

DECISIONS ON SUBMISSIONS AND FURTHER SUBMISSIONS

PROPOSED VARIATIONS 15 AND 16 AND CHANGE 1 TO CHAPTER 1 (OVERVIEW) AND CHAPTER 3 (AIR QUALITY) OF THE CANTERBURY NATURAL RESOURCES REGIONAL PLAN

Release of decisions: 27 November 2010

R10/138

ISBN: 978-1-927137-94-9 (hard copy)

ISBN: 978-1-927137-95-6 (electronic)

I hereby certify that this is a true and correct copy of the Council decisions on Submissions and Further Submissions to Proposed Variation 15 and 16 and Plan Change 1 to Chapters 1 (Overview) and Chapter 3 (Air Quality) of the Canterbury Natural Resources Regional Plan (NRRP) prepared by the of the Canterbury Regional Council.

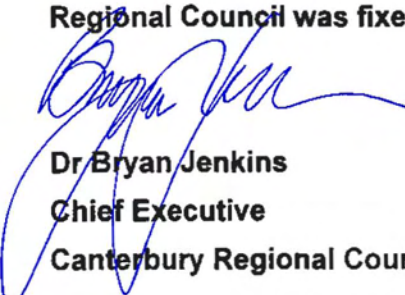
Proposed Variation 15 and 16 and Plan Change 1 is part of a statutory regional plan prepared by the Canterbury Regional Council in accordance with the requirements of the Resource Management Act 1991.

A hearing panel heard and made recommendations to the Council on submissions and the further submission to Proposed Variation 15 and 16 and Plan Change 1 to Chapters 1 and Chapter 3 of the Canterbury Natural Resources Regional Plan and prepared a section 32 evaluation.

Decisions on submissions and the further submission to proposed Variation 15 and 16 and Plan Change 1 were made at a meeting of the Canterbury Regional Council on 24 November 2010 when the recommendations on submissions and further submissions were accepted.

Minor amendments were recommended by the hearing panel under the clause 16 (2) of the first schedule of the Act in paragraph 121, p32 of their attached recommendations. Council resolved to use clause 16 (2) to amend Chapter 3 (Air Quality) of the NRRP in accordance with the hearing panels report for bullet points 1, 2 and 4. Council resolved not to use clause 16 (2) for bullet points 3 and 5 to amend Chapter 3 (Air Quality) of the NRRP. Whilst these changes are shown in the recommendation, they have no legal effect and will not be reflected in the operative document.

The decisions were publicly notified on 27 November 2010. The recommendations and s32 evaluation made by the hearing panel have become Council decisions in the form they have been presented in this document. The Common Seal of the Canterbury Regional Council was fixed in the presence of


Dr Bryan Jenkins
Chief Executive
Canterbury Regional Council



RECOMMENDATIONS OF THE HEARING COMMISSIONERS TO COUNCIL

SUBMISSIONS AND FURTHER SUBMISSIONS

PROPOSED VARIATIONS 15 AND 16 AND CHANGE 1 TO CHAPTER 1 (OVERVIEW) AND CHAPTER 3 (AIR QUALITY) OF THE CANTERBURY NATURAL RESOURCES REGIONAL PLAN

CONTENTS

APPEARANCES.....	1
BACKGROUND TO VARIATIONS 15, 16 AND CHANGE 1.....	2
DESCRIPTION OF VARIATION 15, VARIATION 16 AND CHANGE 1	2
VARIATION 15.....	3
<i>Submissions on Variation 15</i>	<i>6</i>
VARIATION 16.....	6
<i>Submissions on Variation 16</i>	<i>8</i>
CHANGE 1	8
<i>Submissions on Change 1</i>	<i>9</i>
THE STOCKHOLM CONVENTION ON PERSISTENT ORGANIC POLLUTANTS (POP’S)	10
THE ‘ECAN ACT’ AND THE CANTERBURY WATER MANAGEMENT STRATEGY (CWMS)	10
THE HEARING- VARIATION 15.....	10
ASSESSMENT- VARIATION 15.....	14
THE HEARING - VARIATION 16 AND CHANGE 1	21
ASSESSMENT - VARIATION 16 AND CHANGE 1	23
STATUTORY CONSIDERATIONS – VARIATIONS 15, 16 AND CHANGE 1	24
The Canterbury Regional Policy Statement (RPS)	25
PART 2 RESOURCE MANAGEMENT ACT.....	27
SECTION 32 RMA	28
AMENDMENTS TO VARIATION 15.....	30
APPENDIX 1	33
Variation 15 as amended by recommendations of the Hearings Panel	33
<i>NRRP Chapter 1 (Overview).....</i>	<i>33</i>
<i>NRRP Chapter 3 (Air Quality).....</i>	<i>33</i>
APPENDIX 2	44
Variation 16 as confirmed by recommendation of Hearings Panel.....	44
APPENDIX 3	48
Plan Change 1 as confirmed by recommendation of the Hearings Panel.....	48
APPENDIX 4	52
Recommendations on Submissions and Further Submissions	52

IN THE MATTER OF the Resource Management Act 1991

AND

IN THE MATTER OF Proposed Variations 15 and 16 and Change 1 to Chapter 3 of the
Proposed Canterbury Natural Resources Regional Plan (Air)

**RECOMMENDATION OF THE HEARING COMMISSIONERS
November 2010**

Heard on the 29th and 30th of April 2010 at the 'Boaters Restaurant' Christchurch Town Hall,
Kilmore Street, Christchurch.

HEARING COMMISSIONERS

Mr Robert Nixon (Chair)

Mr John Iseli

The hearing commenced at 9:30 AM on 28th September 2010, and concluded at approximately
3PM on 29 September.

APPEARANCES

For the Canterbury Regional Council – CRC (Environment Canterbury)

Mr. Herb Familton (Senior Planner -CRC)

Mr. Roger Cudmore (Air Quality Management Consultant- Golder Associates)

Mr. Marty Mortiaux (Team Leader Regulatory Implementation- CRC)

Mr. Michael Fletcher (Geographic Information Systems Analyst - CRC)

Prior to the hearing, a section 42A report ('S42A Report') was prepared by and circulated to all parties.

For Submitters

Mr. John Hoare (Association for Independent Research – 'AIR')

Mr Steve Godfrey (Energy Projects Manager, Orion)

BACKGROUND TO VARIATIONS 15, 16 AND CHANGE 1

1. It is appropriate to begin by briefly setting out the context for the two variations and the plan change heard by the Hearings Panel.
2. The Canterbury Regional Policy Statement (the "RPS") contains objectives and policies which provide an overview of the management of natural and physical resources and the Canterbury Region. The RPS became operative in 1998, and is currently under review. Chapter 13 of the RPS relates to matters concerning the management of discharges to air.
3. The Proposed Natural Resources Regional Plan ("the PNRRP") implements the RPS through a framework of detailed objectives, policies and rules for the management of natural and physical resources in the Canterbury Region, including water, air, and land use matters of regional significance.
4. Chapter 3 of the PNRRP relates to air quality, and it is this chapter which is amended by the two variations and the plan change. Chapter 3 is at a more advanced stage than the chapters dealing with water issues. It was notified in June 2002 and decisions on submissions were adopted by the Council in September 2007. The great majority of Chapter 3 was made operative in October 2009, with the exception of Policy 4 and Rule AQL29, which forms a significant component of the matters subject to this hearing.

