

From: [Eve Williams](#)
To: [Mailroom Mailbox](#)
Cc: [Lynette Wharfe](#); [Chris Keenan](#)
Subject: Proposed Canterbury Air Regional Plan - Submission
Date: Friday, 1 May 2015 10:25:35 a.m.
Attachments: [Submission on ECan Air Plan.pdf](#)

Good morning,

Please find attached a submission by Horticulture New Zealand on the proposed Canterbury Air Regional Plan.

Kind regards
Eve

Eve Williams | Executive Assistant to Chris Keenan & Angela Halliday

Horticulture New Zealand

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SUBMISSION ON PROPOSED CANTERBURY AIR REGIONAL PLAN

TO: Canterbury Regional Council

SUBMISSION ON: Proposed Canterbury Air Regional Plan

FROM: Horticulture New Zealand

ADDRESS: PO Box 10 232
WELLINGTON

1. Submissions of Horticulture NZ, and the decisions sought, are detailed in the attached schedules as follows:

Schedule 1: Introduction
Schedule 2: Definitions and interpretation
Schedule 3: Objectives
Schedule 4: Policies
Schedule 5: Rules
Schedule 6: Schedules

2. Background

- 2.1 Horticulture New Zealand was established on 1 December 2005, combining the New Zealand Vegetable and Potato Growers' and New Zealand Fruitgrowers' and New Zealand Berryfruit Growers Federations.

- 2.2 On behalf of its 5,400 active grower members Horticulture New Zealand takes a detailed involvement in resource management planning processes as part of its National Environmental Policies. The principles that Horticulture New Zealand considers in assessing the implementation of the Resource Management Act 1991 (RMA) include:


- The effects based purpose of the Resource Management Act,
- Non-regulatory methods should be employed by councils;
- Regulation should impact fairly on the whole community, make sense in practice, and be developed in full consultation with those affected by it;
- Early consultation of land users in preparation of regulatory frameworks;
- Ensuring that RMA plans work in the interests of the parties to protect and preserve opportunities for sustainable growth, to meet the industry vision of being a \$10 billion industry by 2020.

- 2.3 Horticulture New Zealand works to raise growers' awareness of the RMA to ensure effective grower involvement under the Act, whether in the planning process or through resource consent applications.

3. Horticulture NZ wishes to be heard in support of this submission.

4. Horticulture NZ is not a trade competitor who could gain advantage through this submission.

Thank you for the opportunity to submit on the Proposed Canterbury Air Regional Plan.



Chris Keenan
Manager – Natural Resources and Environment
Horticulture New Zealand

Date: 1 May 2015

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SCHEDULE ONE: – Introduction

NOTE: The Introduction is unnumbered so the bold headings have been used to indicate the sections to which this submission relates.

1.1 General approach – Paragraph 2 and bullet point list

Horticulture NZ supports the general approach to provide for industrial and economic growth in appropriate areas, including the adoption of the best practicable option and best practice. However such an approach should also be adopted for the rural area.

Decision sought:

Add an additional bullet point under the Introduction:

- Provides for rural production activities in rural areas, including the adoption of the best practicable option and best practice.

1.2. Outdoor burning and rural discharges of contaminants

The section of outdoor burning and rural discharges of contaminants refers to 'nuisance problems' and 'nuisance effects'.

The term nuisance is not defined in the Plan, nor is nuisance a concept or term used in the RMA so the usage it is inconsistent with the RMA, is unclear what is intended and how it may be applied in the context of the Plan.

The concept of 'nuisance' is provided for in the Health Act with a very wide ranging definition. It is unclear what Council intends to include as 'nuisance' and therefore the implications to the implementation of the Proposed Air Plan.

Consideration of adverse effects under the RMA can include activities that are objectionable or offensive and there is case law to provide direction for interpretation, whereas such case law does not exist under the RMA for 'nuisance'.

The Proposed Plan has a policy for reverse sensitivity and it is unclear how 'nuisance' would be assessed where reverse sensitivity may apply.

The Proposed Plan does include reference to objectionable and offensive in respect of some localised air provisions and these are supported as a test of the extent of adverse effects and are more appropriate in an RMA plan.

Decision sought:

Replace 'nuisance problems' and 'nuisance effects' with 'adverse effects'.

