Tabled @ Hearing 25.11.15

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the proposed Canterbury Air Regional Plan

LEGAL SUBMISSIONS OF COUNSEL

For and on behalf of Bathurst Resources Ltd

25 November 2015

INTRODUCTION

1. My name is Alison Brown and I am General Counsel for Bathurst Resources Ltd (**Bathurst**).

2. Craig Pilcher will be giving evidence on behalf of Bathurst in support of its submission on the Proposed Canterbury Air Regional Plan (pCARP).

3. In summary Bathurst's submission and further submission addressed:

    - $PM_{2.5}$;
    - Contribution of industry to overall discharges;
    - Provision for industrial growth generally and in particular in Washdyke;
    - Doubling up or parallel consents for the same activity;
    - Sulphur limits;
    - Rules around bulk solid material.

$PM_{2.5}$

4. In our original submission we sought an acknowledgement that (as far as we are aware) there are no guideline values currently applicable in New Zealand relating to $PM_{2.5}$ discharges. We also questioned whether it can be said with certainty that the WHO guidelines are being routinely exceeded in all of Canterbury's polluted airsheds.

5. While we do not disagree that from a health perspective it is appropriate to measure and regulate $PM_{2.5}$ levels in airsheds we are concerned that there is the inference in pCARP that industrial discharges are the main source of $PM_{2.5}$ in polluted airsheds and that there is a direct link between industrial discharges and levels of $PM_{2.5}$ in an airshed.[1] We do not think this is correct.

6. In this respect we rely on the evidence of Mr Roger Cudmore (given on behalf of Fonterra and Ravensdown) where he stated:

    37 *It is my view that monitoring and management of PM_{10} is not an effective surrogate for the management of $PM_{2.5}$. Direct measurement of ambient $PM_{2.5}$ concentrations and assessment of $PM_{2.5}$ sources is likely to confirm industry to be a smaller contributor to cumulative impacts, than it is for ambient PM_{10}. Therefore using PM_{10} measurements to infer sector contributions to ambient $PM_{2.5}$ levels would understate the significance of transport and domestic heating. Finally, the accurate measurement of ambient $PM_{2.5}$ levels or $PM_{2.5}$ emissions requires $PM_{2.5}$ based methods – they cannot be reliably inferred from PM_{10} based methods.*

[1] See discussion p1-2 pCARP; s.42A Report 4-1, 10-4 and 10-5

41 *... industrial air discharge sources are a minor contributor to airshed concentrations of this contaminant. As such the imposition of controls on industry air emissions will not have much impact on improving $PM_{2.5}$ levels within the wider airshed."*

7. Care needs to be taken to direct regulatory controls at the real sources of $PM_{2.5}$ emissions in those airsheds where there is a genuine problem. We suggest the following wording for Policy 6.4:

6.4 *In those airsheds where overall concentrations of $PM_{2.5}$ regularly exceed the WHO guidelines for $PM_{2.5}$, or any subsequent applicable New Zealand guidelines, to investigate the root causes of those exceedances and to consider a range of tools to reduce the overall concentrations to acceptable levels by 2030.*

Contribution of Industry to Overall Discharges
Introduction
Sources of Contaminants Page 1-3
Industrial and large scale discharges of contaminants

8. We took issue with the statement in pCARP that:

Industry, including the service industry, contributes a significant proportion of the contaminants in our air ...

on the basis that this statement follows this one:

Sources of PM_{10} in Canterbury cities and towns are identified and monitored .... It is estimated that 65% to 90% of measured PM_{10} in polluted airsheds comes from burning wood and coal on domestic fuel burning equipment ... industrial sources contribute 7%-17% and motor vehicles 3%-16% of total PM_{10} concentrations in the polluted airsheds.

9. The section 42A report, in rejecting our submission that pCARP should accurately reflect that industrial sources make up a similar proportion to that from motor vehicles and that the greatest source of contaminants is from domestic sources, states (page 5-4):

Typically, industry contributes 10-17% of wintertime PM_{10} and in Washdyke industry, is responsible for up to 90% of wintertime PM_{10}. Outside of winter months, industry and large scale discharging activities contribute proportionally much more, and this is significant in regards to annual average exposures to contaminants.

10. It is unclear how these figures relate to those set out in pCARP which presumably is giving the average annual percentages rather than just referring to winter months. Further given that Washdyke is an industrial zone with little contribution from domestic sources it would be odd if the majority of contaminants in that airshed were not from an industrial source, but it is atypical. As the section 32 report said (page 3-5):

In Washdyke, PM_{10} concentrations are considerably lower than those in Timaru city and do not exhibit a seasonal pattern ...

