Proposed Marlborough Environment Plan

Topic 13: Resource Quality (Air)

Hearing dates:	12 – 14 November 2018
S42A Report Writer:	David Jackson
Conflicts of Interest:	None
Interim decision:	None

(Note: A list of conflicts of interest which arose during the process are available to view on the Marlborough District Council Website)

List of Abbreviations

AAQG	Ambient Air Quality Guidelines
PMEP	Proposed Marlborough Environment Plan
LUC	Land Use Capability
MDC	Marlborough District Council
MfE	Ministry for the Environment
MOH	Ministry of Health
NES	National Environmental Standards
NESAQ	National Environmental Standards for Air Quality
RMA	Resource Management Act 1991

Submitter abbreviations

BRRA	Blenheim Residents and Ratepayers Assoc
FENZ	Fire and Emergency New Zealand
Hort NZ	Horticulture New Zealand
NMDHB	Nelson Marlborough District Health Board
NZDF	New Zealand Defence Force
NZTA	New Zealand Transport Agency

Structure of Decisions

1. It is important that the topic decision is read as a whole together with the tracked change version of the Plan. The decision on each topic contains the reasons for the Panel's decisions. These comprise either adoption of the reasoning and recommendations of the original Section 42A Report or the replies to evidence, or a specific reasoning by the Panel[1].

2. The tracked change version of the relevant PMEP provisions forms an integral part of the decision. The source of the change in terms of the topic that the subject matter was dealt with is clearly identified in the track changes version of the plan. This records all amendments (additions and deletions) to the notified PMEP provisions made by the Panel.

3. Where the PMEP provisions **remain as notified**, it is because:

   (a) The Panel has decided to retain the provision as notified for reasons set out in this decision; or

   (b) The Panel adopted the reasoning and recommendation of the Section 42A Report Writer to retain the provision as notified as recommended in the Reply to Evidence; or

   (c) The Panel adopted the reasoning and recommendation of the Section 42A Report to retain the provision as notified in the original Section 42A report.

4. Where there is a **change to a provision** within the plan it is because:

   (a) The Panel has amended a provision for reasons set out in this decision in response to a submission point which the Section 42A report writer(s) does not recommend in their reports; or

   (b) The Panel adopted the reasoning and recommendation of the Section 42A Report Writer to change the provision to that recommended in the Reply to Evidence; or

   (c) The Panel adopted the reasoning and recommendation of the Section 42A Report Writer to change the provision to that recommended in the original Section 42A report; or

[1] (The only exception to that approach relates to the Noise section of the Nuisance topic where the reasoning and recommendations in the responses to Minutes 54 and 59 may have been adopted, rather than the reasoning and recommendations in the Section 42A Report or the Reply to Evidence report. The reasons for that difference in that topic are dealt with in detail at the commencement of the Noise section of the Nuisance topic decision. In respect of that topic the approach to understanding of the individual submission point decisions addressed in paragraphs 13.3 to 13.5 below should be adjusted accordingly to apply references to the Section 42A Report and/or Reply to Evidence in those paragraphs as being references to the responses to Minutes 54 & 59 for that Nuisance topic.)

(d) A consequential change has been necessary following on from a decision in either a), b) or c).

5. Where there is a **different recommendation** between the Section 42A Report and the Reply to Evidence (i.e., the recommendation by the Section 42A report writer(s) has changed as a result of hearing the evidence of submitters), unless the Panel decision specifically adopts the original report's reasoning and recommendations, the reasoning and recommendations in the (later) reply to evidence has been adopted and it must be taken to prevail.

6. There are limited circumstances where the Panel has taken the opportunity to give effect to national policy statements or implement national environmental standards. Where this occurs the relevant decision clearly sets out the nature of the change and the reason for the change.

7. Finally, there are limited circumstances where the Panel has decided that **alternative relief** is more appropriate than that requested by the submitters, but still within the scope of the relief sought. This is recorded in the Panel's decision.

Resource Quality - Air

Method 15.M.28 Incentives

Consideration will be given to assisting landowners to replace open fires and older style enclosed burning appliances and to make energy efficient improvements. This may require approaches to central government and the Energy Efficiency and Conservation Authority for greater financial assistance with offering incentives.

8. Method 15.M.28 provides that the Council will consider assisting landowners to replace open fires and older woodburners and to make energy efficient improvements.

9. Two submitters are concerned about the impact of the fire and burner bans in Blenheim on low and/or middle income households and financial support for that transition.[2] Another submitter supports the provision in part. She says there is talk of incentives but nothing concrete. She is concerned that seniors will end up sitting in the cold rather than using electricity, and that low income families will not be able to afford electric heating if their fires are non-compliant. She also wants education on the alternatives offered.[3]

10. Submitter Woodburners Unite, a community group, opposes the method. It considers that the Council could work to incentivise people to replace older burners using a number of strategies, such as changing to a heat pump. They seek the following be added to the method:

> *Other incentives could include allowing costs to be applied to rates or providing subsidies and/or waiver of permits or free expert advice on best options to suit their dwelling.*

Section 42A Report

11. The report writer identifies that the Council has a financial assistance scheme in place for approved 'clean' home installation (NES compliant woodburners, pellet burners, heat pumps or flued gas heaters). This provides the homeowner with the means to install a new heating appliance at no upfront cost by a targeted rates scheme. Payments back would be over a nine year period, with interest as a targeted rate on the affected property.

12. In the report writer's opinion these schemes meet the requirement to provide assistance to homeowners having to change their heating (including by installing or upgrading insulation). Nonetheless since the schemes exist, the report writer considers that the wording in 15.M.28 could be changed from 'Consideration will be given to assisting landowners' to reflect the actual situation, such as 'The Council will provide assistance to landowners …'.

[2] Woodburners Unite (1239.5), Blenheim Residents and Ratepayers Assoc (BRRA) (573.1) (submitting on Objective 15.2).
[3] Jessica Bagge (227.3).

13. The report writer considers the amended wording would resolve the uncertainty around financial assistance that concerned Ms Bagge. The Woodburners Unite proposal is already in process - captured in the more general wording of Method 15.M.28. Additional wording is therefore not needed, nor is further change in the wording required.

14. Nevertheless, to provide more assurance to homeowners and for the reasons given, the amended wording is recommended as follows:

> ~~*Consideration will be given to assisting*~~ *Council will provide assistance to landowners to replace open fires and older style enclosed burning appliances and to make energy efficient improvements. This may require approaches to central government and the Energy Efficiency and Conservation Authority for greater financial assistance with offering incentives.*

Consideration

15. Submitters are concerned about the impact of prohibitions such as banning fires on low and middle income householders and seek financial assistance from the Council.

16. The Panel considered that it is appropriate for the Council to assess methods to assist landowners in replacing open fires[4].

Decision

17. Method 15.M.28 is amended as follows:

> ~~*Consideration will be given to assisting*~~ *Council will consider methods to assist landowners* ~~*to replace*~~ *in replacing open fires and older style enclosed burning appliances and to make energy efficient improvements. This may require approaches to central government and the Energy Efficiency and Conservation Authority for* ~~*greater*~~ *financial assistance with offering incentives.*

Policy 15.2.2

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

This policy recognises that the efficiency of solid fuel burning appliances decreases with time and ceases to be efficient 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.

[4] Gary Jones (467.1), BRRA (573.1).

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).

Measures included in Chapter 18 - Energy in promoting and encouraging energy efficient dwellings, including passive heating, will also assist in this regard.

18. One submitter supports the policy and one opposes it. NMDHB supports the policy in part (and associated Rules 5.5.5 and 12.5.3), noting that the explanation to the policy identifies that the NESAQ will be able to be met in 2016 if older enclosed burners are replaced (in conjunction with the prohibition on open fires and outdoor burning). But the date needs to be revised, given that Rule 12.5.3 does not prohibit the use of older woodburners until mid-2017.[5]

19. The Chamber of Commerce supports the policy in part while urging the Council to provide incentives to make it affordable for homeowners to make the transition to cleaner heating through rates relief and provision of heating appliances at low cost.[6]

20. Lisa Collinson also supports the policy in part. She is concerned about the impact on superannuates and wants the policy to be amended as follows: *Phase out small scale solid fuel burning appliances ~~older than 15 years of age~~ as they need replacing within the Blenheim Airshed.* She also implies subsiding the cost of changing heating, or providing interest-free loans that can be repaid when a property is sold.[7]

21. Allister Leach opposes the policy.[8] He believes this provision would create too great a financial burden on most residents with wood burners older than 15 years old. He would like to see this provision revised to allow such log burners to be used until they need replacing as being faulty and then required to be replaced with a compliant low emission log burner and would like to see Council educating the public on the correct use of log burners, such as the use and sale of dry wood. He too is concerned about the impact on older or low-income people who might end up not using any form of heating, to the detriment of their health. This is why he seeks the deletion of the policy and of Rule 5.3.19.1.[9]

Section 42A Report

22. The report writer supports the requested change to the explanation, as phasing out of non-compliant facilities 'by 2017' would be more accurate. The open fire phase-out and outdoor

[5] NMDHB (280.30).
[6] Chamber of Commerce (961.77).
[7] Lisa Collinson (444.1).
[8] Allister Leach (135.2).
[9] Section 42A Report, paragraph 188.

burning ban had effect from the start of winter 2016 (9 June) but, as a submitter notes, the ban on older burners would not occur until the beginning of the following winter, so the full impact on emissions would not occur until 2017.