1.3. Territorial Authorities

It is agreed that Territorial authority partnerships are essential to managing air quality, particularly for activities to be located in appropriate areas and avoiding reverse sensitivity effects. This is particularly relevant in a rural context in terms of subdivision and ensuring that potential reverse sensitivity is considered at the time of subdivision.

Decision sought:

Retain the statement on Territorial Authority but amend by adding:
Potential for reverse sensitivity effects should be assessed as part of land use change or subdivision, particularly in the rural areas.

- 1.4 Any consequential amendments are sought as required to give effect to decisions sought in this submission.

SCHEDULE TWO – Definitions and interpretation

2.1. Format of definitions

It is noted that definitions from the RMA are printed in italics. It should state that the RMA definitions are distinguished in this manner so it is clear to plan users.

Decision sought:

Add at the beginning of the definitions and interpretation section:
Terms from the RMA are identified by italics.

2.2 Agrichemical

The definition of agrichemical is supported.

Decision sought:

Retain definition of agrichemical.

2.3 Crop residue

The definition of crop residue means 'standing organic matter left behind after a cultivated crop is harvested.' The term is relevant in the context of the Air Plan in terms of the burning of such residue. Not all crop residue is intended to be burnt. For instance residue from potato crops is usually cultivated back into the soil. So it would be clearer to refer to residue that is intended to be burnt.

Decision sought:

Amend the definition of crop residue as follows:

Means the standing organic matter left behind after a cultivated crop is harvested that is intended to be burnt.'

2.4 Fertiliser

The definition of fertiliser is the ACVM definition and is considered to be the most appropriate one to use as it is the basis for approvals for fertiliser in NZ. In particular it provides for fertiliser additives and so includes lime. .

Decision sought:

Retain definition of fertiliser.

2.5 Offensive and objectionable

A definition is included for noxious or dangerous effect. However the term 'offensive and objectionable' is used in the plan. While Schedule 2 sets out how offensive and objectionable will be assessed there should be a definition that describes what is considered to be offensive and objectionable and also reference Schedule 2.

Decision sought:

Add a definition for offensive and objectionable effects as follows:

Offensive and objectionable effects are effects that cause significant discomfort and

need to be assessed in the context of the discharge, in particular the nature, frequency, duration, intensity and location of the discharge to determine the extent to which it may be considered offensive or objectionable. Offensive and objectionable effects will be assessed as set out in Schedule 2.

2.6 Sensitive activity

The Plan has a definition of sensitive activities that is based on where people are likely to be located. However there are some situations where other activities may be sensitive to discharges, such as sensitive crops. For instance non target crops, such as greenhouses are sensitive to agrichemical off target, or fruit sensitive to dust or smoke particles prior to harvest. There should be recognition that effects can extend beyond people.

Decision sought:

Amend the definition of sensitive activities by adding:

- e) Non target plants and/or crops which may be damaged by a discharge to air

2.7 Space heating appliance

There is a section with definitions relevant to space heating appliances. However it would be appropriate that the definition for 'space hearing appliance' be included in the list of definitions in Table 2.1 so it is clear what Table 2.2 refers to.

Decision sought:

Move the definition of 'space heating appliance' to Table 2.1. and add:
Definitions relevant to 'space heating appliances' are included in Table 2.2.

2.8 Reverse sensitivity

The plan has no definition of reverse sensitivity yet the term is relevant to managing discharges to air as many of the complaints about discharges to air are linked to reverse sensitivity. In Horticulture New Zealand's experiences throughout the country a clear definition of reverse sensitivity and direction for a plan leads to cohesive clarity as to which party is the 'sensitive' party and how existing lawfully established activities will be protected from potential reverse sensitivity effects.

Horticulture NZ also seeks that a policy be included in the plan so it is clear how for reverse sensitivity and potential conflicts will be managed and assessed.

Decision sought:

Include a definition for reverse sensitivity as follows:

"Reverse Sensitivity" means the vulnerability of an existing lawfully established activity to complaint from other activities located in the vicinity which are sensitive to adverse environmental effects that may be lawfully generated by the existing activity, thereby creating the potential for the operation of the existing activity to be constrained.

