

**IN THE MATTER**

of the Resource Management Act  
1991

**AND**

**IN THE MATTER**

of the Proposed Canterbury Air  
Regional Plan

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**MEMORANDUM OF COUNSEL FOR  
WINSTONE WALLBOARDS LIMITED  
(Submitter 61392 , Further Submitter 103060)**

Dated 12 February 2016

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## **MAY IT PLEASE THE PANEL**

- 1 This memorandum contains Winstone Wallboard's comments on the Council officers' proposed amendments to policies 6.19 - 6.22 and proposed deletion of Rules 7.17 and 7.18 as set out in the Memorandum of Counsel for the Canterbury Regional Council dated 18 December 2015.

### *Policy 6.19*

- 2 Winstone Wallboards ("WWB") supports the Council officers' proposed amendments to Policy 6.19 but still seeks that the policy be amended to refer to compatibility with the 'underlying zoning' rather than the 'surrounding land use pattern', as set out in my opening legal submissions, addressed in evidence by Ms Buckingham and set out below<sup>1</sup>:

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

### *Policy 6.20*

- 3 WWB was happy with Policy 6.20 as notified.
- 4 The Council officers' proposed amendments to Policy 6.20(1) are acceptable to WWB, on the basis that those amendments are consistent with the intent of the policy as notified.
- 5 However WWB is strongly opposed to the officers' proposed new Policy 6.20(2). Introduction of a requirement to ensure that "anticipated land use" beyond the subject site is not "constrained" alters the meaning and effect of Policy 6.20 as notified and appears not to be within the scope of submissions. Proposed new Policy 6.20(2) is therefore not a permissible amendment, in terms of Clause 10 of Schedule 1 of the RMA.

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<sup>1</sup> Evidence of Emily Buckingham at paragraph 25

*Policy 6.21*

- 6 WWB supports the deletion of Policy 6.21 as notified and supports the reference in proposed new Policy 6.21 to the NESAQ.

*Policy 6.22*

- 7 The s42A report stated that "Policy 6.22 and Rule 7.14 are intended to provide a consent path through which observance of Regulation 17 of the NESAQ can be enforced<sup>2</sup>" and recommended that Policy 6.22 be retained as notified<sup>3</sup>.

- 8 It is not clear why the Council officers have now recommended that the policy be replaced, or whether the replacement policy is within the scope of submissions. If the replacement policy is within scope, WWB seeks the amendments set out below to ensure that the policy is consistent with the NES (which is air shed based). The amendments sought by WWB require assessment of the proposed discharge relative to all emissions within the air shed (including from home heating), rather than just large scale fuel burning devices and industrial and trade premises:

6.22 Avoid significant new increases in total PM10 from large scale fuel burning devices and industrial or trade premises, which cannot be offset, within Clean Air Zones. The CRC will consider the following when determining significance:

1. The mass emission rate of PM10 from the proposed discharge relative to the total PM10 emissions rate from large scale fuel burning devices and industrial or trade premises within the Clean Air Zone; and
2. The degree to which the proposed discharge exacerbates cumulative effects within the Clean Air Zone; and
3. The local effects of the proposed discharge, including the location of sensitive receptors; and
4. The mitigation and emission control options available, including fuel choice and offsetting; and
5. The duration of consent being sought and the ability for the effects of the discharge or the discharge itself to be reduced over time.

*Policy 6.22A*

- 9 Proposed new policy 6.22A does not apply to WWB's operation in Canterbury, therefore WWB does not have a view on this policy.

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<sup>2</sup> Section 42A report at p13-9

<sup>3</sup> At p13-11

*Policy 6.22B*

- 10 WWB is not opposed to proposed Policy 6.22B, but notes that this policy appears to be entirely new. It was not sought by WWB and does not appear to have been sought by any other submitter. If that is the case, the proposed new policy is not a permissible amendment, in terms of Clause 10 of Schedule 1 of the RMA.

*Rules 7.17 and 7.18*

- 11 WWB supports the deletion of Rules 7.17 and 7.18 and the use of Rules 7.19-7.27 to manage discharges from large scale solid fuel burning devices.
- 12 WWB sought amendments to Rules 7.19, 7.24, 7.25 and the introduction of a new rule (Rule 7.19A)<sup>4</sup>. Those amendments and the new rule (which for ease of reference, are set out below) are still sought by WWB and are not affected by the proposed deletion of Rules 7.17 and 7.18:

*7.19 The discharge of contaminants into air from the combustion of liquefied petroleum gas or compressed natural gas in any large scale external combustion device with a net energy output of less than or equal to 5MW is a permitted activity provided the following conditions are met:*

- 1. The discharge is directed vertically into air and is not impeded by any obstruction above the emission stack which decreases the vertical efflux velocity below that which would occur in the absence of such obstruction; and*
- 2. Except for a period not exceeding two minutes in each hour of operation, the opacity of the discharge is not darker than Ringelmann Shade No. 1, as described in Schedule 5; and*
- ~~3. There are no buildings higher than five metres above natural ground level within a 25m radius of the emission stack, unless the building, land or other structure is on a different property to the stack and was not established or anticipated at the time the stack was established; and~~*
- 4. The fuel burning equipment is maintained in accordance with the manufacturer's specifications at least once every year by a*

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<sup>4</sup> Pages 10-12 of my opening legal submissions

person competent in the maintenance of that equipment and a copy of each maintenance report is held for three years and made available to the CRC on request; and

5. The following emission stack height must be met for the device net energy output specified below:

Net energy output (kilowatts)	Emission stack height
41-500	1m above any building, land or structure within 15m of the emission stack
501-5000	7m above natural ground level and 3m above any building, land or structure within 35m of the emission stack

7.19A The discharge of contaminants to air from the combustion of liquefied petroleum gas or compressed natural gas in any large scale combustion device with a net energy output of less than or equal to 5MW that does not comply with one or more of conditions 1-5 in Rule 7.19 is a restricted discretionary activity.

The exercise of discretion is restricted to the purpose of the condition(s) that is not complied with, and the BPO for the discharge.

7.24 The discharge of contaminants into air, for the purpose of emergency electricity generation, maintenance and peak electricity network load management, from the combustion of diesel, petrol, liquefied petroleum gas or compressed natural gas in any stationary large scale internal combustion device with a net energy output capacity up to and including 300kW is a permitted activity provided the following conditions are met:

...

4. The sulphur content of the ~~fuel~~ diesel burnt does not exceed 0.001% by weight, and the sulphur content of the petrol burnt does not exceed ~~0.001%~~ 0.005% by weight; and

...

7.25 The discharge of contaminants into air, for the purpose of emergency electricity generation, maintenance and peak electricity network load management, from the combustion of diesel, petrol, liquefied petroleum gas or compressed natural gas in any stationary large scale internal combustion device with a net energy output of:

1. 301kW to 1MW within a Clean Air Zone; or

2. 301kW to 2MW outside a Clean Air Zone

is a controlled activity provided the following conditions are met:

...

3. The sulphur content of the ~~fuel~~ diesel burnt does not exceed 0.001% by weight, and the sulphur content of the petrol burnt does not exceed 0.005% by weight; and

...

**DATED** this 12<sup>th</sup> day of February 2016



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Monique Thomas

Counsel for Winstone Wallboards Limited