

From: [Nick Boyes](#)
To: [Mailroom Mailbox](#)
Subject: pCARP - Submission by Higgins Contractors Ltd
Date: Friday, 1 May 2015 4:34:58 p.m.
Attachments: [14142_Higgins_Contractors_Ltd_pCARP_submission.pdf](#)

Dear Sir/Madam

Please find attached a submission lodged on behalf of Higgins Contractors Ltd on the proposed Canterbury Air Regional Plan.

Regards
Nick



Nick Boyes - Senior Planner

DDI: 03 964 4635 **M:** 021 488 938 **E:** nick@planzconsultants.co.nz **W:** planzconsultants.co.nz
P: PO Box 1845, Christchurch 8140 **A:** 124 Peterborough Street, Christchurch 8013

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Notice of Submission on the Proposed Canterbury Regional Air Plan
Pursuant to Clause 6 of Schedule 1 of the Resource Management Act 1991

To: The Canterbury Regional Council/Environment Canterbury
By email: mailroom@ecan.govt.nz

Submitter: Higgins Contractors Ltd

Address: c/- Planz Consultants Ltd
PO Box 1845
CHRISTCHURCH 8140

Contact: Nick Boyes

Telephone: 03 964 4635 or 021 488 938

Email: nick@planzconsultants.co.nz

1. Higgins Contractors Ltd (Higgins) wishes to make a submission on the proposed Canterbury Air Regional Plan (pCARP).
2. Higgins Contractors Ltd could not gain an advantage in terms of trade competition through this submission.
3. Environment Canterbury (ECan) has prepared the pCARP to provide a statutory framework for managing human influences on air quality so that air quality in Canterbury is maintained or enhanced to protect the community's health and wellbeing.
4. The relief sought seeks to maintain consistency with the strategic level planning document (the Regional Policy Statement) and to provide for the on-going ability to provide for industrial discharges where they maintain ambient air quality and do not have significant adverse effects on the localised environment. To not provide for industrial discharges in this manner would have significant and far reaching impacts on the economic and social well-being of the Canterbury region.
5. This submission includes
 - A brief overview of Higgin's operations and proposed activities in the Canterbury Region;
 - Submissions on the pCARP; and
 - Specific suggested relief sought to address the matters raised in the submission points (in tabular form).

Introduction/Overview

6. Higgins is a New Zealand owned civil construction business with over 1200 staff in both New Zealand and Fiji. Higgins provides fully integrated civil construction services and infrastructure products, including the manufacture and supply of aggregates, concrete and bitumen; pavement construction; spray sealing; asphalt paving; drainage; traffic management; road marking and road maintenance. Higgins is a subsidiary company of Higgins Group Holdings Ltd.
7. Higgins has recently acquired a local contracting firm, Calcon Limited and its subsidiary company SQL Quarries, thereby establishing a presence in Christchurch and the wider Canterbury region. More recently Higgins has applied to establish an asphalt plant in an industrial zoned site in Hornby. The proposed provisions contained within the pCARP threaten the basis on which this investment has been made.

Policy Structure of the pCARP

8. Higgins is concerned at the policy structure included within the pCARP and how that is reflected in the rules as notified. In particular, the directive language used within policy framework means that there is little discretion available to Officer's to consider the merits of a proposal at the individual consent level that may not have the ability to 'avoid' all adverse effects. It remains that these effects could otherwise be mitigated or remedied. It is difficult to envisage how the pCARP approach enables the overall balancing of Part 2 matters, which is necessary to achieve the purpose of the RMA.
9. As a consequence of the use of absolute terms within the overarching policies (such as "avoid"), the associated rule package places a heavy reliance on non-complying and prohibited activity rule status to satisfy specific policy directions. While it is clear that no application can be made for a prohibited activity, the pCARP states that consents for non-complying activities will generally only be granted in "*exceptional circumstances*"¹.
10. Any non-complying activity is entitled to be considered on its merits. Such an application must satisfy the section 104D threshold test, and if so, can then be considered for approval following a consideration of all relevant matters under section 104. In this context it is not considered appropriate for the pCARP to introduce an additional qualifier of 'exceptional circumstances'.
11. Higgins is currently going through the air discharge consent process in relation to a large scale burner within an established industrial zone within Christchurch. The concern is that the re-consenting of any such discharge that attracts non-complying activity status may compromise its ability to continue on the site in the future.
12. From a section 32 perspective such an approach appears unfounded given that the pCARP states that it seeks to provide for industrial and trade premises (policy