SCHEDULE THREE: Objectives

3.1 Objective 5.3

The objective seeks that air quality 'protects' the mauri/ life supporting capacity of the environment. The RMA seeks that the life supporting capacity of air is safeguarded rather than the way the objective is phrased. As proposed it provides for a very broad 'protection' for the environment. The objective should be related to what is sought for air quality.

Decision sought:

Amend Objective 5.3 as follows:

Safeguard the life supporting capacity of air.

3.2 Objective 5.4

Objective 5.4 seeks to maintain the amenity values of the receiving environment.

It needs to be clear what the amenity values of the receiving environment are and that it is the only the location in which the discharge is occurring that is to be considered. There will be a range of receiving environments in Canterbury and these environments need to be described so it is clear what the values that are sought to be maintained. The rural environment needs to be described as an environment where discharges to air are part of rural production and hence part of the receiving environment. Such discharges include smoke, fertiliser dust and agrichemical sprays.

Changes are sought to Objective 5.8 to support recognition of the different background environments.

Decision sought:

Discharges to air are managed to maintain the existing amenity values of the receiving environments in which they are located.

Include descriptions of the amenity values for different receiving environments in the Plan.

3.3 Objective 5.8

Objective 5.8 seeks to recognise differing air quality throughout the Region. However it is written as a statement, not an objective.

Decision sought:

Rewrite Objective 5.8 as follows:

Manage air quality to reflect the different receiving environments across the region, taking into account the location and characteristics of the background receiving environment.

SCHEDULE FOUR: Policies

4.1 Central policies applying to all activities

4.1.1 Policy 6.1

Policy 6.1 seeks to manage discharge of contaminants to air, either individually or in combination with other discharges. It is not clear how the combination with other discharges will apply or be assessed. The policy should specify that it relates to other discharges to air from the same property or operation. An operation cannot be responsible for discharges from the activities of others.

Decision sought:

Amend Policy 6.1:

Discharges of contaminants into air, either individually or in combination with other air discharges from the same property or operation, do not cause:

4.1.2 Policy 6.5

Policy 6.5 is written as a statement, not a policy. There should be a policy direction to provide a framework for assessment.

Decision sought:

Amend Policy 6.5 as follows:

Manage discharges to air by assessing frequency, intensity, duration and location of discharges to ensure that offensive and objectionable effects are avoided, remedied or mitigated.

4.1.3 Policy 6.6

Policy 6.6 is supported as it seeks to ensure that discharges to air occur in appropriate locations as provided for by the relevant district plan. A consequence of the policy is that district plans ensure that only appropriate activities are located in areas where it is anticipated that discharges to air will occur. In a rural context this would mean that activities sensitive to discharges from rural production activities are not located in the rural area or that potential reverse sensitivity effects are avoided or mitigated. An additional policy is necessary to provide direction for district plans.

Decision sought:

Retain Policy 6.6

Add an additional policy:

Ensure that district plans zone appropriate locations for activities that discharge to air and that such locations are not compromised by activities sensitive to discharges to air establishing in those areas.

4.1.4 Policy 6.7

Policy 6.7 is unclear and appears to require that existing lawfully established activities relocate if a new land use is significantly adversely affected. The presumption should be the other way around. A new land use should not locate where an existing lawfully established activity may be constrained or compromised because of the new land use.

Decision sought:

Amend Policy 6.7 as follows:

Avoid activities sensitive to discharges to air establishing in areas or in proximity to existing lawfully established activities that discharge to air.

4.1.5 Policy 6.8

The policy provides for longer consent duration and operational certainty where activities are appropriately located to avoid potential for reverse sensitivity effects. There is no provision to provide operational certainty for permitted activities which are also appropriately located, such as rural production activities in the rural zones.

Decision sought:

Amend Policy 6.8 as follows:

Ongoing operational certainty will be provided to activities that discharge into air which are appropriately located to avoid potential reverse sensitivity effects through ongoing permitted activity status or longer consent duration.

4.1.6 Policy 6.13

Policy 6.13 provides for discharges to air necessary for managing biosecurity risks. This policy is supported as it provides a framework for rules and methods to address biosecurity risks.

Decision sought:

Retain Policy 6.13.

