

**BEFORE THE HEARING COMMISSIONERS
AT CHRISTCHURCH**

IN THE MATTER of the Resource Management Act 1991
 (“**the Act**”)

AND

IN THE MATTER of the Resource Management Act 1991
and the Environment Canterbury
(Temporary Commissioners and
Improved Water Management) Act 2010

AND

IN THE MATTER of the Proposed Canterbury Air Regional
Plan

**STATEMENT OF EVIDENCE BY LYNETTE PEARL WHARFE
FOR HORTICULTURE NEW ZEALAND**

18 SEPTEMBER 2015



ATKINS | HOLM | MAJUREY

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1. QUALIFICATIONS AND EXPERIENCE

- 1.1 My name is Lynette Pearl Wharfe. I am a planning consultant with The AgriBusiness Group. I have a BA in Social Sciences and post graduate papers in Environmental Studies, including Environmental Law, Resource Economics and Resource Management.
- 1.2 I am an accredited commissioner under the Making Good Decisions programme with Ministry for the Environment.
- 1.3 I have been a consultant with The AgriBusiness Group since 2002. The Agribusiness Group was established in 2001 to help build business capability in the primary sector.
- 1.4 I have spent over 17 years as a consultant, primarily to the agricultural industry and rural sector, specialising in resource management, environmental issues, and environmental education and facilitation, including 16 years of providing advice to Horticulture New Zealand ("**Horticulture NZ**") and its precursor organisations NZ Vegetable and Potato Growers Federation, NZ Fruitgrowers Federation.
- 1.5 Some of the projects I have been involved in that I consider are particularly relevant in this context are:
- (a) Project Manager and facilitator for a Sustainable Management Fund ("**SMF**") Project 'Reducing nitrate leaching to groundwater from winter vegetable crops', to develop management tools for vegetable growers to implement best practice for fertiliser applications, to assist in changing fertiliser usage.
 - (b) Managed an SMF project for NZ Agrichemical Education Trust communicating the revised NZS 8409:2004 Management of Agrichemicals to local authorities throughout NZ, including development and leading workshops with councils.
 - (c) Revised the Manual for the Introductory GROWSAFE® Course for the NZ Agrichemical Education Trust, to make the Manual more user friendly and accessible and to align it with the Hazardous Substances and New Organisms legislation.
 - (d) Managing the research component for SFF project – SAMSN – developing a framework for the

development of Sustainable Management Systems for agriculture and horticulture.

- (e) Project Manager MAF Operational Research Project Effectiveness of Codes of Practice investigating the use of codes of practice in the agriculture and horticulture sectors.
- (f) Undertook a review of Current Industry and Regional Programmes aimed at reducing pesticide risk, including assessing a number of Codes of Practice.
- (g) Contributed as a project team member for a Sustainable Farming Fund project 'Environmental best practice in agricultural and rural aviation' that included developing a Guidance Note on agricultural aviation, which is now on the Quality Planning website.
- (h) Undertook a review of agrichemical provisions in the Auckland Regional Air Land and Water Plan and developed a risk based response for inclusion in the Proposed Auckland Unitary Plan.

1.6 I have been involved as a consultant to Horticulture NZ on the Proposed Canterbury Air Regional Plan ("pCARP") contributing to the submission and further submissions.

1.7 I have read the Environment Court's Code of Conduct for Expert Witnesses, and I agree to comply with it. My qualifications as an expert are set out above. I confirm that the issues addressed in this brief of evidence are within my area of expertise, except where I state I am relying on what I have been told by another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

2. SCOPE OF EVIDENCE

2.1 This evidence provides a planning assessment of those provisions on which Horticulture NZ submitted and addresses the Section 42A report prepared by Environment Canterbury.

2.2 This evidence will address submissions and further submissions following the order of pCARP and the s42A Report:

- Chapter 1 Introduction – S42A Report Section 5

- Chapter 2 Definitions – s42A Report Section 6
- Chapter 5 Objectives - s42A Report Section 9
- Chapter 6 Central Policies- s42A Report Section 10
- Chapter 7 Rules applying to all activities and Schedules - s42A Report Section 11
- Chapters 6 and 7 Outdoor burning - s42A Report Section 12
- Chapters 6 and 7 Industrial and large scale discharges to air - s42A Report Section 13
- Chapters 6 and 7 Rural discharges - s42A Report Section 14

3. MY UNDERSTANDING OF HORTICULTURE NEW ZEALAND'S SUBMISSIONS

- 3.1 The Horticulture NZ submission and further submissions on the pCARP focussed on the activities that growers may undertake which result in a discharge to air. These activities include:
- (a) Outdoor burning
 - (b) Use of agrichemicals
 - (c) Applications of fertiliser
 - (d) Use of large scale burners in greenhouses
- 3.2 These activities can result in smoke, odour, dust and spraydrift being emitted.
- 3.3 In addition submissions were made seeking changes to provisions for biosecurity purposes.
- 3.4 Key matters of concern to Horticulture NZ are ensuring that the provisions in the Plan are workable and practical, and ensuring that best practice is used when undertaking activities which discharge to air.
- 3.5 In the Appendix to this evidence I have included a table of the all the Horticulture NZ submissions, which also sets out my position in relation to each submission.

4. CHAPTER 1 INTRODUCTION – S42A REPORT SECTION 5

- 4.1 Horticulture NZ made submissions seeking changes to Chapter 5 Introduction, in particular that there be recognition of rural production activities.
- 4.2 The s42A Report Recommendation R-Section 1-1 (Pg 5-1) adds a new bullet point three that recognises the contribution of rural productive activities that discharge into air and also adds 'rural productive' to an existing bullet point. The recommended addition provides for 'rural productive economic growth in appropriate areas.'
- 4.3 The wording sought by Horticulture NZ is:
- Provides for rural production activities in rural areas, including the adoption of the best practicable option and best practice.*
- 4.4 The new bullet point three is supported, but it does not provide for the rural production activities. Rather it seeks to recognise the contribution of rural productive activities to 'rural productive economic growth'. In addition, the reference to 'appropriate areas' is vague.
- 4.5 It is appropriate that rural production activities are specifically provided for in rural areas, given the extent of such activities in Canterbury and the potential for these activities producing discharges to air, which can be managed through adoption of best practicable option and best practice.
- 4.6 Horticulture NZ also sought changes to the outdoor burning and rural discharge of contaminants section of the Introduction, particularly in relation to the use of the term 'nuisance', and supported a similar submission by Selwyn District Council.
- 4.7 Recommendation R- Section 1-5 (Pg 5-4) recommends that 'nuisance problems' be replaced with 'adverse effects' and I support that change as it relates to the range of adverse effects.
- 4.8 However the recommendation does not amend the last sentence of the paragraph relating to the occurrence of adverse effects. Selwyn District Council sought that 'often' is replaced with 'may'. Use of 'often' would need to be justified on the basis of a high frequency of adverse effects, whereas

'may' indicates that if best management practices are not used there may be adverse effects.

- 4.9 While Council may receive a 'significant number of complaints each year' on outdoor burning, to justify the use of 'often' the number of complaints would need to be put into the context of how many outdoor burning events took place over the year and the proportion that led to complaints. Without such data I consider that the use of 'may' is a more appropriate word to use.
- 4.10 Recommendation R- Section 1-5 also adds a new sentence relating to 'agricultural sprays and powders.' Horticulture NZ opposed the submission because the wording sought does not accurately reflect the activities referred to, although the intent that agricultural sprays be included in a description of rural discharges is appropriate.
- 4.11 However the use of the term 'powders' is not clear in its intent. It is assumed that it is meant to refer to 'fertilisers', which in fact may or may not be in a powder form. Increasingly fertiliser is in pelletised or granule form, which has less propensity to drift than non-pelletised compositions. If the intent is to refer to 'fertiliser' then that term should be used rather than 'powder.'
- 4.12 Horticulture NZ also sought a change to the 'Working with key partners' section of the Introduction to ensure that the potential for reverse sensitivity effects is adequately managed by territorial authorities. Recommendation R – Section 1-10 (Pg 5-8) recommends amendments to the wording which provides clearer direction for district plans to ensure that sensitive activities do not encroach onto activities which discharge to air. The new statement is appropriate and gives effect to the Regional Policy Statement Policy 14.3.5 which seeks to avoid encroachment of new sensitive activity developments on existing activities discharging to air.

