Submission to Proposed Canterbury Air Regional Plan

Attention: Environment Canterbury
PO Box 345
Christchurch 8140

Ashburton District Council (ADC) wishes to speak to its submission and would consider joining with other parties to make joint submissions on points of common interest.

ADC wishes to thank the Canterbury Regional Council for the opportunity to submit on the proposed Canterbury Air Regional Plan (the Air Plan).

Submission points follow:

1 Definition "Property" (p2.4)

Reason for submission:

The current definition of property could be construed to include road reserves. This may result in perverse and unintended outcomes from the application of rules within the plan.

Decision requested:

Add the following: "The definition of property excludes all road reserves where a road has been formed."

2 Definition "sensitive activity" (p2.5)

Reason for submission:

Part (b) of the definition simply states a *"residential area or zone".* Such areas are created, defined and enshrined in District Plans. For clarity, the document should specify that these areas or zones are as defined in district plans.

Decision requested:

To (b) add the words following *"residential area or zone* <u>*as defined in a district plan."*</u>

3 Submission: Reference to *"Urban"* and *"townships"* within document, (including definitions).

Reason for submission:

Similar to submission point 2, the document refers to "urban" areas and "townships" at various points. However, it would appear that defining such areas in terms of their District Plan zoning would be clearer and more efficient for users.

Decision requested:

Replace use of "*Urban*" and "*township*" with "*residentially zoned*" and make consequential changes for other parts of the document such as definitions to support this change.

4 Submission: "Outdoor Burning" (p.6-2) and "Outdoor Burning" note (p.7-2)

Reason for submission:
ADC acknowledges reference to the use of bylaws however there also needs to be reference to the Forest and Rural Fire Act 1977 when outdoor burning is considered. This is important as this legislation relates to, among other things, restrictions and prohibition on the lighting of fires.

Decision requested:
Insert reference to Forest and Rural Fires Act 1977 as appropriate.

5 Submission: Policy 6.4 (p6.1)

Reason for submission:

Policy 6.4 is directed towards the reduction in overall concentrations of $PM_{2.5}$ in clean air zones by 2030 and refers to the 24 hour average of $25ug/m^3$. In view of the absence of any guidelines under NESAQ it would be appropriate for this policy to adopt the annual average as the benchmark rather than the 24 hour average.

The critique of the current approach to the management of air quality by Dr. Jan Wright, Parliamentary Commissioner for the Environment in *"The State of Air Quality in New Zealand"* 2015, stressed the greater importance of long-term exposure to poor air quality over short term instances. This would support a policy focusing on the annual average for $PM_{2.5}$ rather than the 24 hour average.

Decision requested:

Amend Policy 6.4 to refer to the annual average for $PM_{2.5.}$

6 Submission: Policy 6.7 (p6.1)

Reason for submission:

Policy 6.7 signals an expectation that where there is a zoning change in a District Plan and there is an emission to air in the locality which causes adverse effects for the new activities, the discharging activity will either *"reduce the effects or relocate."* The Section 32 Report indicates that the Air Plan does not encourage or condone reverse sensitivity.

Policy 14.3.5 of the RPS states *"(1) Avoid encroachment of new development on existing activities discharging to air where new development is sensitive to these discharges, unless any reverse sensitivity effects on the new development can be avoided or mitigated."*

It would appear that the RPS places the onus on the new development to absorb the reverse sensitivity effect, while Policy 6.7 places the onus on the existing activity, which is expected to *"reduce the effects or relocate."*

Decision requested:

Delete Policy 6.7 and replace with revised text which is consistent with Canterbury Regional Policy Statement (CRPS) Policy 14.3.5 (1).

7 Submission: New Policy 6.XX (p6.3)

Reason for submission:

The Policies 6.27 – 6.30 address discharges resulting from the use of space heating appliances anywhere in the Region, and Policies 6.31 – 6.35 address discharges resulting from the use of these appliances in all Clean Air Zones. The Proposed Plan does not provide specific Policy support for the continuing use of open-fires in homes on sites of 2 ha and greater outside of Clean Air Zones.