23. The report writer does not support the wording change to the policy as sought by Ms Collinson. This change would have burners replaced just by natural attrition, when they either wore out or the homeowner decided to replace them. Modelling demonstrated that without a mandatory phase-out date of 15 years after installation, PM_{10} concentrations would not fall enough to meet the NESAQ.

24. The report writer points out that the Council-targeted rates schemes to assist with burner replacement and insulation, while not interest-free, provide for improvements without any upfront cost to the homeowner and with only modest repayments over nine years or sooner in some cases if the house is sold. Even with the best operation, older burners do not have the necessary design features to achieve emissions low enough to deliver ambient air quality in compliance with the NESAQ.[10]

25. The report writer observes that the NESAQ regulates standards for woodburners on properties less than 2 hectares in area. However, this policy is aimed at multi-fuel appliances which are not subject to the NESAQ, requiring them to meet similar standards. New appliances include multi-fuel burners that replace other fires and burners, so no change to the policy is needed. The explanation also makes it clear that the policy does not apply just to the early phase-outs under the plan.[11]

26. The report writer initially recommended that Policy 15.2.2 be retained as notified, providing the second sentence of the explanation to the policy is amended as follows:

> *Modelling has shown that the NESAQ will be achieved by ~~2016~~ 2017.*

27. Woodburners Unite, at the outset, had sought the deletion of the prohibition Rule 5.5.5 which is the rule that implements Policy 15.2.2.[12] The group sought that the ban on the use of burners 'older than 15 years' should be removed for otherwise there would be significant economic and social costs involved. The group is also concerned about the health implications of the proposed prohibition and, like other submitters, is concerned with the impact of the

[10] Section 42A Report, paragraphs 187, 189.
[11] Section 42A Report, paragraph 194.
[12] Woodburners Unite (1239.3). Rule 5.5.5 unamended refers: 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 a pellet burner) that has been installed for more than 15 years.

rules relating to fuel-burning appliances throughout the Urban Environment 1 and 2 Zones and also the Blenheim Air Shed.

28. As a result of the Woodburners Unite submission on Rule 5.5.5, the report writer, in addressing other prohibited activity rules, together with the various permitted activity standards, recommended various further policy and rule changes. One of the further changes he suggested was to Policy 15.2.2 as a consequence of his suggested changes, so there would be no mismatch between that policy and the amended new rules or standards.

Consideration

29. The Panel concluded it was important to clarify the prohibition of woodburning facilities aged 15 years and older within the Blenheim Airshed, as set out in Policy 15.2.2. We agreed there would be significant economic and social costs if the policy and rules did not change. We find there is scope within the submissions by Woodburners Unite and Allister Leach (135.2) to do this.

30. The report writer provided a further amendment to the policy, which the Panel accepts, as follows:

> *Policy 15.2.2 - Phase out <u>within Blenheim</u> small scale solid fuel burning appliances older than 15 years of age <u>that do not comply with the efficiency and emissions standards in the Plan</u> ~~within Blenheim~~.*
>
> *This policy recognises that ~~the efficiency of~~ <u>older</u> solid fuel burning appliances ~~decreases with time and ceases to be efficient~~ <u>have higher particulate emissions than more modern burners that comply with the standards in NESAQ and this Plan</u> ~~after 15 years~~. Modelling has shown that the NESAQ will be achieved by ~~2016~~ <u>2017</u> 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~~ <u>2017</u>).*
>
> *Measures included in Chapter 18 - Energy in promoting and encouraging energy efficient dwellings, including passive heating, will also assist in this regard.*

31. The Panel considers that to be absolutely precise as to the location to which this policy relates, the words 'within the Blenheim Airshed' be reinstated from the report writer's further

amended draft, as sought by Woodburners Unite, to the end of the policy as originally identified in the notified version of the PMEP.

32. The report writer also recommends that the Panel consider including (for the sake of clarity of his amended rule and standards where a lot hinges on the age of the burner) a definition of 'installed'. He was concerned that the relevant date at which replacement is needed and prohibition could be uncertain. Consequently, the change of focus in Policy 15.2.2 and the standards and rules need to identify the meaning of 'install'. A draft of the definition of 'installed' was offered.[13] This is further addressed at the end of this topic decision.

Decision

33. As a consequence to the change in Rule 5.5.5 the policy also requires amendment so there is not a mismatch with the rule. Policy 15.2.2 is amended as follows:

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

34. The explanation to Policy 15.2.2 is amended as follows:[14]

This policy recognises that ~~the efficiency of~~ <u>older</u> solid fuel burning appliances ~~decreases with time and ceases to be efficient~~ <u>have higher particulate emissions than more modern burners that comply with the standards in NESAQ and this Plan</u> ~~after 15 years~~. Modelling has shown that the NESAQ will be achieved by ~~2016~~ <u>2017</u> 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.

[13] Section 42A Report, Memorandum – questions relating to officer's reply to evidence, Appendix 1, paragraphs 3-4, 9 April 2019.
[14] Ibid.

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 a pellet burner) that has been installed for more than 15 years.

And

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 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.

35. A number of submitters request: the ban date changed from 2017 to 2020;[15] the rule be deleted – woodburners should be permitted until they need replacing and wetback fireplaces should be exempt from any restrictions as they heat water as well as the house, reducing power consumption;[16] after 15 years the efficacy and safety of the installed burner could be certified by an accredited installer on a yearly basis;[17] opposition to the outright banning of burners older than 15 years;[18] a longer phase-in (5-7 years) for the replacement of burners installed prior to 2000 and the lifespan of post-2000 burners extended to 20-25 years.[19]

Section 42A Report

36. In the Reply to Evidence, the following recommendations were made by the report writer:

> *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 a<u>n enclosed</u> pellet burner <u>or an enclosed woodburner installed after 1 September 2005</u>) that has been installed for more than 15 years.*

37. Other rule changes to remove the restriction on the use of PMEP-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 <u>at 9 June 2016 was</u> ~~is~~ 15 years of age or older (except an enclosed pellet burner <u>or an enclosed woodburner installed after 1 September 2005</u>).*
>
> *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 <u>was installed prior to 9 June 2016 and that</u> is up to 15 years of age (except an enclosed*

[15] Tim Newsham (1173.3).
[16] Woodburners Unite (1239.3).
[17] Peter Gilbert (1017.10).
[18] Jessica Bagge (227.4).
[19] Wayne Gander (191.1).

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.~~

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.

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.

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.

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.

Consideration

38. The Panel queried the report writer's changes to the permitted activity rules and standards, including the addition of the wording 'was installed prior to 9 June 2016', seeking the

relevance of those words in terms of the application of the words and the implications of not including the addition.[20]

39. The response from the report writer identified that the Plan as notified has a rule structure (for example, 5.1.26/5.3.20 and 5.1.27/5.3.21) that differentiates between appliances installed before the PMEP was notified and after. While the phrase 'was installed prior to 2016' complicates the rules (as recommended in the report writer's evidence Appendix 1), he believes removing the phrase could lead to unintended consequences and uncertainty in rule interpretation.[21]

40. The report writer concluded that separating the NES-compliant woodburners (and pellet fires) from other non-compliant burners for amendment within the permitted rules and standards was becoming complicated to read, so he split out the two and created a new permitted activity rule and standards labelled 'A' for existing pellet burners.[22]

41. Removing the words 'installed prior to 9 June 2016' in Rule 5.1.26A (and related Standard 5.3.20A) in the report writer's opinion would affect its operation and introduce uncertainty to the rules. Removing the words would mean that all pellet burners, including new ones being installed, would not have to meet the emissions and efficiency standards. The report writer's recommendation is that Rule 5.1.26A remains as amended above for the reasons given.

42. After considering the report writer's responses to this and other rules and standards, the Panel decided:

- to add woodburners installed after the words 1 September 2005 to the exemptions in the existing rules/standards as set out in Appendix 1 to the Reply to Evidence;
- to add a new permitted activities rule to permit discharges from enclosed pellet burners installed prior to 9 June 2016 or enclosed burners installed after 1 September 2005 as set out in Appendix 1 to the Reply to Evidence (recommended 5.1.26A, 6.1.17A, 9.1.17A, 10.1.15, 21.1.26A);
- to add standards for a new permitted activity as set out in Appendix 1 to the Reply to Evidence (recommended 5.3.20A, 6.3.11A, 9.3.11A, 10.3.11A, 12.3.15A);
- to remove the words 'was installed prior to 9 June 2016' from the recommended wording for 5.1.26, 6.1.17, 10.1.15, 12.1.26, 5.3.20, 6.3.11, 9.3.11, 10.3.11, 12.3.15 only

[20] Minute 58 of the Panel. .
[21] Memorandum to the Panel, response from the report writer, paragraph 3.
[22] Section 42A Report, Reply to Evidence, page 43.

(that is, do not remove from recommended new permitted activity rule to pellet burners, discussed in greater detail in response to Minute 58 as set out above).

43. The report writer identified out that the words 'installed prior to 9 June 2016 could be removed but explained:

> *If in the future a multi-fuel (coal or wood) appliance was created that met the MEP Appendix 8 emissions and efficiency standards (there are 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).*[23]

Decision

44. Prohibited Activity Rule 5.5.5 is amended as follows:

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.

