

*Tabled @ Hearing
11.11.2015 Synlait Milk*

In the matter of the Resource Management Act 1991

And

In the matter of the Proposed Canterbury Air Regional Plan

LEGAL SUBMISSIONS ON BEHALF OF SYNLAIT MILK LIMITED

11 November 2015

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INTRODUCTION

- 1 These submissions are on behalf of Synlait Milk Limited ("Synlait") which operates a dairy processing plant in the Selwyn District. This involves a number of discharges, including discharges to air from the boilers and emissions from spray dryers and packing lines. The Proposed Canterbury Air Regional Plan ("pCARP") therefore impacts on key aspects of Synlait's operations.

- 2 As stated in Synlait's submission, while Synlait largely supports the objectives of the plan, it is considered that the provisions as notified do not provide a sufficient balance between social, economic and environmental factors to achieve the objectives.

KEY ISSUES

- 3 Synlait's primary concerns are:
 - 3.1 Failure to protect existing industry from reverse sensitivity.
 - 3.2 An inappropriate use of the Ambient Air Quality Guidelines 2002 ("AAQGs").
 - 3.3 The non complying and prohibited activity status in rules 7:17 and 7:18 and the failure to provide for renewal of air discharges and any new consents as discretionary activities.
 - 3.4 The lack of distinction between ambient and localised air quality.
 - 3.5 That the requirement for Best Practicable Option ("BPO") to be applied has not been reflected in the proposed provisions.
 - 3.6 A lack of recognition of significant industries.

- 4 These issues are addressed below and in the evidence filed on behalf of Synlait. Evidence has been pre-circulated by the following witnesses who are available today to answer questions:¹

¹ Except Peter Carey who provided written answers in response to questions from the Panel. We can arrange a time for Peter Carey to be made available should the Commissioners have further questions for him.

- 4.1 Prue Harwood – air quality.
- 4.2 Peter Carey – effluent storage.
- 4.3 Tim Ensor – planning.
- 4.4 Neil Betteridge – General Manager, Synlait.
- 4.5 Laura Hull – Environmental Manager, Synlait.

Reverse Sensitivity

- 5 Policy 6.7 of the pCARP requires that where land use has been authorised that results in new activities being significantly adversely affected by an existing discharge, that discharge is expected to reduce its effects or relocate.
- 6 In Synlait's case, it has constructed, then expanded, its processing base at the Dunsandel site. It is located adjacent to farmland – which is capable of subdivision to smaller lots on which dwellings could be “authorised”; it then faces a renewal of an air discharge consent – it is then when the relevance of policy 6.7 comes in to play.
- 7 This policy is directly contrary to a long line of case law regarding reverse sensitivity in that it puts the onus the wrong way around – the policy seeks to protect new land uses from existing dischargers, whereas case law seeks to protect existing dischargers from the effects of new sensitive activities in their vicinity.
- 8 The term reverse sensitivity has been described as follows:²

... the legal vulnerability of an established activity to complaint from a new land use. It arises when an established use is causing adverse environment impact to nearby land, and a new, benign activity is proposed for the land. The “sensitivity” is this: if the new use is permitted, the established use may be required to restrict its operations or mitigate its effects so as not to adversely affect the new activity.

² Article by Bruce Pardy and Janine Kerr: *Reverse Sensitivity – the Common Law Giveth and the RMA Taketh Away*: ((1993) 3 NZJEL 93, 94).

9 Reverse sensitivity is also described in the RPS as follows:

... the situation where an existing activity has deliberately located away from land uses that maybe sensitive to the discharge, but is subsequently encroached on, resulting in pressure for that activity to cease or change the way it operates. ...

10 Reverse sensitivity has been recognised as an important effect which must be considered when assessing the effects of introducing a new and potentially conflicting activity into the environment. This has been applied in making rules to restrict activities sensitive to low air quality to protect the existing activity³, including by requiring buffers around existing discharging activities.⁴

11 For example, in *Golden Bay Cement Limited v Whangarei District Council*⁵, a case involving the issue of whether a block of land should be zoned for rural or residential purposes, the Court stated:

[37] As was found in the Matamata-Piako, we consider that we must place particular emphasis on the regional, even national importance of the quarry resource; observe the extent to which the resource consents for the quarry ... internalise the effects of noise, vibration and fly-rock; note the extent to which externalising of effects has been authorised, and finally note the vulnerability that the quarry may have to reverse sensitivity concerns.