¹ Proposed Canterbury Air Regional Plan, 3 How the Plan Works, page 3-2

6.19), and monitoring data indicates that industrial sources only contribute 7-17% of total PM₁₀ concentrations within polluted airsheds².

Giving effect to the Canterbury Regional Policy Statement

13. The pCARP is required to “give effect” to the operative Regional Policy Statement (RPS), which includes Chapter 14 – Air Quality, in accordance with section 67(3)(c) RMA. The pCARP only briefly mentions the overarching provisions of Chapter 14 of the RPS, and does not clearly describe how the pCARP gives effect to the objectives and policies therein. It is also noted that while the section 32 report accompanying the pCARP includes numerous references to the requirement for the pCARP to give effect to the RPS, the only apparent discussion of issues raised in the RPS is in respect to reverse sensitivity, not in terms of the distinction made between ambient and localised air quality.

Ambient versus localised air quality

14. In particular, it is recognised that the RPS makes a clear distinction between ambient (Objective 14.2.1 and Policy 14.3.1) and localised air quality effects (Objective 14.2.2 and Policy 14.3.3). This important distinction in the assessment of proposals is not reflected within the pCARP as notified (namely proposed Policy 6.21). There are no references to the differences between ambient and localised air quality effects and the pCARP provisions likewise draw no distinction and are applied uniformly regardless of effect.
15. The proposed site of the Higgins asphalt plant is located within a ‘heavy’ industrial zone, which effectively anticipates and provides for such a use from a land use perspective. Industrial areas are characterised by an absence of residential development and few, if any, other sensitive activities. These characteristics subsequently inform the assessment of any air discharge at the localised level, including the employment of the best practicable option, resultant air quality modelling, and an overall consideration of the appropriateness of any proposed discharge at the proposed location.
16. The uniform approach of the pCARP fails to recognise this variation in the nature of the receiving environment and the key issue is that whilst air discharge activities may have localised effects on air quality they do not influence ambient air quality within the wider airshed/Clean Air Zones.
17. As currently drafted, it is unclear how the approach adopted in the pCARP is to be implemented, particularly in terms of requiring individual discharges to be assessed in the context of the wider airshed (polluted or otherwise), i.e., the ambient level. Therefore, Higgins requests that the distinction between localised and ambient air quality (as is included in the RPS and also the operative NRRP) is continued in the pCARP.

² Proposed Canterbury Air Regional Plan, 1 Introduction, page 1-3

The use of the Ministry for the Environment's Ambient Air Quality Guidelines (2002)

18. The pCARP uses reference to the 2002 Ambient Air Quality Guidelines (AAQG) published by the Ministry for the Environment (MfE) at both the policy and rule level. In particular, Policy 6.21 refers to “avoid” and Rule 7.18 makes industrial and large scale combustion discharges to air that will likely result in exceedances of the AAQG prohibited activities.
19. The Ambient Air Quality Guidelines (AAQG) were used to establish the more recent National Environmental Standards for Air Quality (NESAQ). Whilst the reference to the AAQG is preferred to adoption of different regional air quality assessment criteria, the submitter has significant concerns about the proposed application of the AAQG within the pCARP.
20. The AAQG itself states that these guideline levels were not developed with the intention of being used for assessing discharges from individual sources, rather they are intended to be used as an assessment tool as part of wider airshed management, as evident by the following text³:

As was stated in the 1994 Guidelines, the ambient guideline values are not designed to be used to assess the environmental and health impacts of individual discharges to air as required by the RMA, or a regional or district plan.

