

BEFORE THE CANTERBURY REGIONAL COUNCIL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the Proposed Canterbury Air Regional Plan (pCARP)

MEMORANDUM OF COUNSEL FOR RAVENSDOWN LIMITED

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MAY IT PLEASE THE COMMISSIONERS:

- 1 By Minute 3 dated 10 December 2015 the Commissioners gave submitters the opportunity to provide a written response to the redrafting of Policies 6.20 and 6.21 and Rules 7.17 and 7.18 of the pCARP as set out in the memorandum of counsel for the Canterbury Regional Council dated 18 December 2015 ("the Council Memorandum"). The Council Memorandum proposes changes to several policies, and proposes to delete (rather than redraft) Rules 7.17 and 7.18.
- 2 This memorandum sets out the views of Ravensdown Limited. As the Commissioners will recall, Ravensdown Limited owns and operates the long-established fertiliser works at Hornby. The Hornby Works currently operate pursuant to an air discharge permit granted by the Canterbury Regional Council. The Hornby Works therefore comprise an existing source of discharges to air within a Clean Air Zone.

POLICIES

Policy 6.19

- 3 Canterbury Regional Council staff have proposed some changes to the wording of Policy 6.19. Those changes of themselves are modest, and Ravensdown remains concerned that while this policy may be well suited to new activities or sources of discharge, the policy does not properly address existing discharges/activities. In particular, Ravensdown is concerned that the policy introduces a potential obstacle for existing activities where through no action of the person undertaking that activity, potentially incompatible land uses have located nearby. Accordingly, Ravensdown submits that Policy 6.19 should be amended to apply only to new discharges/activities as follows (or similar):

"6.19 Enable **new** discharges of contaminants into air ..."

- 4 A new policy should then be included which addresses existing activities/discharges as follows:

"6.19A Enable discharges of contaminants into air from existing large scale fuel burning devices, existing industrial or trade premises, and existing nationally and regionally significant infrastructure while ensuring that adverse effects on air quality are minimised."

- 5 The above wording is substantially the same as the wording proposed by Canterbury Regional Council staff in relation to Policy 6.19 with the exception that it does not include reference to compatibility with surrounding land use patterns. It is submitted that this reference is not appropriate in a policy directed towards existing discharges. Counsel notes that in circumstances which may apply in relation to some point source discharges (but which do not apply in relation to the Hornby Works) where the existing discharge may have unacceptably significant adverse effects on surrounding lawful land uses, other policies, and rules which make discharges discretionary or non-complying, will operate to ensure that unacceptable adverse effects can be avoided.

Policy 6.20

- 6 Ravensdown has had the opportunity to consider the comments provided by Fonterra via its planning consultant, Ms Ashley, and respectfully agrees with her analysis and proposed rewording of the policy.

Policy 6.21

- 7 Ravensdown submits that it would assist in the interpretation and application of this policy if the reference to observance by applicants of the relevant standards and guidelines "*to the extent they can*" was qualified by reference to the adoption of the best practicable option. This would therefore require applicants to demonstrate that they have in fact implemented the best practicable option as the means of demonstrating compliance or observance "*to the extent they can*". In Ravensdown's submission this introduces an appropriate degree of objectivity to the policy. Accordingly, Ravensdown submits that Policy 6.21 should be reworded to read:

*"Applicants seeking to discharge contaminants into air from large scale fuel burning devices or from industrial or trade premises will demonstrate, to the extent they can **through the adoption of the best practicable option**, observance of the Resource Management (National Environmental Standards for Air Quality) Regulations 2004 and have regard to the Ambient Air Quality Guidelines 2002 Update."*

- 8 Ravensdown has no comments on the remaining policies set out in Appendix A of the Council Memorandum.

