

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 5 ON BEHALF OF
OJI FIBRE SOLUTIONS (NZ) LIMITED (FORMERLY CARTER HARVEY
PULP & PAPER LIMITED)**

1 APRIL 2016

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1. INTRODUCTION

- 1.1 In accordance with Minute 5 of the Hearings Commissioners on Reply Hearing Arrangements dated 30 March 2016, the purpose of this memorandum is to address the Canterbury Regional Council's s42A Reply report.
- 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. It provided a further response to Minute 3.
- 1.3 As noted in its submissions in reply to Minute 3, 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.

2. OBJECTIVES

- 2.1 The s42A Reply Report rejects submissions seeking a new objective to enable industry and infrastructure that is not regionally or nationally significant on the basis that proposed new Policy 11A is sufficient to "ensure sufficient balance is provided recognising the value of such industry / infrastructure and the potential adverse effects of the discharges into air associated with the infrastructure / industry".
- 2.2 Section 67(1) of the RMA provides that a regional plan must state the objectives for the region and "the policies to implement the objectives". This provision therefore requires a clear link between the policies and the objectives. It is submitted that the enabling aspect of policy 6.19, "enable discharges of contaminants into air from large scale fuel burning devices ..." does not derive from any objective. The same issue applies to proposed Policy 6.11A. In each case the locational constraint aspects of those policies flow from Objectives 5.8 and 5.9, whereas the enabling aspect has no linkage. This can be contrasted to Objective 5.7 which provides a clear linkage for the enabling of discharges from nationally and regionally significant infrastructure.
- 2.3 CHH therefore continues to maintain that a new objective needs to be inserted (see attachment A).

3. POLICIES

3.1 The s42A Reply Report makes very few changes to the Industrial and Large Scale discharges to Air policies (6.19 – 6.24), with the exception of the minor amendment to Policy 6.21 made in line with CHH's submissions. Therefore CHH repeats its submissions filed in response to Minute 3 as they relate to the policies. (The changes it seeks are set out in Attachment A).

4. RULES

4.1 CHH supports the recommendation that Rules 7.17 and 7.18 of the pCARP be deleted but had sought that Rules 7.19 and 7.27 be relied on for managing discharges from large scale fuel burning devices. This was consistent with evidence presented by CHH. However, the s42A Reply Report has now proposed two new amendments which CHH wishes to respond to. The first is that with the deletion of Rule 7.14 (which is supported), the Council proposes to insert a note relating to Regulation 17 of the NES. Unfortunately the note does not fairly represent the exemption in that regulation which applies to existing consents. The words "other than in relation to existing consents" should therefore be added to the note as shown in Attachment A.

4.2 Secondly, and related to regulation 17 is the proposal to include a new rule (7.20A) for "All Solid Fuels Inside the Clear Air Zones". This provides that all discharges from the combustion of solid fuel in any large scale external combustion device that exceed a limit specified in the rule will be a non-complying activity. There is no definition of "large scale external combustion device" although there is a definition of "large scale fuel burning device". In spite of the fact that the following rules attempt to put some definition around the term "large scale external combustion device" this does not apply to rule 7.20A. In the absence of a definition it is not possible to determine what is large scale, or what a "large scale external combustion device" might be.

4.3 Rule 7.20A also fails to differentiate between existing discharges and new discharges in a manner consistent with regulation 17 of the NES. As a matter of principle CHH submits that it is appropriate to allow

renewals of existing consents to be considered under the default discretionary activity rule (7.27) rather than to be assessed as non-complying activities by way of Rule 7.20A.

Gill Chappell

Counsel for Oji Fibre Solutions (NZ) Limited

5. ATTACHMENT A

Insert a new Objective with respect to existing industry:

Recognise and provide for the investment and contribution to economic and social wellbeing of existing industrial, service and rural productive activities that discharge to air.

Insert a new Policy with respect to industry location (per the Section 42A Report Recommendation):

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.

Delete policies 6.7 and 6.14

Amend policy 6.20

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

Amend Policy 6.22

CHH proposes that the policy is reworded as follows.

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]~~

RULES:

Delete Rules 7.17 and 7.18 as proposed by the s42A Reply Report

Amend the second (new) note under the heading Industrial, trade and large scale discharges to air as indicated:

Note: In accordance with Regulation 17 of the Resource Management (National Environmental Standards for Air Quality) Regulations 2004, other than in relation to existing consents, the CRC must decline an application for a resource consent (the proposed consent) to discharge PM₁₀ if the discharge to be expressly allowed by the consent would be likely, at any time, to increase the concentration of PM₁₀ (calculated as a 24-hour mean under Schedule 1 of the Resource Management

(National Environmental Standards for Air Quality) Regulations 2004) by more than 2.5 micrograms per cubic metre in any part of a polluted airshed (see gazetted airsheds shown on the maps in Section 10) other than the site on which the consent would be exercised.

Amend rule 7.20A as follows:

All solid fuels inside Clean Air Zones

7.20A Inside a Clean Air Zone, the new discharge of contaminants into air from the combustion of solid fuel in any large scale external combustion device where the discharge of PM₁₀ exceeds a rate of 250mg/m³ air, when tested in accordance with schedule 6 and adjusted to 0° Celsius, dry gas basis, 101.3 kilopascals, and 8% oxygen or 12% carbon dioxide, is a non-complying activity.

Insert new BPO assessment criteria

Insert proposed BPO assessment criteria as per Primary Evidence of R Matthews dated 18 September 2015:

Proposed best practicable option assessment criteria:

The degree to which the activity affects the ability to meet the National Environmental Standard for Air Quality standards.

Whether the amount of separation between the activity discharging to air and existing activities sensitive to air discharges is appropriate to mitigate adverse effects on the environment, health and amenity.

The value of the existing investment and its contribution to economic and social wellbeing.

The extent to which the activity is consistent with and appropriate to the purpose of the underlying zoning of the subject site.

The degree to which conditions of consent can avoid, remedy or mitigate adverse effects.

The degree to best practicable options for the control of air discharge emissions can or will be implemented.

The extent to which amenity provisions of any zone where the discharge is likely to have an effect are met.

Whether the assessment methods, including monitoring and modelling are appropriate to the scale of the discharge and any potential adverse effects.

Whether discharges to air are reduced where practicable, through:

- a) *Use of fuels appropriate for the Christchurch Air Shed or Clean Air Zones;*
- b) *Efficient use of energy;*

- c) *Implementation of best practicable option;*
- d) *Appropriate management of fugitive emissions; and*
- e) *Avoidance of risk and adverse effects on people, property and the environment from hazardous air pollutants.*