21. The AAQG then goes onto provide reasons why they shouldn't be used to assess individual discharges, including that they do not:
 - take into account the sensitivity of the receiving environment; and
 - consider background concentrations and potential cumulative effects.
22. It is clear from reading the AAQG that it was always only intended to be used to inform a full assessment of environmental effects (AEE) in relation to a particular proposal⁴. They should not be used in the pCARP as environmental bottom lines; particularly where associated with rules including prohibited activity status. The use in the manner proposed does not appear to be supported by the content of the AAQG itself.
23. Policy 6.2 requires that adverse effects on air quality are minimised where ambient air quality monitoring data is between 66% and 100% of AAQG levels. The air quality alert category of 66% as described in the AAQG document is intended to be used to assess ambient air quality measurements and to identify from those measurements where further policy direction may be required to curb upward trends in ambient air quality monitoring data. The AAQG is clear that it is not intended to be used to assess individual discharges, yet this is what is effectively proposed in the pCARP within proposed Policy 6.2 and associated Policy 6.3.
24. Higgins is concerned that the 66% of AAQG levels referred to in Policy 6.2 may be used by processing planners as “pass/fail” criteria when the assessment individual resource consents. This is not the intended application of the AAQG and would not be a representative indicator of adverse effects. Both Policies 6.2 and 6.3

³ Ministry for the Environment's Ambient Air Quality Guidelines (2002), Section 3.7, page 40

⁴ Ministry for the Environment's Ambient Air Quality Guidelines (2002), Section 3.7, page 41

should be amended to refer only to measured ambient air quality monitoring data not the assessment of localised 'one-off' discharge proposals.

The use of Prohibited Activity Status

25. Policy 6.21 and Rule 7.18 would effectively prohibit all industrial and large scale combustion discharges (including existing discharges) in areas/airsheds where contaminant concentrations already exceed AAQG levels (e.g., all of the polluted airsheds in Canterbury). This is regardless of the localised effects of the individual discharge and compliance with the NESAQ. It is noted that these areas take in vast areas of existing industrial zoned land within Christchurch City. The pCARP as written effectively means that any discharge within these areas would be required to cease.
26. Prohibited activity status means that resource consent cannot even be applied for. In that circumstance there is no opportunity to even have the application tested through the RMA resource consent process. Prohibited activity status should be reserved for activities where the consent authority is sure that all such applications could never meet the purpose of the Act. In the case of the pCARP, activities that were formerly discretionary under the operative NRRP, and meet the Regulations set out in the NESAQ, are now prohibited. This is an inappropriate and unjustified outcome.
27. The use of prohibited activity status directly contradicts and conflicts with Policy 6.19 that:

“enables discharges of contaminants into air associated with large scale, industrial and trade activities and nationally and regionally significant infrastructure, in locations where the discharge is compatible with the surrounding land use pattern and while ensuring that adverse effects on air quality are minimised”. {Emphasis added}

28. A related issue with Rule 7.18 as drafted is that it does not state where contaminant levels should be measured. This is somewhat related to the concerns raised regarding ambient versus localised effects. There appears little to be gained by measurement at the site boundary when there might be no sensitive receptors in the vicinity, and particularly where underlying zoning, i.e., industrial, effectively prevents any future sensitive activity establishing in the future.

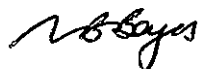
Specific Submission Points

29. Specific submission points, many of which expand on the concerns expressed above, are included in the attached table. This table follows the format of the table included on the template ECan submission form. It is noted that the relief sought therein may not be the only way in which to address the issue being raised. Alternatively, any similar relief with like effect would also be acceptable.