[38] Each case will need to be decided on its own merits, but it seems to have been a reasonably common theme through the evidence offered to us on behalf of all parties that we should particularly recognise the authorised externalisation of quarry effects, and proven reverse sensitivity effects. It is simply a question of to what extent.

12 Despite the recognised need to protect existing discharge from reverse sensitivity effects in appropriate circumstances, Policy 6.7 seeks instead to protect the new sensitive activity even if this means the first in time discharger needs to relocate.

13 The evidence of Synlait explains why relocation is not a feasible option – and this would be the case for many industries. Further, as recognised in the

³ *Auckland Regional Council v Auckland City Council* [1997] NZRMA 205.

⁴ *Winstone Aggregates Limited v Papakura District Council* (Environment Court, Auckland, A049/02, 26 February 2002).

⁵ *Golden Bay Cement Limited v Whangarei District Council* A15/2005.

Panel's questions to the Council Officers, the Council does not have the ability to require an activity to relocate. By referring to relocation in this policy, this may give rise to an unrealistic expectation within the community that relocation may occur.

Reverse sensitivity – Regional Policy Statement

14 The evidence of Mr Ensor refers to Policy 14.3.5 of the Regional Policy Statement which addresses reverse sensitivity, which states in relation to the proximity of discharges to air and sensitive land uses:

- (1) To avoid encroachment of new development on existing activities discharging to air where the new development is sensitive to those discharges unless any reverse sensitivity effects of the new development can be avoided or mitigated.
- (2) Existing activities that require resource consents to discharge contaminants into air, particularly where reverse sensitivity is an issue, are to adopt the best practicable option to prevent or minimise any actual or likely adverse effect on the environment.
- (3) New activities which require resource consents to discharge contaminants into air are to locate away from sensitive land uses and receiving environments unless adverse effects of the discharge can be avoided or mitigated.

15 Policy 14.3.5(1) therefore clearly seeks to protect existing discharging activities and places the onus on new development not to lead to reverse sensitivity effects. This approach is entirely appropriate and consistent with the approach taken in case law.

16 Section 67(3) states that a regional plan must give effect to any regional policy statement. The Supreme Court in *Environmental Defence Soc Inc v the New Zealand King Salmon Co Ltd* [2014] NZSC 38 referred to the fact that the phrase "give effect to" is a strong directive creating a firm obligation on the part of those subject to it. The Court referred to *Clevedon Care Inc v Manukau City Council*⁶ where it was stated:

[51] The phrase "give effect to" is a strong direction. This is understandably so for two reasons:

⁶ *Clevedon Care Inc v Manukau City Council* [2010] NZEnvC 211.

[a] The hierarchy of plans makes it important that objectives and policies at the regional level are given effect to at the district level; and

[b] The Regional Policy Statement, having passed through the [RMA] process, is deemed to give effect to Part 2 matters.

- 17 The Supreme Court stated as a caveat to this that a requirement to give effect to a policy that is framed in a specific and unqualified way may, in a practical sense, be more prescriptive than a requirement to give effect to a policy which is worded at a higher level of abstraction.
- 18 Policy 14.3.5 of the Regional Policy Statement uses strong language in that it requires new development to be "avoided" unless reverse sensitivity effects can be avoided or mitigated. The Supreme Court in *Environmental Defence Soc Inc v the New Zealand King Salmon Co Ltd* discussed the meaning of the use of the word "avoid" in policies 13 and 15 of the New Zealand Coastal Policy Statement, stating that this has its ordinary meaning of "not allow" or "prevent the occurrence of".
- 19 The legal submissions on behalf of the Canterbury Regional Council acknowledge that the CRPS has strong directive policy seeking the avoidance of reverse sensitivity effects.⁷
- 20 At present policy 6.7 runs directly contrary to Policy 14.3.5 of the RPS in that it places the onus on the discharger to reduce its effects or relocate.

