activity, ~~wāhi tapu, wāhi taonga or site of significance to Ngāi Tahu.~~

24. I then propose that Rule 7.39 is modified to specifically manage seeds, grains and stock feed:

7.39 The discharge of contaminants into air from the cleaning, conveying, packaging, processing, handling, treatment or storage of seeds, grains and stock feed is a permitted activity provided the following conditions are met:

1. The discharge does not cause a noxious or dangerous effect; and

2. *If there is a discharge of odour or dust beyond the boundary of the property of origin, an odour and/or dust management plan prepared in accordance with Schedule 2 must be held and implemented by the persons responsible for the discharge into air; and*
3. *The odour and/or dust management plan is supplied to the CRC on request; and*
4. *Surfaces on the property where the discharge originates, including buildings, plant/equipment and ground surfaces, are cleaned as regularly as necessary to prevent wind-blown dispersal or deposition of particles beyond the boundary of the property of origin.*

CONCLUSIONS

25. In my opinion minor amendments are required to the Proposed Plan to recognise that that the storage and handling of seeds, grains and stock feed, which is largely an indoors or contained activity, can be managed with less regulation than bulk solids materials generally. This is because of the lesser degree of risk posed to the environment from related air discharges.

Daniel Murray

18 September 2015