Conclusions

30. Higgins considers that the pCARP as notified, will have significant adverse impacts on both existing and potential future air discharge consent holders operating from industrial and trade premises. The provisions of the pCARP as notified represent a significant threat to the investment in the Canterbury Region by Higgins Contractors Ltd.
31. These new proposed provisions introduce great uncertainty and will no doubt lead to a decline in industrial land use within the Canterbury Region. Specifically in regard to Christchurch, this outcome would slow growth and recovery, and result in further cost and delay in trying to comprehend and consistently and apply the rules.
32. The use of AAQG guidelines as rules with associated prohibited activity status is of great concern and does not appear to be consistent with the requirements of section 32 of the RMA. The reasoning for departure from the applicable standards set out in the NESAQ is not adequately assessed or justified.
33. Insofar as provisions of the Resource Management Act 1991 (RMA) are concerned, the pCARP as notified:
 - a) Will not enable social and economic wellbeing of the community (in this case being the Canterbury Region);
 - b) Will not achieve integrated management of the effects of the use, development or protection of land and associated resources of the Canterbury region, particularly industrial land within a Clean Air Zone;
 - c) Accordingly, it does not contain objectives that are the most appropriate means of exercising the Council's functions having regard to the efficiency and effectiveness of the provisions relative to other means; and
 - d) Will not promote sustainable management of resources and is therefore considered contrary to Part 2 and other provisions of the RMA.
34. The submitter wishes to be heard in support of this submission.
35. The submitter would be prepared to consider presenting your submission in a joint case with others making a similar submission at any hearing.
36. I confirm that I am authorised to make this submission on behalf of Higgins Contractors Ltd.

Signed



Nick Boyes, Planz Consultants Ltd

As authorised agent on behalf of Higgins Contractors Ltd

1 May 2015

SPECIFIC RELIEF SOUGHT

Suggested relief to address concerns in this submission are set out below. However, there may be alternative wording or other methods that are able to address the issue being raised. On that basis the submitter also seeks any consequential or alternative relief to satisfactorily address their concerns set out above.

Page Ref.	Specific Provision	Support / Oppose	Submission	Decision/Relief Sought
1-3	1 – Introduction - ‘Industrial and large scale discharges of contaminants’	Oppose	<p>The statement that “Industry,...contributes a significant proportion of the contaminants in our air...” does not appear to be supported by the figures quoted elsewhere in the pCARP.</p> <p>Under the heading ‘Sources of contaminants’ on the same page, the pCARP identifies that monitoring data indicates industrial sources contribute to only 7%-17% of total PM₁₀ concentrations in the polluted airsheds – this does not equate to “a significant proportion”.</p> <p>PM₁₀ is dominated by domestic emissions; NO_x is dominated by transport; odour impacts are localised and come from a variety of sources not just industrial sources; and dust impacts similarly can arise from a variety of sources.</p> <p>Industrial contributions could only be described as significant in terms of SO₂ and other minor specialised contaminants.</p>	<p>Amend by deleting the first sentence:</p> <p>Industry, including the service industry, contributes a significant proportion of the contaminants into our air, including odour and dust, particularly in urban areas.</p>
1-3	1 – Introduction – ‘Industrial and large scale discharges of contaminants’	Oppose	<p>It is considered appropriate that the pCARP recognises that while industry may impact on localised air quality, the air discharge may not have any discernible impact on ambient air quality, particularly in the case where sites are located in appropriate zones that lack sensitive receptors.</p>	<p>Amend the sentence so as to read:</p> <p>The RMA prohibits discharges into air from industrial and trade premises unless the NESAQ, a rule in a regional plan or a resource consent expressly allows the discharge. To ensure these activities can take place, the Air Plan must provide rules that enable them. <u>It is also recognised that while industry may impact on localised air quality, the discharge may not necessarily impact on ambient air quality.</u></p>
1-6 – 1-7	1 – Introduction – ‘The statutory planning framework’	Oppose	<p>The discussion of the relevant RPS provisions (under the heading ‘The statutory planning framework’) fails to identify that the RPS distinguishes between localised and ambient air quality effects.</p>	<p>Amend the last bullet point (page 1-7) so as to read:</p> <ul style="list-style-type: none"> Setting a framework for the management of PM₁₀ and other contaminants discharged into air <u>that recognises both localised and ambient air quality impacts in ensuring that</u> ensures air quality is maintained or improved across the Region, and sensitive and discharging activities are protected from each other.

