

Memorandum

To	Chair and Members, MEP Hearing Panel
From	David Jackson, Reporting Officer
Date	9 April 2019
Subject	Propose Marlborough Environment Plan, Air Quality Hearing – questions relating to Officer’s Reply to Evidence, Appendix 1

1. The Panel in Minute 58 asked a number of questions relating to Appendix 1 in my Reply to Evidence to the Resource Quality – Air Hearing, as follows:
 - I. *In your Appendix 1 you have recommended changes to the permitted activity standards, including the addition of the wording, “...was installed prior to 2016...” or similar. The Panel seeks your response as to what is the relevance and/or benefit of this additional text in terms of the application of the rules, and the implications of not including the recommended addition.*
 - II. *In para 5 of Appendix 1 of your Reply to Evidence you recommended the addition of the phrase “installed”. You offered to prepare a draft for the Panel’s consideration. The Panel would like to consider a proposed wording for this definition and request a possible wording from you for its consideration.*
 - III. *In para 2 of Appendix 1 you recommend that changes set out elsewhere in the appendix also apply to the rules/standards in Chapters 6, 9, 10 and 12. Could you please identify these provisions to ensure that if the Panel accepts your recommendations, they are then applied to the correct rules/standards.*
2. Attached below is a copy of Appendix 1 from my Reply to Evidence with responses to these questions in red text.
3. In terms of Question (i) and the possible removal of ‘..was installed prior to 2016’ or similar, I do have concerns about this, which I discuss further below. The Plan as notified has a rule structure (e.g. 5.1.26/5.3.20 and 5.1.27/5.3.21) that differentiates between appliances installed before the MEP was notified and after. While the ‘..was installed prior to 2016’ words do complicate the rules (as recommended in my Appendix 1), I believe removing them could lead to unintended consequences and uncertainty in rule interpretation.
4. As well as my comments below on Question (i) I also attach separately a table I prepared to help understand the operation of the rules and standards – as the rules are in the proposed MEP, and as recommended in my Appendix 1 (with revision marking removed from the text to make it easier to read). In the table there is also a precis of the rules, to aid getting an overview. There are annotated comments in that table as well (some more detailed), about the potential effects of removing ‘installed prior to..’. This table (Attachment A) provides a good summary of my response to Question (i).
5. The responses to Questions (ii) and (iii) are also below. Please contact me if you need any clarification or have any other questions.



Opus

APPENDIX 1 - RECOMMENDED

Prohibited rule 5.5.5

From 9 June 2017 the discharge of contaminants to air within the Blenheim Airshed from the burning of solid fuel in a small scale solid fuel burning appliance (except an enclosed pellet burner or an enclosed woodburner installed after 1 September 2005) that has been installed for more than 15 years.

Other rule changes to remove the restriction on the use of MEP-compliant woodburners and pellet burners, following on from the changes to rule 5.5.5

Permitted activity rule 5.1.25

Discharge of contaminants to air within the Blenheim Airshed from the burning of solid fuel in a small scale solid fuel burning appliance that at 9 June 2016 was is 15 years of age or older (except an enclosed pellet burner or an enclosed woodburner installed after 1 September 2005).

Permitted activity rule 5.1.26

Discharge of contaminants to air within the Blenheim Airshed from the burning of solid fuel in a small scale solid fuel burning appliance that was installed prior to 9 June 2016 and that is up to 15 years of age (except an enclosed pellet burner, or an enclosed woodburner installed after 1 September 2005) or an enclosed pellet burner of any age installed prior to 9 June 2016.

DJ Comment (dated 3.4.19)

'was installed prior to 9 June 2016 and that' could be removed from the rule without affecting its operation significantly.

If in the future a multi-fuel (coal or wood) appliance was created that met the MEP Appendix 8 emissions and efficiency standards (there a currently no such appliances that do) then under the revised rule, such a MEP compliant multi-fuel burner would have to be replaced after 15 years. However, it is very unlikely that such an appliance will ever pass the MEP Appendix 8 requirements so very unlikely the 15-year phase out would affect any future multi-fuelled burners, and if it did, it would most likely only be a handful of burners. Multi-fuelled burners could not be included in the exception (along with 'woodburners installed after 1 September 2005' as multi-fuel burners at that time, and since, have not been MEP emission compliant and therefore they do need to be replaced after 15 years and not exempted, unlike the compliant woodburners and pellet fires).