5. CHAPTER 2 DEFINITIONS – S42A REPORT SECTION 6

- 5.1 Horticulture NZ made submissions and further submissions on a range of definitions which are addressed below.

Agrichemicals and fertilisers

- 5.2 Horticulture NZ sought that the definitions for both agricultural and fertiliser be retained and Recommendation R-T2.1 (Pg 6-11) is that they are retained. I support that

recommendation as the definitions adequately describe the substances.

Ambient air quality and localised air quality

- 5.3 Horticulture NZ sought that definitions be included for ambient air quality and localised air quality to provide clarity in terms of implementing policies which use these terms. A number of other parties also sought definitions for similar terms, with Horticulture NZ supporting a number in further submissions.
- 5.4 The s42A Report (Pg 6-7) recommends that a definition be included for ambient air quality but not localised air quality.
- 5.5 It is noted that there are definitions and policies for both ambient and localised adverse effects in the Natural Resources Regional Plan ("**NRRP**").
- 5.6 The issue appears to be the wider debate as to whether there should be a differentiation between ambient and localised air quality in the pCARP.
- 5.7 Chapter 14 of the Canterbury Regional Policy Statement ("**CRPS**") makes a clear distinction between localised effects on air quality and ambient air quality. The s42A Report in Appendix 1 (Pg 16-2) considers that the CRPS does not require that these effects are to be treated separately but rather that the pCARP provides a comprehensive management framework that effects are relative to the receiving environment.
- 5.8 In my opinion the inclusion of additional definitions should be addressed when the Hearing Panel has determined whether the approach in the pCARP is appropriate or whether differentiation between different forms of air quality should be included in the pCARP.

Bulk solid materials

- 5.9 A number of parties sought that a definition be included for 'bulk solid materials' which included fertiliser. Horticulture NZ opposed the submission of Selwyn District Council because the definition sought was broad and all-encompassing and would include fertiliser whether in bulk form or not.
- 5.10 The s42A Report (Pg 6-9) is recommending that such a definition be added to the pCARP as it would add clarity to the relevant rules.

- 5.11 The relevant rules are 7.37 and 7.38 which relate to industrial and trade discharges of contaminants into air and as such would not appear to apply to activities undertaken as part of rural production activities.
- 5.12 However it would be appropriate that the definition is specifically limited to industrial and trade activities so it is clear that the intent is not to capture use of fertiliser or any of the other bulk materials listed on rural properties.

Crop residue

- 5.13 Horticulture NZ made a submission seeking changes to the definition of crop residue so it is clear that the definition only relates to standing crop residue that is intended to be burnt.
- 5.14 The s42A Report (Pg 6-2) does not recommend the change sought and notes that the term is only used to manage the burning of residue and that the wording sought by Horticulture NZ needs to determine an 'intention'.
- 5.15 As I understand the Horticulture NZ submission the concern relates to the definition potentially capturing other crop residue that is not standing or is disposed of by other means. The submission seeks to ensure that the definition of crop residue is clearly linked to the usage in the plan of burning of standing crop residue.
- 5.16 The definition for crop residue actually refers to the 'standing organic matter' and Rule 7.8 refers to 'standing crop residue'. Therefore it may be more appropriate that the definition is for 'Standing crop residue' so that it clearly links to the rules.
- 5.17 I consider that some amendments would be useful to provide greater clarity and linkage to the standing crop residue burning rules as follows:

Standing crop residue: Means the standing organic matter left behind after a cultivated crop is harvested that is to be disposed of by burning.

Nuisance

- 5.18 Christchurch City Council's submission sought a definition for nuisance. Horticulture NZ opposed the submission as Horticulture NZ sought the deletion of nuisance from the pCARP.

- 5.19 The s42A Report (Pg 6-10) is recommending that no definition be included as where the term is used in the pCARP has no bearing on the outcome of any air quality management decision so the application of the common meaning is adequate.
- 5.20 I concur with the recommendation in part. I note that other recommendations in the s42A Report recommend that the use of the word 'nuisance' is amended and these are supported. However 'nuisance' is still used in Schedule 1 as a matter to be provided for in resource consent applications for discharges to air from outdoor burning may have a bearing on an air quality management decision.
- 5.21 It is important that it is clear what information is to be provided as part of a consent application. Given the uncertainty as to how the term 'nuisance' may be applied it would be more appropriate that it was deleted from Schedule 1 entirely and no definition included in the pCARP.

Offensive and objectionable

- 5.22 Horticulture NZ, as well as other submitters, sought that a definition be included for offensive and objectionable effects as the term is used throughout the plan.
- 5.23 The s42A Report (Pg 6-9) rejects the submissions in that they would not provide clarity to the provisions and that the Schedule 2 provisions deal with these effects. Schedule 2 sets out criteria for assessing how offensive and objectionable effects will be determined, but it does not describe what is regarded as an offensive and objectionable effect.
- 5.24 It is accepted that each case needs to be assessed as to whether there is an offensive and objectionable effect but the plan does not provide clarity or guidance for users as to what may be determined an offensive and objectionable effect, until an assessment has been completed.
- 5.25 The purpose of the Horticulture NZ submission appears to seek clarity in describing what offensive and objectionable effects are, by way of the submitted definition:

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.

- 5.26 PIANZ opposed the submission on the basis that case law has established that offensive and objectionable can't be defined or prescribed except in the most general terms and that it needs to take account of case law precedent as it develops.
- 5.27 The definition sought by Horticulture NZ links to Schedule 2 and describes offensive and objectionable as 'causing significant discomfort' that needs to be assessed in the context of a particular discharge. I do not consider this to be prescriptive but rather that it would assist users who seek to identify what the plan means by offensive and objectionable effects.
- 5.28 While it is recognised that case law is evolving there needs to be a degree of certainty for users as to how the plan will interpret and apply the term and assessment criteria.
- 5.29 In my opinion inclusion of a definition for offensive and objectionable effects would assist plan users by providing a degree of clarity and certainty regarding application of the terminology.

Reverse sensitivity

- 5.30 Horticulture NZ sought that a definition be included for reverse sensitivity. A number of further submissions supported that submission in that it would add clarity as the term is relevant to managing discharges to air and represents sound resource management practice. Some further submitters have suggested alternative wording.
- 5.31 The s42A Report (Pg 6-9) considers that the term is not often used in the pCARP and that a definition will not result in any particular clarification of how the provisions are to be applied.
- 5.32 I have been involved in a number of plan processes where the term reverse sensitivity is included in a plan. Often there are a range of views as to what it means. The case law also presents a number of differing interpretations.
- 5.33 Therefore I consider that if a term is to be used there should be clarity as to what it is intended to mean. This is particularly relevant because the territorial authorities have responsibility to include provisions in district plans relating to managing reverse sensitivity effects. Including a definition in the pCARP

will provide direction to the territorial authorities and avoid each one applying a different definition.

- 5.34 Recommendation R-T2.1 (Pg 6-16) includes a definition if the Hearing Panel considers that a definition should be included. While the definition recommended is simpler it does not include all the concepts included in the definition sought by Horticulture NZ.
- 5.35 Critical components in a definition for reverse sensitivity are that it is clear which are the sensitive activities, and the range of effects that such activities may have on existing lawfully established activities, such as complaints, constraints, or curtailing the existing activity.
- 5.36 I have reviewed a number of definitions for reverse sensitivity and consider that the definition taken from the Northland Regional Policy Statement is simple and clearly describes who is the sensitive party and the effects that this can create:

Reverse sensitivity occurs when occupants of a new development (for example, a lifestyle block) complain about the effects of an existing, lawfully established activity (for example, noise or smell from industry or farming) which can have the effect of imposing economic burdens, operational limitations or other constraints on the existing activity thereby reducing its viability.

- 5.37 If the Hearing Panel accepts that a definition is appropriate I recommend that the above definition is included. While the wording is different to that sought by Horticulture NZ it is not inconsistent with the wording in the submission, addresses the s42A Report concern for simplicity, and reflects the discussion of reverse sensitivity in the CRPS (pg 160).