Environment Canterbury's reasoning for including Policy 6.7

- 21 It is understood that the reason this policy has been proposed is to address existing legacy issues where reverse sensitivity issues have occurred and as a result some discharging activities are located in areas where they are no longer appropriate. Mr Maw's legal submissions state that the policy is intended to give decision makers on consent applications a tool to decline a resource consent application for an existing activity, if it is appropriate to do so.
- 22 However the proposed policy is very generic and is not targeted at addressing existing legacy type issues and it could also cover conflict situations that are yet to arise.

⁷ Legal submissions on behalf of Canterbury Regional Council, paragraph 48.

- 23 The policy states that "*it is anticipated that ... the activity giving rise to the discharge will reduce effects or relocate*" which means that the starting point is a presumption that this will need to occur (in all situations, not just legacy situations). Therefore as currently drafted this policy could have unintended consequences.
- 24 The scenario anticipated by Policy 6.7 should be avoided if reverse sensitivity effects are properly considered at the time of land use applications and plan changes. As currently worded, this policy undermines the importance of managing reverse sensitivity effects to prevent issues arising.
- 25 Further, we do not agree that this policy is needed to give the Council a tool to decline resource consent. The evidence of Mr Ensor refers to the range of tools already available to address significant adverse effects arising from existing discharge activities.⁸ This includes the ability to:
- 25.1 review the conditions of resource consents under s 128 RMA.⁹
 - 25.2 place limited durations on discharge activities within areas of likely land use development.
 - 25.3 not renew consents for activities demonstrated to be causing significant adverse effects when they expire.
 - 25.4 take enforcement action if significant effects are arising due to a lack of compliance with consent conditions.
- 26 When deciding on a renewal application by existing industry any sensitive

⁸ Evidence of Tim Ensor, paragraph 34.

⁹ **128 Circumstances when consent conditions can be reviewed**

(1) A consent authority may, in accordance with section 129, serve notice on a consent holder of its intention to review the conditions of a resource consent—

(a) At any time or times specified for that purpose in the consent for any of the following purposes:

(i) To deal with any adverse effect on the environment which may arise from the exercise of the consent and which it is appropriate to deal with at a later stage; or

(ii) To require a [holder of a discharge permit or a coastal permit to do something that would otherwise contravene section 15 or 15B to adopt the best practicable option to remove or reduce any adverse effect on the environment; or

(iii) For any other purpose specified in the consent; or ...

neighbouring land uses will need to be taken into account (without the need for policy 6.7). Not only do such activities form part of the existing environment against which the effects of the discharge need to be assessed, but addressing effects on sensitive activities will also be required as a result of other policies in the plan (for example policies 6.5 and 6.6).

27 Air plans do not exist in isolation. The focus of the policy is where a land use has been authorised. In this case Synlait submits:

27.1 Its own site is authorised by a Selwyn District Council specific zoning for the location of a Dairy Processing Facility;

27.2 The policy as worded, creates a presumption that comparable sites for industry are easily located – this is not the case, as the evidence shows;

27.3 The policy takes no account of the degree of infrastructure planning and capital investment associated with the site;

27.4 The aim at the policy would appear to be to target low level investment – such as the location of a silage pit for example – if that is the case the policy should specify the range of sites to which it is applicable.

27.5 The policy should in the absence of any further specificity be deleted in its entirety.

Reliance on AAQG

28 For industrial and large scale discharges, the focus of the pCARP is on determining activity status and assessing effects based on compliance with AAQGs.

29 Ms Harwood explains in her evidence why this focus on the AAQGs is not consistent with a proper assessment of air discharge effects. In fact, the guidelines make it explicit that the values should not be applied without taking into account the sensitivity of the receiving environment; and that the values should only be used as part of a full assessment of environmental effects.