4.2 Outdoor burning

4.2.1 Policy 6.15

Policy 6.15 provides for outdoor burning of organic material in rural areas where undertaken in accordance with Schedule 3. Written as such means that the policy is in effect a rule as it prescribes how burning is to be undertaken. It would be better that the policy referred to best practice and reference to Schedule 3 included in the relevant rules. The policies make a distinction between organic and non-organic material. There are no definitions which specify what are considered to be organic and non-organic materials. It would assist if there is clarification.

Decision sought:

Amend Policy 6.15 as follows:

Provide for outdoor burning of organic material in rural areas where undertaken using best practice.

Include definitions for organic and non-organic material.

4.2.2 Policy 6.16

As stated in respect of Policy 6.15 there are no definitions which specify what are

considered to be organic and non-organic materials. It would assist if there is clarification so that the rules include appropriate materials.

Decision sought:

Include definitions for organic and non-organic material.

4.3 Industrial and large scale discharges to air

4.3.1 Policy 6.19

Policy 6.19 enables the use of industrial and large scale discharges to air where compatible with the surrounding land use patterns and effects are minimised.

This policy is relevant for where boilers are used for heating of covered crops, such as in greenhouses which are greater than 40kW and so classed as large scale fuel burning devices. Most are located in rural areas and so compatible with the surrounding land use pattern.

Decision sought:

Retain Policy 6.19.

4.3.2 Policy 6.20

Policy 6.20 seeks to use best practicable option to minimise degradation of ambient air quality. There is no definition of ambient air quality. It is questioned whether the policy should be to avoid degradation of localised air quality, as opposed to ambient air quality.

Decision sought:

Include definitions for ambient air quality and localised air quality.
Amend Policy 6.20 to minimise localised air quality.

4.4 Rural discharges to air

4.4.1 Policy 6.25

Policy 6.25 provides for the use of agrichemicals and fertilisers where appropriate management practices are used to minimise the risk of affecting non-target locations.

The policy is supported in part. However it is considered that the reference should be to 'best management practices' rather than 'appropriate management practices'.

The policy direction should also be to minimise the risk of adverse effects on non-target locations.

It is noted that agrichemicals is defined and the hyphen in the policy should be deleted to be consistent with the definition.

Decision sought:

Amend Policy 6.25 as follows:

The discharge to air of agrichemicals and fertilisers is undertaken using best management practices to minimise the risk of adverse effects on non-target locations.

4.4.2 Policy 6.26

Policy 6.26 states that discharges to air from rural activities do not cause offensive or objectionable effects beyond the boundary of the property of origin.

A definition of offensive or objectionable effects has been sought so there is clarity as to what may be deemed offensive or objectionable and how it will be assessed. Schedule 2 includes criteria for assessing whether dust, odour and smoke are offensive or objectionable. Therefore Policy 6.26 should only relate to activities that discharge dust, odour or smoke and seek to provide a direction for how the activities will be managed. It would be better that it is adverse effects that are avoided as these can include effects other than what may be judged as offensive or objectionable.

Decision sought:

Amend Policy 6.26 as follows:

Manage the discharges to air from rural activities to avoid or minimise potential for adverse effects beyond the boundary of the property of origin.

OR

Manage the discharge of dust, odour or smoke into air from rural activities to avoid or minimise potential for offensive or objectionable effects beyond the boundary of the property of origin.

SCHEDULE FIVE: Rules

5.1 Rules – All activities

5.1.1 Rule 7.3

Rule 7.3 is a catch all rule that makes any discharge of odour, dust or smoke into air that is offensive or objectionable beyond the boundary when assessed in accordance with Schedule 2 a non complying activity. This submission has highlighted that there is not a definition or description of offensive or objectionable. Requiring an activity status of non-complying when it is dependent on a case by case assessment of offensive or objectionable which often occurs as a result of complaint so determination cannot be made prior to an activity occurring means that there is significant discretion and uncertainty for users as to how the plan will be implemented.

Decision sought:

Amend Rule 7.3 to discretionary activity.

5.2 Rules – Outdoor burning

5.2.1 Rule 7.7

Rule 7.7 provides for burning where required for biosecurity control. This is supported. However the rule refers to disease control. It should also include control of unwanted organisms which need to be disposed of for biosecurity reasons. An unwanted organism may not be a 'disease'.

Decision sought:

Amend Rule 7.7 by adding or 'control of unwanted organisms' after 'disease control'.