DESCRIPTION OF VARIATION 15, VARIATION 16 AND CHANGE 1

5. The two variations and the plan change have a relatively narrow scope, but are quite complex, particularly Variation 15. This variation is in many respects quite unlike Variation 16 and Change 1, which concern exclusions enabling use of household fires and woodburners during periods when there are disruptions to electricity supply. Variation 15 involves a reasonably important regulatory initiative which will restrict some people's

activities (notably those who have traditionally burned rubbish and garden waste outdoors in urban areas). This variation attracted few submissions, but did attract a detailed submission in opposition. For these reasons, issues concerning Variation 15 occupy by far the greater proportion of the subsequent discussion in our recommendations.

VARIATION 15

6. This is the most contentious of the three matters before the Hearings Panel.
7. The subject of Variation 15 is the management of the outdoor burning of rubbish and garden waste in residential and living zones. Briefly, the Hearings Commissioners on Chapter 3 concluded that the outdoor burning of materials can have significant adverse effects on local air quality, and that in urban areas alternative methods of disposing of such waste existed. Subsequently, after ECAN accepted the Commissioners' recommendations, *AIR* lodged an appeal with the Environment Court against the decision of ECAN.
8. The position of *AIR* was essentially that the outdoor burning of rubbish and garden waste should be permitted subject to a range of conditions. We understand that as a result of a consent order on the appeal, ECAN and *AIR* agreed that the matter would be resolved by the preparation of a variation to address this particular issue. Ultimately this resulted in ECAN deciding to pursue restrictions on outdoor burning of rubbish and garden waste through that variation, but that additional amendments to the PNRRP would be required to provide greater clarity, particularly as this related to Policy 4 and Rule AQL 29.
9. Variation 15 was publicly notified on 23 January 2010, and perhaps not surprisingly, *AIR* was a submitter in opposition. The amendments to the PNRRP resulting from Variation 15 are attached to this recommendation as **Appendix 1**. As well as amending Policy AQL4, adding a new Policy AQL4A, and new rules AQL29A and AQL29B, there are associated amendments to add new definitions in Chapter 1 of the PNRRP, associated explanations and principal reasons, and methods.
10. It is also noted that there are other restrictions on outdoor burning that exist quite independently of the fate of Variation 15, and which are not open to challenge. Firstly, no burning is permitted during the winter months of May - August inclusive. Secondly, any

burning is restricted to vegetation, paper, cardboard and untreated wood; other materials (for example old tyres) are subject to restrictions under Rule AQL36.

11. However, to provide context for our assessment of the submissions to this variation, the wording of the key amendments and alterations are set out below.
12. Existing Policy AQL4 (and the first paragraph of its explanation and principal reasons) is proposed to be reworded so that it only applies to rural areas, and reads as follows;

"Policy AQL4 Restrict outdoor burning except in residential and living zoned areas"

"Restrict the discharge to air of contaminants associated with outdoor burning, except:..."

Explanation and Principal Reasons

Policy 4 applies to outdoor burning on land zoned in operative District Plans as rural, rural residential or to similar effect, commercial, and industrial. Policy 4A applies in residential and living zones, which are defined in this plan NRRP Chapter 1 (Overview) as:

Residential and Living Zone means any land which is shown in any operative District Plan in the Canterbury Region as zoned residential or living, but excludes Rural and Rural Residential zones or zones of similar effect. It includes any site which is not used for residential purposes, but which is zoned Residential or Living.

13. New Policy AQL4A is proposed to be added, reading as follows;

Policy AQL4A

"To restrict discharges to air from outdoor burning in residential and living zoned areas by:

1. *avoiding nuisance effects on surrounding residents where there are alternatives for managing these waste streams, and*
2. *minimising nuisance effects on surrounding residents where there are no alternatives for managing these waste streams".*

14. Two new rules with explanation and principal reasons would be added, reading as follows;

Rule AQL29A

Outdoor burning of vegetation, paper, cardboard and untreated wood in residential and living zones- non complying activity"

Explanation

Residential burning has localised and cumulative effects. In the worst case example of a significant number of outdoor fires in larger urban areas, it has the potential to significantly affect air quality and create localised nuisance effects. The larger cities in the Region, such as Christchurch and Timaru have ready access to alternatives to outdoor burning, to dispose of green waste, cardboard, paper, and untreated wood. Most of the towns are served by transfer stations and recycling depots.

Allowing outdoor burning is not the most effective and efficient method to manage the disposal of green waste, especially in residential areas where kerbside collection, recycling depots or transfer stations are provided. This means that non complying activity status is appropriate for this activity, but there may be exceptional circumstances when a consent may be granted.

Rule AQL29B

Outdoor Burning of vegetation, paper, cardboard and untreated wood in residential and living zones- permitted activity.

Explanation

In residential and living zones where kerbside collection, transfer stations, or recycling depots are not available, outdoor burning may be the only or most practical option to dispose of green waste, paper, cardboard, and untreated wood. In these cases, the activity is classified as a permitted activity, subject to conditions to ensure that outdoor burning is undertaken in a manner that minimises the likelihood of nuisance effects.

Submissions on Variation 15

15. Four submissions were received on Variation 15 as follows;

Organisation	Submission Points	Decision Requested
Solid Energy	1.1	Retain proposed Variation 15
Association for Independent Research Inc(AIR)	2.1	Amend Policy 4A to provide that outdoor burning in residential areas is not restricted where there is no offensive or objectionable effect beyond the property boundary
Association for Independent Research Inc(AIR)	2.2	Add a new rule to the effect of providing for outdoor burning as a permitted activity subject to a condition that the burning not have effects which are offensive or objectionable beyond the property boundary
Christchurch City Council	3.1	Amend Rule AQL29A by adding "recycling, composting, or" after... is located in a township which has.... In subparagraph b) of Rule AQL 29A

VARIATION 16

16. This variation proposes an amendment to Chapter 3 to provide for emergency discharges of PM₁₀ from small-scale solid fuel burning devices (ie, open fires and noncomplying woodburners) when the electricity distribution network is disabled due to unforeseen circumstances or planned maintenance. The officers report indicated that this variation arose from concerns by the Hearings Commissioners who in hearing submissions to Chapter 3, noted that provision should be made to allow for open fires and non-complying woodburners to be used during electricity outages, planned maintenance or other unforeseen emergencies. It was noted that these circumstances were not adequately

addressed by the emergency provisions of the Act, which only apply to emergencies (not maintenance), are only available to specified agencies, and require the submission of a retrospective resource consent.

17. The proposed amendments to Chapter 3 are attached in **Appendix 4** to these recommendations.
18. The key change is the addition of a new **Rule AQL81A**, which with its explanation reads as follows;

“Emergency discharge by small scale fuel burning devices when electricity network supply terminated - permitted activity.

Explanation

Policy AQL27 allows for non complying small scale solid fuel burning devices to be used when there is a planned network disruption of greater than 3 hours, or unknown at the time of disruption. Note that open fires are included in the definition of small scale fuel burning devices and are covered by these policies.

The intention of the above policies is that they apply only when the network is disrupted. It does not apply when electric power connection to a specific household, business or building has been intentionally disconnected for non payment or other reasons.