Given the generally good air quality across Canterbury outside of the urban areas and the limited likelihood of there being a significant number of dwellings on sites of 2 hectares or greater in urban areas not subject to Clean Air Zone controls, the adverse effect of open-fires on air quality can be regarded as inconsequential. Under these conditions any effort to control the use of existing open-fires or enclosed domestic burners that do not meet low or ultra-low emission standards is not considered to be warranted.

Decision requested:

Provide a new policy for sites of 2 ha or more outside of Clean Air Zones that states:

"On sites of 2 ha or more outside of Clean Air Zones anywhere in the Region allow the discharges to air from open-fires and enclose burners that are not classified as low-emitting or ultra-low emitting."

8 Submission: Policy 6.35 (p6.3)

Reason for submission:

Policy 6.35 states that the discharge of contaminants into air from the use of open fires is to be avoided. To provide alignment with the Rules regarding the use of space heating appliances, this policy should refer to the date at which the NESAQ was amended to remove the installation of open-fires as a permitted activity after 1 January 2013.

Decision requested

Amend Policy 6.35 by adding words *"installed on or after 1 January 2013"* after the words use of open fires.

9 Submission: Policy 6.38 (p6-3)

Reason for submission:

Council is concerned about unrealistic and unaffordable costs of installing ultra-low emission (ULE) burners by 1 January 2019, given current additional costs over low emission (LE) units, if the costs of these were substantially in excess of the cost of installing LE wood burners on 1 January 2019.

Decision requested

Defer implementation until average cost of a ULE appliance is less than 50% greater than a LE burner.

10 Submission: Rule 7.5 (p7.2)

Reason for submission:

Rule 7.5 provides that the discharge of contaminants to air anywhere in the Region from outdoor burning which does not comply with Rules 7.6 to 7.13 is a "prohibited activity". In the NRRP: Rule AQL34 provides that emissions to air from outdoor burning which do not meet the conditions attached to a similar suite of rules is a "discretionary activity". The step-down from a permitted activity directly to "prohibited activity" is unreasonably severe.

It is also noted that Schedule 1 (p8.4) provides a list of the information required for a resource consent for applications for discharges to air from outdoor burning. This would indicate that circumstances where outdoor burning is a consented activity is contemplated, which would make the establishment of a default rule to "discretionary activity" a response to the intentions of the plan.

Decision requested:

Amend Rule 7.5 to "discretionary activity" and make the preparation of a smoke management plan a condition of a discretionary consent for Rule 7.10 where condition 7.10 (2) cannot be met.

11 Submission: Rule 7.6 (p7.2)

Reason for submission:

Rule 7.6.3 provides that within clean air zones no building fires for firefighter training purposes are to occur during the months of April, May, June, July, August and September.

There are a number of reasons why it is more desirable to conduct this type of training during winter months. The logic behind restricting burning during winter months is presumably because of the normally higher moisture content of vegetation fuels during winter. This logic does not apply to buildings. From the firefighters perspective the winter months are a better time to be carrying out this training as they are not as busy responding to vegetation fires as during the summer months. Additionally, it is also a time when the risk of a fire escape into surrounding vegetation is less likely. This activity is very infrequent, as and when buildings become available. Often there are time frames placed on the NZFS by the building owners as to when the sites must be cleared. If it is necessary to wait several months then the opportunity for live fire training may be lost due to the owner finding an alternative means of disposal.

Decision requested:

Delete clause 7.6.3 (within a clean air zone building fires do not occur during the months of April, May, June, July, August and September).

12 Submission: Rules 7.8 and 7.9 – Smoke Management Plans

Reason for submission:

In relation to smoke management plans for all stubble burning, it is unclear as to the required frequency at which smoke management plans would be required. For example, is a new plan required for each burn or will a single plan suffice for each season, year or other period?

Decision requested:

That the document be amended to clarify whether individual smoke management plans will be required per burn or whether a “strategic” approach might be employed by applicants for multiple events.