Provision for Industrial Growth - Washdyke

11. As we read the policies and rules of pCARP we think the application of Rule 7.18 in particular has the potential to prohibit new or additional industrial discharges in Clean Air Zones and/or polluted airsheds.

12. We arrive at this conclusion because the discharge of contaminants from large scale burning devices or industrial or trade premises that:

    ...will likely result in guideline values, set out in the Ambient Air Quality Guidelines 2002 Update, being exceeded is a prohibited activity.
    (Rule 7.18)

13. The issue is what will be an exceedance of a guideline value set out in the Ambient Air Quality Guidelines 2002 Update (**AAQG**).

14. Where an airshed is already polluted then presumably any further discharges of PM_{10} must result in the exceedance of the guideline values set out in AAQG particularly if the discharge is measured at the boundary of the discharging site. If this logic is correct then the application of Rule 7.18 will see new or additional industrial discharges in Clean Air Zones from large scale fuel burning devices or industrial or trade premises being prohibited.

15. Further Rule 7.1 provides that when two rules apply to the same activity the more stringent activity status applies. I query then how Rule 7.14 is to be read with Rule 7.18 with respect to Clean Air Zones. Will Rule 7.18 override Rule 7.14?

16. Assuming this is a correct reading of the plan, it seems the issue arises because the AAQG are being applied incorrectly and that there should be a differentiation between localised air effects and effects on the ambient air quality. PCARP as currently written does not make the necessary distinction.

17. I am aware that Mr Cudmore gave evidence in some detail about these points and Bathurst would respectfully adopt his evidence on these points.

18. The Resource Management (National Environmental Standards for Air Quality) Regulations 2004 (**NESAQ**) already sets out when a consent authority cannot grant a resource consent in respect of the discharge of a variety of contaminants. These are the prescribed bottom lines. If these are not being breached then it is submitted that the activity should be able to be considered by the consent authority in the context of its actual local effects as well as its effects on ambient air quality.

19. The AAQG can usefully be used as a trigger for further consideration of a proposed discharge but should not be used as an absolute standard for localised as well as ambient air quality effects.

20. If the submissions that seek a definition of localised air quality and ambient air quality are accepted and incorporated into pCARP then we would suggest the following redraft of Rules 7.17 and 7.18 into one rule as follows:

> *7.17 The discharge of contaminants into air from a large scale fuel* ***burning*** *device or from an industrial or trade premise that will likely result in either:*
>
> *(i) an exceedance (measured in the ambient air quality of the relevant airshed) of the guideline values set out in the Ambient Air Quality Guidelines 2002 Update; or*
>
> *(ii) more than minor adverse effects on the health and wellbeing of people, flora or fauna measured in the localised air quality*
>
> *is a discretionary activity.*

21. This would mean that AAQG guideline values would be used as a trigger for further consideration of both the localised and ambient air quality impacts of the proposed discharge. Where other rules (for example Rule 7.16) apply a more stringent activity status, then that more stringent activity status would prevail (Rule 7.1).

22. Mr Pilcher will give evidence which illustrates the issues that will be faced at Washdyke Industrial area if changes are not made to these rules. This is perhaps a reminder of the real world interface between a regional air plan, a district plan and the needs of industry (access to road, rail and ports as well as suitable infrastructure).

23. Bathurst has submitted querying why Washdyke has had a Clean Air zone imposed on it. Given it is an area specifically identified by the Timaru District Council for industrial activities and is physically separate from the main residential part of Timaru it would be unfortunate if the rules in pCARP will mean that there will be limited or no opportunity for further industrial activities with discharges to locate in that airshed. The potential for offsetting new or additional discharges in a predominantly industrial area, which has vacant land, are limited.

Doubling up or Parallel Consents

24. It has been usual on applying for a discharge to air permit to provide an AEE which addresses effects relating to type and level of contaminants that will be deposited, as well as addressing dust and odour issues. After consideration of the likely effects of the proposed activity a consent is granted subject to conditions addressing contaminant levels and controls to be employed to keep dust and odour to acceptable levels.