45. Permitted activity rules 5.1.26, is amended as follows:

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 woodburner installed after 1 September 2005) ~~pellet burner of any age installed prior to 9 June 2016~~.

46. Identical consequential amendments are made to rules 6.1.17, 9.1.17, 10.1.15, 12.1.26 and 5.3.20, 6.3.11, 9.3.11, 10.3.11 and 12.3.15.

47. New permitted activity rules, to permit discharges from enclosed pellet burners installed prior to 9 June 2016 or enclosed woodburners installed after 2005, are inserted under 5.1.x, 6.1.x, 9.1.x, 10.1.x and 12.1.x as follows:

[23] Section 42A Report, Reply to Evidence, Memorandum in response to Minute 58, 9 April 2019, page 2.

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.

48. Add new permitted activity standards under 5.3, and 6.3, 9.3, 10.3, 12.3 as follows:

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.

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

x.x.x.2 The appliance must only burn fuels approved for use in the appliance.

Rule 12.5.3

From 9 June 2017 the discharge of contaminants into air within the Blenheim Airshed from the burning of solid fuel in an enclosed wood, coal or other burner (except a pellet burner) that has been installed for more than 15 years.

49. One submitter opposes the rule as it is concerned it would require the replacement of industrial plant (an industrial boiler) after it was 15 years old, even if it were still compliant in terms of emissions further noting that. If the rule is intended to apply to domestic heating, it should say so.[24]

Section 42A Report

50. The report writer considers the wording of the rule is confusing as to whether it applies to domestic-scale appliances, or to industrial size ones. It should use the same terminology as Rule 12.3.14, which is the related permitted activity standard that limits use of such fires beyond 9 June 2017. The prohibited rule should refer to 'small scale solid fuel burning appliances', as that is a clear defined term in the Plan, and the term is used elsewhere in similar or related rules. There is a need to refocus the rule on to small scale fuel burning appliances. If the wording is amended as recommended, the rule is consistent with similar rules in other zones.[25]

Consideration

51. The Panel accepts the recommendation of the report writer as provided. Changes need to be made consistent with (amended) Rule 5.5.5. In relation to that rule, the addition of the words 'woodburner installed after 1 September 2005' provides the exemption in the rule. The word 'enclosed' is also to be added to 'pellet burner' as a consequential change to Rule 5.5.5.

[24] Timberlink (460.13).
[25] Section 42A Report, paragraph 282.

Decision

52. Prohibited Rule 12.5.3 is amended as follows:[26]

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

Permitted Activity Rules – Fire Training, Fireworks and Film Special Effects

53. There is a permitted rule in several zones in the PMEP which read:

Discharge of contaminants to air arising from the burning of materials for any of the following purposes:

(a) training people to put out fires;

(b) creating special smoke and fire effects for the purposes of producing films;

(c) fireworks display or other temporary event involving the use of fireworks.

54. The permitted activity standard relating to the rule in most zones is:

X.3.XX Discharge of contaminants to air arising from the burning of materials for any of the following purposes:

(a) training people to put out fires;

(b) creating special smoke and fire effects for the purposes of producing films;

(c) fireworks display or other temporary event involving the use of fireworks.

X.3.X.1 The Council must be notified at least 5 working days prior to the burning activity commencing.

X.3.X.2 Any discharges for purposes of training people to put out fires must take place under the control of the NZ Fire Service or any other nationally recognised agency authorised to undertake firefighting research or firefighting activities.

55. NZDF undertakes firefighting training at various locations in the district and requests the discharges to air associated with the training should be enabled in the district rules. It supports in part the permitted activity standards relating to firefighting activity and seeks:

- To undertake firefighting training at various locations in the district and request that it is provided for as a permitted activity with appropriate standards and named zones, that

[26] Section 42A Report, paragraph 282, Reply to Evidence, page 11.

the wording in the standards wherever it appears in the Plan be amended to: *Any discharges for purposes of training people to put out fires must take place under the control of the NZ Fire Service, the New Zealand Defence Force or any other nationally recognised agency authorised to undertake firefighting research or firefighting activities*.[27]

- In addition, for Rule 23.1.20 and Standard 23.3.7 in the Airport Zone, the submitter requests the ability to undertake controlled outdoor burning or deflagration of unwanted public or military ammunitions, munitions and pyrotechnics at Base Woodbourne. It is submitted this system is the safest practical option for disposing this unwanted material. The system is also sought as a permitted activity. It seeks the insertion of a new clause as follows: '(d) controlled outdoor burning or deflagration of unwanted public and military ammunitions, munitions and pyrotechnics undertaken by the NZ Defence Force.'[28]

Section 42A Report

56. The report writer supports the inclusion of the words 'New Zealand Defence Force' in the fire training standards throughout the Plan as this will remove any ambiguity from whether the existing words 'any other nationally recognised agency' includes the NZDF or not.

57. In terms of addressing a new clause to allow combustion of unwanted ammunition, munitions and pyrotechnics, this may be addressed in other relevant legislation as the report writer does not have enough information to make the required recommendation.[29]

Consideration

58. The report writer recommends and the Panel agrees the following wording should be added 'the New Zealand Defence Force' where the amended permitted activity standard appears in the Rural Environment, Coastal Environment, Urban Residential 1 and 2, Rural Living, Industrial 1 and 2, Port, Marina, Coastal Marine, Open Space 3 and Airport Zones, and that the same additional wording should appear if this permitted activity standard is added to any other zones as part of decisions on submissions:[30]

59. The Panel noted that the NZ Fire Service is also referred to in the standard, and there is a need to replace this in the standards (and elsewhere in the PMEP) where this occurs, with the title to the new legislation Fire and Emergency New Zealand (FENZ).

[27] NZDF (992.58, .59, .62, .63, .64, .70, .71).
[28] NZDF (992.70 and .71).
[29] Section 42A Report, paragraph 346.
[30] See new rules and standards set out in Section 42A Report, pages 66-69.

Decision

60. The following amendment is made in the permitted activity standard in the Rural Environment, Urban Residential 1 and 2, Rural Living and Open Space 3 Zones identified for the reasons given:[31]

X.3.X.3 - Any discharges for purposes of training people to put out fires must take place under the control of ~~the NZ Fire Service,~~ Fire and Emergency New Zealand, the New Zealand Defence Force or any other nationally recognised agency authorised to undertake firefighting research or firefighting activities.

61. The above amendment also applies to the Coastal Environment, Industrial 1 and 2, Port, Marina, Coastal Marine and Airport zones.

Issue 15E

The discharge of contaminants into air that reduce the amenity of the surrounding area or create an undue risk to human health.

62. Three submitters oppose the issue. One of these submitters is concerned about the lack of smoke (PM_{10}) monitoring in the Picton waterfront *'where for the last 30 years ferries have belched black grey smoke at least four times a day as they start their polluting diesel engines'*. His inferred relief is to commence air quality monitoring in Picton.[32]

63. Two submitters support the issue in part, addressing undue risks to human health. They consider the concept of 'reasonableness' should be applied to amenity so that the chapter is based on sound evidence and RMA obligations, not merely the concerns of disgruntled residents.[33] They submit that rural production activities have the potential to generate adverse effects beyond the site which must be acknowledged as being part of the rural environment. If reasonableness is applied in these circumstances, adverse effects should be avoided, remedied or mitigated. Federated Farmers and the Gerards seek that Issue 15E be amended as follows:

> *Issue 15E The discharge of contaminants into air that ~~reduce the amenity of the surrounding area or~~ create an undue risk to human health.*

They also seek a new paragraph to be added to the explanatory text as follows:

> *At times primary production activities will generate effects such as noise, odour and dust - residents living in the rural environment should therefore reasonably expect times when amenity values may be modified by such effects.*

[31] Section 42A Report, paragraph 389.
[32] Tony Mortiboy (43.2).
[33] Federated Farmers (425.310) and Michael and Kristen Gerard (424.129).

64. Another submitter opposes the issue but does not say why.[34] The company representative seeks a new objective and policies relating to the requirements of the rural sector:

> *Objective 15.X The operational requirements of rural activities are recognised and provided for.*
>
> *Policy 15.3.X Recognise that rural air quality is generally a result of dust and odours, and other emissions generated by rural production activities.*
>
> *Policy 15.3.X Require adequate separation distance between rural land use which discharges dust and odour to air and activities that are sensitive to adverse effects of dust and odour discharges.*

Section 42A Report

65. The report writer indicates that rural amenity differs from residential amenity, with the expectations of both being different. He does not support removing amenity from Issue 15E as it then relates to the risk to human health. That risk creates a very high threshold – air discharges can be annoying but are below the threshold of when they are dangerous or noxious. The issue needs to recognise this, especially as it applies to a range of zones including residential. Also, it is well established that rural amenity is dependent on context and expectations and will include dust and odour to a reasonable extent.

66. The report writer supports the NZ Pork Industry submissions relating to the realities of rural living, supported by Federated Farmers and the Gerards, but would support an addition to the explanation under Issue 15E. But that issue applies across the entire district and not just rural land.