13 Submission: Rule 7.8 and 7.9 – Consenting Requirement Uncertainty

Reason for submission:

ADC is concerned about a lack of clarity in the document as drafted in relation to the process, timeframes and costs associated with situations where resource consents are required for stubble burning within buffer areas. It is unclear whether a party could apply for a single consent to allow them to burn multiple times within a certain period or whether each individual burn would require its own consent.

If a separate consent is required, costs could be significant and would also be practically difficult given that certain climatic conditions are required for burning and that applications are likely to be submitted over a short period of time. Council would seek reassurance that the Regional Council would have the resources to deal efficiently with such applications to ensure that farming operations would not be significantly hindered if individual consents were required.

Decision requested:

That the document be amended to clarify that consents would allow for multiple burns over a certain period (subject to compliance with conditions).

14 Submission: Rule 7.8/7.9 – Buffer Zone

Reason for submission:

Given the level of control imposed through the Air Plan and requirements to prevent odour/nuisance, ADC is concerned regarding the separation distances (5km) from residential boundaries which will comprise a significant proportion of the Ashburton District plains, much of which is rural land on which burning commonly occurs. ADC is also concerned about the additional preparatory and consenting requirements emerging from compliance or consent in this respect for those seeking to undertake farming activities affected by the restrictions within these areas.

Decision requested:

That the Regional Council revisit the 5km setback requirement and reduce the setback from such zones accordingly.

15 Submission: Rule 7.10

Reason for submission:

Rule 7.10.6 refers to smoke discharges of three days or more when requiring a smoke management plan. This section also refers to Schedule 3 of the document. Section 2 of Schedule 3 refers to burns of more than "four days", this appears to be inconsistent.

Decision requested:

That the difference between the Rule and the Schedule be revisited and if necessary consequential amendments made to remove inconsistencies.

16 Submission: Rule 7.10 (3)

Reason for submission:

Rule 7.10 (3) requires that organic material to be burnt has been left to dry for at least six weeks prior to burning or is located at least 200m in any direction from a sensitive activity. Whether the material to be burnt needs to be left to dry will depend on it being living organic matter as opposed to material such as untreated dried wood or cardboard. Having the

requirement for material to have dried for a specified period or the location of burning being at an extended distance from sensitive activities should be qualified. It needs to take into account the nature of the organic material to be burnt.

The extension of the distance from sensitive activities to 200 metres in any direction if the material to be burnt is not dry is also an unreasonable condition of outdoor burning as a permitted activity in rural areas. If people make a habit of lighting fires involving organic material that cause a nuisance effect, then the Air Plan provides the basis for enforcement action.

Decision requested:

Amend Rule 7.10 (3) to read "…200 metres clearance in any direction if material is not dry".

17 Submission: Rule 7.13

Reason for submission:

Rule provides for outdoor burning in urban areas for *"cooking".* In the NRRP: Chapter 3 – Air Quality, cooking is defined as hangi and barbeque. As cooking is also referred to in the Proposed Plan with respect to food manufacturing it would be more appropriate to replace *"cooking"* in Rule 7.13 with hangi, barbeque, pizza oven and other small scale cooking devices.

Decision requested

Amend rule 7.13 to read:

In urban areas, the discharge of contaminants into air from outdoor burning for the purposes of ~~cooking~~ hangi, barbeque, pizza oven and other small scale domestic cooking devices is a permitted activity.

18 Submission: Rule 7.57 (P7-18&19)

Reason for submission:

This rule has implications for Territorial Authorities that operate community wastewater networks. Part 3 of the rule requires that if a discharge of odour occurs, then an odour management plan must be held. This is contrary to guidance in the Schedule 2, where the assessment for whether the discharge is "offensive or objectionable" is the combined impact of frequency; intensity; duration; offensiveness; and location. The requirement to manage an issue of odour should only be enforced where the odour has been assessed as being offensive or objectionable.

Decision requested

Amend rule 7.57 Part 3 to read:

"If there is a discharge of offensive and objectionable odour or dust beyond the boundary of the property of origin, an odour and/or dust management

plan prepared in accordance with Schedule 2 must be held and implemented by persons responsible for the discharge unto air; and"

19 Submission: Setback distances Rule 7.66(1)

Reason for submission:
The separation distance, as drafted, requires setbacks of at least 500m from a property boundary. Discussions through the ADC variation process identified concerns within the farming community regarding consent requirements and the associated uncertainty when sourcing finance, purchasing and developing land. Industry also expressed concern that requirements to site buildings away from boundaries to avoid consent requirements often times interfered with other farming activities for example the siting of irrigator paths.

