

*Tabled @ Hearing  
04/04/16*

**BEFORE THE HEARING COMMISSIONERS**

**IN THE MATTER** of the Resource Management Act  
1991 ("**the Act**")

**AND**

**IN THE MATTER** of the Resource Management Act 1991  
and the Environment Canterbury  
(Temporary Commissioners and  
Improved Water Management) Act  
2010

**AND**

**IN THE MATTER** of the hearing of submissions on the  
Proposed Canterbury Air Regional Plan

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**STATEMENT OF SUPPLEMENTARY EVIDENCE BY LYNETTE PEARL WHARFE  
FOR HORTICULTURE NEW ZEALAND**

**4 APRIL 2016**

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## **QUALIFICATIONS AND EXPERIENCE**

1. My name is Lynette Pearl Wharfe, my qualifications and experience is set out in my evidence in chief dated 18 September 2015.

## **SCOPE OF SUPPLEMENTARY EVIDENCE**

2. My supplementary evidence is in response to the Commissioners Minute 5 dated 30 March 2016.
3. Horticulture NZ appreciates the Hearing Commissioners providing the opportunity for submitters to present at this reconvened hearing.
4. This evidence will address matters raised in Horticulture NZ comments in response to the Commissioners Minutes (dated 10 December), Council's revised provisions (dated 18 December 2015) and responses and recommended changes in the s42A Reply Report March 2016.
5. The matters under consideration relate to provisions for large scale and industrial and trade discharges to air, specifically Policies 6.19, 6.20, 6.21 and 6.22 and Rules 7.14 – 7.27
6. Horticulture NZ's interest is in the use of large scale burning devices to heat greenhouses in rural areas.
7. In preparing this evidence I have reviewed the comments made by other parties to the Council's revised provisions, the s42A Reply Report and the Tracked Changes s42 Recommendations.
8. The following matters will be addressed:
  - (a) General comments
  - (b) Policy 6.20
  - (c) Policy 6.22
  - (d) Policy 6.22A
  - (e) Policy 6.22B
  - (f) Revised rule framework

## GENERAL COMMENTS

9. The comments from parties in response to the Council's revised provisions show considerable consensus between parties about the issues and matters of concern.
10. However the s42A Reply Report only recommends minor changes in response to the comments. The recommended changes assist in some instances but there remain concerns with the provisions that are now recommended in the s42A Track Changes.
11. In addition to the policies which were circulated in December 2015 new rules and changes to rules are recommended in the s42A Reply Report in response to the deletion of rules 7.17 and 7.18 and the changed policies. These rules and changes were not included in the revised provisions dated 18 December 2015 so submitters have not had opportunity to comment until being able to present at this reconvened hearing.
12. The issue of scope to make the recommended changes was raised by a number of parties in written comments.
13. The s42A Recommended Tracked Changes identifies in footnotes the submissions which provide scope for the recommended changes. In respect to changes to policies 6.19 – 6.22B and a number of rules the scope is attributed to Submission 558 by Canterbury District Health Board.
14. Submission 558 is a broad submission relating to Rules 7.17 and 7.18 and sought that the activity status be amended discretionary and:  
  
*That a policy be developed and included in the plan to inform the consideration and granting of discretionary activity consent.*
15. The submission did not specifically state the relief sought or clearly articulate what it anticipated as being appropriate policies.
16. A submission should be clear as to the changes that are sought so submitters can reasonably anticipate changes that may be made as a result of the submission.
17. The submission by Canterbury District Health Board is attributed by Council as the basis for:
  - (a) Changes to Policy 6.19

- (b) Changes to Policy 6.20 including the addition of new clause (2)
  - (c) Changes to Policy 6.21
  - (d) Changes to Policy 6.22
  - (e) New policy 6.22A
  - (f) New policy 6.22B
  - (g) Consequential changes to Rules 7.19, 7.20, 7.21, 7.22, 7.23, 7.23A, 7.24 and 7.25.
18. I do not consider that submission 558 by Canterbury District Health Board is sufficient to base the range of changes now recommended in the s42A Reply Report which are attributed to that submission.