67. But he did not support adding a further objective or policies, considering the recommended change to the issue explanation will adequately recognise rural concerns. He considers it is inappropriate and unnecessary to elevate air (reverse sensitivity) discharge and discharge issues above the wider treatment of adverse impacts and reverse sensitivity (already addressed elsewhere in the Plan) for all activities and effects.[35]

68. Lynette Wharfe for Hort NZ in evidence pointed out that it is not just the 'expectations of amenity values' that differ, but the actual nature of the background receiving environment (for example, whether it is an industrial environmental or residential). This witness requested that the recommended wording in the explanation is amended as follows: '*Also <u>the</u>*

[34] NZ Pork Industry Board (998.37 and .38).
[35] Section 42A Report, paragraph 416.

background receiving environment and the expectation of amenity values will differ in different areas'.[36]

69. In his reply, the report writer gave close attention to Hort NZ's further submission to Federated Farmers and NZ Pork Industry, approving Hort NZ's further amended wording identifying the significance of the background environment.

Consideration

70. The Panel accepts the recommendation in the Reply to Evidence and in part to accept Ms Wharfe's suggestions subject to a change to the phrase 'to be expected' to 'experience' because what is being explained is a statement of actual reality, as compared to future expectations.

Decision

71. As now recommended, a new paragraph is added after the last paragraph of the explanatory text under Issue 15E as follows:[37]

Also, the background receiving environment and experience of amenity values will differ in different areas. For example, primary production activities can generate effects such as noise, odour and dust, so that even with appropriate management of effects, the amenity values experienced by residents living in the rural environment will be different to that within a residential zone.

Policy 15.3.2

Require all discharges to comply with the ambient air quality standards established by the National Environmental Standard for Air Quality.

72. The policies explanatory text reads:

> *The NESAQ sets ambient air quality standards that apply to both airsheds and open air. The standards include threshold concentrations for carbon monoxide, nitrogen dioxide, ozone, PM10 and sulphur dioxide, and specify the number of exceedances allowed (if any) within a certain timeframe. All discharges are required to comply with the ambient air quality standards in order to protect the health and wellbeing of people in close proximity to any proposed discharge. This policy will be implemented through the assessment of discharge permit applications, the imposition of resource consent conditions and the establishment of permitted activity rule standards.*

73. Two submitters oppose the policy and consider it to be inconsistent with the NESAQ as it confuses the ambient air quality standards in the NESAQ with assessment criteria for

[36] Hort NZ, Lynette Wharfe Evidence, paragraph 4.11.
[37] Section 42A Report, Reply to Evidence, page 17.

individual discharges. It also fails to recognise other important air quality criteria such as the Ambient Air Quality Guidelines (AAQG).

74. Fonterra as an alternative requests that the policy should seek to manage the adverse effects on human health of the discharge, including cumulative effects. The company proposed the existing policy be replaced with:[38]

> *Manage the discharge of contaminants to air so that adverse effects on human health, including cumulative adverse effects, are avoided, and all other adverse effects are remedied or mitigated.*

75. NZDF opposes the policy. It submits that the policy confuses the ambient air quality in the NESAQ with assessment criteria for individual discharges. Policy 15.3.2 should be deleted, or amended to make it clear that the ambient air quality standards in the NESAQ are not to be used as assessment criteria for individual discharges.[39]

76. Tim Newsham supports the policy in part although his requests are unclear. He appears to be requesting the implementation of rules which reflect scientific basis toward dealing with the health aspects of air quality controls and regional responsibility for creating rules which reflect our quality of life expectations.[40] His submission did not seek specific relief.

Section 42A Report

77. The purpose of the NESAQ (and ambient air quality guidelines) is not to protect people close to the discharge, as stated in the explanation to the policy, but to protect ambient air quality in general across the wider airshed. There are also certain regulations in the NESAQ that prevent a council from approving applications for discharges of PM_{10}, carbon monoxide, oxides of nitrogen and volatile organic compounds if the discharge would cause concentrations in the airshed in breach of the relevant NES standard (under circumstances defined in the NESAQ).[41]

78. The report writer initially agreed the policy's focus should be on managing discharges to air to achieve certain outcomes. He considers a reference to NESAQ is appropriate while at the same time supporting also the inclusion of a reference to the MfE/MOH Ambient Air Quality Guidelines (which cover both human and ecosystem health) suggested by NZDF. He includes both in his initial recommended changes to the policy, as they are key national targets for

[38] Fonterra (1251.111).
[39] NZDF (992.21). Section 42A Report, paragraph 439.
[40] Tim Newsham (1173.5).
[41] Section 42A Report, paragraph 440.

ambient air quality. Policy 15.3.2 is not a rule so the values of AAQG are not absolute but have the status appropriate for use in the PMEP.

79. The report writer initially recommended that Policy 15.3.2 is amended as follows:[42]

> *Policy 15.3.2 - ~~Require all~~ Manage discharges to air ~~to comply with the~~ so that ambient air quality is consistent with ~~standards established by~~ the National Environmental Standard for Air Quality and the Ambient Air Quality Guidelines.*

80. And as a consequential amendment, the explanation to Policy 15.3.2 was recommended to be amended as follows:

> *The NESAQ sets ambient air quality standards that apply to both airsheds and open air. The standards include threshold concentrations for carbon monoxide, nitrogen dioxide, ozone, PM_{10} and sulphur dioxide, and specify the number of exceedances allowed (if any) within a certain timeframe. The Ambient Air Quality Guidelines (Ministry for the Environment) cover these and additional contaminants, and, unlike the NESAQ, address ecosystem health as well as human health. The Standards and Guidelines are not intended as assessment criteria for individual discharges, but larger discharges applying for consent will need to show their activity does not cause a breach of the NESAQ (or the ambient air quality guidelines where relevant). ~~All discharges are required to comply with the ambient air quality standards in order to protect the health and wellbeing of people in close proximity to any proposed discharge.~~ This policy will be implemented through the assessment of discharge permit applications, the imposition of resource consent conditions and the establishment of permitted activity rule standards.*

Consideration

81. The Panel took notice that the Council is obliged to comply with the NESAQ and give effect to it, for the NESAQ has the force of a regulation under ss 43 to 44A RMA. Section 44A(7) states that '*Every local authority and consent authority must observe national environmental standards*'. Section 44A(8) states that '*Every local authority and consent authority must enforce the observance of national environmental standards to the extent to which their powers enable them to do so'*. Also, when preparing a regional plan, a council is obliged to do so '*in accordance with … any regulations*' (s 66(1)(f)).[43]

[42] Section 42A Report, paragraphs 447-448.
[43] Section 42A Report, paragraph 444.

82. In evidence, Lynette Wharfe for Hort NZ submitted that the Ambient Air Quality Guidelines were not developed through a statutory process and are only that – guidelines. Therefore, their inclusion as a threshold requirement in the policy is inappropriate.[44]

83. The report writer changed his initial recommendation to a consequential amendment in response to Ms Wharfe's evidence. He considered that his initial wording in the explanation to the policy could be amended to better match the policy and to remove any suggestion of a rule-like threshold.[45] He also recommends changing the wording slightly to resolve a grammatical issue in the recommended amended text – 'discharges' instead of 'dischargers'.

84. Policy 15.3.2 should give prominence to NESAQ which is a rule as opposed to a guideline, and the Panel considers the reference to Ambient Air Quality Guidelines should be removed from the statement to the policy, and be included instead in the explanation to focus on managing discharges to air. We also decided that it would be appropriate to include a new method to suggest where the AAQG might be used.

Decision

85. Policy 15.3.2 is amended as follows:

15.3.2 ~~Require all~~ Manage discharges to air ~~to comply with the~~ so that ambient air quality is consistent with ~~standards established by~~ the National Environmental Standard for Air Quality.

86. As a consequential amendment, the explanation to Policy 15.3.2 is amended as follows:

The NESAQ sets ambient air quality standards that apply to both airsheds and open air. The standards include threshold concentrations for carbon monoxide, nitrogen dioxide, ozone, PM_{10} and sulphur dioxide, and specify the number of exceedances allowed (if any) within a certain timeframe. The Ambient Air Quality Guidelines (Ministry for the Environment) cover these and additional contaminants, and, unlike the NESAQ, address ecosystem health as well as human health. The Standards and Guidelines are not intended as assessment criteria for individual discharges, but those applying for discharge permits will need to show whether the activity would be likely to cause a breach of the NESAQ (or the ambient air quality guidelines where relevant). ~~All discharges are required to comply with the ambient air quality standards in order to protect the health and wellbeing of people in close proximity to any proposed discharge.~~ This policy will be implemented through the assessment of discharge permit applications, the imposition of resource consent conditions, ~~and~~ the establishment of permitted activity rule standards, and Method 15.M.X Discharges to air.

[44] Hort NZ, Lynette Wharfe Evidence, paragraph 6.11. Section 42A Report, Reply to Evidence, pages 20-21.
[45] Section 42A Report, Reply to Evidence, citing NESAQ, pages 20-21.

87. A new method is to be inserted as follows:

Method 15.M.X Discharges to air

Where relevant and appropriate, use the Ambient Air Quality Guidelines to assess the adverse effects of proposed discharges to air.

Policy 15.3.4

Manage the use of agrichemicals to avoid spraydrift. The boundary of the property on which the application of agrichemical occurs is the point at which management applies, as follows:

(a) any agrichemical should not move, either directly or indirectly, beyond the property boundary of the site(s) where it is or has been applied; and

(b) agrichemical users will be required to utilise best practice and exercise reasonable care to achieve (a).