- 30 Section 68(3) RMA provides that in making a rule, the regional council shall have regard to the actual or potential effects on the environment of activities, including, in particular, any adverse effect. As stated in the evidence of Ms Harwood, as currently proposed, rules 7:17 and 7.18 may impose a significant impediment to any further growth of industries such as Synlait, despite not resulting in any significant adverse effects on ambient air quality. It is therefore considered that the actual or potential effects of discharges have not been properly considered in the development of proposed rules 7.17 and 7.18 and the associated policies.
- 31 As set out in the evidence of Mr Ensor, in applying the AAQGs across the region without considering spatial variations in the receiving environment, this also fails to achieve proposed Objective 5-8. This objective recognises that air quality expectations differ throughout the region depending on location and the receiving environment. This is relevant to consider in the context of a section 32 assessment which includes a requirement to examine whether the provisions of the pCARP are the most appropriate way to achieve the stated objectives.
- 32 The section 42A report acknowledges these concerns and recommends that new policies be inserted that set clear expectations around application of the best practicable option in the context of the receiving environment, and that rules 7.17 and 7.18 are amended to enable industry to develop in a way that is appropriate relative to the sensitivity of the receiving environment.¹⁰
- 33 The evidence of Mr Ensor outlines the particular changes sought by Synlait. The changes proposed by Synlait to better reflect the variations in the receiving environment are also addressed below under the heading Ambient vs Localised Air Quality.

Uncertain consent trigger

- 34 A further difficulty with the inclusion of the AAQG in rules 7.17 and 7.18 is that contaminant dispersion modelling would be required to establish compliance with these guidelines. Ms Harwood outlines the inherent uncertainties that exist with this modelling.

¹⁰ Page 13-6.

- 35 Mr Ensor refers to these uncertainties in his evidence and states that in his opinion undertaking potentially complex modelling in order to determine the status of an activity is excessively onerous and that the pCARP needs to contain a relatively straight-forward set of criteria that can be applied by a resource consent applicant to determine whether consent is required and the status of the activity.
- 36 It is fundamental that rules of district or regional plans are sufficiently certain that a potential applicant is able to assess from reading any given rule whether or not they are subject to that rule.¹¹
- 37 For this reason it is also considered that at present the rules are open to challenge on the basis of being void for uncertainty.

Impact on Synlait

- 38 The evidence of Ms Harwood sets out the results of modelling that was undertaken at the Synlait site and explains that peak concentrations of sulphur dioxide within the plant were predicted to exceed the AAQG thresholds in a small area of the site just within the southern site boundary. Therefore any further growth is likely to result in an exceedance of the guidelines at the boundary.
- 39 Although not explicit in rules 7.17 and 7.18, the intention in the plan as notified appears to be that the AAQG values be applied at a site boundary. For example page 3-8 of the section 32 report states:

the pCARP prevents industrial discharges from exceeding ambient air quality guidelines beyond property boundaries so as to avoid the creation of new polluted airsheds.

- 40 An application by Synlait to renew its existing air discharge consents would most likely be a non complying activity. When a non complying activity is assessed against the policies which seek to ensure that concentrations of contaminants do not exceed AAQG values, this may in effect require no further deterioration in air quality for many industries such as Synlait (if the point at which exceedance of the guidelines is measured is at the boundary of the site).

¹¹ *Fonterra Co-operative Group Ltd v Manawatu-Wanganui Regional Council* [2013] NZEnvC 250. See also *Shotover Hamlet Investments Limited v The Queenstown-Lakes District Council*

- 41 The provisions therefore impose a significant impediment to the on-going operation and any further growth of industries such as Synlait (as recognised in the evidence of Ms Harwood).

Activity Status

- 42 As set out above, rules 7:17 and 7:18 provide for certain discharges to be non-complying and prohibited activities respectively.
- 43 When considering rule 7:18 it is relevant to consider case law regarding the use of a prohibited activity status. This has been set out in the section 42A report¹² and so we do not repeat it here. However we note the comments by the Environment Court in *Thacker v Christchurch CC* Env C C026/09 regarding the implications of a prohibited activity status:¹³

The imposition of prohibited activity status on any activity or activities is the most draconian form of control available under the RMA. A prohibited activity is not only one for which a resource consent must not be granted by a consent authority, but a proponent of such an activity may not even make an application for it. Although not specifically stated by any of the parties to these proceedings there was an implicit acceptance that prohibited activity status was not one which should be imposed lightly and without detailed consideration.