A specific rule is required to make using small scale solid fuel burners in this situation a permitted activity, because:

- *It clarifies when the rule exemption will apply,*
- *The emergency provisions of section 330 of the RMA do not apply in this situation, and*
- *It gives effect to the policies above*

The emergency provisions of section 330 of the RMA cannot be used by operators of small scale fuel burning devices in an electricity supply network disruption event. The emergency provisions only apply to public works, local authorities, network utility operators, and consent authorities. The emergency provisions also require that resource consent be sought post event. The practicalities of requiring an air discharge consent for large numbers of people means it is not practicable, and a specific permitted activity rule is a more appropriate method.

The rule will make the discharge of PM₁₀ from any small scale fuel burning device (including open fires) a permitted activity when the electricity supply network is disrupted for either maintenance or repair.”

Submissions on Variation 16

19. Three submissions were received on variation 16 as follows;

Organisation	Submission Points	Decision Requested
Solid Energy NZ Ltd	1.1	Retain Variation 16
Association for Independent Research Inc (AIR)	2.1	Amend definition of the term “emergency” to cover situations where electricity [or other popular, non solid sources of energy] is for some reason, in short supply or needs to be conserved leading to requests by the authorities for "savings to be made"
Christchurch City Council	3.1	Retain proposed rule 6A

CHANGE 1

20. This plan change is similar in nature to the subject material in Variation 16, and results from observations made by the Hearings Commissioners who heard submissions on Chapter 3. The plan change is intended to allow for the use of open fires and older wood burners when there is an outage to the power network in Christchurch, Kaiapoi, and Ashburton. It was noted that these circumstances are not adequately addressed by the emergency provisions of the Act, which only apply to emergencies (not maintenance), is only available to specified agencies, and requires the submission of a retrospective resource consent.
21. The amendments to Chapter 3 are attached in **Appendix 3** to these recommendations.
22. The wording of the provisions of change one is almost identical to that set out in Variation 16, which set out under paragraph 18 above. The key change here is the addition of a

new permitted activity rule - **Rule AQL 6A.**

Submissions on Change 1

23. Four submissions were received to Change 1 as follows;

Organisation	Submission Points	Decision Requested
Solid Energy NZ Ltd	1.1	Retain Plan Change 1
Orion NZ Ltd	2.1	Insert "directly or indirectly" after electricity network utility operator to condition 1 of proposed Rule AQL6A
Association for Independent Research Inc (AIR)	3.1	Amend definition of the term "emergency" to cover situations where electricity [or other popular, non solid sources of energy] is for some reason, in short supply or needs to be conserved leading to requests by the authorities for "savings to be made"
Christchurch City Council	4.1	Retain proposed rule 6A

24. One further submission F2.1 was lodged by Orion NZ Ltd in support of submission point 3.1 from Submitter 3 (Association for Independent Research Inc).

Organisation	Submission Points	Decision Requested
Orion NZ Ltd	F2.1	Submission 3.1 supported by a proposed inclusion of a condition 3 to rule AQL6A allowing for the discharge from any small scale solid fuel burning device for the duration of the emergency zone as derived by The Electricity Commission.

THE STOCKHOLM CONVENTION ON PERSISTENT ORGANIC POLLUTANTS (POP's)

25. This convention was raised by ECAN officers during the hearing as having relevance to Variation 15. New Zealand is a signatory to the Convention, which with respect to air contaminants, calls for signatories *"to continually minimise, and where feasible eradicate these emissions"*. The officers submitted that this was a matter that we should appropriately have regard to in accordance with Section 66(2)(c)(i) of the RMA.

THE 'ECAN ACT' AND THE CANTERBURY WATER MANAGEMENT STRATEGY (CWMS)

26. Although the two variations in the plan change are completely unrelated to water management issues, this legislation adds an important new requirement unique to regional planning in Canterbury, in addition to the matters under the Resource Management Act ('the RMA' or 'the Act'). Although the 'vision and principles' of the CWMS have no relevance to the matters subject to these hearings, under section 66 of the ECan Act, we note that any appeals on decisions made with respect to variations and changes to the PNRRP are limited to the High Court on matters of law. This also applies to ECAN's decision on our recommendations on Variations 15, 16 and Change 1.

THE HEARING- VARIATION 15

Evidence for the Canterbury Regional Council

27. **Mr. Herb Familton** opened the presentation of evidence on behalf of ECAN. He explained that following hearings on the Air Plan (Chapter 3), ECAN remain satisfied that there were adverse effects created by the burning of outdoor vegetation, cardboard, paper and untreated wood, and that in the case of urban areas, there were alternatives for disposing of such waste. It was further observed that all large towns and cities in the region had access to kerbside collection or recycling/transfer station facilities (chipping, mulching and composting were other possible options cited).
28. It was also concluded that the application of a separation distance from outdoor burning activities would require a 100 m setback which virtually no properties in the urban areas could comply with. Three alternatives were considered with respect to Section 32, these being firstly the "status quo" position of discretionary activity status, and secondly permitted activity status subject to conditions. The third was the selected option of providing for burning of rubbish and vegetation as a permitted activity subject to conditions

in *rural* locations where there was no kerbside collection facility, and to make that activity non-complying in *urban* locations with such facilities.

29. Mr. Familton stated that the RPS provided a framework to support such restrictions, notably with respect to Chapter 13, Objective 2, and associated Policies 3, 5 and 6. He added that Objective AQL2 under the PNRRP also supported such restrictions. To give effect to these proposals, he explained that new definitions of "kerbside collection", "refuse handling or disposal system", and "residential" and "Living zones" would need to be added to Chapter 1 of the PNRRP (Overview). Policy AQL4 would be amended to apply to areas other than residential and living zones, a new policy AQL4A would be introduced to restrict burning in residential areas, and two new rules AQL29A and AQL29B would be added to address residential and rural situations respectively. The latter would also include a new Appendix AQL2 as a guide to minimising smoke emissions where burning was permitted.
30. Drawing attention to the evidence of Mr. Mortiaux and Mr. Cudmore, he said that there were established adverse health and amenity effects associated with outdoor burning activities, and that it was now undertaken only by a small minority of people in urban areas. He said the restrictions proposed were in accordance with the government's obligations under the Stockholm Convention.
31. **Mr. Roger Cudmore** addressed health and amenity issues associated with outdoor burning. He said that outdoor burning of domestic rubbish normally took place either in metal drums or in piles, particularly garden vegetation in the case of the latter. He identified the emissions from domestic burning as including carbon monoxide (CO), respirable particulate matter (PM₁₀), oxides of nitrogen, volatile organic compounds (VOC's), products of incomplete combustion (PIC's), polyaromatic hydrocarbons (PAHs), dioxins and furans.
32. He contended that in addition to health issues affecting immediate neighbours, there were adverse amenity effects including exposure to unpleasant smoke and odours. Identified potential adverse effects caused by outdoor burning included discomfort to breathing and eyes, soiling of washing, and potentially triggering of asthma attacks. He said that people were often forced indoors. He drew attention to a report prepared by Paddle Delamore Partners in 1997 and the 'dispersion modelling' process which indicated that there could be high concentrations of particulate matter, nitrogen dioxide and carbon monoxide within 25 m of a fire, potential for acute sensory organ irritation at 100 m from the fire, and that