Permitted activity rule 5.1.26A

Discharge of contaminants to air within the Blenheim Airshed from the burning of solid fuel in an enclosed pellet burner installed prior to 9 June 2016, or an enclosed woodburner installed after 1 September 2005.

DJ Comment (dated 3.4.19)

See below – Permitted standard 5.3.20A.

Permitted standard 5.3.19

Discharge of contaminants to air within the Blenheim Airshed from the burning of solid fuel in a small scale solid fuel burning appliance that at 9 June 2016 was is 15 years of age or older (except an enclosed pellet burner or an enclosed woodburner installed after 1 September 2005).

5.3.19.1 The continued use of the specified appliance is only permitted until 9 June 2017.

5.3.19.2 The appliance must burn only fuels approved for use in the appliance.

Permitted standard 5.3.20

Discharge of contaminants to air within the Blenheim Airshed from the burning of solid fuel in a small scale solid fuel burning appliance that was installed prior to 9 June 2016 and that is up to 15 years of age (except an enclosed pellet burner or an enclosed woodburner installed after 1 September 2005), ~~or an enclosed pellet burner of any age installed prior to 9 June 2016.~~

5.3.20.1 *The appliance must comply with the stack requirements of Appendix 8 – Schedule 2.*

5.3.20.2 *The appliance must only burn fuels approved for use in the appliance.*

See comments on 5.1.26 above.

Permitted standard 5.3.20A

Discharge of contaminants to air within the Blenheim Airshed from the burning of solid fuel in an enclosed pellet burner installed prior to 9 June 2016, or an enclosed woodburner installed between 2 September 2005 and 9 June 2016.

5.3.20A.1 *The appliance must comply with the stack requirements of Appendix 8 – Schedule 2.*

5.3.20A.2 *The appliance must only burn fuels approved for use in the appliance.*

DJ Comment (dated 3.4.19)

Removing 'installed prior to' from this standard (and related rule 5.1.26A), in my view, would affect its operation and introduce potential uncertainty to the rules. Under rule 5.3.21, all appliances (including pellet burners) installed after 9 June 2016 have to comply with rules regarding the stack, approved fuels and emissions and thermal efficiency.

Removing the words 'installed prior to 9 June 2016' in rule 5.3.20A would mean that all pellet burners, including new ones being installed would not have to meet the emissions and efficiency standards. It would also create potential confusion as to whether pellet burners are covered by rule 5.3.20A or 5.3.21. Possibly 5.3.21 would override 5.3.20A, but it would create the potential for arguments about interpretation – e.g. would the 'specific' (5.3.20A) override the 'general' (5.3.21)?

Recommendation:

1. I recommend that the above rule changes be made (replacing my recommendations in 5.1.25 and 6.1.7, 5.3.19, 5.5.5, 12.5.3, Policy 15.2.2 and potentially Policy 15.2.3. (I seek leave from the Panel to provide an undated Appendix 1 *Recommended Decisions on Decisions Requested*, as a number of my recommendations will change from my s42A report. I have not had time to carefully work through my s42A report and that table yet).
2. I also recommend that the same changes be made where they occur in identical rule in other chapters. Chapter 6, 9, 10, and 12. As discussed above, I consider there is scope within the Woodburner Unite submission for this, and Allister Leach (135.2).

Response to Question 3:

See Table 1 attached.

3. I recommend that Policy 15.2.2 as a consequence be changed also, so there is not a mismatch between the policy and the rules.

Currently the policy says:

Phase out small scale solid fuel burning appliances older than 15 years of age within Blenheim.

I recommend it be amended to:

Phase out within Blenheim small scale solid fuel burning appliances older than 15 years of age that do not comply with the efficiency and emissions standards in the Plan within Blenheim.