Sensitive activity

- 5.38 Horticulture NZ sought that the definition of sensitive activity be amended to include non-target plants and crops which may suffer damage as a result of a discharge to air, such as agrichemical spraydrift, fertiliser, or earthworks dust or ash on fruit.
- 5.39 Recommendation R-T2.2 recommends that this additional matter be added to the definition of sensitive activities. I support that recommendation and the wording that is recommended.

- 5.40 I note that PIANZ opposed the submission as it is unclear what is meant by non-target plants and crops. I understand that non-target plants and crops are those which are not intended to be sprayed during agrichemical applications but which may be affected by spraydrift. The term is also relevant to other discharges to air which may cause damage to the non-target crop. For instance excessive ash landing on fruit just prior to harvest can cause significant damage and loss of value of the fruit. Fertiliser drift that lands on organically grown crops can affect the organic registration of the grower.
- 5.41 It may assist if the words 'beyond the boundary of the property where the discharge activity occurs' are added so it is clear that the non-target crops are on a property other than where the discharge activity is being undertaken.

Space heating appliance

- 5.42 Horticulture NZ sought that a definition of space heating appliance be included in Table 2.1 General Definition that also refers to the definitions in Table 2.2 for Space Heating Appliances. Recommendation R-T2.2 recommends that a new statement be inserted above Table 2.2 to provide a level of clarity and this is considered appropriate. However a plan user may seek to find a definition of 'space heating appliance' in the General Definitions. Therefore including a definition that refers to Table 2.2 would assist in plan usability and provide greater clarity.

6. CHAPTER 5 OBJECTIVES – S42A REPORT SECTION 9

Objective 5.3

- 6.1 Horticulture NZ sought amendments to Objective 5.3 to better reflect the RMA. Other submitters also sought similar changes.
- 6.2 The s42A Report (Pg 9-3) recommends that the objective be amended to focus on 'managing the air'. The Recommendation R-5.3 is appropriate and I support the recommended change of wording as it is more focused and better reflects the RMA.

Objective 5.4

- 6.3 Objective 5.4 seeks to manage discharges to air to maintain the amenity values of the receiving environment.

- 6.4 Horticulture NZ sought that the objective be amended to maintain the existing amenity values of the receiving environment in which they are located.
- 6.5 The s42A Report does not accept the changes sought but as a result of the submission, the s42A Report (Pg 9-4) is recommending other changes to the objective.
- 6.6 The s42A Report considers that a limitation on existing amenity values is not appropriate as receiving environments change over time.
- 6.7 However there needs to be some degree of certainty for an activity locating in an area considered to be appropriate at that time, that changes over time to that receiving environment will not make it difficult to continue operating in that location. Using the existing amenity values as the base of the assessment would ensure that locations remain appropriate to the activities that locate in them.
- 6.8 Therefore I support the wording sought by Horticulture NZ but amended to reflect the recommended change in R-5.4:

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

Objective 5.8

- 6.9 Proposed Objective 5.8 is:

It is recognised that air quality expectations throughout the Region differ depending on the location and the characteristics of the receiving environment.

- 6.10 Horticulture NZ sought that the objective be amended to read as an objective, not a statement. Further submissions made on this submission point concur that it is not written as an objective.
- 6.11 The s42A Report (Pg 9-6) considers that the wording is an objective as the outcome is that the air quality expectations of the receiving environment are recognised.
- 6.12 While recognition may be an outcome, the plan should be focusing on how matters should be managed based on that recognition. Recognition itself is not an end point and the objective provides little or no policy direction other than recognising the different air quality expectations.

- 6.13 The Horticulture NZ submission sought that the objective be reworded to focus on managing air quality to reflect the different receiving environments:

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

- 6.14 As a result of other submissions the s42A Report is recommending additions to the objective including the underlying land use or zoning, and activities being appropriately located. These changes seem in part in response to submissions by Carter Holt Harvey seeking new objectives for separation of industrial and rural activities. (s42A Report Pg 9-1).

- 6.15 Objective 5.9 also addresses appropriate spatial location of activities so the appropriate location of activities is not necessary to also be included in Objective 5.8.

- 6.16 In my opinion Objective 5.8 could be improved by amending as sought by Horticulture NZ with some of the additions recommended in the s42A Report (Recommendation R-5.8):

Manage air quality to reflect the different receiving environments across the region, taking into account the location and characteristics of the background receiving environment, including the underlying landuse patterns or zoning.

Objective 5.9

- 6.17 Objective 5.9 is linked to Objective 5.8 and provides for the spatial location to achieve appropriate air quality outcomes.
- 6.18 The s42A Report (Pg 9-6) is recommending changes as a result of submissions.
- 6.19 Horticulture NZ made further submissions supporting a submissions by Fonterra and also Carter Holt Harvey's submission seeking new objectives, which the s42A Report state are addressed as part of Objectives 5.8.and 5.9.
- 6.20 While the recommended changes assist, particularly the addition of 'discharging and sensitive activities', they do not provide the clarity and direction that was sought by Carter Holt Harvey.

- 6.21 The s42A report (Pg 10-7) in respect of Policies 6.6, 6.7 and 6.8 states that these policies provide the framework to achieve Objective 5.9. These policies relate to management of reverse sensitivity effects so it is appropriate that the potential for reverse sensitivity effects is included in Objective 5.9. Carter Holt Harvey sought that reverse sensitivity be included in the objectives. If the Hearing Panel is not of a mind to include a specific objective then it would be appropriate that Objective 5.9 be amended to include reference to reverse sensitivity.
- 6.22 In my opinion Objective 5.9 could be improved by including the recommended wording in Objective 5.8 to be located appropriately within the receiving environment as follows:

Discharging and sensitive activities are located within appropriate receiving environments so that the activities can be managed to achieve air quality outcomes which reflect the characteristics of the different receiving environments and avoid reverse sensitivity conflicts.

7. CHAPTER 6 CENTRAL POLICIES APPLYING TO ALL ACTIVITIES - S42A SECTION 10

Policy 6.1

- 7.1 Policy 6.1 seeks to manage discharge of contaminants to air, either individually or in combination with other discharges so that a number of effects are not caused.
- 7.2 Horticulture NZ is concerned about how the policy will be applied as it is not clear how the 'in combination with other discharges' will apply or be assessed, given that an applicant may have no control over other discharges in the vicinity.
- 7.3 The s42A Report (Pg 10-2) states that the effects on air quality will be assessed in the context of the receiving environment, which is appropriate.
- 7.4 I consider that the policy would be clearer if it stated that the assessment is in the context of the receiving environment:

Discharges of contaminants into air, assessed in the context of the receiving environment, do not cause:

Policy 6.5

- 7.5 Policy 6.5 relates to offensive and objectionable effects being unacceptable. A number of submitters have sought changes

to the policy but the s42A Report makes no recommendations for changes as it is considered that the proposed policy provides the intended guidance to implement the objectives.

- 7.6 The Horticulture NZ submission sought the policy be amended 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.

- 7.7 In my opinion the wording sought by Horticulture NZ is appropriate as it seeks to manage offensive and objectionable effects in a way which better aligns with the sustainable management purpose of the RMA and still provides the intended guidance for implementing the objectives.

Policies 6.6, 6.7 and 6.8

- 7.8 Policies 6.6, 6.7 and 6.8 provide a suite of policies to manage reverse sensitivity, with a focus on location within appropriate receiving environments.
- 7.9 There are a range of submissions on the three policies but the s42A Report is recommending that no changes be made as a result of the submissions.
- 7.10 The Horticulture NZ submission sought that Policy 6.6 be retained but changes made to Policies 6.7 and 6.8.
- 7.11 Policy 6.7 seeks to address what the s42A Report terms 'legacy reverse sensitivity issues' with the policy approach to seek reduction in effects or relocation where the land use has changed around an existing activity and there are significant adverse effects.
- 7.12 I consider that this policy approach is contrary to the application of the concept of reverse sensitivity and provides no certainty for existing, and in some cases long established, activities to remain in their current location when changes of land use occur around them.
- 7.13 Policy 14.3.5 in the CRPS sets out the relationship between discharges to air and sensitive land uses. The policy has a three pronged approach, but none requires the relocation of activities where the surrounding land use has changed. Rather the focus is on:

- (a) Ensuring that new developments do not encroach on existing activities which discharge to air
- (b) Existing activities which require resource consent are to adopt best practicable option to prevent or minimise adverse effects
- (c) New activities which discharge into air are to locate away from sensitive land uses and receiving environments unless the adverse effects can be avoided or mitigated.