- regionally such fires can contribute up to 10% of observed contaminant levels of PM₁₀ and NO₂.
33. He said that community surveys revealed that there had been a significant decline in outdoor burning activity since the mid-1990s, but nevertheless a 2010 survey by Golder Associates indicated that 3% of people undertook outdoor burning, while 7% claimed to be annoyed by it. He added that the 1156 complaints received by ECAN in the last two years reflected a high complaint rate given the low numbers of properties undertaking burning. He too drew attention to the provisions of the Stockholm Convention and that with respect to the management of POP's, domestic waste burning was the largest single source of dioxins and furans.
34. **Mr. Mathias Mortiaux** set out the experience of ECAN with respect to enforcement. He said that the decision had been made not to implement the residential restrictions under Rule AQL29A in the interim pending a decision on Variation 15. He said that ECAN operates a 24-hour seven-day pollution hotline response system, and response times were particularly important in determining whether a particular activity was offensive or objectionable. He said the 'FIDOL' system (frequency, intensity, duration, offensiveness, location) was used to measure the level of adverse effects and that the tools available under the RMA were enforcement orders under section 314 or abatement notices under section 322. He said there remained a significant number of complaints from residential areas in Christchurch, and that these complaints primarily related to nuisance effects.
35. It was noted that the level of complaints associated with outdoor burning activity had remained at a relatively high level, notwithstanding that the number of property owners undertaking this activity had declined significantly over the years.
36. **Mr. Michael Fletcher** was the last witness for ECAN. His brief evidence explained a GIS analysis undertaken of properties within the Christchurch urban area, which had revealed that there were only 34 individual land parcels within, or partially in Christchurch City, which contained sufficient area to afford a separation distance of at least 100 m from neighbouring land parcels within Living zones. The message to be taken from this was that there were virtually no residential properties in the city where on-site domestic rubbish burning could be undertaken in a manner where the nearest neighbour would be at least 100 m away.

Evidence from submitters

37. **Mr. John Hoare** presented evidence of behalf of AIR. He was particularly critical of Variation 15. As we understood his position, AIR was under the impression that following the consent order on their appeal relating to the decisions on Chapter 3 as a whole, that ECAN would accept a more liberal (ie, permitted subject to conditions) regime controlling outdoor fires. He was concerned that Variation 15 appeared to replicate or even reinforce the restrictive regime originally proposed through Chapter 3 as notified.
38. He was critical of national standards relating to management of air pollution, notably the National Environmental Standards for Air Quality (NESAQ). In his opinion the risk to public health from air pollution generally had been substantially exaggerated, and that "clean air" in contrast to "cleaner air" was an unrealistic ideal. He took the view that the standards were likely to be relaxed as a result of a review.
39. He said that the Hearings Commissioners on Chapter 3 had accepted that general health effects associated with outdoor fires had been exaggerated, and cited a decision of the Appeal Board on the decision by the Advertising Standards Authority which he said supported this view. He claimed that research revealed that the risk to human health from dioxins was not a matter of major concern in a New Zealand context.
40. He was critical of the alternatives presented to outdoor burning of vegetation, and queried the environmental and economic effectiveness of recycling, and reliance on landfill disposal. He referred to evidence showing that the tonnage of material deposited at the Kate Valley landfill had remained largely static, despite measures encouraging recycling.
41. He contended that the actual level of complaints about outdoor burning was low, and reflected a lack of tolerance by people of occasional vegetation fires which in his words, amounted "*to paranoia in many cases*". He considered there was no justification for a blanket ban based on health effects, and that there was only a small minority of complainants.
42. He noted there were other unregulated activities which could also lead to petty disputes between neighbours, and strongly emphasised in his evidence that issues associated with outdoor burning complaints should be resolved "neighbour to neighbour". He said that provided fires were carefully managed, they would have little adverse effect on neighbours, and that it was ECan's job to monitor and police outdoor burning activities,

which in a small number of cases may justify prosecution.

43. An overarching theme throughout his evidence was that there was too much regulation of people's activities generally, and the application of commonsense and tolerance could address issues associated with complaints on outdoor burning.

ASSESSMENT- VARIATION 15

44. Matters relating to the issues raised by Variation 15 now have a lengthy history to them, as they were initially considered by the Commissioners appointed to hear submissions on Chapter 3 in 2007. The same issues are again raised with this variation, albeit on a somewhat modified form with respect to the construction of the policies and rules.
45. The nature of this issue itself - and in particular the validity or otherwise of the science underpinning the proposed restrictions on outdoor burning -are such that it is not surprising that private individuals, be they people undertaking burning or affected by it, have not appeared as submitters. AIR, as a small group of interested individuals, are also somewhat constrained in their ability to put expert resources into this exercise. Nevertheless, we have given careful consideration to the evidence that they have put forward in opposition to that of witnesses for ECAN.
46. The issues raised by Variation 15 can be considered to fall into two broad categories, as became apparent during the course of the hearing. The first of these concern the extent of effects on the health of individuals and the community as a whole associated with outdoor burning activities. The second concerns the amenity effects of outdoor burning.

Effects on individual and community health

47. The potential adverse effects of outdoor burning can be considered in terms of effects on health and effects on amenity. Turning first to the issue of health effects, the hearing panel received detailed evidence from Mr Cudmore on this matter. Mr Cudmore concluded that the level of exposure to contaminants discharged from outdoor burning in urban areas justifies a regulatory response.
48. The results of dispersion modelling undertaken by Pattle Delamore Partners indicated that the concentrations of primary contaminants (notably PM₁₀, NO₂ and CO) discharged

from typical outdoor burning scenarios could be very high at immediately neighbouring properties. While taking into account uncertainties associated with such modelling, Mr Cudmore considered that the predicted concentrations were sufficiently high to indicate that acute health effects could be experienced by individuals located within 100m of such a fire. He found that contaminant exposures could on occasion be dangerous and noxious for some people, particularly those within 20m of the fire.

49. The potential health effects identified by Mr Cudmore included discomfort to breathing and eyes, and exacerbation of symptoms in those with underlying asthma conditions.
50. We accept Mr Cudmore's evidence that there is potential for outdoor burning to cause adverse short-term health effects on nearby neighbours in some circumstances. That conclusion particularly applies to urban areas where neighbours are often very close to the fire. In some circumstances contaminant concentrations are likely to be sufficiently high to cause avoidance behaviour, such as leaving the property.
51. Mr Hoare has submitted that such adverse effects could be substantially avoided by careful management of fires according to good practice guidance. We are not convinced by that argument as applied to densely populated urban areas. The evidence of Mr Mortiaux indicates that such good burning practices are often not followed at present, resulting in a substantial number of complaints from urban areas. Given the typically small separation distances from neighbours in such areas, the effects of poor judgement or changeable wind conditions can be significant.
52. Mr Cudmore indicated that there is potential for outdoor burning on several urban properties within close proximity to contribute to an increase in contaminant concentrations within a region or airshed. The Pattle Delamore Partners report indicated that such burning could contribute up to 10% of observed contaminant levels on a regional basis for NO₂ and PM₁₀. However we note that other rules in the plan restrict outdoor burning in urban areas during the winter period when background concentrations of these contaminants are high. We have not found it necessary to rely on any potential airshed-wide impact of PM₁₀ and NO₂ from outdoor burning in reaching our decision.
53. Detailed evidence regarding the potential effects of persistent organic pollutants (POPs) from outdoor burning, particularly dioxins and furans, was presented by Mr Cudmore. Dioxins and furans (collectively referred to as dioxins hereafter) emitted from outdoor burning have been the subject of considerable research internationally. An inventory of

New Zealand emissions identifies domestic waste burning as the single largest source of dioxins nationally. Mr Cudmore noted that a number of states in the USA have either banned or restricted the practice of outdoor burning due to concerns regarding dioxin discharges and subsequent contamination of the environment. The evidence indicated that burning of drier combustible waste streams (such as paper, cardboard or wood in drums or open piles) is a significant source of dioxins, relative to other emission sources.