5.2.2 Rule 7.8

Rule 7.8 provides of burning of crop residue outside the Crop residue buffer areas. It is dependent on an assessment based on Scheduled 2. However there is subjectivity in the assessment so it will be unknown until a burn begins as to whether it will be deemed 'offensive or objectionable'. This provides for uncertainty in a permitted activity rule, which is inappropriate. A permitted activity rule needs to be clear, certain and enforceable. An assessment can be made under the general requirement to avoid adverse effects under the RMA but it should not be a condition of a permitted activity rule.

Decision sought:

Delete Rule 7.3 Clause 1.

5.2.3 Rule 7.10

Rule 7.10 provides for the outdoor burning in rural areas off vegetation, paper, cardboard and untreated wood as a permitted activity subject to conditions, which are designed to avoid effects of discharges on sensitive activities.

Condition 3 requires material to be left dry for 6 weeks and located at least 200m from a sensitive activity in any direction. The threshold should be upwind of the fire when the burn is undertaken, not in any direction.

Condition 4 effectively has a 5km setback from urban areas which is extensive.

Condition 9 is uncertain, which is inappropriate for a permitted activity rule.

Decision sought:

Amend Rule 7.10 (3) by deleting 'in any direction' and replacing with 'upwind'

Amend Rule 7.10 (4) by reducing 5km to 2km.

Delete Rule 7.10 (9)

5.3 Rules – Industrial, trade and large scale discharges to air

5.3.1 Rule 7.16

Rule 7.16 provides for large scale burning devices outside of a clean air zone to be discretionary where certain standards are met. It is considered that the matters could be assessed as a restricted discretionary activity with clear matters of discretion.

Decision sought:

Amend Rule 7.16 to restricted discretionary.

5.3.2 Rule 7.17

Rule 7.17 provides for large scale burning devices outside of a clean air zone to be non-complying where it was established prior to 28 February 2015 and where it will likely result in guideline values being exceeded. It is considered that this level of activity could be assessed as a discretionary activity.

Decision sought:

Amend Rule 7.17 to discretionary

5.4 Rural discharges to air

5.4.1 Rule 7.72

Rule 7.72 provides for the application of agrichemicals or fertiliser in rural areas.

It is inappropriate to combined fertilisers and agrichemicals into the same rule as different standards and provisions should apply relative to the different effects of the activities.

Horticulture NZ supports the inclusion of NZS8409 Management of Agrichemicals in respect of agrichemicals as it is best practice. However the relevant version is 2004. In addition the Plan should specify the relevant sections as not all matters in the Standard are matters over which the Regional Council has control. Relevant sections are: Storage – Appendix L4, Use – Part 5.3, Disposal – Appendix S, Records – Appendix C9.

The provisions for agrichemicals should include training and preparation of a spray plan to ensure that risks are adequately assessed and managed.

NZS8409:2004 requires that a spray plan is prepared as part of best management practice. Horticulture NZ considers that preparation of a spray plan is a crucial step to ensuring that assessment of potential risks and methods to avoid adverse effects are considered. In particular it requires sensitive areas where extra care is required. This is considered best practice and should be included as a specific condition in the Proposed Plan.

Training is essential to ensure that users are aware of best practice. Accreditation for aerial operations also ensures that best practice is used at all times.

The rule also requires that adverse effects are avoided on vegetation and fauna and sensitive activities but then also requires that there are no noxious or dangerous effects. Noxious or dangerous effects are adverse effects and are therefore provided for in clauses 3 and 5 so clause 4 is not necessary. It is appropriate that the rule is based on adverse effects from spray drift as this is the real issue relating to applications of agrichemicals.

Decision sought:

Separate out application of fertiliser into a separate rule that requires:

- compliance with the application provisions in the Code of Practice for Nutrient Management (Fertiliser Association)
- is approved for use under the Fertiliser Group Standards under HSNO

Amend Rule 7.72 for agrichemicals as follows:

Applications of agrichemicals

The discharge to air from the application of agrichemicals is a permitted activity provided the following conditions are met:

- 1) The substance is approved under HSNO and the use and discharge of the substance is in accordance with all conditions of the approval; and
- 2) The discharge is undertaken in a manner consistent with NZS8409:2004 Management of Agrichemicals and for specific activities compliance with the following sections of NZS8409: 2004 Management of Agrichemicals:
 - Storage – Appendix L4
 - Use – Part 5.3
 - Disposal – Appendix S
 - Records – Appendix C9
- 3) The discharge must be undertaken in such a way that there are no adverse effects from off target spray drift beyond the boundary property
- 4) Spray plan