ADC rules emerging from these discussions have resulted in separation distances being calculated from activities on neighbouring properties rather than from property boundaries. This rule allows more flexible use of rural land whilst still protecting neighbouring occupiers.

ADC notes that since the operative date of the District Plan (August 2014), there have been no complaints received in relation to this rule in practice.

Decision requested:
Change the trigger separation distance to read "The structure is located at least 500m from ~~the property boundary~~ … a sensitive activity on a site held in separate ownership and …"

20 Submission: 500m Setback from boundaries 7.66(1)

Reason for submission:

As with submission point 14, ADC considers the restrictions imposed through Rule 7.66 to be overly conservative. It is submitted that a separation of 400m is appropriate separation given that the rules within the ADC plan have been in force since August 2014 and Council is not aware of complaints arising from their operation.

Decision requested:
Amend distance from 500m to 400m.

21 Submission: Objective 7.66(2) 1500m from "Urban" Land

Reason for submission:
ADC considers that the rule, as drafted, does not adequately anticipate that there are differing intensities of residential activity, especially in "peri-urban" areas where residents might expect greater levels of odour from farming related practices to be apparent than for sites located in traditional, suburban, residential environments.

Decision requested:

Provide reduced separation distances to have regard for rural - residential buffer zones, such as Ashburton District's "Residential D" zone.

22 Submission: Objective 7.66/67

Reason for submission: 12 hour time limit

The 12 hour time restriction appears to be arbitrary and does not take into account instances when animals may be confined, for example during inclement weather.

The rule would also be difficult to monitor and enforce given that it would be difficult to identify whether animals would in fact leave the building.

Moreover, the rule would fail to apply in instances where animals were milked twice a day as it would be likely that they would not spend 12 hours confined at one time.

Ashburton District Council, during variations to its proposed (now operative) District Plan, conducted significant discussion with industry. This resulted in intensive farming being defined as being continuous confinement of more than two weeks. This was in order to differentiate true intensive farming (which is likely to generate additional odour) from other, more traditional and less intensive farming practices.

ADC also provided exemption from rearing operations, where activities have been seen to be low impact and where juvenile animals are frequently confined for several months.

Decision requested:

Change the reference from twelve hours to two weeks of continuous confinement and exempt the rearing of juvenile animals from such controls.

23 Submission: Heritage Buildings Schedule 9 and Rule 7.81

Reason for submission:

The use of a schedule to identify Heritage Buildings within District Plans might be problematic in ensuring that the document remains current as, over time, items are removed from or added to District Plan Registers. It is suggested that a more appropriate solution to this situation would be to delete the schedule and to simply make reference to district plan heritage protection schedules.

Decision requested:

Delete Schedule 9 and;

Amend wording of Rule 7.81 (1) as follows:

"…where that building is listed in ~~Schedule 9~~ the relevant district plan as a protected heritage item…"

24 Submission: Heritage Buildings – New Rule

Reason for submission

A number of heritage properties were historically provided with cooking appliances which, while providing some heat, were primarily for the purpose of cooking and food preparation.

7.81 specifically refers to heating appliances, which may lead to confusion or inconsistency when landowners or residents consider using cooking appliances which are original and form important parts of the fabric of a heritage item.

Decision requested:

Provide relief for original cooking appliances equivalent to that provided for heating appliances within rule 7.81 and any necessary relief to amend associated policies.

25 Submission: Objective 7.85/86

Reason for submission: Date of installation of Wood burner

The date of installation of wood burners is not recorded by Ashburton District Council and may be difficult to monitor or enforce. Council records date of Code Compliance Certificate through its Building Consent process and it is suggested that this is a more appropriate date as it is the first date that the appliance can be legally used.

Decision requested:

Change "date of installation" to "date of issue of Code Compliance Certificate".