54. New Zealand has a commitment under the Stockholm Convention on POP's to quantify POP emission sources and implement reduction programmes. While the Stockholm Convention does not impose mandatory requirements, it is a matter we may take into account. We agree with Mr Cudmore that preventing outdoor burning in urban areas where alternatives are available would achieve a significant reduction in regional dioxin emissions. We regard that as a significant benefit of restricting outdoor burning in urban areas to avoid both the short-term health effects discussed and the effects an amenity considered hereafter.
55. We note Mr Hoare's comments that the risk of dioxin exposure in New Zealand is assessed as relatively low, compared to exposures internationally. Nevertheless we consider there are likely to be long-term benefits of reducing dioxin exposure, particularly in urban areas, due to outdoor burning practices.

Effects on amenity

56. It appeared to be common ground at the hearing (confirmed in a question to Mr. Hoare) that the contemporary extent of outdoor burning, whatever the benefits or otherwise of this activity, are now practised much less frequently than was the case perhaps even 20 years ago. It follows from this that there are many people who are not adversely affected by outdoor burning simply because they don't experience it.
57. The adverse ***localised*** effects resulting from outdoor burning were described in Mr. Cudmore's report as follows;
 - Exposure to unpleasant smoke and odour;
 - Discomfort to breathing and eyes;
 - Forcing people indoors;
 - Soiling of washing that is drying outside;

- In some cases individuals with underlying asthma conditions are vulnerable to asthma attacks due to exposure to smoke from neighbours outdoor burning
58. It was further stated that such effects were experienced by people up to 100 m from a fire. We did not hear any evidence that such effects did not occur as a result of outdoor burning - rather it was the case of AIR that such effects were exaggerated, could be resolved by careful management of fires, or by resolution between neighbours. We consider that the evidence of Mr. Cudmore and Mr. Mortiaux with respect to whether these effects were 'real' was convincing, and were a potential adverse impact particularly in densely settled urban environments. The persistently high level of complaints about outdoor burning , and the effects described by Mr. Mortiaux from his enforcement experience, are such that we are not persuaded that these can be rejected as coming from disgruntled complainants with nothing better to do.
59. We do not consider it would be appropriate to dismiss or diminish any adverse effects of outdoor burning activities because only a minority of people in urban areas as a whole are now affected by this activity. We consider that it is important for us to consider the extent of any effects on those who **are** directly affected. This is consistent with the scheme of the RMA, where issues of notification and assessment of effects focus specifically on those who directly suffer adverse effects. These cannot be submerged under a philosophy of "the general public good", unless the positive effects of the activity confer very significant benefits on the wider community.
60. In commenting on alleged adverse effects of burning garden vegetation, Mr. Hoare stated;
- "2.12 The unfortunate results described here can, I suggest, be dealt with/mitigated, neighbour to neighbour, without resorting to an all out ban. Urban living involves all sorts of petty annoyances the resolution of which, frequently, hardly requires a big brother/interventionist approach".*
61. He went on to say;
- "2.15 - 2.18 Provided the individual fires are of limited duration, conducted rarely, able to be blanket banned by the authorities via public notification when the risk of conflagration, contravention of NESAQ [revised], etc is likely, the problems raised here should be satisfactorily obviated".*

62. Upon questioning, it is apparent that in practice it would be a matter of the neighbour just having to 'put up with' the effects of outdoor burning. It is the affected party who is on the 'back foot' at this point. The reality is that if neighbours are affected, they either have to leave their property, move indoors, or wash their clothing again. Mr. Hoare sought to portray complainant's concerns as petty issues or even perhaps paranoid. We prefer the evidence of Mr. Mortiaux, who has to deal with the practical effects of this type of activity from a wider perspective than that of a property owner exercising their perceived rights to burn garden waste and rubbish.
63. In practical terms, with respect to amenity complaints (be they burning or some other form of nuisance) neighbours are often understandably reluctant to risk confrontation with a neighbour. A decision not to complain does not necessarily signal acquiescence, and if people do go so far as to seek redress, they will often do so through the more impersonal avenue of complaining to the relevant regulatory authority. The effectiveness of this is in turn largely dependent on resourcing and response times.
64. There is another major flaw with Mr. Hoare's reasoning. He sought to persuade us that with the imposition of appropriate conditions or guidance, urban rubbish fires will not result in any justifiable cause for complaint. He quite rightly points out that this is the approach that ECAN is prepared to accept in rural areas through its suggested Appendix AQL2, which has the status of a "guide". It is perhaps appropriate at this point to set out what these conditions are;

Appendix AQL2 - Guide to minimise smoke emissions from outdoor burning in residential areas under Rule AQL29B

- 1) *Burning of vegetation, cardboard, paper and untreated wood under Rule AQL29B:*
 - a) *Except stumps, standing dead vegetation and crop residue, vegetation should be allowed to dry for at least six weeks prior to burning.*
 - b) *Prior to burning there should be at least two days of fine weather when less than five millimetres of rain has fallen.*
 - c) *Regard should be had to the forecast wind strength and direction during the intended day of burning. Burning should not occur when either:*
 - i) *very strong winds (such as north-westerly gales) are predicted; or*
 - ii) *cold/frosty, clear, calm & highly stable conditions which encourage the development of temperature inversions.*
 - d) *Vegetation and wood should be stacked loosely, not compacted.*
 - e) *A small fire should be started with the driest material and fed gradually with*

- further material once the fire is “blazing”. Fires should not smoulder slowly.*
- f) *The fire should not be left unattended once started.*
 - g) *Small quantities of diesel oil or re-refined oil may be used as accelerants. Note that burning of rubber, used or waste oil is prohibited under Rule AQL36.*

Advisory notes

Burning resulting in the dispersal or deposition of particles that causes an objectionable or offensive effect beyond the boundary of the property where the discharge originates, may be subject to enforcement action.

However, following the steps in 1 to 3 above should help prevent such adverse effects. In deciding on whether enforcement action will be taken, Environment Canterbury staff will be guided by the “Criteria for Assessing Offensive or Objectionable Dispersal or Deposition of Smoke Particles” in Appendix AQL3.