88. It was drawn to the Panel's attention that Air Quality in Volume 1 PMEP Policy 15.3.4 relates only to land, not air, while Volume 2 Rules relates to Multiple Zone Standards which require applications to be carried out in accordance with NZS 8409 Agricultural Chemicals sections 5.3, 5.5 and 5.34 which require an applicator to 'minimise' spray drift instead of 'avoiding' spray drift as in Policy 15.3.4.

Consideration

89. The questions the Panel considered were:

- Does this create conflict between the provisions in the NZS 8409:2004 and the plan provisions with respect to the receiving environment?
- Is there an inconsistency with respect to the performance standard?

90. The first bullet point question is addressed in the Panel's decision in Discharge to Land under the heading Discharge to Air.

91. The potential confusion with respect to the receiving environment raised by submitters arises because most agrichemicals are sprayed into the air with the intent that it settles as droplets onto vegetation. It is clear that the intended receiving environment is therefore land. The potential for spray drift occurs only as a result of inappropriate application methods and practices such as applying agrichemicals in windy conditions. However, the Panel considers that the confusion can be resolved by replicating the policy in Chapter 16 and by additional explanation to the policy that reflects the situation described above.

92. We referred to the definition of 'minimise' in the New Zealand Concise Oxford Dictionary[46] which identifies the word as 'the smallest possible amount'.

[46] 4th Edition.

93. Most parties to the policy, while acknowledging that some spray drift was unavoidable when dealing with agrichemicals and fertilisers, need to employ best practice, recognising that complete internalisation of effects within a property is not always possible.

94. In our view, the word 'minimise' informs the policy, prompting users to use best practice to avoid/remedy the difficulties with spray drift. 'Minimise' is the strongest term to use in the context of such a high level policy.

Decision

95. Amend Policy 15.3.4(b) as follows:

…(b) agrichemical users will be required to utilise best practice and exercise reasonable care to achieve (a) by minimising any such spray drift.

96. Amend the explanation to Policy 15.3.4 as follows:

The use of agrichemicals is an important management tool, especially in rural environments where they contribute to the control of animal and plant pests and help to minimise crop diseases. Use of agrichemicals in the environment is controlled under the Hazardous Substances and New Organisms Act 1996. Each agrichemical must be approved for use by the Environmental Protection Authority. The Authority can also impose specific controls on the application of agrichemicals to ensure safe use. The policy signals that the Council's role in controlling the ~~discharge~~ application of ~~contaminants~~ agrichemicals ~~to air is restricted~~ is to ensure~~ing~~ that there are no off-site adverse effects. The application of agrichemicals onto crops or unwanted vegetation typically involves spraying the agrichemical into air and subsequent settlement of the droplets onto the vegetation. The Plan regulates the application (involving discharge) of agrichemicals as a discharge to land as that is the intended receiving environment. However, the potential for spraydrift occurs as a result of inappropriate application methods and practices (e.g. applying agrichemicals in windy conditions). The property boundary is therefore established as the point to which management is applied, as agrichemicals have the potential to cause health effects and other unintended consequences once they move beyond the boundary of the property on which they are being used. ~~Spraydrift usually occurs as a result of inappropriate application methods and practices (e.g. applying agrichemicals in windy conditions).~~ The Council will rely on agrichemical users applying best practice and exercising reasonable care to avoid spraydrift beyond their property boundary.

97. Insert a new policy in Chapter 16 as follows:

[R]

Policy 16.3.x – Manage the use of agrichemicals to avoid spraydrift. The boundary of the property on which the application of agrichemical occurs is the point at which management applies, as follows:

(a) any agrichemical should not move, either directly or indirectly, beyond the property boundary of the site(s) where it is or has been applied; and

(b) agrichemical users will be required to utilise best practice and exercise reasonable care to achieve (a) by minimising any such spray drift.

The use of agrichemicals is an important management tool, especially in rural environments where they contribute to the control of animal and plant pests and help to minimise crop diseases. Use of agrichemicals in the environment is controlled under the Hazardous Substances and New Organisms Act 1996. Each agrichemical must be approved for use by the Environmental Protection Authority. The Authority can also impose specific controls on the application of agrichemicals to ensure safe use. The policy signals that the Council's role in controlling the application of agrichemicals is to ensure that there are no off-site adverse effects. The application of agrichemicals onto crops or unwanted vegetation typically involves spraying the agrichemical into air and subsequent settlement of the droplets onto the vegetation. The Plan regulates the application (involving discharge) of agrichemicals as a discharge to land as that is the intended receiving environment. However, the potential for spraydrift occurs as a result of inappropriate application methods and practices (e.g. applying agrichemicals in windy conditions). The property boundary is therefore established as the point to which management is applied, as agrichemicals have the potential to cause health effects and other unintended consequences once they move beyond the boundary of the property on which they are being used. The Council will rely on agrichemical users applying best practice and exercising reasonable care to avoid spraydrift beyond their property boundary.

Standard 3.3.37

Discharge of contaminants to air from burning for the purposes of vegetation clearance.

Standard 3.3.37.1

Burning must not be carried out on Class 7e or Class 8 land when the Fire Weather Index Parameters (as notified by the Rural Fire Authority for the burn area, pursuant to the Forest and Rural Fires Act 1977) for the burn are:

(a) drought code – 200 or higher,

(b) build up index – 40 or higher.

98. One submitter opposes the rule references to the Rural Fire Authority. Federated Farmers requests: the standard is not clear for a plan user as to what is Class 7e or Class 8 land, who determines it, and where this can be found.[47] There is a plethora of burning rules (and this seems to either contradict them or be irrelevant) – the rule should be deleted (a similar submission is made on the identical Rule 19.1.12 (Standard 19.3.10) in the Open Space 3 Zone).[48]

Section 42A Report

99. The report writer identifies the same rule has been used for many years in the MSRMP and he is not aware of the rule being problematic. The rule, however, could be better expressed. The class of land in the rule relates to the Land Use Capability (LUC) system. This is a well-established land assessment methodology used throughout New Zealand to determine suitability and vulnerability of lands and soils as well as its long-term capability.[49]

100. The report writer seeks to amend the standard as follows:

> *Discharge of contaminants to air from burning for the purposes of vegetation clearance.*
>
> *3.3.37.1 Burning must not be carried out on <u>Land Use Capability</u> Class 7e or Class 8 land<u>, as shown as the 'LUC' category on the New Zealand Land Resource Inventory database,</u> when the Fire Weather Index Parameters (as notified by the Rural Fire Authority for the burn area, pursuant to the Forest and Rural Fires Act 1977) for the burn are:*
>
> *(a) drought code – 200 or higher,*
>
> *(b) build up index – 40 or higher.*

[47] Federated Farmers (425.608 and .609).
[48] Federated Farmers (425.742).
[49] Section 42A Report, paragraph 591.

Consideration

101. The standards lack certainty due to use of Class 7e or Class 8 land. The Panel accepts the reference to the LUC system and the NZLRI database as set out in the original Section 42A Report but also notes the references to the 'Forests and Rural Fires Act 1977' and the 'Rural Fire Authority' should now be 'Fire and Emergency New Zealand Act 2017' and 'Fire and Emergency New Zealand'.

Decision

102. Standard 3.3.37.1, 4.3.36.1 and Standard 19.3.10.1 are amended to read:

Burning must not be carried out on Land Use Capability Class 7e or Class 8 land, as shown as the 'LUC' category on the New Zealand Land Resource Inventory database, when the Fire Weather Index Parameters (as notified by the Rural Fire Authority for the burn area, pursuant to the ~~Forest and Rural Fires Act 1977~~ Fire and Emergency New Zealand Act 2017) for the burn are:

(a) drought code – 200 or higher, or

(b) build up index – 40 or higher.

Discretionary Activity Rule 21.4.4

Any discharge of contaminants into or onto land, or to air, not provided for as a Permitted Activity or limited as a Prohibited Activity.

103. Rule 21.4.4 enables only the Council to seek a resource consent (see Chapter 21 heading) as the paragraph immediately following the Chapter 21 heading states '*Unless explicitly specified, these rules apply to river control and drainage works only carried out by the Marlborough District Council exercising its functions under [river control legislation*]'.

104. One submitter seeks the rule be retained as notified. The MDC identifies that there is no discretionary activity rule that enables a third party to apply for resource consent for the discharge of contaminants into or on to land, or to air in the Floodway Zone.[50]

105. MDC seeks that Rule 21.4.4 be amended as follows: 'Any discharge of contaminants into or onto land, or to air, by any person, not provided for as a Permitted Activity or limited as a Prohibited Activity.'

Section 42A Report

106. The report writer agrees there is a difficulty with the discretionary rule not allowing persons other than MDC to apply for a discharge permit under 21.4.4. Certain rules in the Floodway Zone provide for persons other than the MDC to undertake permitted activities, for example,

[50] MDC (91.119).

21.1.16, 21.1.17 and 21.3.16. The addition of the words 'any person', would allow persons other than the MDC to apply for a discharge permit under 21.4.4.

107. The report writer also notes that Prohibited Rule 21.5.1 prohibits the burning of certain materials. As currently worded, this rule applies only to MDC. An application by others for resource consents cannot be made for this activity either. This, in the opinion of the report writer, is likely a drafting oversight. As a consequential amendment to the relief sought, the report writer recommends that the words 'by any person' be added to the introductory sentence to the rule to bring it into line with the proposed revision to 21.4.[51]

Consideration

108. Because Rule 21.4.4 only relates to the Council and the relief sought to expand that to include any person a new rule would be required. The Panel preferred the proposed wording from the Section 42A Report on Topic 9 Natural Hazards 'Discharge of industrial process waste to stormwater by any person'[52] and adapted the wording to suit Prohibited Rule 12.5.1.