4. I recommend that the first paragraph in explanation to Policy 15.2.2 be amended as follows:

This policy recognises that ~~the efficiency of older solid fuel burning appliances decreases with time and ceases to be efficient~~ have higher particulate emissions than more modern burners that comply with the standards in NESAQ and this Plan after 15 years. Modelling has shown that the NESAQ will be achieved by 2016 if, in conjunction with the prohibition on open fires and outdoor burning of rubbish, older style enclosed burning appliances are replaced at the end of their 15 year life. This policy seeks to ensure that this phase out occurs by encouraging people to either replace existing solid fuel burning appliances with modern and compliant solid fuel burning appliances or install other clean forms of heating (e.g. electric). The Council retains records of the installation of fuel burning appliances and the priority for action will be those solid fuel burning appliances installed prior to 2001 (i.e. 15 years prior to 2016).

5. I recommend the Panel consider (for the sake of clarity on interpretation of the rules) where a lot hinges on the age of the burner, to include a definition of 'installed'. It has not been sought in any submission, but I am concerned that the relevant date at which replacement is needed and prohibition occurs could be uncertain. Is it 'installed' or when a building consent is issued? Many burners are installed without building consent, so tying it to issue (or Code Compliance?) of a building consent could be problematic. Burners without a building consent could potentially be deemed ageless and escape the 15-year phase out for older burners. If the Panel wished to explore this, I could work up a draft definition for consideration.

Response to Question 3:

Below is a possible definition of 'installed' (and hence age of appliances) for the Panel's consideration. It is based around one used in the Nelson Air Quality Plan and is quite wordy, but in my view there need to be various ways to determine when an appliance was installed. Appliances may have been installed without the necessary permit, or they might be part of other construction works on a house and not permitted individually. Being about pinpoint a burner's age can benefit both the Council and the house owner.

For the Council it is important in terms of enforcing the 'older than 15 years' rules. If a burner does not have a building consent documenting installation how is age determined – or an owner could deem it ageless. For the property owner, it gives them a line in the sand, where they might be able to argue a burner was not installed before a certain date, and therefore it does not need replacing.

Installed

Installed, and resultant age of, a small-scale solid fuel burning appliance means:

a) the date on which a building permit for the appliance or related work was issued under the Local Government Act 1974, or

b) the date on which a building consent for the appliance or related work was issued under the Building Act 1991 (or where a building consent was lodged prior to the date of notification of this Plan, the date of lodging of the consent), or

c) a date of installation for the appliance or related work from an unauthorised building work report that has been accepted in writing by the Consents Department of the Marlborough District Council, or

d) a date of installation or appliance age authenticated by the Consents Department of the Marlborough District Council, based on:

i) a valuation report or sale and purchase agreement showing the small-scale solid fuel burning appliance as a chattel at a specified date, or

ii) the original invoice for the installation of the small-scale solid fuel burning appliance, or

iii) a copy of the installer's office record for the installation of the small-scale solid fuel burning appliance (certified by a Justice of the Peace), or

iv) a report from Council building inspector or suitably qualified person approved by the Council as to the age of the appliance.

Table 1 – Other rules in Chapters 6, 9 and 12 that need amending (Question (iii))

Chapter 6	Comment
6.1.16	
6.1.17	Also add a new 6.1.17A
6.3.12 (wrongly numbered as 6.2.10 in MEP)	Note for information: In this chapter, this rule has an additional clause (6.3.12.2) in the standard, relating to the stack requirements. All other chapters have only two clauses in the standard
6.3.13 (wrongly numbered as 6.2.11 in MEP)	Add a new 6.3.13A
Chapter 9	
9.1.16	
9.1.17	Also add a new 9.1.17A
9.3.10	
9.3.11	Add a new 9.3.11A
Chapter 10	
10.1.14	
10.1.15	Also add a new 10.1.15A
10.3.10	
10.3.11	Add a new 10.3.11A
Chapter 12	
12.1.25	
12.1.26	Also add a new 12.1.26A
12.3.14	
12.3.15	Add a new 12.3.15A