- 44 When applying the test of what is the most appropriate status of the options available, it is considered that, based on the evidence of Mr Ensor and Ms Harwood, a discretionary activity status is the most appropriate. The evidence of Mr Ensor and Ms Harwood explains why it is considered that rules 7.17 and 7.18 can simply be deleted, with the activities previously covered by these rules falling for consideration under rule 7.27.
- 45 It is understood that the section 42A report agrees with the use of a discretionary activity status. In particular it is stated that a discretionary activity status with a stronger policy guidance is more appropriate so that the pCARP can enable industry, whilst ensuring that the air quality objectives of the pCARP are met.¹⁴

¹² Page 3-24.

¹³ Paragraph [42].

¹⁴ Page 13-1.

Ambient vs Localised Air Quality

- 46 The evidence of Mr Ensor refers to the separate objectives and policies for addressing effects on ambient and localised air quality in the RPS. This distinction is currently lacking from the pCARP.
- 47 The legal submissions on behalf of the Canterbury Regional Council state that localised effects and cumulative effects can be addressed through a single set of policies, rather than a set of provisions for "cumulative effects" and a separate set of provisions for "localised effects".
- 48 However without this distinction being made in the policies, the policies provide little guidance to the regional council and to applicants in relation to the consideration and management of these effects. We are unsure what the rationale is for not addressing these effects separately. The result is a set of provisions which lack clarity in relation to the management of these effects when compared to the RPS.
- 49 In addition the pCARP is currently lacking a distinction between urban airshed issues, and rural air shed issues.
- 50 The evidence of Synlait records that there is adequate datasets to provide a baseline analysis of urban airshed issues but a distinct lack of data in rural areas and that it would be expensive and time-consuming to obtain.
- 51 The importance of these distinctions in considering effects is explained in the evidence of Ms Harwood. Ms Harwood explains that within rural areas air quality is likely to vary considerably from location to location and from day to day depending on local influences. With respect to Synlait's plant, Ms Harwood explains how maximum ground level concentrations of contaminants resulting from Synlait's discharge decrease rapidly with distance and have only localised effects on ambient air quality (and are unlikely to cause any cumulative effects with other discharges in the airshed). Any increases in contaminants within the airshed due to discharges from Synlait are therefore negligible. In contrast, in urban airsheds the concentration of activities is much more likely to give rise to cumulative effects on air quality making the effects of individual discharges more difficult to establish.
- 52 Changes have therefore been sought by Synlait to:

- 52.1 Distinguish between localised air quality and ambient air quality within the provisions.
- 52.2 Ensure that the provisions refer to exceedances of the AAQG at sensitive receptors (see Policy 6.21).
- 52.3 Distinguish between clean air zones (i.e. urban airsheds) and areas outside clean air zones (i.e. rural areas) in order to provide more specific focus and guidance for these zones (see Policies 6.3, 6.21 and 6.22).
- 53 We have commented on some of these changes further below.

Policy 6.3

- 54 Amendments have been proposed to this policy by Synlait to make it clear that this relates only to the management of ambient air quality, and to state that this applies within the clean air zone.
- 55 Mr Hansen in his rebuttal evidence expresses some concern in relation to these proposed amendments, stating that he sees no justification for limiting this policy to the clean air zone. However, by referring to the clean air zone, this recognises that it is within this zone that an exceedance of the guideline values is likely to occur. Further, outside clean air zones there is not the level of information available in order to determine whether there may be an exceedance of the guideline values. Outside of these zones it is much more relevant to focus on localised effects (see discussion on Policy 6.20 below).
- 56 A further concern of Mr Hansen in relation to Policy 6.3 is that the reference to the airshed and to the clean air zone within the same policy could be confusing. This is acknowledged by Synlait and it is now proposed to delete the reference to the airshed from this policy.

Policies 6.20 and 6.21

- 57 Amendments proposed by Synlait to Policy 6.20 draw attention to the fact that localised effects (whether they be from one or more industries) are going to be the effects that are likely to be of most concern outside of clean air zones where the density of discharges and people is least and background

air quality is likely to be good. The isolated discharges are not going to have any significant effect on ambient air quality at the airshed level.