The owner/ occupier or manager shall prepare a spray plan at least once a year including identifying sensitive areas adjacent to where discharges will occur. (Spray plan requirements to be included in Plan or refer to NZS8409:2004 5.3 and Appendix M4 and template on website);

5) Training

Where agrichemicals are applied:

- i) All users, other than agrichemical contractors, must hold a GROWSAFE® Introductory Certificate or be under direct supervision of a person holding a GROWSAFE® Applied Certificate or Registered Chemical Applicators Certificate.
- ii) Every ground based agrichemical contractor shall hold a GROWSAFE® Registered Chemical Applicators Certificate Or have a GROWSAFE® Introductory Certificate and under direct supervision of GROWSAFE® Registered Chemical Applicator
- iii) Every pilot undertaking Aerial application must hold a GROWSAFE® Pilots Agrichemical Rating Certificate issued by CAA and the application company or operator must hold a current AIRCARE™ Accreditation.

6) Notification

The owner/ occupier or manager shall ensure that notification has occurred prior to application commencing as follows:

- i) Sensitive areas other than amenity areas and public places:

The owner/ occupier or manager of the property where agrichemicals are to be used is to ensure that any person likely to be directly affected by application and who requests notification, is notified prior to application commencing:

- ii) Amenity areas and public places

The owner/ occupier or manager shall provide a public notice in a local newspaper or letter drop in the area to be sprayed at least 7 days before the proposed application and ensure that the signage below is provided:

- i) Where spraying is occurring in a public place signs shall be placed within the immediate vicinity of the spraying prior to commencing and maintained until spraying has ceased,
- ii) Where the spraying is occurring on or alongside roads vehicles associated with the spraying shall display signs on the front and rear of the vehicles advising that spraying is occurring.

5.4.2 Rule 7.73

Rule 7.73 provides for the application of agrichemicals for purpose of addressing a biosecurity incursion. The rule is supported, however the conditions are uncertain for a permitted activity.

A time frame of 24 hours is more appropriate as biosecurity actions need rapid response times.

There also needs to be provision for agrichemicals for biosecurity purposes in the urban areas – such as occurred in Auckland for Queensland Fruit Fly. At present the rule is located under Rural discharges to air so it is unclear whether it is limited to rural areas.

Decision sought:

Delete Rule 7.73 Condition 3

Amend Condition 2 to NZS8409:2004

Amend clause 4 to 24 hours.
Ensure that the rule is applicable in both rural and urban areas.

5.4.3 Rule 7.74

Rule 7.74 provides for applications of agrichemicals that cannot meet the permitted activity standards to be a restricted discretionary activity. This is supported.

However it is uncertain as to how 'benefits to the community' would be assessed.

Decision sought:

Retain Rule 7.74 subject to:

Delete Clause 6

Amend Matter 7 to: Matters set out in Rule 7.72

SCHEDULE SIX: Schedules

6.1 Schedule 2 Assessment of offensive and objectionable effects

A range of policies and rules rely on Schedule 2, which is detailed in terms of assessing offensive and objectionable effects for smoke particles, dust and odour.

The provisions apply to a vast array of potential situations and there needs to be recognition that any assessment will be related to the nature and scale of the activity.

Horticulture NZ considers that application of Schedule 2 a requirement for a permitted activity is uncertain and has sought deletion of the requirement. Therefore Schedule 2 should be amended to remove compliance with permitted activity conditions. It is appropriate that the schedule is used for s17 assessments and for resource consent conditions.

Decision sought:

Delete 'with permitted activity conditions' from the provisions in Schedule 2 in relation to smoke, dust and odour.

6.2 Schedule 3 Content of smoke management plans for the outdoor burning of organic material in rural areas

Permitted activity rules 7.8 and 7.10 require preparation of a smoke management plan. Schedule 3 sets out the matters that are required to be considered as part of preparing such a plan and include best practice considerations and an approach to assessing the risks associated with the outdoor burning. This approach is supported.

Decision sought:

Retain Schedule 3.