Decision

109. After consideration, the Panel retains 21.4.4 as notified and accepts that as recommended for the reasons given, Rule 21.4 is amended by adding a new rule as follows:[53]

21.4.5 Any activity provided for as a Permitted Activity undertaken by any person other than Marlborough District Council.

110. The following consequential amendment is made to Prohibited Rule 21.5.1:[54]

21.5.1 Discharge of contaminants to air by any person arising from the burning of any of the following materials:

Rule 13.1.37

Discharge of contaminants to air from combustion within a stationary internal combustion engine (i.e. internal combustion).

111. One submitter seeks the rule to cover vehicles with internal combustion engines that are moving, such as trains, ferries and support and other vehicles.[55]

112. NZDF is concerned that the rule could capture emissions from aircraft engines, particularly when they are removed for maintenance and testing.[56]

[51] Section 42A Report, page 674.
[52] Section 42A Report (Topic 9 Natural Hazards), paragraphs 420-424.
[53] Section 42A Report, paragraph 672. This amendment was adapted from the Section 42A Report on Topic 9 National Hazards (Paul Whyte), paragraphs 420-424.
[54] Section 42A Report, paragraph 676.
[55] KiwiRail (873.157).
[56] NZDF (992.85).

Section 42A Report

113. The report writer recommends that an addition could be made to the definition of 'internal combustion' on page 25-11 (PMEP Definitions) to avoid the potential for ambiguity, as follows:[57]

> ***Internal combustion*** *means a method of energy generation in which combustion takes place in a controlled chamber or chambers inside an engine to generate mechanical energy. A stationary internal combustion engine is one that is fixed in place or to the device to which it provides power, but which does not provide propulsion to the device. An engine in a usually mobile vehicle which is being tested during repair or maintenance whether in the vehicle or temporarily removed from it is not a stationary internal combustion engine for the purposes of this Plan.*

Consideration

114. After hearing the evidence the Panel considers that instead of extending the amended definition of 'internal combustion' as set out in the Section 42A Report, there should be a new definition of 'stationary internal combustion' because the report writer's amendment could unnecessarily capture emissions from aircraft engines. The Panel used the recommended additional sentence to form the definition amending the start to include the words '*Stationary internal combustions means an engine that is fixed*'.

Decision

115. Rule 13.1.37 is retained as notified and a new definition 'stationary internal combustion' is inserted as follows:

> ***Stationary internal combustion*** *means an engine that is fixed in place or to the device to which it provides power, but which does not provide propulsion to the device. An engine in a usually mobile vehicle which is being tested during repair or maintenance whether in the vehicle or temporarily removed from it is not a stationary internal combustion engine for the purposes of this Plan.*

New Permitted Activity Rule - Discharges to air from cars, trucks on the road and rail network

116. Several submitters seek a new rule to deal with discharges to air from mobile sources such as motor vehicles and trains.[58]

117. KiwiRail submits that the discretionary activity rules at 2.23.2 identify that any discharge to air not provided for as a permitted activity requires consent. This rule means that trains, cars,

[57] Section 42A Report, paragraph 722.
[58] KiwiRail (873.98 and .157), NZTA (1002.149).

trucks on the road and rail network require a discharge to air consent for each operation. Even so, the Council already controls the discharge to air from internal combustion engines in the Port Zones. The submitter wants the permitted activity rule to cover moving vehicles with internal combustion engines such as trains cars, trucks on the road and rail network.

118. Submitters on Rule 10.3.10 are concerned about restrictions on their ability to run a steam train through Blenheim at special events or parades.[59] This issue is similar to that raised by KiwiRail.

119. NZTA opposes the General Rules in Volume Two, Chapter 2, and like KiwiRail is concerned about the lack of provision for discharges from mobiles sources such as vehicles using the road. They seek a permitted rule, not subject to standards – 'Discharge of contaminants from a mobile source'.[60]

Section 42A Report

120. The report writer considers the issue of mobile sources is significant:

- Any train, aircraft, boat (other than in the coastal marine area), motor vehicle, lawnmower or motorised equipment would need a resource consent to operate.
- This is a problem not only for roads and the rail corridor identified in the planning maps but also for trains, vehicles and vessels operating outside of the identified roads and rail corridors (for example, trucks and cars within zoned land, earthmoving equipment on a farm, or aircraft on an airfield).
- Steam trains and traction engines (external combustion driven) also need to be accommodated, including the recreational railway beside the Taylor River which is not within the defined rail corridor.
- The wording of the rule proposed by NZTA ('Discharge of contaminants from a mobile source') would be open to misinterpretation if read by users without a definition of 'mobile source'. Without changing the rule it would be helpful to mention vehicles in the new rule to provide clarity.[61]
- A General Rule is recommended to be introduced that applies in all locations – rail corridor, roads, all zones.

[59] John and Pam Harvey (430.9).
[60] NZTA (1002.149).
[61] Section 42A Report, paragraphs 772-774.

- A new definition of 'mobile source' is recommended with some minor changes which would support the proposed new rule (it was recommended in the Waste and Discharge chapter).
- A new permitted activity rule for the discharge of contaminants to air from the burning of fuel in a motor vehicle or train as follows:

  2.21.X Discharge of contaminants to air from the burning of fuel in a motor vehicle, train, aircraft or other mobile source.

  And that it states:

  This rule applies to roads and rail corridors identified on the zoning maps, and within all zones.

121. NZTA supports the definition and wording of the rule proposed in the Section 42A Report. But the company is concerned that this 'applies to roads and rail corridors identified in the zoning maps and within all zones'. NZTA considers that mobile sources on water may not be permitted – these are neither road nor rail. The suggested amendment is as follows:[62] *This rule applies to all land and water bodies within the region, irrespective of zoning*.

Consideration

122. The scope for relief is limited by the submission that are restricted to the discharge of contaminants to air from mobile sources in or on the road and rail corridors. The report writer's recommendations sought to expand the rule to include aircraft and other mobile sources within all zones but that is beyond the scope of the submission. The Panel accepts the recommendations but with reference to aircraft and other mobile sources within all zones deleted.

123. The Panel notes that the decision on a NZTA submission in the Topic 13 – Water Quality expands the scope of Rule 2.21 and 2.23 and therefore also the activities provided for in the road and rail corridor. The rule(s) accepted by the Panel above are to integrate into that new structure by being inserted into Rule 2.21 which lists (a now expanded range of) permitted activities in the road and rail corridor.

Decision

124. As further recommended, a new rule be added to the General Rules of Volume Two as follows:

2.21.X Discharge of contaminants to air from the burning of fuel in a motor vehicle or train.

[62] Section 42A Report, Reply to Evidence, page 37.

New rule – Emergency electricity generation

125. The proposed rule is to 'facilitate discharge of contaminants to air from internal combustion engines during disruption to the power network together with exclusions within the zone rules where necessary'.[63]

126. Z Energy, Mobil and BP support in part the General Rules for discharges to air.[64] But they do not recognise the need for emergency generators to be used during disruption to the power network. They argue that service stations provide a strategic function in the region's emergency plan with the fuel stored at service stations providing emergency power generation. It is essential to be able to use the fuel source in an emergency for extended periods of time (beyond the 5 hour restriction in zone rules). A new permitted activity rule is required to facilitate the use with exclusions within the zone rules where necessary.

127. Trustpower also supports in part the permitted activity rules in order to allow for the use of small-scale diesel-fuelled generators during maintenance activities, emergencies, weather, accidents or other unforeseen activities.[65] The company operates such devices at its hydroelectric plants to enable the operation of spillway gates and other essential components of the infrastructure during emergencies to prevent flooding and/or infrastructure damage. Trustpower seeks a new permitted activity rule as follows:

> *Discharge of contaminants to air from the combustion of diesel to provide back-up power generation when an electricity connection is disrupted or unavailable.*
>
> *i) The maximum generating capacity of the combustion equipment is less than 1 MW; and*
>
> *ii) The discharge shall not cause noxious, dangerous, offensive or objectionable odour, particulate or smoke beyond the boundary of the property.*

and 'any similar or consequential amendments to the MEP that stem from the submission and relief sought'.

128. NZDF also sought an exemption for discharges to air for emergency electricity generation.[66]

Section 42A Report

129. After traversing the existing limitations on discharges from stationary internal combustion engines (hospitals, airports) which have a standard restricting usage to a maximum of 5 hours'

[63] Section 42A Report, paragraph 781.
[64] Z Energy, Mobil and BP (1004.38).
[65] Trustpower (1201.143 and .144).
[66] NZDF (992.84).

usages and the kW capacity of engines, the report writer considered that it is appropriate to provide for people's health and safety through a general rule providing for emergency electricity generation in the event of a power outage.

130. In an emergency involving an extended electricity outage, the zone rules can be too restrictive. The report writer considered ss 330 and 330B RMA could not be used in such circumstances.