pMEP rules

5.1.25	<i>Discharge of contaminants to air within the Blenheim Airshed from the burning of solid fuel in a small scale solid fuel burning appliance that is 15 years of age or older (except an enclosed pellet burner).</i>	5.3.19	<i>Discharge of contaminants to air within the Blenheim Airshed from the burning of solid fuel in a small scale solid fuel burning appliance that is 15 years of age or older (except an enclosed pellet burner).</i> 5.3.19.1 <i>The continued use of the specified appliance is only permitted until 9 June 2017.</i> 5.3.19.2 <i>The appliance must burn only fuels approved for use in the appliance.</i>
5.1.26	<i>Discharge of contaminants to air within the Blenheim Airshed from the burning of solid fuel in a small scale solid fuel burning appliance that is up to 15 years of age (except an enclosed pellet burner), or an enclosed pellet burner of any age installed prior to 9 June 2016.</i>	5.3.20	<i>Discharge of contaminants to air within the Blenheim Airshed from the burning of solid fuel in a small scale solid fuel burning appliance that is up to 15 years of age (except an enclosed pellet burner), or an enclosed pellet burner installed of any age installed prior to 9 June 2016.</i> 5.3.20.1 <i>The appliance must comply with the stack requirements of Appendix 8 – Schedule 2.</i> 5.3.20.2 <i>The appliance must only burn fuels approved for use in the appliance.</i>
5.1.27	<i>Discharge of contaminants to air within the Blenheim Airshed from the burning of solid fuel in a small scale solid fuel burning appliance installed after 9 June 2016.</i>	5.3.21	<i>Discharge of contaminants to air within the Blenheim Airshed from the burning of solid fuel in a small scale solid fuel burning appliance installed after 9 June 2016.</i> 5.3.21.1 <i>The appliance must comply with the emission, operational and other requirements of Appendix 8 – Schedule 1.</i> 5.3.21.2 <i>The appliance must comply with the stack requirements of Appendix 8 – Schedule 2.</i> 5.3.21.3 <i>The appliance must burn only fuels approved for use in the appliance.</i>

Summary of rules pMEP

5.1.25	<i>Any appliance > 15 years (except an enclosed pellet burner).</i> Included for completeness. This rule and standard not recommended for change in App 1.	5.3.19	<i>Any appliance > 15 years (except an enclosed pellet burner).</i> <ul style="list-style-type: none"> • <i>Use permitted till 9 June 2017</i> • <i>approved fuels</i>
5.1.26	<i>Any appliance <15 years (except an enclosed pellet burner) or Pellet burner installed prior to 9 June 2016</i>	5.3.20	<i>Any appliance < 15 years (except an enclosed pellet burner).</i> <ul style="list-style-type: none"> • <i>Stack requirements</i> • <i>approved fuels</i>
5.1.27	<i>Any appliance installed after 9 June 2016.</i> Included for completeness. This rule and standard not recommended for change in App 1.	5.3.21	<i>Any appliance installed after 9 June 2016.</i> <ul style="list-style-type: none"> • <i>Emission & efficiency stds</i> • <i>Stack requirements</i> • <i>Approved fuels.</i>

Recommended amended rules (with revision marking removed)