- 65. It might be argued that if guidance of this nature is appropriate in a rural area, it could be equally so in an urban area. We do not accept this argument, because people in rural areas do not have alternatives available to the same extent as urban dwellers, and in many cases (admittedly not always) it is possible to achieve a much greater buffer distance between adjoining dwellings and properties.
- 66. We acknowledge that even if Variation 15 were implemented, it would not remove the burden of enforcement from ECan. There are still requirements restricting the kind of rubbish that can be burnt; there would be an issue with people carrying out burning outside the permitted periods; managing burning in the rural area; and of course there will remain instances where some people in the urban area would carry out unauthorised burning regardless. Notwithstanding this, we are satisfied that the implementation of Variation 15 should result in a substantially reduced level of complaints, and consequently enforcement. In urban areas where the vast majority of people live, it would simply become an issue of whether burning took place at all, not how well it was carried out.
- 67. However well-intentioned and responsible Mr. Hoare and his group may be as individuals, it is quite apparent to us that the guidelines require a high degree of judgement, sensitivity to potentially affected parties, and on site management to minimise adverse effects on neighbours. Even then, there could be no pretence that there would be no effects - only that the duration and intensity of these effects be reduced. This is doubly difficult in an urban area where there will always be neighbours in close proximity. There is also the

issue as to whether some people would make the effort to carry out their burning activities in a manner consistent with the guidelines.

68. We accept the evidence that even from an amenity perspective alone, the burning of rubbish and garden refuse can cause significant nuisance effects on neighbours. Earlier on we noted that some adverse effects, subject to mitigation, can be accepted if there are significant benefits to the wider community. We heard no evidence that there would be significant compensatory benefits to the wider community through the practice of continued burning of rubbish and vegetation on urban properties. We are satisfied upon hearing Mr. Mortiaux's evidence that the nuisance effects of outdoor burning are regarded by those adversely affected as being significantly worse than some of the other potential nuisance effects that arise between neighbours. We also note that the number of complaints has remained at a high level, notwithstanding that relatively few people are now affected by outdoor burning, which as an activity has been declining for some time.
69. We also consider we have to take into account any adverse social and economic effects of having restrictions of the nature proposed. Mr. Mortiaux was asked whether there was any discernible geographic or socio-economic pattern associated with outdoor burning. Mr. Hoare made the valid point that the small green waste bins are of limited capacity for the disposal of garden waste. There would be additional costs involved in hiring a trailer, chipping or mulching, or hiring a larger greenwaste bin. However there was no evidence from any quarter that the implementation of Variation 15 would cause significant hardship within the community, or particular sections of the community. While Mr. Hoare considered that the rule would be onerous for some people, it is clear that the numbers of such people are small, and the issue is one of inconvenience and perceived rights, rather than hardship.
70. We can sympathise with Mr. Hoare's general observation that activities generally, and specifically those which were once tolerated by neighbours, are increasingly subject to regulation. While this perspective is entirely understandable, it comes down to a matter of whether particular restrictions are justified on their merits, not a discussion on the merits of regulation as a whole. In some respects this issue is analogous to restrictions on indoor smoking - a form of behaviour which was also becoming less common prior to legal restrictions, and where the adverse effects could not be confined to the environment of the person creating them.
71. We are satisfied that in an urban area the practice of outdoor burning of rubbish and

garden vegetation requires a degree of judgement which many people will not successfully achieve (or even try to achieve), and will still potentially create a nuisance even where the standards in the guideline are achieved. It is a practice which does not produce any clear benefits except to the small number of persons who undertake on-site burning, and where alternatives for disposing of waste are readily available.

72. Finally, there was an underlying theme to the evidence of AIR that at a broader level, the effects of air pollution were exaggerated. This however raised matters well beyond the scope of Variation 15, and we have no jurisdiction to revisit wider issues of management of air discharges subject to Chapter 3 of the PNRRP. We also observe that this issue has been already considered by commissioners on Chapter 3, and that the merits or otherwise of outdoor burning have now been given quite extensive consideration.

THE HEARING - VARIATION 16 AND CHANGE 1

Evidence for the Canterbury Regional Council

73. Mr. Familton's evidence covered both of these proposed provisions in some detail.
74. Both Variation 16 and Change 1 sought to make almost identical amendments to Chapter 3, and accordingly are considered together. Both changes relate to the use of "small-scale solid fuel burning devices" - that is non-complying woodburners and open fires during times of disruptions to electricity supplies. Such burners are subject to rules, which restrict non-complying older type woodburners and open fires because of their contribution to air pollution.
75. The primary concerns with domestic fuel burners relate to PM₁₀ emissions. The exemptions proposed through Variation 16 and Change 1 have the potential to increase such discharges for very short periods, but the intention of the amendments was to recognise the potential hardship that could occur to some households particularly during winter months, if electrical sources of heating were not available. It was noted that in the Mainpower area any severance to electricity supplies was normally only for a short period - for example, in the Mainpower area during 2009, power cuts averaged only 1.33 hours for the year.

76. He noted that although an exemption was provided for within the policy framework, it effectively relied on the provisions of Section 330 of the RMA to provide an exemption during power outages. Concerns had been expressed by the Hearings Commissioners in their decisions on submissions on Chapter 3, that there was an urgent need to consider more adequate exemptions for households during disruptions resulting from required maintenance, and to avoid the need for retrospective resource consents. Mr. Familton also noted that Section 18 (2) of the Act provided that no party could be prosecuted with respect to matters arising out of the application of Section 330, but this too did not provide sufficient scope for members of the public to be able to confidently use open fires or non-complying burners during electricity supply disruptions.

Evidence for submitters

77. **Mr. Stephen Godfrey** presented evidence of behalf of *Orion* with respect to Change 1. This evidence was presented as a further submission within the scope of a submission lodged by AIR. It went on to much more detail than the *AIR* submission, so we have considered it first.
78. Orion's further submission sought a further extension under proposed rule AQL6A in circumstances where the "Emergency Zone" was breached. Mr. Godfrey explained that New Zealand (particularly with reference to the South Island storage lakes) has relatively low hydro storage capacity. If lake storage fell below the "10% risk curve" following a period of prolonged low rainfall, there would be a possibility (albeit not yet experienced) that storage would run out. This would amount to a breach of the "Emergency Zone", which although unlikely, could have significant implications for the community as unplanned power cuts could take place.
79. The further submission of Orion would provide a further exemption to permit use of small-scale solid fuel burning devices for the duration of an Emergency Zone being in place. Mr. Godfrey was concerned that the need for this exemption had not been accepted in the officer's report. The officer's report concluded that the likelihood of enhanced PM₁₀ levels as a consequence of such an exemption would be more than minor, and could be in breach of NESAQ compliance. Mr. Godfrey disputed this conclusion particularly recognising that such an emergency situation would only very rarely arise.
80. **Mr. John Hoare** on behalf of AIR argued that the harmful effects of ordinary air pollution in Canterbury were relatively small and had been exaggerated. He sought that expanded

use of domestic woodburners should also be allowed when "energy supplies are significantly restricted or potentially so". In other words, his submission sought a significantly wider liberalisation than that sought by Orion through its further submission in support of *AIR*. He was confident that revised NESAQ standards were likely to be relaxed to allow a larger number of annual exceedances of the quality standards.