#### **POLICY 6.20**

19. Proposed Policy 6.20 sought that best practicable option (BPO) be applied so that degradation of ambient air quality from large scale and industrial activities discharging contaminants is minimised.
20. The extent of original submissions on Policy 6.20 is small, with either the policy to be retained, deleted, or minor changes made. Horticulture NZ sought that the policy be amended to 'localised air quality is minimised' rather than ambient air quality.
21. Council circulated a revised policy dated 18 December policy. Comments from parties were generally opposed to the revised provisions, particularly the degree of uncertainty that the changes introduce.
22. The s42A Reply Report recommends further changes to the policy.

*Apply the best practicable option to all large scale fuel burning devices and industrial or trade premises discharging contaminants into air so that:*

- 1. *Discharges into air do not cause significant adverse cumulative and local effects on air quality; and*
- 2. *Anticipated land use is not constrained beyond the property on which the discharge originates.*

23. The changes are attributed to submission 558 from Canterbury District Health Board discussed above.

24. It appears from the s42A Reply Report that recommended Policy 6.20 is due to the recommended deletion of Rules 7.17 and 7.18.

*"In the context of the deletion of Rules 7.17 and 7.18 it is important that there is sufficient policy guidance to ensure that the Plan Objective of maintaining air quality that provides for the health and wellbeing of people and the environment is achieved") Para 42).*

25. The report does not identify any specific weaknesses in the proposed policy framework where it is considered to have insufficient guidance to achieve the objective.

26. Both the proposed and recommended policies seek that BPO is applied.

27. However the respective policies seek different outcomes from applying BPO:

(a) Proposed policy: seeks that degradation on ambient air quality is minimised.

(b) Revised policy: seeks that discharges do not cause significant cumulative and local effects on air quality; and

Anticipated land use is not constrained beyond the property on which the discharge is located.

28. The question needs to be asked if the recommended changes are necessary to achieve the objective in the Plan and if they are within the scope of submissions made.

29. The addition of Clause 2 is of the greatest concern to Horticulture NZ, particularly the introduction of 'anticipated land use' because it is imprecise.

30. The s42A Reply Report is recommending that a definition be added for anticipated land use 'to ensure that the plan is absolutely clear':

*Anticipated land use means land use that is reasonably likely to occur and is provided for under district and regional plan provisions or by resource consent.*

31. This definition is still open to interpretation as it includes 'reasonably likely'.
32. In a rural context this would include activities that could be undertaken as permitted within the rural zone, including residential housing and lifestyle use of property.
33. Therefore if an adjacent property currently has no dwelling on it the effects of the discharge would need to be assessed as if there was a dwelling located on it. Given that the property is likely to be a number of hectares or more it is uncertain where on the property a dwelling may be located so the policy would have to be applied to the whole property, even if in the future such a change does not occur or in a place where there are no adverse effects from the discharge.
34. Policy 6.19 addresses potential reverse sensitivity effects by seeking that the location of the discharges is compatible with surrounding land use patterns.
35. In my opinion the objective of the Plan can be met through consideration of the compatibility of the surrounding land use pattern, the application of BPO, and ensuring that significant adverse effects on air quality are not caused.
36. The specific policies for industrial and large scale discharges to air also need to be considered in the context of the Central policies applying to all activities which include policies relating to location aspects such as Policy 6.6.
37. Therefore the addition of Clause 2 'anticipated land uses' is not necessary in Policy 6.20 to achieve the objective of the Plan.
38. In addition I support wording of Clause 1 to refer to 'significant adverse effects on localised and amenity air quality' as this is more certain than 'cumulative and local effects on air quality.'
39. The matter of scope to add Clause 2 also needs to be considered. The s42A Reply Report attributes the addition of the policy to Submission 558 by Canterbury District Health Board as discussed above. It is considered that Policy 6.20 Clause 2 could not have been reasonably anticipated through the submission by Canterbury District Health Board.

## **POLICY 6.22**

40. Policy 6.22 relates to discharges within the Clean Air Zones.
41. A number of parties (e.g. Synlait) have identified that the policy should relate to the gazetted air sheds as the enlarged Clean Air Zones' include significant areas, including rural land, that are outside the gazetted air sheds.
42. Policy 6.22, as now recommended in the s42A Reply Report would be more appropriate to be limited to the gazetted air sheds in relation to implementing the NESAQ.