7.14 Therefore Policy 6.7 goes beyond the policy approach in the CRPS.

7.15 The s42A Report indicates it is a legacy issue but the way that Policy 6.7 is worded it is not limited to so-called 'legacy issues' as it is not only retrospective.

7.16 If Council want to manage so called 'legacy issues' then it should be stated clearly what the intended outcome is, including areas identified where the policy may apply, and the issue should be ring fenced so there is certainty for existing activities.

7.17 In the absence of such clarity I consider that the policy should be deleted, as sought by a number of submitters.

7.18 Policy 6.8 seeks to provide longer term certainty for activities which discharge to air through provision of longer term consents when the activity is appropriately located to avoid the potential for reverse sensitivity effects. However the policy only provides certainty for consented activities, not those provided for as permitted activities.

7.19 Horticulture NZ sought that Policy 6.8 be amended to also provide certainty for permitted activities.

7.20 The s42A Report (Pg 10-8) states:

Ongoing operational certainty is important and it is appropriate that this is provided where possible.

7.21 I concur with that statement but consider it must apply to all activities, not just consented activities. Therefore I consider that the change sought by Horticulture NZ is appropriate:

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.

Policy 6.13

- 7.22 Policy 6.13 relates to providing for management of discharges as a result of addressing biosecurity risks.
- 7.23 Horticulture NZ supported the policy and seeks its retention.
- 7.24 The s42A Report (Pg 10-11) supports retaining the policy.
- 7.25 Federated Farmers sought a change to refer to burning of infected plant or animal material. The s42A Report considers that the change is not necessary.
- 7.26 I would support the Federated Farmers recommendation as management for biosecurity purposes may involve discharges to air other than burning, such as agrichemical use.

8. CHAPTER 7 RULES APPLYING TO ALL ACTIVITIES AND SCHEDULES - S42A REPORT SECTION 11

Rule 7.3

- 8.1 Rule 7.3 is a non-complying activity rule for discharges of odour, dust or smoke that are assessed as offensive or objectionable beyond the boundary of the property of origin.
- 8.2 There are a range of submissions on Rule 7.3 but the s42A Report (Pg 11-2) is recommending that the rule be retained as proposed.
- 8.3 Horticulture NZ sought that the rule be changed to discretionary activity. This submission is supported by a number of further submitters.
- 8.4 The s42A Report considers that non-complying status is required to implement Policy 6.5 of the pCARP. Section 3 of the s42A Report (Pg 3-25) describes the council's rationale for applying the non-complying activity status:

Non complying activity status has been applied where the policies of the Plan indicate that the activity is generally unacceptable, or the effects are likely to be significant.

- 8.5 As noted above there are a range of submissions seeking changes to Policy 6.5 so the activity status needs to be

considered in the context of the wider range of changes sought.

- 8.6 There is also an issue with the relationship to a range of other rules, such as 7.8, which include a condition relating to offensive and objectionable effects. The s42A Report is recommending that such conditions are deleted and rely on Rule 7.3. This brings into focus the relationship between the conditions and Rule 7.3. A number of submitters sought that Rule 7.3 be amended by adding 'except where provided for under a separate rule.' This addition would clarify the relationship where offensive and objectionable effects are included in other rules so I support the inclusion of this change.

Schedule 2

- 8.7 Schedule 2 sets out how an assessment will be made to determine offensive and objectionable effects. The schedule is referred to in a range of policies and rules so is fundamental to how the provisions will apply.
- 8.8 The proposed schedule not only relates to assessments for resource consents but is also intended to apply to assessing compliance with permitted activity conditions.
- 8.9 Horticulture NZ sought that the inclusion of permitted activity conditions be deleted from Schedule 2 because it is uncertain how it would be applied.
- 8.10 A number of submitters supported the Horticulture NZ submission because the inclusion suggests that even if Schedule 2 is not referred to in a permitted activity rule, such activities would need to comply with the schedule. Other reasons are that it is inappropriate for a permitted activity and that there is a lack of detail which creates uncertainty for permitted activities.
- 8.11 The s42A Report (Pg 11-6) states:

Many permitted activity rules include conditions requiring management plans that address odour, dust or smoke effects in accordance with Schedule 2.

AND

Schedule 2 provides necessary certainty for the permitted activity rules.

- 8.12 The s42A Report (Pg 3-25) outlines that permitted activity rules have been applied where the adverse effects are predictable and generally acceptable within the environments in which they occur, with conditions being used to minimise adverse effects.
- 8.13 I consider that including permitted activities in Schedule 2 is inconsistent with the approach for permitted activities outlined in section 3 of the s42A Report.
- 8.14 A permitted activity rule should not have to undertake an assessment as set out in Schedule 2 as a condition of a rule where the adverse effects are predictable and generally acceptable within the environments in which they occur.
- 8.15 Therefore in my opinion the reference to permitted activities in Schedule 2 should be deleted.

9. CHAPTERS 6 AND 7 OUTDOOR BURNING - S42A REPORT SECTION 12

- 9.1 The s42A Report Section 12 includes both policies and rules relating to outdoor burning. The relevant policies are 6.15 – 6.18 and the related rules are 7.5- 7.13 and Schedule 3 Content of Smoke Management plans for outdoor burning of organic material in rural areas.
- 9.2 Horticulture NZ made submissions and/or further submissions on Policies 6.15, 6.16 and 6.17 and Rules 7.5, 7.7, 7.8, 7.9 and 7.10 and Schedule 3.
- 9.3 The policy suite is:
- (a) Policy 6.15 – Provide for outdoor burning of organic material in rural areas
 - (b) Policy 6.16 – Avoid outdoor burning of non-organic material in rural areas
 - (c) Policy 6.17 – Manage the outdoor burning of organic material in rural areas, to minimise adverse effects on townships, particularly in Crop Residue Burning Buffer areas
 - (d) Policy 6.18 – Avoid outdoor burning in urban areas
- 9.4 The s42A Report recommends only minor amendments in response to submissions.

- 9.5 A number of submitters sought that outdoor burning in rural areas be prohibited or further restricted. The s42A Report recommends that these submissions not be accepted on the basis that the effects can generally be managed and that outdoor burning is an important management tool in rural areas. I concur with that recommendation.
- 9.6 The main point of contention in the provisions is the nature of and extent of the controls that are necessary to manage the effects from outdoor burning. The Council is relying on Schedule 3 and smoke management plans as a key tool in managing the effects of smoke. Horticulture NZ supports the approach in Schedule 3.
- 9.7 The plan makes a distinction between organic and non-organic materials. The nature of the material is important in terms of whether it can be burnt or not, such as Policy 6.15 and 6.16. There is no definition in the plan for either organic or non-organic material. Horticulture NZ made a submission seeking that a definition be included. The s42A Report addresses the submission on Pg 6-9. It does not consider that it is necessary to define the terms as they have a well understood common meaning.

While there is a common meaning the terms are critical to how the policy and rule framework apply and it would be appropriate that there is clarity as to exactly what material is able to be burnt.

Policy 6.15

- 9.8 Policy 6.15 seeks to provide for outdoor burning of organic material in rural areas where undertaken in accordance with Schedule 3. The Horticulture NZ submission considered that the policy is written effectively as a rule with the requirement to be undertaken in accordance with Schedule 3. The Horticulture NZ submission sought amendments to the policy to include best practice and then refer to Schedule 3 in the rules.
- 9.9 The s42A Report (Pg 12-2) recommends that the submission not be accepted as Schedule 3 'does not preclude using best practice'. The report does not address the Horticulture NZ concern that the policy is written more as a rule.
- 9.10 I consider that the approach sought by Horticulture NZ is a sound planning approach so that a policy provides the

approach to achieving the objective and the rule is the method to give effect to the policy. A policy should not read as a rule with activity specific restrictions and standards.