ASSESSMENT - VARIATION 16 AND CHANGE 1

81. Mr. Godfrey, on behalf of Orion, presented a detailed and thoughtful case in seeking a further exemption for situations where a significant electricity supply crisis may occur. We accept without reservation the technical arguments presented by Mr. Godfrey with respect to the ramifications of a hydro lake storage crisis which could adversely affect South Island consumers in particular. He stated that "the likelihood of an emergency zone breach is minimal", although he explained that in 2001, 2003, 2006 and 2008 there had been widespread low inflows into hydro lakes. He said that in the very unlikely event that a emergency zone was breached, power cuts, first planned and then unplanned, could last for days or even weeks.
82. His argument was that a further exemption to enable the use of small solid fuel devices during the declaration of the emergency zone would not, as feared by ECAN officers, be likely to lead to prosecution of ECAN for a breach of NESAQ standards. We can see some justification to this argument, because as noted by Mr. Godfrey, the "social and political ramifications of power outages are immense". He properly notes that the government of the day would be taking all possible steps to firstly avoid, and then limit the extent of any power outages, and would not want to prosecute ECAN in such circumstances.
83. The other exceptions notified by ECAN in respect to Change 1 and Variation 16, allow for events which can confidently be expected to occur briefly but on an occasional basis, such as temporary disruptions to supply for a number of potential reasons. With respect to the emergency zone scenario, while we agree that it is arguable whether ECAN would be prosecuted, we think it equally unlikely that ECAN would seek to identify and prosecute parties in circumstances where people chose to use noncomplying woodburners or open fires during such an emergency. Furthermore, as agreed by all present, such events are likely to be extremely rare. While we respect the basis for Mr. Godfrey's comments, we do not consider a further exemption to provide for emergency zone

declarations is in fact required. In this context, any issue as to whether the *Orion* submission is within scope is arguably moot.

84. We also note that over time the number of non-compliant woodburners and open fires (an outcome possibly hastened by the recent earthquake) is likely to steadily diminish, making all of these exemptions of lesser value over time. However given the greater certainty of short-term unforeseen power outages, we consider there is a somewhat stronger case for exempting these kinds of events.
85. Mr. Hoare's submission on Change 1 and Variation 16 was much more brief than those on Variation 15, but nevertheless followed a consistent theme. While not opposed to the exemptions suggested by ECAN in themselves, the position of *AIR* was that exemption should be extended to cover periods of energy "shortages" as well as "outages".
86. We note that the evidence to the hearing again made reference to the harmful effects of air pollution being either relatively small or exaggerated. We do not consider that a rather open-ended extension to cover "shortages" (the definition of which could be problematic) would be sending the right message about air quality protection. This is quite apart from the additional interpretation and enforcement issues that such an exemption would be likely to create.

STATUTORY CONSIDERATIONS – VARIATIONS 15, 16 AND CHANGE 1

87. Section 63(1) of the RMA sets out the purpose of regional plans and a proposed plan is defined under section 43 to include a variation to a proposed plan.
88. Section 65 (1) provides that the Regional Council may prepare a regional plan for any part of its region. Section 65(3) provides that a Regional Council shall consider the desirability of preparing a regional plan whenever any of the following circumstances or considerations arise or are likely to arise:
- a) *Any significant conflict between the use, development, or protection of natural and physical resources or the avoidance or mitigation of such conflict:*
 - b) *Any significant need or demand for the protection of natural and physical resources or any site, feature, place, or area of regional significance:*
 - c) *Any foreseeable demand for or on natural and physical resources:*
 - d) *The restoration or enhancement of any natural and physical resources in a*

deteriorated state or the avoidance or mitigation of any such deterioration.

89. Section 66 specifies the matters to be considered by the Regional Council under the RMA, which include its functions under section 30, the provisions of Part 2, and its duty under section 32. Under section 66 (2)(d) the Regional Council is also required to have regard to "*the extent to which the regional plan needs to be consistent with the regional policy statements and plans...*"

The Canterbury Regional Policy Statement (RPS)

90. Although the Canterbury Regional Policy Statement ('RPS') has been operative for well over 10 years, **Chapter 13** provides a relevant framework for management of air quality, which is expanded on through Chapter 3 of the PNRRP.
91. The overarching provision is **Objective 2**, which states as follows:

"Avoid, remedy or mitigate the adverse effects on people, flora and fauna, and other natural and physical resources resulting from discharges of contaminants into the air".

92. Policies 3 and 5 of the RPS provide a more detailed framework for implementation measures, and have relevance to activities involving discharges to air from activities involving on-site burning of vegetative matter and refuse.

Policy 3

"Set standards, conditions and terms for discharges of contaminants into the air to avoid, remedy or mitigate adverse effects".

Policy 5

- (1) *"Activities which require resource consents to discharge contaminants into air should be encouraged to locate away from residential dwellings, educational facilities, hospitals, shops and other similar public buildings unless adverse effects can be avoided or mitigated.*
- (2) *Avoid encroachment of new development on existing activities discharging to air, unless the adverse effects can be avoided or mitigated".*

Chapter 3 (Air) - PNRRP

93. The relevant local air quality objective for residential outdoor burning is Objective AQL2, which has identical wording to Chapter 13, Objective 2 in the RPS, set out above.
94. Of the two proposed new policies, **Policy AQL4A** applies to urban areas where kerbside collection or transfer station facilities exist, and is based on the **avoidance** of adverse effects associated with outdoor burning. **Policy AQL4** applies to rural areas with an associated guideline, and is based on **minimising** adverse effects.
95. We consider that in contemporary circumstances (in contrast to that pertaining 20 or 30 years ago) that this two pronged policy strategy is an appropriate means of addressing the adverse localised effects that can result from outdoor burning activities. The proposed policies sit comfortably within the existing (operative) objective and policy framework in both the RPS and the PNRRP (Chapter 3) and are consistent with these provisions. We are satisfied that the implementation of Variation 15 will better achieve the purpose of the Act than maintaining the current provisions in Chapter 3, or in the case of urban areas, relying on a permitted activity regime in association with ongoing monitoring and enforcement.
96. The amendments proposed under Variation 16 and Change 1 are very similar in content, so can logically be considered together. In contrast to Variation 15, these two amendments to the Air Plan merely seek to provide an exemption for the use of small-scale domestic burners and open fires when electricity supplies are disrupted. In terms of policies, the only amendments proposed to Chapter 3 resulting from Variation 16 are to amend the "explanation and principal reasons" to Policy AQL 27 to signal that discharges from small-scale fuel burning devices are acceptable during disruptions to the electricity network (relating specifically to Rangiora). Similarly, with respect to Change 1, the same exception is signalled in the explanations associated with Policies AQL 17, AQL 35, and AQL 44 (relating specifically to Christchurch, Kaiapoi and Ashburton).
97. While these changes have the potential to temporarily increase discharges to air (an adverse effect on the environment) they also promote the welfare of the community during periods when alternative heating is no longer available. These periods are expected to be short term and reflect a reasonable balance between the protection of the environment and the welfare of the community. They are in the nature of a refinement to the policy framework, rather than creating a new policy direction. We consider these

changes to be consistent with the existing objective and policy framework in the RPS and the PNRRP.

98. We note that the only issue raised through submissions with respect to Variation 16 and Change 1 is whether these exemptions go far enough. We consider that suggestion made by AIR would arguably go beyond the scope of these two provisions, and that the rather vaguely defined concept of electricity shortages could perpetuate the adverse effects of inefficient forms of burning for potentially long periods - for example during times when the media is reporting low lake storage levels. In our view this would be inconsistent with the existing operative objective and policy framework in the RPS and the PNRRP (Chapter 3).