131. The report writer therefore recommends that, as proposed under Matter 15 (Permitted Activities – Stationary Internal Combustion Engines), a cross reference to this new rule is inserted along with the clarification that the zone rules do apply to emergency electricity generation.[67]

132. The evidence of GBC Winstone, through its air consultant, provides support for the new permitted activity rule relating to the need to limit the permitted activity by stating a maximum allowable size for diesel-powered generators of 1 MW. As written, this restriction would not exist for generators powered by other fuels.[68]

133. The report writer identifies that the 1 MW cap was part of the relief sought by Trustpower[69] as the specification of diesel fuel. He favours retaining the 1 MW limit as that is a large generator and should meet most requirements. He supports removing the reference in 2.22.Y to diesel fuel so that it would apply to internal combustion engines fuelled by petrol or gas.

Consideration

134. The rules should recognise the need to provide for emergency generation to be used during a disruption to the power network. We agree with the report writer's recommendation but have deleted 'This rule applies to road and rail corridors identified on the zoning maps and within all zones' as there is no zoning that applies to this General Rule. We also agreed that the word 'diesel' should be deleted and replaced with 'fuel', and that the new rule under a heading 'Emergency Electricity Generation' be inserted at the conclusion of the General Rules, as opposed to amending 2.21.

[67] Section 42A Report, paragraph 786.
[68] GBC Winstone (749.5). Andrew Curtis, Evidence, paragraph 424.
[69] Trustpower (1201.143 and .144).

Decision

135. For the reasons recommended, a new Permitted Activity Rule is inserted at the end of the General Rules, as follows:

[R]

Emergency Electricity Generation

2.X.1 Discharge of contaminants to air from combustion of fuel within an internal combustion engine used to provide back-up power generation when an electricity connection is disrupted or unavailable.

136. Insert new standards as follows

2.X.1 Discharge of contaminants to air from the combustion of fuel within an internal combustion engine used to provide back-up power generation when an electricity connection is disrupted or unavailable.

2.45.Y.1 The maximum generating capacity of the combustion equipment is less than 1 MW; and

2.45.Y.2 The discharge shall not cause noxious, dangerous, offensive or objectionable odour, particulate or smoke as detected at or beyond the legal boundary of the area of land on which the discharge is occurring.

137. Insert a new Discretionary Activity Rule as follows:

[R]

The discharge of contaminants from combustion of fuel within an internal combustion engine used to provide back-up power generation when an electricity connection is disrupted or unavailable that does not meet the applicable permitted activity standards.

New rule and associated standards – water blasting and dry abrasive blasting in the road and rail corridors

138. Trustpower seeks the insertion of a new rule in Chapter 3 to allow for the following as a permitted activity: *Discharge of contaminants to air from water blasting and from dry abrasive blasting*, and new permitted activity standards (wording provided i-viii) and 'any similar or consequential amendments to the PMEP that stem from the submission and relief sought'.[70]

139. Trustpower submitting on the Rural Zone supports in part the permitted activity rules including a new rule for abrasive blasting in the Rural Zone. The activity is allowed in Industrial

[70] Trustpower (1201.145 and .146).

and Port Zones. The company considers that requiring resource consent for abrasive blasting in rural areas would not achieve any better environmental outcomes than could be achieved by standards on a permitted activity rule. The company identifies to that abrasive blasting is a common maintenance activity for infrastructure (such as penstocks at hydro dams), and can be managed in such a way that any potential effects on the environment can be suitably avoided or mitigated. It points out that other regional plans provide for abrasive blasting as a permitted activity region-wide, including the Regional Air Quality Plan for Taranaki, the Canterbury Air Regional Plan and the Proposed Natural Resources Plan for the Wellington Region.[71]

Section 42A Report

140. The report writer advised that the Canterbury Air Regional Plan provides for outdoor abrasive blasting subject to conditions as does the Taranaki Plan that is not quite as enabling as suggested. The Taranaki Plan provides for wet abrasive blasting subject to conditions including no disposition of contaminants can occur within 10 metres of any waterbody, while dry abrasive blasting outdoors is a controlled activity.[72]

141. The report writer advises he is generally supportive of a blasting rule similar to other zones being provided in the road and rail corridors (General Rules) and in the Rural Zones as sought by Trustpower which are rules to provide for wet and dry abrasive blasting in the Rural Zone.

142. Nevertheless, the report writer also recommends that with the number of structures in the rural area over rivers and streams, an additional standard to prevent contaminants entering water is required.

143. The report writer recommends that a new activity rule for abrasive blasting and water blasting in the road and rail corridors associated with road and bridge maintenance be added to Volume Two General Rules as follows:[73]

> *Standard 2.1.Z. The discharge of contaminants into air from abrasive blasting and water blasting, including and [sic] any associated discharge onto land.*
>
> *Permitted activity standards specific to this activity:*
>
> *2.3.Z.1. Any sand or other material used for abrasive blasting must contain less than 5% free silica on a dry weight basis.*

[71] Section 42A Report, paragraph 791.
[72] Section 42A Report, paragraph 793.
[73] Section 42A Report, paragraph 795. PMEP Volume Two General Rules 2-28.

2.3.Z.2. Any discharge of particulate matter must not be offensive or objectionable as detected at or beyond the legal boundary of the area of land on which the activity is occurring.

2.3.Z.3. Any abrasive media not in use must be kept covered and protected from erosion.

2.3.Z.4. All material that is discharged to land from the blasting must be collected and removed from the site to the extent practicable after blasting has been completed. The material must be disposed of to a facility that has authorisation to accept the contaminants in the material.

2.3.Z.5. There must not be any deposition of contaminants from the activity into or within 10 metres of a waterbody or the coastal marine area.

2.3.Z.6. The surface to be blasted must not contain lead, zinc, arsenic, chromium, copper, mercury, asbestos, tributyl tin, thorium-based compounds, and other heavy metals including anti foul paint containing these substances.

2.3.Z.6.[sic]For dry abrasive blasting all items must be blasted within an abrasive blasting enclosure and the discharge must be via a filtered extraction system that removes at least 95% of particulate matter from the discharge.

144. A new permitted activity rule be added to Chapter 3, Volume 2, Use of the Rural Environment as follows:

3.1.X The discharge of contaminants into air from water blasting and dry abrasive blasting.

145. Permitted activity standards specific to this activity:

3.3.X The discharge of contaminants into air from water blasting and dry abrasive blasting.

3.3.X.1 There must be no discharge of water spray, dust or other contaminant beyond the boundary of the property.

3.3.X.2 Where the discharge occurs from public land there must be no discharge of water spray, dust or other contaminant beyond 50m from the discharge point or beyond the boundary of the public land, whichever is the lesser.

3.3.X.3 There must not be any deposition of contaminants from the activity into or within 10 metres of a waterbody or the coastal marine area.

3.3.X.4 The surface to be blasted must not contain lead, zinc, arsenic, chromium, copper, mercury, asbestos, tributyl tin, thorium-based compounds, and other heavy metals including anti foul paint containing these substances.

3.3.X.5 Where abrasive blasting is undertaken inside an enclosed booth, the discharge must be via a filtered extraction system that removes at least 95% of particulate matter from the discharge.

3.3.X.6 Dry abrasive blasting outside an enclosed booth shall only be undertaken when it is impractical to remove or dismantle or transport a fixed object or structure to be cleaned in a booth.

3.3.X.7 For dry abrasive blasting the free silica content of a representative sample of the blast material must be less than 5% by weight.[74]

Consideration and decision

146. The Panel adopted the recommendation of the report writer but noted an inconsistency in his recommendations with respect to the rule to be inserted in the General Rules and the rule to be inserted thin the Rural Zone rules. To achieve consistency the Panel has decided to use the collective term 'water blasting and dry abrasive blasting. A new permitted activity standard for water blasting and dry abrasive blasting in the road and rail corridor associated with road and bridge maintenance is added to Volume Two General Rule. By adding the rule to section 2.21 of the General Rules the note recommended for inclusion with the rules is not required as the rules in this section only apply to the road and rail corridor.

147. The Panel notes that the decision on a NZTA submission in the Topic 13 – Water Quality expands the scope of Rule 2.21 and 2.23 and therefore also the activities provided for in the road and rail corridor. The rule(s) accepted by the Panel above are to integrate into that new structure by being inserted into Rule 2.21 which lists (a now expanded range of) permitted activities in the road and rail corridor.

148. A new rule is inserted as follows:

<u>2.21.x. Discharge of contaminants into air from water blasting and dry abrasive blasting, including any associated discharge onto land.</u>

<u>Permitted activity standards specific to this activity:</u>

<u>2.22.x.1. Any sand or other material used for abrasive blasting must contain less than 5% free silica on a dry weight basis.</u>

[74] Section 42A Report, paragraph 797.

2.22.x.2. Any discharge of particulate matter must not be offensive or objectionable as detected at or beyond the legal boundary of the area of land on which the activity is occurring.

2.22.x.3. Any abrasive media not in use must be kept covered and protected from erosion.

2.22.x.4. All material that is discharged to land from the blasting must be collected and removed from the site to the extent practicable after blasting has been completed. The material must be disposed of to a facility that has authorisation to accept the contaminants in the material.

2.22.x.5. There must not be any deposition of contaminants from the activity into or within 10 metres of a waterbody or the coastal marine area.

2.22.x.6. The surface to be blasted must not contain lead, zinc, arsenic, chromium, copper, mercury, asbestos, tributyl tin, thorium-based compounds, and other heavy metals including anti foul paint containing these substances.