26 Submission: Rule 7.10 (additional condition) (p7.4)

Reason for submission:

The permitted activity Rule AQL29 (5) in NRRP: Chapter 3 – Air Quality provides that *"only small quantities of petroleum products, up to 10 litres per fire, may be used as accelerants."* It is also noted that in NRRP Chapter 3 – Air Quality Appendix AQL1 "Guide to minimising smoke emissions from outdoor burning …" that it is recommended in (g) that *"small quantities of diesel oil or re-refined oil may be used as accelerants. Burning of rubber, used or waste oil is prohibited …"* As it is necessary to have discharges to air specifically permitted under *RMA Section 15,* it is appropriate to specifically permit the use of diesel oil or re-refined oil as an accelerant when beginning burning vegetable or other organic material outdoors.

Decision requested:

Add to Rule 7.10 new condition that states:

"A quantity of diesel oil or re-refined oil, not exceeding 10 litres per fire, may be used as an accelerant when undertaking outdoor burning of vegetation, paper, cardboard and untreated wood."

27 Submission: Rule 7.10 (additional condition) (p7.4)

Reason for submission:

A further condition caveat with regard to the outdoor burning permitted activity rule for organic waste in NRRP: Chapter 3 – Air Quality Rule 29 states that *"minor and incidental amounts of materials specifically excluded under Rule AQL36 (a), (d), (e), (i) and (l) … is a permitted activity."*

Decision requested:

Add to Rule 10 new condition that states:

"Minor and incidental amounts of materials specifically excluded under Rule 7.4"

28 Submission: Rule 7.54

Reason for submission:

It is unclear the scope of this Rule which relates to *"waste transfer sites".* It would appear from the limit of 5t per day that it is intended to be directed to solid not hazardous waste transfer, and this should be clarified.

Given the range of conditions designed to manage discharges, including the quality of the discharges and the management of these beyond the property boundary, it would appear that the setting of a 5 tonne limit is unnecessarily arbitrary.

Decision requested:

Amend Rule 7.54 to read:

"Discharges of contaminants into air from solid waste transfer sites processing up to an average of 10 tonnes per day is a permitted activity …"

29 Submission: Rule 7.55

Reason for submission:

Rule 7.55 provides a set of conditions under which the discharge into air of contaminants from a clean fill site is a permitted activity. Condition (1) provides that the discharge does not occur within 300metres of a sensitive activity located on an adjoining property.

Given the conditions controlling the material that is deposited in clean fill sites, differences in the scale of operation, and the relatively infrequent times at which material in a clean fill site is deposited or otherwise disturbed, the establishment of a 300metre buffer zone to protect sensitive activities from adverse effects is unreasonable.

It is recognised that there could be instances where there are discharges of dust, but not odour as it is a clean fill site, these should be managed with respect to neighbouring sensitive activities through the dust management plan required by condition (5).

Decision requested:

Delete Condition Rule 7.55 condition (1).

30 Submission: Rule 7.56 (p7.18)

Reason for submission:

Rule 7.56 provides for the discharge of contaminants into air from the treatment and disposal of 50m^3 of human sewage effluent per day as a permitted activity. The use of a "per day" threshold is considered unreasonable for identifying those small scale treatment plants that can be operated under 7.56 as a permitted activity. The volume of material through such plants can fluctuate quite widely, and accommodated without any particular difficulty. It would therefore by more reasonable for the threshold for Rule 7.56 to be based on an annual average of 50m^3 rather than a daily amount.

Decision requested:

Amend Rule 7.56 by deleting the words *"~~per day~~"* and replacing them with the words *"less than an annual average of 50m^3 per day.*

31 Submission: Rule 7.57 (p7.18)

Reason for Submission:

Rule 7.57 provides that the discharge of contaminants into air from air pressure release valves on sewerage systems that are on publicly owned land already in place should be a permitted activity, that meet conditions (2), (3) and (4) irrespective of location. This would avoid the requirement to obtain retrospective global consents for these valves which are already part of the network infrastructure, and not necessarily currently a cause for concern.