## **POLICY 6.22A**

43. Recommended Policy 6.22A is a new policy that applies only to large scale fuel burning devices or industrial or trade premises outside gazetted airsheds. It seeks to provide discretion to the Council to instigate requirements for monitoring of both cumulative and local effects of discharges.
44. In comments on the revised provisions I sought that Policy 6.22A be deleted and that monitoring of specific discharge be a matter of discretion in rules for the discharge.
45. Most parties who made comments on the revised provisions expressed concern with the policy, that it is not necessary, reasonable or justified, provides uncertainty and that it does not provide guidance on the circumstances as to when the monitoring would be required. Matters of scope were also raised.
46. Regardless of these comments the s42A Reply Report recommends that the policy be included in the Plan.
47. The s42A Reply Report links the need for the policy to the fact that consent applications often rely on the use of modelling to predict actual or potential adverse effects, conditions may be imposed on the basis of the modelling and that monitoring of the actual effects will assist in understanding the actual effects.
48. Council can impose a monitoring condition in such circumstances regardless of the existence of a policy in the Plan. However monitoring that may be required by a

consent condition needs to clearly relate to the effects of the activity and be both reasonable and practical.

49. If Policy 6.22A is retained it should provide clear guidance as to when monitoring would be required, particularly of cumulative effects.
50. The matter of scope to add the policy also needs to be considered. The s42A Reply Report attributes the addition of the policy to Submission 558 by Canterbury District Health Board as discussed above. It is considered that Policy 6.22A could not have been reasonably anticipated through the submission by Canterbury District Health Board.

#### **POLICY 6.22B**

51. The Council's revised provisions included a new Policy 6.22B to provide for consideration of the combined effect of all consented discharges associated with the activity.
52. Comments from parties questioned the need for the policy.
53. Regardless of these comments the s42A Reply Report recommends that the policy be included in the Plan, with a minor change to add 'consented' before discharges.
54. The s42A Reply Report (Para 76) states that the policy:  
*is recommended in response to evidence that the pCARP was unclear as to whether the rules for large scale burning devices relate to heat output capacity of each device or all large scale burning devices on the property.*
55. As a consequence it is recommended that a number of the rules be amended to include consideration of the 'combined net energy output capacity within one property' rather than the 'net energy output of the device'.
56. The change is recommended to be included in:
  - (a) Rule 7.19 Permitted activity
  - (b) Rule 7.20 Permitted activity
  - (c) Rule 7.21 Permitted activity
  - (d) Rule 7.22 Permitted activity
  - (e) Rule 7.23 Controlled activity

- (f) Rule 7.23A Controlled activity
  - (g) Rule 7.24 Permitted activity
  - (h) Rule 7.25 Controlled activity
57. This is a significant change in the rule structure.
58. While the matter of uncertainty of the rules application may have been raised in evidence there does not appear to be any specific submission that sought the change that is now recommended.
59. The footnote in the track changes to the rules states that the change is consequential to inclusion of Policy 6.22B which is attributed to Submission 558 by Canterbury District Health Board.
60. The submission from Canterbury Health Board related to Rules 7.17 and 7.18 seeking that they be discretionary activities and that related policies be included.
61. The effect of the s42A recommended change to add new Policy 6.22B and the consequential changes to the rules extends beyond the scope of Rules 7.17 and 7.18 and discretionary activity provisions, as the submission is being used as a basis for changes to permitted and controlled activity rules.
62. Horticulture NZ did not anticipate that the addition of the new policy in the revised provisions circulated in December 2015 would trigger the change that is now attributed to the addition of the policy.
63. In the case of greenhouse growers the recommended change could have a significant effect on the consent activity status.
64. For instance: a grower with two .8MW burners fuelled by solid fuel or light fuel oil would be a controlled activity under Rule 7.23A if each burner was assessed separately. But the combined energy output would be over the threshold of 1MW and so the activity status would change from controlled to discretionary. Under the NRRP the activity would have been permitted under Rule AQL 24.
65. Therefore the consequences of the inclusion of Policy 6.22B is significant and was not anticipated through the submissions made on the Plan.

66. Where resource consent is required the assessment of effects can consider the combined effect of all the consented discharges and so does not need to be specifically included as a policy as recommended.
67. However it would appear that the intent is that recommended Policy 6.22B is included to provide the linkage for the addition to the rules relating to combined output.
68. I consider that this is an unanticipated consequence which is beyond the scope of submissions so seek that recommended Policy 6.22B be deleted.