2.22.x.7. For dry abrasive blasting all items must be blasted within an abrasive blasting enclosure and the discharge must be via a filtered extraction system that removes at least 95% of particulate matter from the discharge.

149. A new permitted activity standard is added to Chapter 3, Volume 2, Use of the Rural Environment as follows:

3.1.X The discharge of contaminants into air from water blasting and dry abrasive blasting.

Permitted activity standards specific to this activity:

3.3.X The discharge of contaminants into air from water blasting and dry abrasive blasting.

3.3.X.1 There must be no discharge of water spray, dust or other contaminant beyond the boundary of the property.

3.3.X.2 Where the discharge occurs from public land there must be no discharge of water spray, dust or other contaminant beyond 50 metres from the discharge point or beyond the boundary of the public land, whichever is the lesser.

3.3.X.3 There must not be any deposition of contaminants from the activity into or within 10 metres of a waterbody or the coastal marine area.

3.3.X.4 The surface to be blasted must not contain lead, zinc, arsenic, chromium, copper, mercury, asbestos, tributyl tin, thorium-based compounds, and other heavy metals including anti foul paint containing these substances.

3.3.X.5 Where dry abrasive blasting is undertaken inside an enclosed booth, the discharge must be via a filtered extraction system that removes at least 95% of particulate matter from the discharge.

3.3.X.6 Dry abrasive blasting outside an enclosed booth shall only be undertaken when it is impractical to remove or dismantle or transport a fixed object or structure to be cleaned in a booth.

3.3.X.7 For dry abrasive blasting the free silica content of a representative sample of the blast material must be less than 5% by weight.

New rule – Open burning

150. NZDF opposes the Airport Zone rules. It says open burning is provided for as a permitted activity in other zones including the Rural Zone, Urban Residential 1 and 2 Zones, and the Open Space Zone (and others) where arguably the amenity is higher and the discharge would likely have a greater effect.[75]

151. The submitter also considers that it may wish to undertake burning of green waste within the Airport zoned area of Base Woodbourne and it is appropriate that this is provided for as a new permitted activity rule with appropriate standards in Chapter 23. The suggested wording is as follows:

Permitted activity: Discharge of contaminants to air arising from burning in the open.

Standards: - Only material generated on the same property or a property under the same ownership can be burned.

Section 42A Report

152. The report writer identifies that the three airports covered by the Airport Zone (Blenheim, Picton and Omaka) are all outside the Blenheim Airshed, so impacts on PM_{10} levels within Blenheim are not a critical concern – although Omaka is just outside the urban area.

153. The writer considers it is appropriate for the Airport Zone to have an outdoor burning rule, with the expectation that the operators of the site would manage effects on the safe operation of the airport.

[75] NZDF (992.91).

154. As the airports are surrounded by land zoned Rural, the report writer considers a rule similar to that zone would be appropriate for the Airport Zone. The key standard in the Rural Zone is that proposed by NZDF: *Only material generated on the same property or a property under the same ownership can be burned*.

155. The report writer recommends a new permitted activity rule be added to the Airport Zone as follows:

23.1.X Discharge of contaminants to air arising from burning in the open.

156. And that a new specific permitted activity standard be added, as follows

23.3.X Discharge of contaminants to air arising from burning in the open.

23.3.X.1 Only material generated on the same property can be burned.

Consideration

157. The Panel accepts that NZDF should have the opportunity to burn waste in the open as a permitted activity on the basis that it is enabled in other zones. But we do not agree that the phrase 'or property under the same ownership' is appropriate for the standard as recommended by the report writer as the submission opens up burning of material generated not only within the Airport zoned area but also within other properties so long as they are in the same ownership.

Decision

158. As recommended, a new permitted activity rule is added to the Airport Zone as follows:

23.1.X Discharge of contaminants to air arising from burning in the open.

159. And a new specific permitted activity standard is added as follows:

23.3.X Discharge of contaminants to air arising from burning in the open.

23.3.X.1 Only material generated on the same property can be burned.

New rule – Discharge from petroleum products

160. Z Energy, Mobil and BP support the Plan in part but they request a new rule be inserted to provide for discharges to air associated with the storage and use of petroleum products, including vapour ventilation and displacement, and emergency power generation as permitted activities. They provided the rule they wish to be added (with a default to discretionary activity status where the activity standards are not met) as follows:[76]

Discharge to Air - All Zones

[76] Z Energy, Mobile and BP (1004.31 and .56).

These activities apply within all zones

2.## The following activities shall be permitted without resource consent where they comply with the applicable standards in 2.##

And;

2.## Permitted Activities

2.##.1 The discharge of contaminants including odour into air from the storage or transfer of petroleum products, including vapour ventilation and displacement.

2.##.2 Discharge of contaminants to air from combustion within a stationary internal combustion engine to provide emergency power generation.

2.## Standards that apply to specific permitted activities

2.##.1 Discharge of contaminants including odour into air from the storage or transfer of petroleum products, including vapour ventilation and displacement.

2.##.1.1The discharge does not cause a noxious or dangerous effect beyond the legal boundary of the area of land on which the permitted activity is occurring.

2.##.2 Discharge of contaminants to air from combustion within a stationary internal combustion engine to provide emergency power generation when:

a) the electricity network is disrupted through weather, accidents, or any unforeseen circumstances, or

b) the person operating the equipment is undertaking necessary maintenance or testing of the device, or

c) the electricity connection is not available

And;

2.## Discretionary Activities

Application must be made for a Discretionary Activity for the following:

2.##.1 Any activity provided for as a Permitted Activity that does not meet the applicable standards.

2.##.2. Any discharge to air not provided for as a Permitted Activity.

Section 42A Report

161. The report writer recommends a new rule to provide for discharge to air associated with emergency electricity generation. While there is a permitted activity rule providing for 'Discharge for the purposes of ventilation or vapour displacement' in the Industrial, Port, Lake Grassmere Salt Works, and the Airport zones, other zones lack such a rule.

162. For some other zones there is a potential problem – there is no rule to allow for vapour displacement. Most farms and rural activities will have storage on site as will the Marina and Open Space 4 Zone (ski fields). Residential sites too will sometimes have oil-fired central heating, and hospitals and other institutions will have fuel tanks – at least for running emergency generators.[77]

163. The report writer recommends it is appropriate to include a permitted activity rule similar to that sought in each zone as otherwise the activity technically requires resource consent. He recommends that a new permitted activity rule is inserted under 'X.1 Permitted Activities' in the Rural Environment Zone, Coastal Environment Zone, Urban 1, 2 and 3 Zones, Coastal Living Zone, Rural Living Zone, Business 1, 2 and 3 Zones, Port Landing Area Zone, Marina Zone, Open Space 1, 2, 3 and 4 Zones, Floodway Zone, as follows:

> *The discharge of contaminants into air from the storage or transfer of petroleum products, including vapour ventilation and displacement.*

164. And it is recommended that a new standard applying to all permitted activities be inserted, as follows:

> *Odour must not be objectionable or offensive, as detected at or beyond the legal boundary of the area of land on which the permitted activity is occurring.*

165. And a new General Rule is recommended as follows:

> *This rule applies to only roads and rail corridors identified on the zoning maps, and within all zones.*

Consideration

166. The Panel agrees with the recommendations of the report writer with respect to providing a permitted activity. In addressing these matters, the Panel considered that a new permitted activity rule should be added to 2.21 would be more appropriate to enable the discharges to air associated with the storage and use of petroleum products in the road and rail corridor. It

[77] Section 42A Report, paragraphs 813-814.

is more appropriate to use the odour standard in Topic 18 Nuisance Section 42A Report instead of that in the Section 42A Report.[78]

167. The Panel agrees with the recommended point of assessment at the boundary that considers the issue is whether the objectionable or offensive odour is causing an adverse effect. It therefore preferred that wording as follows:[79]

> *There shall be no objectionable or offensive odours to the extent that it causes an adverse effect at or beyond the boundary of the site.*

168. The Panel notes that the decision on a NZTA submission in the Topic 13 – Water Quality expands the scope of Rule 2.21 and 2.23 and therefore also the activities provided for in the road and rail corridor. The rule(s) accepted by the Panel above are to integrate into that new structure by being inserted into Rule 2.21 which lists (a now expanded range of) permitted activities in the road and rail corridor.

Decision

169. The standard for odour throughout the PMEP are amended as follows:

There must be no ~~The odour must not be~~ objectionable or offensive odours to the extent that it causes an adverse effect ~~as detected~~ at or beyond the legal boundary of the site. ~~area of land on which the permitted activity is occurring.~~

Note: For the purpose of this performance standard, an offensive or objectionable odour is that odour which can be detected and is considered to be offensive or objectionable by a Council officer. In determining whether an odour is offensive or objectionable, the "FIDOL" factors must be considered (the frequency; the intensity; the duration; the offensiveness (or character); and the location). For the purposes of this performance standard, the "site" comprises all that land owned or controlled by the entity undertaking the activity causing the odour.

New definition – Installed

170. The report writer identifies that a new definition of 'installed' is required as a result of the Panel's Minute 58 to support amended rules as a result of the Woodburners Unite submission.

Consideration and decision

171. The Panel accepts the report writer's recommendations, with a few minor amendments, and a new definition is inserted as follows:

[78] Section 42A Report, paragraph 818.
[79] Section 42A Report (Topic 18 Nuisance Effects), paragraph 58.

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

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 contained in 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.