Decision requested:

Amend Rule 7.57 so that condition (1) reads:

"The discharge occurs from an existing air pressure release value on a sewerage system, or does not occur within a property intended for residential use; and (2) …"

32 Submission: Rule 7.58 (p7.19)

Reason for submission:

Rule 7.58 provides for the air pressure release valves on sewerage systems that cannot comply with Rule 7.57 to be a restricted discretionary activity. The need to apply for consents that can be declined by the Regional Council is unreasonable given the importance of sewerage systems to public health and the wellbeing of communities.

Given that the release values are a component of local infrastructure it would appear that the matters listed in addition to the particular matters for control listed would appear to represent an unnecessary consenting burden on applications for air pressure release valves on sewerage systems. For this reason, reference to (2) *"The matters set out in Rule 7.2"* is unnecessary.

Decision requested:

Amend Rule 7.58 from *"restricted discretionary"* to *"controlled"* with the matters for control to be as set out in 7.58 (2) deleted.

33 Rule 7.72 (p7.22/23)

Reason for submission:

Rule 7.72 is designed to encompass all discharges that result from the application of agrichemicals or fertilisers as a permitted activity, and requires that applications be undertaken in accordance with NZS8409:2009. This Rule replaces two rules in the Operative Plan, one addressing the small scale application of agrichemicals and the second large scale, commercial and/or contractor scale operations.

The two rule approach allows for small scale applications, while requiring the manufacturer's instructions for the use of the agrichemical to be followed. This would not require the person using the agrichemical on his/her own property or on the road reserve adjacent to that property to have NZS user certification.

It is noted that other regional plans adopt a two rule approach to the management of discharges to air of agrichemicals, and that the Gisborne Plan includes details of the requirements for a person to achieve NZS certification as a schedule in this Plan. To have a single rule with the level of reliance on NZS8409:2009 also presents difficulties because copies of New Zealand Standards are relatively expensive to purchase and cannot be accessed on the internet.

Decision requested

Add a new rule following 7.72 that addresses small scale applications of agrichemicals using hand held appliances by property owners, with the provision that agrichemicals are to be used in accordance with manufacturer's directions. The new rule should only require applications consistent with NZS8409:2009 certification if the applications are

undertaken by a licensed operator. As in AQL70, the new rule should provide for the application of agrichemicals without nationally accredited qualifications by owners on roadsides adjacent to their property.

34 Note: Schedule 3

ADC would note that the numbering in the third Schedule appears to have a typographical error in that the number "1" is used in two sections. For the purposes of comments on Schedule 3 as follows, ADC has counted from the first paragraph, so section 2 as numbered on the page would be section 3 and so on.

Submission: Schedule 3, third section

Reason for submission:

It is unclear whether the weather forecasting as proposed in the Schedule can be done by a private individual or whether it would require a report from a suitably qualified or experienced person and what would qualify them being such a person.

Decision requested:

Relief to clarify the level of technical knowledge required in support of weather conditions in Smoke Management Plans.

35 Submission: Schedule 3 (sixth section)

Reason for submission:

The methods for minimising impacts on people affected by smoke include the notification of the New Zealand Fire Service before the burning commences. Also important but omitted from the list is the notification of the Rural Fire Authority.

Decision requested:

Relief which acknowledges the importance of informing the Rural Fire Authority of the activity before commencement.

36 Submission: Schedule 7, Part 1

Reason for submission:

The Plan, as written, requires installation of home heating appliances to be authorised by the Home Heating Association.

The Building Act allows any person to install burners/heaters, subject to passing final inspection by Council Building Inspectors.

As drafted, the Air Plan seeks to impose additional controls beyond the regulatory controls of the Building Act as to who may install solid fuel heaters/burners. The Air Plan provides no evidence as to why existing Building Act requirements are not sufficient in controlling quality of

installations. This appears duplicative and inefficient in terms of efficiency of process for applicants.

Additionally, it is understood that there are few accredited installers in Canterbury and that the requirements for accreditation will mean that there will be a significant delay in sufficient numbers of installers to service demand in Ashburton.

Decision requested:

Delete Part 1 of Schedule 7 from the Air Plan.