RULES

- 9 The proposed deletion of Rules 7.17 and 7.18 in the pCARP makes a fundamental change to the way the rules in the pCARP apply to Ravensdown's Hornby Works.
- 10 Rule 7.1 requires an activity to comply with all relevant rules in the pCARP and makes it clear that where two or more rules apply, the most stringent activity status in any relevant rule will determine the overall activity status.
- 11 Previously, Ravensdown was likely to be caught by proposed Rule 7.18 and the Hornby discharge would have been classified as a prohibited activity for which no consent could be granted. This is because the discharge:
- (a) Was from an industrial or trade premise inside a Clean Air Zone; and
 - (b) Would likely result in guideline values as set out in the AAQG being exceeded¹.
- 12 In the Council Memorandum it is stated at paragraph 5 that:
- "The Council Officers also recommend 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 solid fuel burning devices."*
- 13 No mention is made in the Council Memorandum as to how discharges from industrial or trade premises (as opposed to from large scale solid fuel burning devices) are to be managed with the deletion of Rules 7.17 and 7.18. Rules 7.17 and 7.18 were clearly intended to apply to both large scale solid fuel burning devices and industrial / trade premises.
- 14 Large scale fuel burning devices are defined in section 2 of the pCARP. A key component of the definition requires the device to be designed "*to burn fuel for the primary purpose of energy production*". This does not appear to apply to the Hornby situation where the primary purpose of

¹ This was because Canterbury Regional Council intended to apply the AAQG values as compliance values at the boundary of the property – contrary to the express recommendation in the AAQG itself.

combustion is the manufacture of sulphuric acid and the production of energy is a by-product.

- 15 On that basis, rules in the pCARP which manage large scale fuel burning devices (but not industrial and trade premises generally) do not apply to the Hornby Works. Provided this interpretation is correct, the Hornby discharge is not managed by Rules 7.19 to 7.27.
- 16 Rules 7.28 – 7.59 deal with general industrial and trade premises. It appears that three rules are relevant to the Hornby Works:
- (a) Rule 7.28 – odour discharges beyond the property boundary (restricted discretionary activity);
 - (b) Rule 7.29 – dust discharges beyond the property boundary (restricted discretionary activity); and
 - (c) Rule 7.59 – any discharge to air from an industrial or trade premise or process that:
 - (i) Does not comply with the appropriate permitted activity rule and conditions [there are none directed to fertiliser manufacturing];
 - (ii) Is not prohibited [this concerns matters addressed in Rules 7.4 and 7.32 – not relevant to the Hornby Works]; and
 - (iii) Is not otherwise provided for by:
 - (1) Rule 7.3 [offensive or objectionable odour or dust beyond the boundary is a non-complying activity];
 - (2) Rule 7.4 [prohibited activities – not relevant]; and
 - (3) Rules 7.28 – 7.58 [specific industry or process rules – not applicable to Hornby other than 7.28 and 7.29];

is a discretionary activity.

- 17 The above analysis which concludes that Rule 7.59 is relevant is supported by the table below the Rule itself in the pCARP which notes that fertiliser manufacture and bulk handling is likely to require consent under Rule 7.59.

- 18 In accordance with Rule 7.1 consent will also be required under Rules 7.28 and 7.29, but the overall activity status will be discretionary and not restricted discretionary.
- 19 In passing counsel notes that in accordance with Rule 7.4(14) the burning of fuel with a sulphur content greater than 1% by weight is a prohibited activity. Ravensdown considers that this rule does not apply to the Hornby Works because:
- (a) The melting of sulphur is to make sulphuric acid. While "fuel" is not defined in the pCARP the common sense interpretation of that word would not include the use of sulphur to manufacture sulphuric acid. Sulphur is clearly a raw ingredient, but not a fuel; and
 - (b) Even if it is a fuel, there is an exception to the prohibited status in Rule 7.4 in the case of industrial or trade premises. In these cases the burning of fuel with a sulphur content greater than 1% by weight is a discretionary activity pursuant to Rule 7.31(12).
- 20 On the basis that the above rule analysis is correct, Ravensdown is satisfied that the rules are appropriate. However, if the activities at the Hornby Works are classified as including discharges from a large scale fuel burning device or if the above analysis of the rules is otherwise flawed, Ravensdown may have significant problems with the way the rules are structured.

DATED this 12th day of February 2016



S W Christensen
Counsel for Ravensdown Limited