

Reply to submissions of industry submitters

1. In Minute 5, the Panel gave specific submitters leave to provide further written submissions in relation to the officer's analysis and recommendations made on the revised industry and large scale policy framework set out in the reply recommendations¹. Further submissions were provided in writing by Ravensdown, Lyttelton Port Company, OJI Fibre Solutions (formally Carter Holt Harvey)², Fonterra and Synlait.
2. The Matters that the Panel have given leave for additional submissions are the revised policy framework set out in the Memorandum of Council the Regional Council made available on its web site on 18 December 2015. That is: the recommended revised policies 6.19 – 6.22B and the deletion of Rules 7.17 and 7.18.

Policy 6.19

3. In relation to Policy 6.19, of those submitters who provided further comments, only Ravensdown oppose the recommended policy. Ravensdown have not provided further reasoning for this opposition. I have nothing further to add beyond the response set out in the reply response³.
4. Having considered this additional submission, I do not recommend additional amendments to Policy 6.19.

Policy 6.20

5. In relation to Policy 6.20, Ravensdown and Fonterra seek clarification that the recommendation made at Page 5-7, Paragraph 45 of the reply report has been carried through. I note the tracked change version of the pCARP includes this amendment.
6. Fonterra, Lyttelton Port Company and Carter Holt Harvey continue to seek that Policy 6.20 focuses only on localised effects and does not address anticipated future land use. Cumulative effects cannot be discounted in an assessment of the actual or potential effects of a proposed discharge into air. Narrowing the Policy to focus only on localised effects would limit decision makers to considering only the effects in the immediate area. If there are no cumulative effects from a discharge, then the policy will not unduly constrain an applicant.
7. With regard to the approach of discussing localised and cumulative effects rather than "localised and ambient effects", I consider that the term "ambient effects" is used in different ways by different people and the meaning of it is not clear. What the pCARP proposes to address is all effects on air quality, wherever those effects occur.

¹ Reply Report (from Page 5-3)

² For consistency with earlier reports, I will continue to refer to this submitter as Carter Holt Harvey

³ Reply Report (Page 5-6 Paragraph 38)

Ultimately it is unhelpful to define the extent to which effects may occur (i.e. close to the discharge or distant from the discharge, including cumulative effects both close to and distant from the discharge), as it results in the assessment of effects being constrained. Given that, I consider returning to the approach proposed through the notified pCARP of considering all effects of discharges on air quality, without specifying a preference to localised or cumulative, or ambient effects is appropriate.

8. With regard to the recommended definition of “anticipated land use” Fonterra and Synlait submit that the definition is not certain enough. I accept that the definition leaves room for discretion and consider amendments to the definition could be made to make it more certain. Specifically the definition could refer to permitted, controlled and consented activities.
9. In relation to the submission of Synlait, it is worth addressing the example the submitter has provided at paragraph 18 and 19 of their submission. Synlait wish to ensure that the pCARP would not result in dwellings within the DPMA that do not comply with insulation requirements being considered to be anticipated. The pCARP only addresses air quality. In this example, and for the purpose of Policy 6.20, dwellings with noise insulation are clearly anticipated within the DPMA. Whether those dwellings have noise insulation or not has no bearing on the effects of Synlait’s air discharges on the occupants of those dwellings.
10. Lyttelton Port Company seek amendment to clause 2 of Policy 6.20 to state
“Best practicable option is applied so that...
...
Ambient air quality is maintained or improved”
11. In my view this amendment does not provide sufficient guidance. It is unclear how a proposed discharge might be expected to improve ambient air quality, or maintain it in a static state, particularly if the policy does not address cumulative effects as the submitter seeks.
12. Synlait is concerned that Policy 6.20 seeks specific outcomes from the application of best practicable option. It is the intention that the policy makes it clear that the best practicable option must result in a discharge that does not cause significant adverse cumulative effects or constrain anticipated landuse. Where application of BPO does not result in such effects being avoided or mitigated the appropriate outcome might be to decline consent.
13. Synlait have submitted that the use of the word “significant “ in Policy 6.20 could be problematic, particularly when considered in conjunction with Policy 6.21. The submitter is concerned that exceedances of the Ambient Air Quality Guidelines in areas where people are unlikely to be effected may result in a discharge being considered significant. When considered in conjunction with Policies 6.2 and 6.3, it is unlikely that this assessment would be made. It is common for assessments of effects to consider “significance”. With regard to Policies 6.2 and 6.3, Fonterra noted that there is no need to refer to people and the environment as “people” is intrinsic in

the term “environment”. I agree with that statement, however the intention was to draw attention to the fact that there are Ambient Air Quality Guidelines for both human and ecological health and that both need to be considered in achieving the Objectives of the Plan.

14. Synlait are concerned that the criteria set out in Policy 6.22 may be used to determine significance for the purpose of Policy 6.20. This could be avoided with an amendment to Policy 6.22 as follows:

6.22. Avoid significant increases in total PM₁₀ ...For the purpose of assessment in accordance with this policy, the CRC will consider the following when determining significance: ...