- 9.11 Therefore the change sought by Horticulture NZ to Policy 6.15 is supported.

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

Rule 7.5

- 9.12 Rule 7.5 is a catch all prohibited activity rule for outdoor burning in the region which does not comply with rule 7.6-7.13.

- 9.13 Horticulture NZ supported a submission by Ashburton District Council which seeks to amend the rule to a discretionary activity status.

- 9.14 The s42A Report (Pg 12-5) recommends that the rule be retained as proposed.

- 9.15 In the rural area outdoor burning is provided as a permitted activity in Rule 7.8, 7.10 and 7.11 subject to conditions. Rule 7.9 is a controlled activity rule for burning of standing crop residue in Crop Residue Buffer areas, subject to conditions. If the conditions are not met then the activity immediately defaults to Rule 7.5 – the prohibited activity rule. There is no provision to enable an assessment of the effects of the activity and the permitted activity conditions that are not met.

- 9.16 Rule 7.10 has nine conditions, including setbacks, drying times, and source of material. If any of these conditions are not met the activity is then prohibited.

- 9.17 The s42A Report (Pg 12-5) states:

Prohibiting this activity in these circumstances is the most appropriate where many people are likely to be affected and where effects cannot be appropriately minimised. It is not certain that provision for consent pathways will provide for the management of adverse effects.

- 9.18 There are situations in rural Canterbury where the number of people who may be affected is limited and appropriate conditions can be applied to manage effects. The purpose of the resource consent process is to provide for an

assessment of the effects and methods to avoid, remedy or mitigate those effects.

- 9.19 In my opinion this recommended rule framework is not good planning practice and is inconsistent with the RMA which clearly signals a management regime where consent can be applied for to ensure that adverse effects are avoided, remedied or mitigated.
- 9.20 I support the submission by Ashburton District Council to amend the activity status or Rule 7.5 to Discretionary. If there are particular rules that should default to prohibited then these should be specifically provided for, rather than through a 'catch-all' rule such as Rule 7.5.

Rule 7.7

- 9.21 Rule 7.7 provides for the outdoor burning of material for biosecurity purposes.
- 9.22 Horticulture NZ supported the rule but sought the addition of 'control of unwanted organisms' in addition to disease control because not all biosecurity incursions are diseases.
- 9.23 The s42A Report (Pg 12-6) Recommendation R – 7.7 recommends that the submission be accepted and the addition to the rule made.
- 9.24 I support that recommendation because it is important that the management of unwanted organisms under that Biosecurity Act is able to be undertaken without undue regulatory barriers.

Rule 7.8

- 9.25 Rule 7.8 provides for the burning of standing crop residue outside of the Crop Residue Burning Buffer Areas.
- 9.26 It is important that a distinction is clearly made to identify that the greatest concern is the burning of standing crop residue. The term 'crop residue' is used but it is not always clear that it is the standing residue that is being referred to. In respect of the definition of crop residue I have above sought that it be amended to 'Standing crop residue' so that it is clear which residue is being referred to.
- 9.27 Non standing crop residue is usually gathered or raked and burnt in a pile, as distinct from standing crop residue. The effects of the burning are quite different so the terminology

needs to be clear. Amending the definition of crop residue to 'standing crop residue' would assist in addressing this issue.

- 9.28 Horticulture NZ sought that Rule 7.8 be amended by deleting clause 1 relating to a requirement to not cause an objectionable or offensive effects when assessed in accordance with Schedule 2.
- 9.29 The requirement for a permitted activity to undertake a Schedule 2 assessment is addressed earlier in this evidence.
- 9.30 The s42A Report (Pg 12-7) recommends that Rule 7.8 Clause 1 be deleted as Rule 7.3 provides for the assessment and so is not necessary.
- 9.31 Rule 7.3 is a non-complying activity. However if the conditions of Rule 7.6 aren't met then the activity defaults to prohibited under Rule 7.5. This relationship is not considered in the s42A Report.
- 9.32 There is uncertainty in the provision as 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.

Rule 7.10

- 9.33 Rule 7.10 is a broad permitted activity rule to manage the outdoor burning of a specified list of organic materials, subject to nine conditions.
- 9.34 There are a range of submissions on Rule 7.10, including a submission by Horticulture NZ which sought changes. Horticulture NZ also made further submissions on a number of submissions.
- 9.35 The s42A Report (pgs 12-9 -12-12) only recommends minor amendments to the rule, despite the number of submissions that were made.
- 9.36 One recommended change is to delete clause 9 relating to offensive and objectionable effects based on the same reasons as for Rule 7.8. I will not repeat my response to that

recommended change but note that my position is the same as set out for Rule 7.8 (Paragraph 9.25- 9.32)

- 9.37 A particular change that Horticulture NZ seeks is that condition 3 should be amended by replacing 'in any direction' with 'upwind'.
- 9.38 Wind direction is a key issue in managing effects of outdoor burning and any setback should be related to the upwind distance of the burning, not in all directions. Such an approach requires a risk assessment of potential effects, rather than setting an arbitrary distance.
- 9.39 The s42A Report (Pg 12-9) states:
- The setback from sensitive activities in any direction recognises that the burn is likely to produce more smoke than it would if the material is drier.*
- 9.40 This response does not address the point in the submission that the potential effects are related to wind direction. If the wind direction means that the smoke is not going to affect a sensitive activity there is no need for a 200m setback in all directions.
- 9.41 Therefore I support the submission of Horticulture NZ to amend condition 3 by replacing 'in any direction' with 'upwind'.
- 9.42 Horticulture NZ also seeks that Condition 4 be amended to 2kms rather than 5kms.
- 9.43 The s42A Report (Pg 12-9) indicates that the intention of the condition is to ensure dispersion of smoke.
- 9.44 The condition also includes requirements for windspeed but does not require that the wind direction be away from the urban area.
- 9.45 While windspeed is important, wind direction is also critical. If the direction is away from an urban area then the need for a 5km setback is not necessary.
- 9.46 I would support a reduced setback if there is also inclusion of wind direction in Clause 4 to reduce the potential for effects on urban areas.

10. CHAPTERS 6 AND 7 INDUSTRIAL AND LARGE SCALE DISCHARGES TO AIR - S42A REPORT SECTION 13

- 10.1 The submission by Horticulture NZ sought changes to the activity status of Rules 7.16 and 7.17.
- 10.2 The s42A Report is recommending (Pg 13-8) that Rule 7.16 be amended but not as sought by Horticulture NZ and that Rule 7.17 be deleted and replaced with a new rule that enables the application of BPO as appropriate to the receiving environment. The report does not indicate what activity status the new rule may be.
- 10.3 I support the approach to amend Rule 7.17 to provide for application of BPO but seek that it is a discretionary activity given that the activity is outside a Clean Air Zone and established prior to notification of the pCARP.

11. CHAPTERS 6 AND 7 RURAL DISCHARGES - S42A REPORT SECTION 14

- 11.1 The Rural Discharges section of the s42A Report includes policies in Chapter 6 and rules in Chapter 7 and addresses discharges to air from a range of rural activities such as intensive farming, livestock and effluent, agrichemical use and fertiliser use.
- 11.2 Horticulture NZ is particularly interested in the policies and rules relating to agrichemical use and fertiliser use as growers are both users and potentially affected parties of agrichemical use.
- 11.3 The relevant policies are 6.25 and 6.26. The relevant rules are 7.72 -7.74.
- 11.4 Horticulture NZ is a member of the NZ Agrichemical Education Trust ("**NZAET**") and has provided evidence from Mr Matthew Dolan who is the manager of NZAET.
- 11.5 Horticulture NZ has been involved in many plan processes regarding the use of agrichemicals and has extensive experience in ensuring that best practice is used in their application. The submissions made on this topic reflect that experience.
- 11.6 Key planning issues in this section are:

- (a) Approach to managing agrichemical use in the pCARP.
- (b) Relationship of pCARP to the Land and Regional Water Plan.
- (c) Should fertilisers and agrichemicals be included in the same rule?
- (d) What constitutes best management practice for agrichemical use?
- (e) What provisions will ensure that air quality outcomes in the CRPS and pCARP are achieved?