5.1.25	<i>Discharge of contaminants to air within the Blenheim Airshed from the burning of solid fuel in a small scale solid fuel burning appliance that at 9 June 2016 was 15 years of age or older (except an enclosed pellet burner or an enclosed woodburner installed after 1 September 2005).</i>	5.3.19	<i>Discharge of contaminants to air within the Blenheim Airshed from the burning of solid fuel in a small scale solid fuel burning appliance that at 9 June 2016 was 15 years of age or older (except an enclosed pellet burner or an enclosed woodburner installed after 1 September 2005).</i> 5.3.19.1 <i>The continued use of the specified appliance is only permitted until 9 June 2017.</i> 5.3.19.2 <i>The appliance must burn only fuels approved for use in the appliance.</i>
5.1.26	<i>Discharge of contaminants to air within the Blenheim Airshed from the burning of solid fuel in a small scale solid fuel burning appliance that was installed prior to 9 June 2016 and that is up to 15 years of age (except an enclosed pellet burner, or an enclosed woodburner installed after 1 September 2005).</i>	5.3.20	<i>Discharge of contaminants to air within the Blenheim Airshed from the burning of solid fuel in a small scale solid fuel burning appliance that was installed prior to 9 June 2016 and that is up to 15 years of age (except an enclosed pellet burner or an enclosed woodburner installed after 1 September 2005).</i> 5.3.20.1 <i>The appliance must comply with the stack requirements of Appendix 8 – Schedule 2.</i> 5.3.20.2 <i>The appliance must only burn fuels approved for use in the appliance.</i>
5.1.26A	<i>Discharge of contaminants to air within the Blenheim Airshed from the burning of solid fuel in an enclosed pellet burner installed prior to 9 June 2016, or an enclosed woodburner installed after 1 September 2005.</i>	5.3.20A	<i>Discharge of contaminants to air within the Blenheim Airshed from the burning of solid fuel in an enclosed pellet burner installed prior to 9 June 2016, or an enclosed woodburner installed between 2 September 2005 and 9 June 2016.</i> 5.3.20A.1 <i>The appliance must comply with the stack requirements of Appendix 8 – Schedule 2.</i> 5.3.20A.2 <i>The appliance must only burn fuels approved for use in the appliance.</i>
5.1.27	<i>Discharge of contaminants to air within the Blenheim Airshed from the burning of solid fuel in a small scale solid fuel burning appliance installed after 9 June 2016.</i> Included for completeness. This rule and standard not recommended for change in App 1.	5.3.21	<i>Discharge of contaminants to air within the Blenheim Airshed from the burning of solid fuel in a small scale solid fuel burning appliance installed after 9 June 2016.</i> 5.3.21.1 <i>The appliance must comply with the emission, operational and other requirements of Appendix 8 – Schedule 1.</i> 5.3.21.2 <i>The appliance must comply with the stack requirements of Appendix 8 – Schedule 2.</i> 5.3.21.3 <i>The appliance must burn only fuels approved for use in the appliance.</i> Included for completeness. This rule and standard not recommended for change in App 1

Summary of recommended rules

5.1.25	<i>Any appliance > 15 years at 9 June 2016</i> <i>Except: i) an enclosed pellet burner or</i> <i>ii) woodburner installed after 1 Sept 2005.</i>	5.3.19	<i>Any appliance > 15 years at 9 June 2016 (except an enclosed pellet burner or woodburner installed after 1 Sept 2005).</i> • <i>Use permitted until 9 Jun 2017</i> • <i>Approved fuels</i>
5.1.26	<i>Any appliance installed prior to 9 June 2016 & < 15 years</i> <i>Except: i) an enclosed pellet burner or</i> <i>ii) woodburner installed after 1 Sept 2005.</i>	5.3.20	<i>Any appliance installed prior to 9 June 2016 & < 15 years (except an enclosed pellet burner or woodburner installed after 1 Sept 2005)</i> • <i>Stack requirements</i> • <i>Approved fuels</i>
5.1.26A	<i>Pellet burner installed prior to 9 June 2016</i> <i>Woodburner installed after 1 Sept 2005</i>	5.3.20A	<i>Pellet burner installed before 9 June 2016 or Woodburner installed after 1 Sept 2005</i> • <i>Stack requirements</i> • <i>Approved fuels</i>
5.1.27	<i>Any appliance installed after 9 June 2016.</i> Included for completeness. This rule and standard not recommended for change in App 1.	5.3.21	<i>Any appliance installed after 9 June 2016.</i> • <i>Emission & efficiency stds</i> • <i>Stack requirements</i> • <i>Approved fuels.</i> Included for completeness. This rule and standard not recommended for change in App 1.