15. Having considered the additional submissions I do not recommend further amendments to Policy 6.20.

Policy 6.21

16. Additional submissions have not raised anything in relation to Policy 6.21 that is necessary to respond to, and no further amendments are recommended.

Policy 6.22

17. Synlait and Fonterra submitted, for different reasons, that the application of the Policy to Clean Air Zones, rather than gazetted airsheds may unduly constrain industry. The reason the Policy applied to Clean Air Zones and not to gazetted Air Sheds, it because Clean Air Zones are the area in which air quality needs to be improved in order to ensure NESAQ targets can be achieved within gazetted airsheds. The policy provides the CRC with a necessary tool for enforcing observance of the NESAQ as a whole, not just Regulation 17.
18. Carter Holt Harvey have sought wholesale changes to Policy 6.22. With regard to the change sought to the first sentence of the Policy, it is my view that this proposal significantly weakens the policy and does not reflect the intent, which is to enforce observance of the NESAQ by avoiding significant increases in total PM₁₀ in Clean Air Zones.
19. With regard to the comments of Carter Holt Harvey regarding the criteria recommended for determining significance, I will address them in the Table below

Carter holt Harvey submission	Officer response
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]	If proposed new discharge will increase industries total PM ₁₀ emission contribution to the airshed by, say, 25% that would be significant. On the other hand, if the proposal is to renew a consent for an existing discharge where the relative increase will be nil, that would not be considered significant.

<p>The degree to which the discharge exacerbates cumulative effects within the Clean Air Zone affects the ability to meet the <u>National Environmental Standard for Air Quality standards</u>. [Comment: the NES addresses effects including cumulative effects as the definitions in the NES are the same as in the RMA]</p>	<p>A single discharge may have significant cumulative effects, but considered alone will not result in the NESAQ not being met. Cumulative effects include NESAQ exceedances but also include the cumulative impact of several point source discharges within a smaller area. For example industry at Hornby might not impact on the monitoring equipment in St. Albans, but when added to domestic and transport emissions in the area may have cumulative impacts on the residents of Hornby.</p>
<p>The local effects of the proposed discharge, including the location of sensitive receptors <u>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</u>. [Comment: - the location of sensitive receptors is not an issue in determining significance as there is no control those locators are positioned]</p>	<p>The location of sensitive receptors in relation to the discharge is the salient matter when determining if a discharge will be a “significant increase”. The further away the sensitive receptors, the less significant the increase in PM₁₀ is likely to be to them.</p>
<p><u>The extent to which the activity is consistent with and appropriate to the purpose of the underlying zoning of the subject site</u>. [Comment: the above clauses address the issue of location and the amenity values of the receiving environment]</p>	<p>The zoning of a site is irrelevant in determining if a proposal constitutes a “significant increase” in PM₁₀, particularly within a Clean Air Zone.</p>
<p><u>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</u> [Comment: this amendment recognises the distinction between new applications and renewals and the need to consider the existing environment]</p>	<p>This matter is addressed as point 1 of the recommended Policy.</p>
<p><u>The degree to which best practicable options for the control of air discharge emissions can or will be implemented</u>. [Comment: this amendment incorporates the concept of BPO which is consistent with other policies]</p>	<p>This does not relate to how significant the proposed total emission increase will be. Application of BPO is a method of ensuring the discharge will not result in a significant increase in PM₁₀.</p>
<p>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]</p>	<p>The duration of consent and reductions over time are important considerations when determining if an increase in emissions will be significant, when considered in terms of the capacity for the airshed to absorb emissions. For example, the space heating provisions may result in a slight increase in total emissions prior to 2019 as ULEBs are permitted in the airsheds before existing woodburner stock are removed but over 15 years there will be significant overall reductions in PM10 emissions</p>

	from space heating. The increase over the next 3 years is not significant in the context of the overall strategy.
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20. Having considered these additional submissions I do not recommend further amendments to Policy 6.22, other than that recommended paragraph 13 above.

Policy 6.22A

21. Lyttelton Port Company, Fonterra and Synlait have submitted that Policy 6.22A is unnecessary as it replicates section 108 of the RMA but does not qualify the ability of the CRC to require monitoring with case law⁴ that specifies that conditions imposed on consents must be reasonable and practical. The intent of the Policy is to indicate that the CRC will consider such conditions. It is useful and appropriate to provide such guidance so that applicants can consider its consequences prior to making an application for consent. *Newbury* will apply regardless of the Policy.
22. Such monitoring will enable appropriate “truth checking” of the effects which are often modelled for the purposes of consent application. I consider this analogous to seeking requiring a party responsible for a discharge of contaminants to land to monitor the effects on groundwater (bore testing).
23. The Policy applies outside of gazetted airsheds because the CRC undertakes monitoring within gazetted airsheds.
24. Having considered these additional submissions I do not recommend further amendments to Policy 6.22A

Policy 6.22B and Rules 7.17 and 7.18

25. Submitters have not raised new issues with regard to Policy 6.22B or rules 7.17 and 7.18 and as such I do not recommend further amendments.

⁴ *Newbury DC v Secretary of State for the Environment* [1981] AC 578, [1980] All ER 731.