Approach to managing agrichemical use in the pCARP

- 11.7 The s32 Report (Pg 4-49) sets out Option 2 as the preferred option for the pCARP:

Streamlining the agrichemical provisions to ensure focus in regulation is on maintenance of air quality, leaving other matters to be addressed by appropriate instruments.

- 11.8 Option 1 was to implement the operative Air Plan provisions but this option for agrichemicals was not preferred. A review of the provisions was undertaken as part of the plan development process and determined that the provisions could be streamlined and focus on effects on air quality (s32 Report Pg 3-11).
- 11.9 I agree that the provisions for agrichemicals in Rules AQL 70-72 could be simplified. In particular it is not necessary to specifically provide for different application methods where a risk based approach is taken in the provisions.
- 11.10 However I disagree with the focus solely on maintenance of air quality and the limited set of provisions that are included in the pCARP.
- 11.11 In my opinion the focus should be on both maintenance of air quality and managing the effects of discharges to air.
- 11.12 Policy 14.3.4 in the CRPS is specific for agrichemical spraydrift. Agrichemical spray drift is the only specific rural activity that is identified with a separate policy in the air quality chapter of the CRPS and seeks to:

To avoid adverse effects of agrichemical sprays drifting beyond property boundaries or onto non-targeted properties and to avoid the contamination of water.

- 11.13 The pCARP needs to give effect to this policy with a focus on avoiding adverse effects. Managing agrichemical spray drift beyond property boundaries requires policies and methods to ensure that the risk of drift is avoided.
- 11.14 Policy 6.25 provides for discharges to air of agrichemicals where appropriate management practices are used to minimise the risk of affecting non-target locations. A threshold of 'minimise' is significantly less than the 'avoid' in the CRPS.
- 11.15 While Policy 6.25 provides for minimising risk, in my opinion the provisions in Rule 7.72 are not sufficient to ensure that the risk of adverse effects of agrichemical spraydrift beyond the property boundary will be avoided. I will address this below in an assessment of the specific provisions.
- 11.16 Policy 6.25 provides for discharges to air of agrichemicals where appropriate management practices are used to minimise the risk of affecting non-target locations. A threshold of 'minimise' is significantly less than the 'avoid' in the CRPS.
- 11.17 While Policy 6.25 provides for minimising risk in my opinion the provisions in Rule 7.72 are not sufficient to ensure that the risk of adverse effects of agrichemical spraydrift beyond the property boundary will be avoided. I will address this below in an assessment of the specific provisions.
- 11.18 Policy 6.26 requires that discharges of contaminants into air associated with rural activities do not cause offensive or objectionable effects beyond the boundary of the property of origin.
- 11.19 The Horticulture NZ submission sought that this be amended to apply to those activities which discharge smoke, dust or odour and so able to undertake an assessment of offensive and objectionable effects under in Schedule 2.
- 11.20 Horticulture NZ also supported a submission by Selwyn District Council to exclude agrichemicals from Policy 6.26.
- 11.21 I consider that the current wording of Policy 6.26 should be related to specific activities where an assessment of the offensive and objectionable effects can be undertaken or the policy amended to be more generic.

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.

Relationship of pCARP to the Land and Water Regional Plan

- 11.22 The Land and Water Regional Plan (“**LWRP**”) includes Region wide Rules 5.22 and 5.23 to address the discharge of agrichemicals into or onto land in circumstances where it may enter water or into a surface water body.
- 11.23 The focus of these rules is on managing the effects on water or land and they include conditions relating to matters such as mixing and diluting or cleaning of containers and community water drinking water. These provisions give effect to the CRPS requirement to avoid agrichemical contamination of water so have a different focus from the pCARP which is on air quality. Therefore it is appropriate that the provisions in the pCARP are distinct and different from the LWRP.

Should fertilisers and agrichemicals be included in the same rule?

- 11.24 As presently proposed the pCARP includes both fertilisers and agrichemicals within the same rule – Rule 7.72.
- 11.25 The Horticulture NZ submission sought that the activities be separated into two rules as the methods to manage the respective activities are different. The s42A Report (Pg 14-9) addresses the conditions that are sought for the fertiliser rule but does not address the submission relating to separating the activities.
- 11.26 The CRPS has a specific policy for agrichemical use which does not include fertiliser.
- 11.27 The LWRP also separates agrichemical provisions from fertiliser use.
- 11.28 The pCARP Schedule 2 relates to smoke, odour and dust but not spray drift, so is relevant for fertiliser but not agrichemical use. (Agrichemicals may have a smell additive so it is evident where they are being applied, but this disperses soon after application. While some people may dislike the odour it is generally related to a dislike of the agrichemical use rather than the odour itself. Given the nature and duration of the

odour it is unlikely to generate an offensive and objectionable effect under Schedule 2.)

- 11.29 HSNO separates fertilisers and agrichemicals and has a specific Group Standard for Fertilisers whereas pesticides (agrichemicals) are individually approved.
- 11.30 There are different standards to manage the effects of the respective activities. NZS8409: Management of Agrichemicals sets out best practice for use of agrichemicals while the Code of Practice for Nutrient Management produced by the Fertiliser Association is relevant to fertiliser applications.
- 11.31 In my opinion the rules for fertiliser and agrichemicals should be separate with clear and specific conditions related to the effects of the use of the substances.

What constitutes best management practice for agrichemical use?

- 11.32 Policy 6.25 seeks that agrichemical discharges only occur where 'appropriate management practices' are used.
- 11.33 The Horticulture NZ submission sought that the reference be to 'best management practice'. The s42A Report (Pg 14-1) rejects this and considers that 'appropriate management practices' is appropriate and avoids confusion with the use of best practice in the LWRP and best practicable option in the pCARP, but that 'appropriate management practices' are considered to represent best practicable option.
- 11.34 'Appropriate management practice' is not a term that is used by industry. It would be much more effective to use a term that is used and known by users. While the LWRP refers to best practice it is clearly linked to water and is not defined in the Plan. Just because the term is used in the context of water in another plan should not preclude the use of 'best management practice' in respect of discharges to air. The best management practices for the respective discharges will clearly be related to the activities so there should not be confusion. In addition the rules for agrichemical and fertiliser use should clearly describe which best management practices are to be used to achieve the plans objectives.
- 11.35 Both NZS8409:2004 Management of Agrichemicals and the Code of Practice for Nutrient Management represent best practice for safe, responsible and effective use of the

respective substances. The CRPS (Policy 14.3.4) supports the use of industry led guidelines and codes of practice and inclusion of 'best management practice' is consistent with this approach.

11.36 Part of the assessment of provisions that I was involved in for the Proposed Auckland Unitary Plan ("PAUP") identified a set of attributes that were considered to be desirable for agrichemical provisions in the Plan to ensure that adverse effects of agrichemical use are avoided or minimised. The list of attributes was identified through review of relevant publications and a review of regional plans and led to the following:

- A clear definition of agrichemical based on NZS8409:2004.
- Users should be able to apply agrichemicals as a permitted activity in a safe, responsible and effective manner.
- Controls should be related to addressing potential adverse effects and risk factors.
- The critical threshold should be avoiding significant adverse effects of off target drift beyond the property boundary. 'Significant adverse effects' should be clearly defined.
- NZS8409 is best practice and should be used as the basis in the plan – but only those parts relevant to regional council responsibilities.
- The rate of application should not exceed label directions or contravene manufacturers' recommendations.
- Competency of users is critical.
- Onus of responsibility for respective tasks in the use of agrichemicals needs to be clear.
- There needs to be clear verification of task.
- Those likely to be directly affected by the application have a right to know that it is to occur.
- Risk based approach.
- HSNO and the HSNO classifications should be used where they align and inform the provisions.
- There are multiple variables that need to be considered for any agrichemical applications.

- Controls should comprise a cost effective tool box.

11.37 I consider that this list of attributes encompasses the aspects of best management practice that need to be used to ensure that adverse effects from agrichemical use do not occur.

What provisions will ensure that air quality outcomes in the CRPS and pCARP are achieved?