25. The way pCARP is drafted is confusing. Take the example of burning coal in a boiler on an industrial site. Usually one discharge to air permit would be sought, and if granted,

would cover all the discharges resulting from the activity, from fugitive dust from coal stockpiling and handling through to the emissions from the stack and that permit would be issued with appropriate conditions addressing contaminant levels, dust and odour. Under pCARP it appears that potentially a series of different discharge to air consents might be required for this activity:

- Rule 7.3 makes the **discharge of odour, dust or smoke** into the air that is objectionable or offensive a non-complying activity
- Rules 7.14-7.16 will apply to the **discharge of PM_{10}** into air and the activity status of that will be restricted discretionary, discretionary or non-complying
- Rules 7.17-7.18 apply to the **discharge of contaminants** into air (which includes PM_{10}) where the guideline values of AAQA will be exceeded and this will be either non-complying or prohibited
- Rule 7.28 makes the **discharge of odour from an industrial or trade premise** a restricted discretionary activity
- Rule 7.29 makes the **discharge of dust from an industrial or trade premise** a restricted discretionary activity
- Rule 7.31 makes the **discharge of contaminants** into air from the burning of any fuel with a sulphur content of greater than 1% by weight a discretionary activity when undertaken within an industrial or trade premise
- Rule 7.37 provides for the **discharge of contaminants** into air from the handling of bulk solid materials meeting certain conditions a permitted activity otherwise the activity is assumed to be a discretionary activity under Rule 7.59
- Rule 7.38 provides that the **discharge of contaminants** into air from the outdoor storage of bulk solid materials meeting certain conditions is a permitted activity otherwise the activity is assumed to be a discretionary activity under Rule 7.59

26. I am unclear how many discharge permits would be required under these rules. I am also unclear how comfortably they sit together. With respect, for example, to the discharge of dust or odour under Rule 7.3 how is it possible to establish prior to the activity taking place whether or not it is objectionable or offensive? Schedule 2 sets out criteria which are based on the activity actually occurring.

27. Why separate out the handling of bulk solid materials from their storage?

28. I have gone back to NRRP to see how it was written. Generally it identifies the relevant activity which has a discharge to air associated with it and then sets conditions on that activity which leads to its activity status. Unlike pCARP there is not a welter of overlapping activity statuses for the same base activity.

29. We are also not clear that if a discharge to air permit is granted and implemented according to its terms and there are later complaints about dust or odour (which are upheld) that the permitholder may suddenly find their discharge activity non-complying under Rule 7.3. Is this is what is intended by the pCARP? If so, this would place a

permitholder in the position of continuous uncertainty about whether it had a lawful right to pursue its business.

Sulphur Levels

30. Mr Pilcher will give evidence of the sulphur levels in coal mined and sold by Bathurst.

31. We think that schools and hospitals which do not appear to fall within the definition of "*industrial or trade premises*" should be included in the ambit of Rule 7.31 where they operate large scale burning devices. This would be consistent with how they were treated under NRRP.

32. More generally Bathurst has submitted that it is the effects of what comes out of the stack that is should be focussed on, measured and controlled. It is the deposition that has the potential to adversely affect people, flora and fauna.

Bulk Solid Materials

33. Bathurst operates and has operated its Timaru coalyard in the Washdyke industrial area for many years without complaint and in reliance on its status as a permitted activity under Rule AQL42 of the NRRP. PCARP now proposes 2 separate rules – Rule 7.37 and 7.38 – to address with what was previously dealt with under the one rule. (To make a distinction between handling and storage of bulk solid materials for the purposes of an air plan seems unnecessary.)

34. We set out below the existing rule which provides for pre-existing activities and addresses odour and deposition issues. We think that existing activities which have invested in reliance on Rule AQL42 should continue to be allowed to operate under those conditions as a permitted activity.

Rule AQL42 Existing handling of bulk materials – permitted activity

Activity	Conditions
Discharge of contaminants into air from existing extraction, handling, processing, conveying, or storage of bulk materials on industrial or trade premises or involving, or as part of, industrial or trade processes, where the activity was lawfully established on site on or before 1 June 2002, and where a permit or resource consent for the discharge to air was not required on or before 1 June 2002, is a permitted activity **For the purposes of this rule** "existing" means the extraction, handling, processing, conveying, or storage of bulk materials which was operating on, or within the 12 months before, 1 June 2002	1. The extraction, handling, processing, conveying, or storage of bulk materials shall not have been discontinued for a continuous period of more than 12 months. 2. There shall be no increase in the scale, intensity, frequency or duration of the effects of the discharge of contaminants into air from the activity. 3. The dispersal or deposition of particles shall not cause an objectionable or offensive effect beyond the boundary of the property where the discharge originates. 4. The discharge of odour beyond the boundary of the site shall not be noxious, dangerous, offensive or objectionable to such an extent that it has an adverse effect on the environment.