#### **RULE FRAMEWORK**

69. The s42A Report recommends that Rules 7.17 and 7.18 be deleted and replaced with new rules based on BPO.
70. New rules 7.23A and 7.23B are recommended to be added to provide for solid fuel burners outside the Clean Air Zone, which would provide for greenhouse growers using solid fuel in rural areas outside the enlarged Clean Air Zones
71. Attached to this evidence are tables that sets out the rules in the NRRP as they currently apply outside the Clean Air Zones and how the new rules in the pCARP would apply.
72. The table demonstrates that greenhouse growers **will** have greater regulatory requirements under the pCARP. However it is unclear why Council consider that such a more stringent regulatory requirement is needed.
73. While recommended Rules 7.23A and 7.23B provide for solid fuel but there is no definition for solid fuel in the pCARP.
74. The definition for solid fuel in the NRRP includes wood, coal and its derivatives, and manufactured fuel pellets. The definition isn't appropriate in the pCARP as there are different rules for wood pellets and coal.
75. Therefore there needs to be clear direction as to what fuels are included as 'solid fuels' in the recommended rules.
76. In addition there appears to be no provision for use of 're-refined oil', which is defined in the Plan and is a potential fuel that growers may use.

## RECOMMENDED CHANGES

77. The Hearing Commissioners have sought that wording of specific changes sought be included. The following are the changes that I would support:
78. Policy 6.20:  
Amend Clause 1: Discharges into air does not cause significant adverse effects on localised and ambient air quality.  
Delete Clause 2
79. Policy 6.22 – Amend to apply to gazetted air sheds
80. Policy 6.22A - Delete
81. Policy 6.22B - Delete
82. Rules:
- a) Delete combined net energy output capacity within one property from
    - i. Rule 7.19 Permitted activity
    - ii. Rule 7.20 Permitted activity
    - iii. Rule 7.21 Permitted activity
    - iv. Rule 7.22 Permitted activity
    - v. Rule 7.23 Controlled activity
    - vi. Rule 7.23A Controlled activity
    - vii. Rule 7.24 Permitted activity
    - viii. Rule 7.25 Controlled activity
  - b) Amend Rule 7.23A to Permitted
  - c) Amend Rule 7.23B to Controlled
  - d) Add a rule to provide for use of re-refined oil outside clear air zones
  - e) Add a definition for solid fuel

## **CONCLUSION**

- f) I have reviewed the Councils s42A Reply Report and submitter's comments on the revised provisions and made comments as above. I confirm that my evidence in chief stands.

**Lynette Wharfe**

**4 April 2016**

Current rule structure in the NRRP for growers outside Clean Air Zones

<b>Rule</b>	<b>Fuel</b>	<b>Size</b>	<b>Activity status</b>
AQL 22	Gas	5MW or less	Permitted
AQL 23	Diesel or kerosene	2MW or less	Permitted
AQL24	Solid fuel or light fuel oil	1MW or less	Permitted
AQL 26	Diesel or kerosene	2MW to 5MW or less	Controlled
AQL 26	Gas	Greater than 5MW to 20MW	Controlled
AQL 26	Solid fuel or light fuel oil	Greater than 1MW to 5MW	Controlled
AQL 26D	Solid fuel or light fuel oil in existing large scale fuel burning device	Greater than 5MW	Controlled activity
AQL 27		Not provided for in other rules	Discretionary

Revised rule framework for Large scale fuel burning devices outside of Clean Air Zones – new rules are shaded

<b>Rule</b>	<b>Fuel</b>	<b>Location</b>	<b>Size</b>	<b>Activity status</b>	<b>NRRP status</b>
7.19	LPG or compressed natural gas		Less than or equal to 5MW	Permitted activity – subject to condition	AQL 22 Permitted
7.20	Diesel	Outside Clean Air Zone	Less than or equal to 2MW	Permitted activity – subject to condition	AQL 23 Permitted
7.21	Pellet fuels and wood chips	Outside Clean Air Zone	Less than or equal to 1MW	Permitted activity – subject to condition	AQL 24 Permitted
7.23	Pellet fuels and wood chips	Region wide	Less than or equal to 1MW that don't comply with 7.21 or 7.22 conditions	Controlled activity	
New rule 7.23A	Other solid fuels	Outside Clean Air Zone	Less than or equal to 1MW	Controlled – subject to condition	AQL 24 Permitted
New rule 7.23B	Solid fuel	Outside Clean Air Zone	That doesn't meet 7.21, 7.23 or 7.23A	Discretionary	AQL 26 AQL 26 D Controlled
7.27	Large scale	Region wide	Not meeting other rules	Discretionary	Discretionary