Page Ref.	Specific Provision	Support / Oppose	Submission	Decision/Relief Sought
N/A	2 – Definitions and Interpretation - new definition of “Ambient air quality”	Oppose	Higgins is concerned that the pCARP currently makes no reference to ambient air quality and therefore does not give effect to the RPS. A definition of ambient air quality is required to be included in the pCARP provisions that give effect to the RPS and address ambient air quality issues.	<p><i>Insert the following new definition:</i></p> <p><u>Ambient air quality -</u> <u>Means the quality of air outside of buildings and structures. It does not refer to indoor air, air in the workplace, or contaminated air being discharged from a source.</u></p> <p><i>(NB: this definition is taken directly from that provided in the MfE AAQG 2002)</i></p>
3-2	3 – How the Plan Works - Rules	Oppose	<p>It is inappropriate for the pCARP to include a statement that non-complying activities will only be granted in “exceptional circumstances”.</p> <p>A non-complying activity must first be considered under the s104D threshold test (adverse effects are no more than minor; or proposal is consistent with objectives and policies), and if it passes this test then the decision-maker is required to consider all relevant matters under s104. These would include plan integrity matters.</p>	<p><i>Amend the description of non-complying activities by deleting the following text:</i></p> <p><u>“...Consents for non-complying activities will generally only be granted in exceptional circumstances.”</u></p>
5-1	5 – Objectives 5.1 – 5.5	Oppose in part	<p>The RPS recognises the differences between ambient air quality and localised effects of individual discharges to air (Objectives 14.2.1 and 14.2.2 and associated policies).</p> <p>The RPS also recognises the importance of industry to the social and economic wellbeing of the community and that the associated discharges to air should be enabled, provided localised adverse effects are avoided, remedied or mitigated (refer Objective 14.2.2).</p> <p>The pCARP objectives provide no equivalent recognition and do not seek to enable discharges to air. This outcome is contrary to the direction provided by the RPS.</p> <p>A new objective is therefore sought to give effect to the RPS.</p>	<p><i>Insert a new Objective 5.10 as follows:</i></p> <p><u>Localised contaminant discharges into air do not, either on their own or in combination with other discharges, result in significant adverse effects on the environment.</u></p> <p><i>(this wording is taken from Objective AQL1 of the operative NRRP - Chapter 3. It is noted that the ‘Air Plan Review – discussion document for consultation’ (dated June 2014) states that the current Air Plan manages industrial and large scale emissions “quite well”⁵)</i></p>
5-1	5 – Objectives, Objective 5.8	Support	Higgins supports the recognition of differing air quality expectations for different locations- in particular industrial zones being an appropriate	<i>Retain Objective 5.8.</i>

⁵ ‘Air Plan Review – discussion document for consultation’ (June 2014), page 5-1

Page Ref.	Specific Provision	Support / Oppose	Submission	Decision/Relief Sought
			<p>location for discharges to air.</p> <p>It is considered that this Objective serves to recognise that an assessment of air discharges from large-scale industrial activities requires consideration of the sensitivity of the local environment, including separation to any sensitive receptors.</p> <p>However, as set out above, it is noted that the application of AAQG as region-wide “bottom-lines” as indicated in the section 32 and included in Rule 7.17 and 7.18 conflicts with the approach set out in this Objective.</p>	
6-1	6 – Policies, Policy 6.2	Oppose	<p>As already alluded above, Higgins is concerned at the lack of distinction between localised and ambient air quality and that this will have a significant impact on various discharges to air if the pCARP is applied without proper consideration of environmental effects.</p> <p>It is also considered necessary for the pCARP to distinguish between localised and ambient air quality effects in order to give effect to the RPS.</p>	<p><i>Amend Policy 6.2 so as to read:</i></p> <p>Manage adverse effects on ambient air quality where ambient monitoring results indicate concentrations of contaminants are between 66% and 100% of the guideline values set out in the Ambient Air Quality Guidelines 2002 Update, so that ambient air quality does not exceed 100% of those guideline values.</p>
6-1	6 – Policies, Policy 6.3	Oppose		<p><i>Amend Policy 6.3 so as to read:</i></p> <p>Where ambient monitoring results indicate concentrations of contaminants exceed 100% of guideline values set out in the Ambient Air Quality Guidelines 2002 Update, action is taken to improve air quality.</p>
6-1	6 – Policies, Policy 6.4	Support in part	Higgins supports the reference to “ <i>while providing for industrial growth</i> ” in this policy.	<i>Retain Policy 6.4.</i>
6-2	6 – Policies, Policy 6.21	Oppose in part	It is considered that the use of the term ‘avoid’ within Policy 6.21 infers prohibition, which is an inappropriate application of the AAQG, particularly as it relates to localised air discharges. The AAQG specifically states that any exceedance of the 100% guideline values is intended to trigger a more detailed assessment of potential adverse effects, including an assessment of the sensitivity of the receiving environment and the degree of population exposure to the discharge.	<p><i>Amend Policy 6.21 so as to read:</i></p> <p>Manage any localised adverse effects from Avoid the discharge of contaminants into air from any large scale fuel burning device or industry or trade premise, where the discharge will result in the exceedance, or exacerbation of an existing exceedance, of 100% of the guideline values set out in the Ambient Air Quality Guidelines 2002 Update.</p>