Note prohibited rule 5.5.5 From 9 June 2017, appliances >15 yrs prohibited - except pellet burners or woodburners installed after 1 Sept 2005

Summary of recommended rules **if 'prior to 9 June 2016' removed** David Jackson comments in red

5.1.25	<p>Any appliance > 15 years at 9 June 2016</p> <p>Except: i) an enclosed pellet burner or ii) woodburner installed after 1 Sept 2005.</p>	5.3.19	<p>Any appliance > 15 years at 9 June 2016 (except an enclosed pellet burner or woodburner installed after 1 Sept 2005).</p> <ul style="list-style-type: none"> • Use permitted until 9 Jun 2017 • Approved fuels
5.1.26	<p>Any appliance installed prior to 9 June 2016 & < 15 years</p> <p>Except: i) an enclosed pellet burner or ii) woodburner installed after 1 Sept 2005.</p> <p><i>'was installed prior to 9 June 2016 and that'</i> could potentially be removed from the rule without affecting its operation too much.</p> <p>If in the future a multi-fuel (coal or wood) appliance was created that met the MEP Appendix 8 emissions and efficiency standards (there a currently no such appliances that do), then under the revised rule, such a MEP-compliant multi-fuel burner would have to be replaced after 15 years.</p> <p>However, it is very unlikely that such an appliance will ever pass the MEP Appendix 8 requirements, so it is not likely the 15-year phase out would affect any future multi-fuelled burners, and if it did, it would most likely only be a handful of burners. Multi-fuelled burners could not be included in the exception (along with 'woodburners installed after 1 September 2005' as multi-fuel burners at that time, and since, have not been MEP-emission compliant and therefore they <u>do</u> need to be replaced after 15 years and not exempted, unlike the compliant woodburners and pellet fires).</p> <p>While removing the 'prior to ..' words would simplify the rule's wording, in my view, it does not gain a lot, and as noted above, it introduces a potential complication, albeit small, regarding multi-fuelled appliances. Combined with my comments under 5.1.26A/5.3.20A below, I see consider there are good reasons <u>not</u> to remove the 'prior to..' words.</p>	5.3.20	<p>Any appliance installed prior to 9 June 2016 & < 15 years (except an enclosed pellet burner or woodburner installed after 1 Sept 2005)</p> <ul style="list-style-type: none"> • Stack requirements • Approved fuels
5.1.26A	<p>Pellet burner installed prior to 9 June 2016</p> <p>Woodburner installed after 1 Sept 2005</p> <p>Would conflict with 5.1.17 / 5.3.21 (see 5.3.20A)</p>	5.3.20A	<p>Pellet burner installed prior to 9 June 2016 or Woodburner installed after 1 Sept 2005</p> <ul style="list-style-type: none"> • Stack requirements • Approved fuels <p>Would conflict with 5.1.17 /5.3.21 as 5.3.20A would say that any pellet burner would just need to comply with the stack requirements and approved fuel standard. However, pellet burners installed since June 2016 have also had to comply with the emissions and efficiency standards.</p> <p>The permitted rule and standard provide for pellet burners existing before the MEP was notified to only comply with these two standards. That was provided for in pMEP under standard 5.3.20 (and similar rules in other chapters). There is no submission to change this. In moving the provision into a new rule/standard the provision remains the same. But removing the 'installed prior to 9 June 2016' words (which were in pMEP 5.3.20) would change the rule with the effect of either:</p> <ol style="list-style-type: none"> requiring pellet burners installed prior to the MEP to comply with the emissions and efficiency standards (as they are defined as 'small scale solid fuel burning appliances' and arguably come under 5.3.21), and / or Create confusion that standard 5.3.21 would not apply to pellet burners, and that new pellet burners installed would not have to comply with the emissions and efficiency standards because 5.3.20A treats them separately.
5.1.27	<p>Any appliance installed after 9 June 2016.</p> <p>Included for completeness. This rule and standard not recommended for change in App 1.</p>	5.3.21	<p>Any appliance installed after 9 June 2016.</p> <ul style="list-style-type: none"> • Emission & efficiency stds • Stack requirements • Approved fuels. <p>Included for completeness. This rule and standard not recommended for change in App 1.</p>