- 58 Policy 6.21 as proposed by Synlait draws attention to the fact that inside clean air zones cumulative effects are the primary concern as background air quality is likely to be poor and the density of exposure is high.
- 59 It is important to recognise however that cumulative effects are not forgotten outside of clean air zones (refer policies 6.1, 6.2 etc) and localised effects are not forgotten within (refer policies 6.1, 6.6 etc.).
- 60 The rebuttal evidence of Mr Hansen states that he does not consider it appropriate or necessary to distinguish between being outside or inside the clean air zone in Policies 6.20 and 6.21, on the basis that BPO principles are applicable to the activities regardless of whether they sit outside or within a clean air zone.
- 61 The amendments proposed by Synlait to these policies include a requirement to apply the best practicable option both outside a clean air zone (Policy 6.20) and inside a clean air zone (Policy 6.21). Therefore the changes proposed by Synlait do not limit the application of the BPO to particular areas.
- 62 Further, the changes proposed by Synlait are appropriate in the context of the more general application of BPO through Policy 6.10 which provides:

All activities that discharge into air apply, at least, the best practicable option so that cumulative effects are minimised.

BPO

- 63 Synlait are supportive of the use of BPO and the evidence of Mr Betteridge and Ms Harwood sets out how the Synlait plant achieves BPO in relation to air discharges.
- 64 However at present the rules do not provide adequate discretion to consider BPO, and as noted in the evidence of Ms Harwood the pCARP may impose a significant impediment to further growth despite Synlait using BPO.

65 The s 42A report acknowledges this issue, stating:¹⁵

It is acknowledged in section 13 of this report that the strategy intended for managing large scale and industrial emissions in the pCARP to require the BPO to be applied has not been fully realised in the proposed plan. Accordingly, the provisions of the plan for managing large scale and industrial discharges require amendment. It is recommended that new policies are to be inserted that set clear expectations around application of the best practicable option in the context of the receiving environment and that Rules 7.17 and 7.18 are amended to enable industry to develop in a way that is appropriate relative to the sensitivity of the receiving environment.

66 Changes to the provisions have been recommended by Mr Ensor to address this issue.

A lack of recognition of significant Industries

67 Synlait's submission refers to Policy 6.11 which recognises nationally and regionally significant infrastructure and provides for their operation and development. The submission by Synlait sought to carry over the pCARP definition of Regionally Significant Infrastructure from the Regional Policy Statement and amend it to include primary sector manufacturing.

68 The evidence of Mr Ensor refers to an alternative to this relief being the inclusion of primary sector manufacturing alongside regionally significant infrastructure within Policy 6.11.

69 It is recognised that the pCARP contains Policy 6.19 which is enabling, however it is considered that this does not go far enough in that it does seek to recognise the importance of industry or provide for its ongoing operation and development (as Policy 6:11 does for Regionally Significant Infrastructure).

70 Further, despite any enabling policies, the remainder of the provisions do little to achieve this, and in fact, as currently proposed the provisions will have a significant impact on the continued operation and expansion of existing industries as discussed above.

¹⁵ Page 3-7.

71 Section 32 of the RMA states that when undertaking an assessment of the efficiency and effectiveness of the provisions in achieving the objectives, the evaluation must:

- (a) identify and assess the benefits and costs of the environmental, economic, social and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for –
 - (i) economic growth that are anticipated to be provided or reduced; and
 - (ii) employment that are anticipated to be provided or reduced; and
- (b) if practicable, quantify the benefits and costs referred to in paragraph (a).

72 The social and economic implications to industries such as Synlait are therefore relevant to a section 32 assessment of the provisions.

73 The section 42A report recognises that when the relevant policies are read in conjunction with Rules 7.17 and 7.18 these provisions do not enable industrial and large scale discharges where they are appropriate.¹⁶ The report goes on to recommend that Rules 7.17 and 7.18 should be replaced with a framework that better reflects the enabling intention of the Plan.¹⁷

74 Synlait agrees that changes are required in order to enable industry and changes have been proposed by Mr Ensor to achieve this.

PART 2 CONSIDERATIONS

75 Section 63(1) states that the purpose of the preparation, implementation and administration of regional plans is to assist a regional council to carry out any of its functions in order to achieve the purpose of the Act. Section 66(1) requires a regional council to change any regional plan in accordance with the provisions of Part 2.

76 The purpose of the Act is defined as:

¹⁶ Page 13-7.

¹⁷ Page 13-8.

..managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—

(a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

77 For the reasons set out above, the provisions as proposed do not enable people and communities to provide for their social or economic wellbeing.

78 In respect of s7, particular regard must be given to

(b) the efficient use and development of natural and physical resources

79 This matter is particularly relevant to your consideration of the reverse sensitivity policy, as the evidence demonstrates that relocation of existing industry would not constitute efficient use and development.

RELIEF SOUGHT

80 The relief sought by Synlait is summarised in the tracked change version of the provisions attached as Annexure A to the evidence of Tim Ensor.

81 We have attached an updated tracked change document to the legal submissions. This takes the version of the provisions set out Attachment One to the document entitled “pCARP Panel questions for Council Officer’s” as the starting point (rather than the pCARP provisions as notified). The changes proposed by Synlait which are additional to those shown in Annexure A to Mr Ensor’s evidence are as follows:

81.1 Acknowledgement that it is useful for the terms ambient and localised air quality to be defined.

81.2 The deletion of the reference to the airshed in Policy 6.3 and replacing this with a reference to improving the ambient air quality.

81.3 The inclusion of Policy 6.11A which was proposed in the section 42A report and which is supported by Synlait.

Dated 11 November 2015



Ewan Chapman/Shoshona Galbreath
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ANNEXURE A TO EVIDENCE OF TIMOTHY ENSOR

Definitions of ambient and localised air quality

Comment [DC1]: Synlait agrees with the evidence of the other witnesses that it would be useful for these terms to be defined.

Objective 5.8

Ensure that discharging activities are located appropriately given that air quality expectations throughout the Region differ depending on the location and characteristics of the receiving environment, including the land use patterns and zoning.

Objective 5.9

Ensure that new discharging and sensitive activities are spatially located so that appropriate air quality outcomes are achieved both now and into the future.

Objective 5.X

Existing discharging activities contribute to achieving appropriate air quality outcomes.

Policy 6.2

Manage ~~Minimise~~ adverse effects on ambient air quality within the airshed where concentrations of contaminants are between 66% and 100% of the guideline values set out in the Ambient Air Quality Guidelines 2002 Update, ~~so that concentrations do not exceed 100% of those guideline values.~~

Policy 6.3

Improve ambient air quality where ambient concentrations of contaminants within a clean air zone exceed 100% of guideline values set out in the Ambient Air Quality Guidelines 2002 Update.

Comment [DC2]: To avoid any confusion caused by references to a "clean air zone" and "the airshed" within the same policy, we have deleted the reference to "within the airshed" (which was originally proposed by Synlait), and have amended the policy to refer to "improving ambient air quality."

Policy 6.5

Manage offensive and objectionable effects from discharges into air identified because of their frequency, intensity, duration, offensiveness and location.

~~Policy 6.7~~

~~Where authorised land use change results in land use activities which are significantly affected by discharges to air from an existing activity, the existing activity may be required to reduce effects or relocate within a defined time frame.~~

Policy 6.8

Without limiting the ability of the consent authority to consider other relevant matters,
consider longer consent durations to durations to provide ongoing operational certainty where
activities that discharge into air locate appropriately to avoid the potential for reverse sensitivity
effects.

Policy 6.10

Minimise cumulative effects by requiring application of the best practicable option to minimise
discharges into air.

Policy 6.11

Recognise the contribution of nationally and regionally significant infrastructure and primary sector
manufacturing to people's social and economic wellbeing and facilitate its ongoing operation and
development.

Policy 6.11A

Locational constraints of discharging activities, including heavy industry and infrastructure, are
recognised so that operational discharges into air are enabled where the best practicable option is
applied.

Comment [DC3]: This Policy was proposed in the section 42A report and is supported by Synlait.

Policy 6.12

Recognise that the management of discharges into air is likely to improve during the life of resource
consents and incorporate such improvements in new and replacement consents where this is
consistent with the best practicable option.

Policy 6.19

Enable discharges of contaminants into air associated with large scale fuel burning devices, industrial
and trade activities and nationally and regionally significant infrastructure, in locations where the
discharge is compatible with the surrounding land use pattern and while ensuring that adverse
effects on air quality are minimised.

Policy 6.20

Outside a clean air zone Apply the best practicable option to all large scale and industrial activities
discharging contaminants to air so that the degradation of ambient-localised air quality is minimised.