11.38 The submission of Horticulture NZ set out a range of provisions that are sought to be included in a rule for agrichemical use and include:

- Compliance with specific sections of NZS8409:2004 Management of Agrichemicals.
- The substance approved under HSNO.
- That no adverse effects occur from off target spray drift.
- Preparation of a spray plan.
- That appropriate training be undertaken.
- That notification be required in specific situations.

11.39 I consider that these provisions constitute best management practice for agrichemical use relevant to discharges to air and will achieve the policy outcome to 'minimise the risk of affecting non-target locations'.

11.40 The s42A Report (Pgs 14-8 – 14.10) rejects the submission to include these best management practices in the pCARP.

Compliance with NZS8409:2004 Management of Agrichemicals

11.41 Proposed Rule 7.72 does require that the application of agrichemicals is undertaken in accordance with NZS8409:2004 Management of Agrichemicals ("**NZS8409**"). The Horticulture NZ submission sought that specific sections of NZS8409 are referred to in the rule as not all the provisions in the Standard are relevant to the regional council's function.

11.42 The s42A Report does not specifically address the submission relating to the specific parts of NZS8409 that were sought to be included. Given the focus on ensuring that the provisions in the pCARP are within the role of the Council it would seem expedient to consider whether a requirement to comply with all parts of NZS8409 is appropriate.

- 11.43 In my opinion matters such as use of personal protective clothing do not relate to a regional council function for discharges to air so should not be included in the provisions in the pCARP.
- 11.44 The list of sections of NZS8409 that Horticulture NZ sought be included are those that are relevant to best management practices for discharges to air and should be specified in Rule 7.72.
- 11.45 It is noted that the s42A Report (Pg 14-8) states:
- The standard provides users with directions for compliance with the HSNO Regulations.*
- 11.46 The Standard does far more than required by HSNO. In fact the early versions of NZS8409 preceded the HSNO Regulations, but it was updated to ensure that it was consistent with HSNO. It is an approved code of practice under the HSNO and is a means of compliance but it also includes best management practices, beyond what is required for HSNO that should be used by those undertaking applications of agrichemicals.
- HSNO approval*
- 11.47 The Horticulture NZ submission sought a provision for agrichemicals relating to HSNO approval, similar to the proposed Rule 7.72. However the provision is not considered appropriate for fertilisers, for the reasons set out below.
- No adverse effects*
- 11.48 Proposed Rule 7.72 requires that the discharge does not cause a noxious or dangerous effect, Clause 3 seeks that there is no adverse effect on vegetation or fauna beyond the boundary of the target and Clause 5 seeks that there is no adverse effects on a number of listed areas.
- 11.49 Clauses 3 and 5 of proposed Rule 7.72 are similar and appear to duplicate the need to not have adverse effects.
- 11.50 Horticulture NZ sought a provision that there be no adverse effects from off target spray drift beyond the boundary.
- 11.51 While worded slightly different the intent is similar. I consider that the wording sought by Horticulture NZ is adequate and would mean that clauses 3, 4, and 5 could be replaced with a single clause requiring that there be no adverse effects from off target spray drift beyond the boundary. This would include

noxious or dangerous effects and effects on all the listed matters.

Spray plan

- 11.52 The Horticulture NZ submission seeks that those who are going to apply agrichemicals prepare a spray plan, based on requirements set out in NZS8409.
- 11.53 The s42A Report does not specifically address this submission point other than that stating that it is sufficient that Rule 7.72 requires compliance with HSNO Regulations and NZ Standards.
- 11.54 A purpose of a spray plan is to clearly identify sensitive areas and methods to ensure that they are not affected by off target drift.
- 11.55 In my opinion it is key step to ensure that the policy to manage the risk of affecting non-target locations is met, and this should be specifically included in the provisions.

Training

- 11.56 The Horticulture NZ submission sought that training requirements be included in the Plan.
- 11.57 The s42A Report indicates that the need for training should be directed by HSNO, not the pCARP.
- 11.58 I disagree with that position as training is a key component in ensuring that the risk of affecting non-target locations is met. Training ensures that the applicator understands the chemicals, how they move, and methods to ensure that the risk of off target drift is minimised. Without adequate and appropriate training the user will not be aware of best practice or the contents of NZS8409.
- 11.59 The evidence of Mr Dolan for Horticulture NZ sets out the GROWSAFE training programme and I accept his evidence.
- 11.60 Approved handler requirements under HSNO are limited to only some substances and meet a different set of requirements from the regional plan. The plan needs to take all steps to ensure that best practice to avoid off target spray drift. Relying on Approved Handler training for some substances will not achieve this outcome.

- 11.61 As training is an integral part of achieving the objectives and policies in the Plan it is within the Council's functions to include requirements in the Plan.
- 11.62 Therefore I support the inclusion of training requirements as set out in the Horticulture NZ submission.

Notification

- 11.63 The Horticulture NZ submission seeks specific inclusion of notification provisions so people are aware of when an agrichemical application is to occur in the vicinity.
- 11.64 The work I have undertaken for Auckland and on other regional air plans has identified that adequate notification is a key issue for people who are concerned about the effects of agrichemical applications. It allows them the ability to take precautionary steps, such as removing clothing from lines, having pets inside or going out while the activity is being undertaken.
- 11.65 At present there is no specific provision for notification in the pCARP, even for public places.
- 11.66 In my opinion it is a best management practice for agrichemical use that people are appropriately notified where they request that information and should be included in the Plan.

Rule 7.73

- 11.67 Rule 7.73 applies to use of agrichemicals for biosecurity purposes.
- 11.68 The Horticulture NZ submission seeks that changes be made to the proposed rule including amending the time frame to 24 hours and ensuring that the rule applies in both the rural and urban areas.
- 11.69 The scope of the rule is not addressed in the s42A Report (Pg 14-9). The Horticulture NZ concern appears to be the fact that Rule 7.73 is located in the 'Rural Discharges' section of the Plan and therefore that the rule only applies in rural areas.
- 11.70 Given that there may be the need for agrichemicals to be used to address biosecurity threats, such as the recent spraying in Auckland to eradicate Queensland Fruit Fly, it needs to be clear that spraying for biosecurity purposes is not limited to rural areas.

- 11.71 I support that the plan clarifies the status of the rule in respect of urban areas.
- 11.72 I also support the reduction of time to 24 hours as it is critical that a biosecurity response can occur at short notice.

Fertiliser applications

- 11.73 Fertiliser use is proposed to be included in Rule 7.72. As stated above Horticulture NZ considers that the rule should be separated with fertilisers specifically provided for.
- 11.74 The conditions in Rule 7.72 are inappropriate for fertiliser use.
- 11.75 It is inappropriate that only fertilisers approved under HSNO are able to be applied. Not all fertilisers need to be approved under HSNO. Therefore the proposed rule would preclude the use of fertilisers that do not need a HSNO approval as a permitted activity. By including such a provision the pCARP is more stringent than the HSNO Regulations.
- 11.76 There is no best practice standard included in the pCARP for fertilisers. The s42A Report (Pg 14-9) does not consider that the Fertiliser Group Standards and the Code of Practice for Nutrient Management is suitable or appropriate and whether they seek to manage air quality.
- 11.77 The Fertiliser Group Standards are the HSNO regulations for fertilisers so the plan effectively includes them in Clause 1 relating to HSNO, whether they are related to air discharges or not.
- 11.78 Relevant sections from the Code of Practice for Nutrient Management could be selected which relate to air discharges and the functions of the regional council, similar to the approach sought by Horticulture NZ in respect of NZS8409. The Horticulture NZ submission sought that compliance with the 'application provisions' in the Code of Practice for Nutrient Management are included in a fertiliser rule. The issue of training requirements in the Code of Practice could also be addressed in selecting the relevant sections for inclusion in the Plan.

Rule 7.74

- 11.79 Rule 7.74 is a restricted discretionary rule which applies if the permitted activity conditions are unable to be met.

- 11.80 The s42A Report (Pg 14-10 Recommendation R-7.74) is recommending that the rule be amended to include fertilisers and I support that recommendation.
- 11.81 However the matters of discretion are generally related to agrichemical use and are not appropriate for assessing fertiliser applications. A set of matters relevant to fertiliser use should be included in the rule.