Page Ref.	Specific Provision	Support / Oppose	Submission	Decision/Relief Sought
			Also, this Policy should refer to “ <i>large scale <u>fuel</u> burning device...</i> ” in order to be consistent with the term used in the definitions section of the pCARP.	
7-4	7 – Rules, Rules 7.15, 7.17, 7.18	Oppose	<p>Higgins does not support the use of the MfE AAQGs in the pCARP given that Rules 7.17 and 7.18 seek to prohibit activities on the basis of predicted exceedance of the AAQG. This is contrary to the intent and purpose of the AAQG. The AAQG document is clear that AAQG are not intended to be applied to the consideration of individual discharges. In that context they should not be adopted in the pCARP as a threshold by which resource consent applications will be assessed.</p> <p>Rule 7.18 explicitly prohibits certain discharges, including renewals of existing discharges within a Clean Air Zone.</p> <p>Higgins considers that any explicit or implied prohibition of discharges under Rules 7.17 and 7.18 is inconsistent with the underlying document on which they rely (being the AAQG). Amendments are therefore sought to enable a full assessment of potential effects of the discharges to be undertaken, taking account of background air quality, the sensitivity of the receiving environment and population exposure etc.</p> <p>Discretionary activity status is sufficient to undertake this assessment and allows for inappropriate industrial discharges to be declined were justified.</p> <p>Furthermore Rules 7.17 and 7.18 do not specify the locations where the guidelines are to be applied. To apply the guidelines as intended by MfE specific reference to ambient air quality in the rules and adoption of the definition of ambient air quality requested above is required.</p>	<p><i>Amend Rule 7.15 so as to read:</i></p> <p>Within a Clean Air Zone the discharge into air of PM₁₀ at a rate exceeding 250mg/m³ air, when tested in accordance with schedule 6 and adjusted to 0° Celsius, dry gas basis, 101.3 kilopascals, and 8% oxygen or 12% carbon dioxide is a non-complying <u>discretionary</u> activity.</p> <p><i>Amend Rule 7.17 so as to read:</i></p> <p>The discharge of contaminants into air from a large scale solid fuel burning device or from an industrial or trade premise established prior to 28 February 2015, outside a Clean Air Zone, that will likely result in <u>ambient air quality exceeding</u> guideline values, set out in the Ambient Air Quality Guidelines 2002 Update, being exceeded is a non-complying <u>discretionary</u> activity.</p> <p><i>Amend Rule 7.18 so as to read:</i></p> <p>The discharge of contaminants into air from a large scale fuel burning device or from an industrial or trade premise established either: inside a Clean Air Zone; or outside a Clean Air Zone after 28 February 2015, that will likely result in <u>ambient air quality exceeding</u> guideline values, set out in the Ambient Air Quality Guidelines 2002 Update, being exceeded is a prohibited <u>discretionary</u> activity.</p>