Policy 6.21

Avoid Within a clean air zone apply the best practicable option to avoid, remedy or mitigate the
cumulative effects from the discharge of contaminants into air from any large scale burning device
or industry or trade premise, where the discharge will result in the exceedance, or exacerbation of
an existing exceedance, of the guideline values set out in the Ambient Air Quality Guidelines 2002

Update at sensitive receptors or exceedance of the National Environmental Standards for Air
Quality.

Policy 6.26

Ensure that the discharge of contaminants into air associated with rural activities do not cause offensive or objectionable effects beyond the boundary of the property ~~of origin the discharge occurs on.~~

Rule 7.3

The discharge of odour, dust or smoke into air that is offensive or objectionable beyond the boundary of the property of ~~origin the discharge occurs on~~ when assessed in accordance with Schedule 2 is a non-complying activity.

~~Rules 7.17~~

~~The discharge of contaminants into air from a large scale solid fuel burning device or from an industrial or trade premise established prior to 28 February 2015, outside a Clean Air Zone, that will likely result in guideline values, set out in the Ambient Air Quality Guidelines 2002 Update, being exceeded is a non-complying activity.~~

~~Rule 7.18~~

~~The discharge of contaminants into air from a large scale fuel burning device or from an industrial or trade premise established either inside a Clean Air Zone, or outside a Clean Air Zone after 28 February 2015, that will likely result in guideline values, set out in the Ambient Air Quality Guidelines 2002 Update, being exceeded is a prohibited activity.~~

Rule 7.27

Any discharge of contaminants into air from any large scale fuel burning device that does not comply with the appropriate permitted activity rule and conditions, and is not prohibited, and is not otherwise provided for by rules 7.3, 7.4 or rules 7.19-7.26 is a discretionary activity.

Rule 7.28

The discharge of odour, beyond the boundary of the property ~~of origin the discharge occurs on~~, from an industrial or trade premise is a restricted discretionary activity, except where otherwise permitted or prohibited by rules 7.29 to 7.59 below.

The exercise of discretion is restricted to the following matters:

1. The contents of the odour management plan to be implemented; and
2. The frequency of the discharge; and
3. The intensity of the discharge; and
4. The duration of the discharge; and
5. The offensiveness of the discharge; and

6. The location of the discharge; and

7. The matters set out in Rule 7.2.

Rule 7.29

Except where otherwise permitted or prohibited by rules 7.30 to 7.59 below, the discharge of dust, beyond the boundary of the property ~~of origin the discharge occurs on~~, including from unsealed or unconsolidated surfaces, from an industrial or trade premise, including a construction, subdivision or development property is a restricted discretionary activity.

The exercise of discretion is restricted to the following matters:

1. The contents of the dust management plan to be implemented; and
2. The frequency of the discharge; and
3. The intensity of the discharge; and
4. The duration of the discharge; and
5. The offensiveness of the discharge; and
6. The location of the of the discharge; and
7. The matters set out in Rule 7.2.

Rule 7.68

The discharge of contaminants into air from the collection, storage, treatment and application of liquid and slurry animal effluent or solid animal effluent onto production land, is a permitted activity provided the following conditions are met:

1. The discharge does not cause a noxious or dangerous effect; and
2. An odour management plan prepared in accordance with Schedule 2 is held by the persons responsible for the discharge, and where a Farm Environment Plan is required pursuant to Rule 5.45 of the Land and Water Regional Plan, the odour management plan will be a component of that Plan; and
3. The odour management plan is supplied to the CRC on request; and
- ~~4. The pH range of the liquid or slurry effluent is between pH6.5 and pH8; and~~
- ~~5. Dissolved oxygen is present in liquid or slurry effluent at concentrations greater than 1ppm; and~~
- ~~6. The persons responsible for the effluent application will keep a record for 3 months, to be provided to the CRC on request, of the effluent discharged including the following information:~~
 - ~~(a) the type of effluent applied to land; and~~

- ~~(b) the estimated daily quantity of effluent applied to land in cubic metres; and~~
- ~~(c) the location of the effluent application; and~~
- ~~(d) the wind direction at the time of application.~~