

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

**of the Proposed Canterbury Regional
Air Plan**

**LEGAL SUBMISSIONS IN REPLY TO MINUTE 3 ON BEHALF OF
OJI FIBRE SOLUTIONS (NZ) LIMITED (FORMERLY CARTER HARVEY
PULP & PAPER LIMITED)**

10 FEBRUARY 2016

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1. INTRODUCTION

1.1 The purpose of this memorandum is to address:

(a) The proposals set out in the Memorandum of Counsel for the Canterbury Regional Council dated 8 December 2015 (“Memorandum A”) which responds to Minute 2 of the Hearings Panel dated 2 December 2015; and

(b) The further amendments proposed by the Canterbury Regional Council Officers in the Memorandum of Counsel of 18 December 2015 (“Memorandum B”) which responds to Minute 3 of the Hearings Panel dated 10 December 2015.

1.2 Carter Holt Harvey Pulp & Paper Limited (“CHH”) provided planning evidence and legal submissions and appeared before the Hearings Panel on 29 October 2015. For the record Counsel notes that since that time CHH has been renamed Oji Fibre Solutions (NZ) Limited following its purchase by Oji Corporation in late 2014. For the purpose of these submissions I will continue to refer to the company as CHH.

1.3 These submissions have been prepared by counsel with input from Mr Matthews who provided expert evidence to the Hearings Panel for the purpose of these proceedings.

2. MEMORANDUM A

2.1 The Council’s Memorandum A proposes to respond in detail to the issues raised by the Hearings Panel in its Minute 2 by 11 March 2016.

2.2 CHH is concerned at the inference in Memorandum A that the Council will provide further significant amendments to the pCARP in addition to those already provided with Memorandum B.

2.3 With reference to s39 of the RMA, if the amendments are significant, CHH respectfully submits that the Hearings Panel give consideration as to whether it would be appropriate and fair in the circumstances for parties to be given the opportunity to respond to those changes, in the same manner as has been afforded to them in relation to the

amendments to the policies for industrial and large scale discharges to air.

2.4 The following section responds to Appendix A of Memorandum B by policy number.

3. SUPPORT FOR DELETION OF RULES 7.17 AND 7.18

3.1 CHH supports the Council Officer's recommendation that Rules 7.17 and 7.18 of the pCARP be deleted and that Rules 7.19 and 7.27 are relied on for managing discharges from large scale fuel burning devices. This is consistent with evidence presented by CHH.

4. PROPOSED REVISIONS TO POLICY 6.20

4.1 The amendments to clauses 1 and 2 of Policy 6.20 are opposed for the reasons outlined below.

4.2 With respect to clause 1 it is not necessary to refer to the concept of "cumulative and local adverse effects".

(a) The clause requires cumulative effects to be minimised through adoption of the BPO. This implies that the effects from trade premises other than the applicant's, must be minimised. However, it is not clear in what circumstances applicants could apply the BPO to their own activities in a way that would minimise such effects. While ambient air quality can be monitored (being the cumulative effect of all discharges including from vehicles, industry etc), the only means of minimising cumulative effects is through the applicant's own discharge. In any event, as the definition of "effects" includes cumulative effects¹ it is unnecessary to specify that adverse effects can include cumulative and local effects.

(b) The clause also requires local adverse effects to be minimised through adoption of the BPO. As identified by the Hearings Commissioners' Minute 2 there is a need to assess

¹ Section 3 RMA

both localised and ambient effects and to separately identify them (paragraph 6), but that does not suggest that these should be addressed in the context of BPO. Requiring the applicant to use the BPO to focus on minimising localised as compared to “adverse” air quality effects’ generally will not recognise the need to address ambient effects or vice-versa.

- 4.3 Similar issues arise with respect to clause 2 which provides that the BPO shall be applied so that “Anticipated land use is not constrained beyond the property on which the discharge originates”. The drafting of new clause 2 echoes the Council’s initial drafting of the policies (specifically Policy 6.7) which sought to manage legacy issues by reducing the effects of existing discharges or by relocating industry. That policy was roundly addressed by a number of submitters and the Hearings Panel is referred to those submissions.²
- 4.4 Adoption of the BPO requires consideration of what the effect of the discharge is (irrespective of whether it is “local” or “cumulative” or something else), what level of control is needed or appropriate at the site taking into account the nature of the surrounding environment / land use and the various other BPO assessment factors. It cannot anticipate unforeseen future land use beyond the property on which the discharge originates.
- 4.5 This is particularly the case where the discharge occurs in the appropriate zone. If the application for the discharge is not in the appropriate zone, in any event, land use rules will apply under the District Plan. CHH maintains that land use controls are the appropriate planning response to address legacy issues associated with the location of industry in proximity to sensitive activities.