12. CONCLUSION

- 12.1 The following provisions of the Plan included in Attachment 1 should be amended as proposed for the reasons set out in the body of this evidence.

Lynette Wharfe

18 September 2015

ATTACHMENT 1
Provisions Proposed to be amended

APPENDIX 1: Horticulture NZ submissions on Proposed Canterbury Regional Air Plan and planning response to s42A Report recommendations

Chapter 1- Introduction

Sub ref	Plan provision	Submission point	S42A Report Ref.	S42A Recommendation	Planning response for Horticulture NZ
1.1	Introduction General approach – Paragraph 2 and bullet point list	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.	5.1	Accept	Amend recommendation to include rural specific clause: Provides for rural production activities in rural areas, including the adoption of the best practicable option and best practice.
1.2	Introduction Outdoor burning and rural discharges of contaminants	Replace ‘nuisance problems’ and ‘nuisance effects’ with ‘adverse effects’.	5.3	A	Accept but delete ‘nuisance’ from Schedule 1
1.3	Introduction – Territorial Authorities	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.	5.8	A	Accept

Chapter 2 - Definitions

Sub ref	Plan provision	Submission point	S42A Report pg	S42A Recommendation	Planning response for Horticulture NZ
2.1	Format of definitions	Add at the beginning of the definitions and interpretation section: Terms from the RMA are identified by italics.	6.1	A	Accept
2.2	Agrichemical definition	Retain definition of agrichemical.	6.1	A	Accept
2.7	Space heating appliance definition	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.	6.10 6.18	A/P	Amend Table 2.1 to add: Space heating appliances:

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					Definitions relevant to 'space heating appliances' are included in Table 2.2.
2.3	Crop residue definition	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.'	6.2	R	Amend as follows: <u>Standing</u> crop residue: Means the standing organic matter left behind after a cultivated crop is harvested <u>that is to be disposed of by burning.</u>
2.4	Fertiliser definition	Retain definition of fertiliser.	6.3	A	Accept
2.6	Sensitive activity definition	Amend the definition of sensitive activities by adding: e) Non target plants and/or crops which may be damaged by a discharge to air	6.5	A	Accept
2.5	Offensive and objectionable definition	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.	6.9 And 3.28	R	Add definition as sought in the Horticulture NZ submission.
2.8	Reverse sensitivity definition	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.	6.9 Also 3.29	R	Add alternative definition as follows: Reverse sensitivity occurs when occupants of a new development (for example, a lifestyle block) complain about the effects of an existing, lawfully established activity (for example, noise or smell from industry or farming) which can have the effect of imposing economic burdens, operational limitations or other constraints on the existing activity thereby reducing its viability.

Chapter 5- Objectives

Sub ref	Plan provision	Submission point	S42A Report pg	S42A Recommendation	Planning response for Horticulture NZ
3.1	Objective 5.3	Amend Objective 5.3 as follows: Safeguard the life supporting capacity of air.	9.3	A/P	Support Recommendation R-5.3
3.2	Objective 5.4	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.	9.3	A/P	Amend: Discharges to air are managed in accordance with the existing amenity values of the receiving environments in which they are located
3.3	Objective 5.8	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.	9.5	A/P	Amend: Manage air quality to reflect the different receiving environments across the region, taking into account the location and characteristics of the background receiving environment, including the underlying landuse patterns or zoning.

Chapter 6- Central Policies

Sub ref	Plan provision	Submission point	S42A Report pg	S42A Recommendation	Planning response for Horticulture NZ
4.1.1	Policy 6.1	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:	10.2	R	Amend: Discharges of contaminants into air, assessed in the context of the receiving environment do not cause:
4.1.2	Policy 6.5	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.	10.6	R	Amend: 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.

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4.1.3	Policy 6.6	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.	10.7	R	Retain Policy 6.6
4.1.4	Policy 6.7	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.	10.7	R	Delete Policy 6.7
4.1.5	Policy 6.8	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.	10.7	R	Amend to include permitted activities: 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	Retain Policy 6.13.	10.11	A	Accept

Chapter 7- Rules applying to all activities and schedules

Sub ref	Plan provision	Submission point	S42A Report pg	S42A Recommendation	Planning response for Horticulture NZ
5.1.1	Rule 7.3	Amend Rule 7.3 to discretionary activity.	11.3	R	Add 'except where provided for under a separate rule'
6.1	Schedule 2	Delete 'with permitted activity conditions' from the provisions in Schedule 2 in relation to smoke, dust and odour.	11.5	R	Delete 'with permitted activity conditions' from the provisions in Schedule 2 in relation to smoke, dust and odour.

Chapters 6 & 7 – Outdoor burning

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Sub ref	Plan provision	Submission point	S42A Report pg	S42A Recommendation	Planning response for Horticulture NZ
4.2.1	Policy 6.15	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.	12.2 And 6.9	R	Amend: Provide for outdoor burning of organic material in rural areas where undertaken using best practice.
4.2.2	Policy 6.16	Include definitions for organic and non-organic material.	12.3	Refer definition 6.9	Provide definitions for clarity
6.2	Schedule 3	Retain Schedule 3 Smoke Mgt Plan	12.3	A	Accept
5.2.1	Rule 7.7	Amend Rule 7.7 by adding or 'control of unwanted organisms' after 'disease control'.	12.6	A	Accept
5.2.2	Rule 7.8	Delete Rule 7.3 Clause 1.	12.7	A	Accept
5.2.3	Rule 7.10	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)	12.9	R	Amend Rule 7.10 (3) by deleting 'in any direction' and replacing with 'upwind' Amend Rule 7.10 (4) by reducing 5km to 2km.

Chapter 6 & 7 – Industrial and Large Scale Discharges to air

Sub ref	Plan provision	Submission point	S42A Report pg	S42A Recommendation	Planning response for Horticulture NZ
4.3.1	Policy 6.19	Retain Policy 6.19.	13.6	A – but amended	Accept
4.3.2	Policy 6.20	Include definitions for ambient air quality and localised air quality. Amend Policy 6.20 to minimise localised air quality.	13.7	R	Defer to wider debate on this issue
5.3.1	Rule 7.16	Amend Rule 7.16 to restricted discretionary.	13.7	13.9	Amend Rule 7.16 to restricted discretionary.
5.3.2	Rule 7.17	Amend Rule 7.17 to discretionary	13.7	13.9	Support new rule re BPO if discretionary

Chapters 6 & 7 – Rural discharges

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Sub ref	Plan provision	Submission point	S42A Report pg	S42A Recommendation	Planning response for Horticulture NZ
4.4.1	Policy 6.25	Amend Policy 6.25 as follows: The discharge to air of agrichemicals and fertilisers is undertaken using to minimise the risk of adverse effects on non-target locations.	14.1	R	Amend 'appropriate management practices' to 'best management practices'
4.4.2	Policy 6.26	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.	14.1	R	Amend: 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
5.4.2	Rule 7.73	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.	14.10	R	Amend clause 4 to 24 hours. Ensure that the rule is applicable in both rural and urban areas.
5.4.3	Rule 7.74	Retain Rule 7.74 subject to: Delete Clause 6 Amend Matter 7 to: Matters set out in Rule 7.72	14.10	R	Amend to include matters of discretion for fertilisers
5.4.1	Rule 7.72	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	14.8	R	Separate out application of fertiliser into a separate rule Amend agrichemical provisions as per Horticulture NZ submission.

		<p>agricultural is a permitted activity provided the following conditions are met:</p> <ol style="list-style-type: none"> 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 Agricultural and for specific activities compliance with the following sections of NZS8409: 2004 Management of Agricultural: <ul style="list-style-type: none"> • 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 agricultural are applied: <ol style="list-style-type: none"> i) All users, other than agricultural 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 agricultural contractor shall hold a GROWSAFE® Registered Chemical Applicators Certificate Or have a GROWSAFE® Introductory Certificate and under direct 			
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		<p>supervision of GROWSAFE® Registered Chemical Applicator</p> <p>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.</p> <p>6) Notification The owner/ occupier or manager shall ensure that notification has occurred prior to application commencing as follows:</p> <p>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:</p> <p>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:</p> <p>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,</p> <p>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.</p>			
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