Amendments sought to policy 6.20

- 4.6 CHH proposes that Clause 2 be deleted in its entirety and that Clause 1 be modified so that the Policy reads as follows:

Apply the best practicable option to all large scale fuel burning devices, and industrial or trade premises discharging

² Refer to page 7 CHH legal submissions

contaminants into air so that adverse effects on air quality from the discharge are minimised.

5. NEW POLICY 6.21

5.1 The approach entrained in redrafted policy 6.21 is supported for the reasons identified in Mr Matthew's evidence. CHH seeks one minor amendment to recognise that applicants should be required to demonstrate to the extent they reasonably can, their observance with the NES. The inclusion of the reasonableness test ensures that applicants will not be required to 'jump through hoops' that are unreasonable / inappropriate in their demonstration of their observance with the NES.

6. NEW POLICY 6.22

6.1 The redrafted policy sets a high bar for assessing whether increases of total PM10 from large scale fuel burning devices are significant. If the Council considers that the increases are significant the policy requires that the increase be avoided. The question as to whether the increase in PM10 will cause significant adverse effects is a factor of many (but not all) of the matters for consideration listed in clauses 1-5 of redrafted policy 6.22.³ It is submitted that the emphasis of the policy on avoiding significant increases is inappropriate. As the Section 42A report makes clear, it is a significant adverse effect on people and other values that must be addressed - not whether there is an increase per se.

For example, the RPS directs enabling the discharge of contaminants into air provided there are no significant localised adverse effects on social, cultural and amenity values, flora and fauna, and other natural and physical resources (Objective 14.2.2). The explanation to the objective confirms that "*Many industries that are important to the social and economic wellbeing of the community involve discharges to air. While the ability to discharge needs to be provided for, it is important that these discharges do not cause significant adverse effects on people and other values.*"⁴

6.2 CHH proposes that the policy is reworded as follows.

³ For example, the duration of the consent being sought is not a factor in determining significance.

⁴ P 3-9

Avoid, significant increases in total PM10 ~~remedy or mitigate significant adverse effects arising from discharges of total~~ PM10 from large scale fuel burning devices and industrial or trade premises within Clean Air Zones. The CRC will consider the following in determining significance:

- ~~• The mass emission rate of PM10 from the proposed discharge relative to the total PM10 emission rate from large scale fuel burning devices and industrial or trade premises within the Clean Air Zone. [Comment: The relativity to other similar types of discharges is irrelevant to the degree of significance, particularly when the largest source of PM10 emissions is not from industry]~~
- The degree to which the discharge exacerbates cumulative effects within the Clean Air Zone affects the ability to meet the National Environmental Standard for Air Quality standards. [Comment: the NES addresses effects including cumulative effects as the definitions in the NES are the same as in the RMA]
- The local effects of the proposed discharge, including the location of sensitive receptors. The extent to which adverse effects on the environment, health and amenity are mitigated by the separation between the activity discharging to air and existing activities sensitive to air discharges. [Comment: - the location of sensitive receptors is not an issue in determining significance as there is no control over when or where those locators are positioned]
- The extent to which the activity is consistent with and appropriate to the purpose of the underlying zoning of the subject site. [Comment: the above clauses address the issue of location and the amenity values of the receiving environment]
- The degree to which the discharge increases the total PM10 from the Clean Air Zone, taking into account whether the application is a replacement for an existing consent and if so, the existing environment [Comment: this amendment recognises the distinction between new applications and renewals and the need to consider the existing environment]
- The mitigation and emission control options available including reasonably practicable fuel choices and offsetting
- The degree to which best practicable options for the control of air discharge emissions can or will be implemented. [Comment: this amendment incorporates the concept of BPO which is consistent with other policies]
- The extent to which amenity provisions of any zone where the discharge is likely to have an effect are met.
- ~~• The duration of consent being sought and the ability for the effects of the discharge itself to be reduced over time. [Comment: the duration of consent does not directly affect the question of the significance of~~

any increase in or the effects of a discharge. Policy 6.8 requires consideration of longer term consents. The application of the BPO addresses opportunities for reduction over time]

7. NEW POLICY 6.22B

- 7.1 The concepts in this policy are new to the policy section applying to industrial, trade and large scale discharges to air and it is unclear whether they are in response to a specific submission.
- 7.2 Apart from observing that this policy is more appropriate as a general policy, it is submitted that the policy is unnecessary as it duplicates s103 of the RMA which requires a consent authority to consider applications in relation to the same activity together. Further, the Council may consider any associated discharges to air from the same activity by virtue of the definition of “effects” which includes “a cumulative effect which arises over time or in combination with other effects”.⁵
- 7.3 If the clause is to be retained CHH requests the addition of the following words to reflect that a requirement to consider the existing environment is part of its assessment process:

When considering the discharge of contaminants into air from large scale fuel burning devices or from industrial or trade premises, the CRC will consider the combined effect of all discharges of contaminants into air associated with the activity having regard to the existing environment.

Gill Chappell

Counsel for Oji Fibre Solutions (NZ) Limited

⁵ Section 3 RMA