PART 2 RESOURCE MANAGEMENT ACT

99. Section 5(2) of the Act provides for the use of natural and physical resources to enable people and communities to provide for their social, economic and cultural well-being. We note that subclause (2) *"enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety....."*

Activities of an industrial, rural or residential nature can be undertaken which involve discharges to air. Undertaking activities which may affect the quality of air are qualified by all three subclauses under section 5(2) and in particular;

- (b) Safeguarding the life supporting capacity of air, water, soil, and ecosystems; and
(c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

100. Part 2 of the Act, and Section 5, require a broad overall judgement to be made in achieving the purpose of the Act in a situation where there is a balance to be struck between the use of resources and their protection. We consider there are no matters under Section 6 of the Act which have particular relevance to Variation 15. However we consider that we are required to have particular regard under section 7 of the Act to the following matters which appear to be relevant to this particular variation –

- (a) The efficient use and development of natural and physical resources:*

- (b) *The maintenance and enhancement of amenity values:*
- (c) *Maintenance and enhancement of the quality of the environment:*

101. We accept that the burning of domestic waste in urban areas of the Canterbury region is unlikely to create a serious issue for the health of residents as a whole, although we consider that the evidence establishes that it is a contributing factor to reduced air quality, and more importantly, to the health of persons who are directly exposed to this activity.
102. We also consider that outdoor burning in residential areas where alternatives are available has significant effects on the amenity of those in close proximity to it, and that mitigation measures in the form of guidance are likely to be of limited effectiveness. Accordingly it is a practice that we consider is contrary to sections 5(2)(c) and subsections 7(c) and (f) of the Act.
103. Given the availability of alternative means of disposing of domestic waste and vegetative matter in urban areas, we conclude that the practice of outdoor burning in these urban areas is inconsistent with Section 7(b) of the Act. We also consider that a regime of outdoor burning in an urban environment subject to "guidance" would result in high administration and compliance costs and would be an inefficient form of regulation.
104. Given the limited scale and gradually diminishing extent of outdoor burning activities in urban areas, even if it could be argued that such activities are not contrary to Section 5(2)(b) of the Act, they are at the very least inconsistent with it.

SECTION 32 RMA

105. Variation 15 entails the most significant text changes to Chapter 3 of the PNRRP. Even then however it is quite limited in its scope. Section 32 does however apply to Variations 15 and 16 and to Change 1 under Section 32 (1)(c) of the Act, and we are required to undertake an evaluation under Section 32 in terms of subsection (2)(a). We are not required to consider any of the objectives under the Air Plan in terms of Section 32 (3) (a), because none of these are changed by the proposed variations or plan change.
106. With respect to section 32 (3) our evaluation must therefore examine –
 - "(b) whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives".*

107. Under Section 32 (4), our evaluation must also take into account –

*"(a) the benefits and costs of policies, rules, or other methods; and
(b) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods".*

Variation 15

108. Objective AQL2 "*Objective for localised air quality*" in Chapter 3 of the PNRRP (which in turn reflects the wording of its parent objective in the RPS) is beyond challenge. It reads as follows;

"Avoid, remedy or mitigate the adverse effects on people, flora and fauna, and other natural and physical resources, resulting from discharges of contaminants into air".

109. All the evidence before us was that Variation 15 was only promulgated to address effects on people. There was no evidence before us that there was uncertain or insufficient information available; the challenge from *AIR* was directed at whether or not the regulatory intervention sought to Variation 15 was justified or not.

110. The evidence was that the benefits of the Variation would result in a modest improvement to air quality within urban areas as a whole, but more particularly to the amenity and health of those persons who were directly affected by the practice of outdoor burning of rubbish and vegetation. No detailed evidence as to the costs of this form of regulation were put before us, except assertions that adverse effects were overrated, and that there would be inconvenience and cost associated with some alternative methods of disposal – should for example, material have to be transported by trailer to a transfer station. The primary concern appeared to be a philosophical one about loss of personal freedoms.

111. We were satisfied that the adverse effects on those persons directly affected by the practice of outdoor burning, albeit probably infrequent, outweighed any benefits associated with a continuation of that practice in urban areas. Any regulatory provision, where the burning was subject to conditions, or the much more stringent regime on burning as proposed through Variation 15, will involve an element of enforcement at public cost. However we are fully satisfied that the regulatory intervention proposed through Variation 15 is the most efficient and effective means of achieving Objective AQL 2.

Variation 16 and Change 1

112. Variation 16 (Rangiora) and Change 1 (Christchurch, Kaiapoi, and Ashburton) have even narrower scope than Variation 15, and seek to provide for an exemption for the use of small-scale solid fuel burning devices when there are disruptions to the electricity network. From a plan drafting perspective this simply involves additional text to the explanation and principal reasons for the relevant policies, a new rule AQL 81 to provide for an exception for Rangiora, and amended text for the explanations to rule with respect to the other three centres.
113. These were not challenged, rather Orion and *AIR* sought that the exemptions be extended - albeit substantially so in the case of *AIR*. For the reasons set out earlier, we have concluded that these exemptions are either inappropriate or not required on the weight of evidence. There is also an issue relating to the scope of these submissions, and whether they fall within the ambit of Variation 16 and Change 1 as notified.
114. The exemptions proposed through Variation 16 and Change 1 will provide for infrequent events of short duration, which would otherwise potentially result in hardship and discomfort for some people during electricity outages, and would not have a significant adverse effect on air quality. We have concluded that Variation 16 and Change 1 are efficient and effective, and will achieve Objective AQL 2, although we note that over time these alternative forms of heating are likely to become available to fewer people.

AMENDMENTS TO VARIATION 15

115. As will be apparent from the foregoing discussion, we recommend that only minimal change be made to Variation 15 and none to Variation 16 or Change 1 as a result of hearing submissions.
116. We did consider that reference to "living" or "residential" zoned land could be simply eliminated and replaced with reference to whether or not the area had some form of kerbside collection. It is possible in future that a district council may choose to utilise a different terminology to describe an "urban" type of zoning other than using the words living or residential, which may compromise the application of the rules in Variation 15. However similar definitional issues could conceivably arise through reference to access to a kerbside collection system, so the final analysis we have decided not to change the Variation in that respect.

The only change we are proposing to make relates to the title to proposed Policy AQL 4 which currently reads;

"Restrict outdoor burning except in living and residential zoned areas".

117. The policy then goes on to refer to the restrictions on outdoor burning. The problem with the current wording is that for a first-time reader of the plan at least, the impression given by the policy title is that outdoor burning is not restricted in living and residential zoned areas, which is clearly not the intention. Accordingly we consider that a reworking of the title of both of these policies would be advantageous.

118. ***Accordingly, we recommend that the title wording of amended Policy AQL4 and new Policy AQL4A be changed as follows;***

"Policy AQL4 Restrictions on outdoor burning undertaken outside living and residential zoned areas".

"Policy AQL4A Restrictions on outdoor burning undertaken within living and residential zoned areas"

119. Neither of these amendments alters the application of the two policies, but clarifies the wording used in the title of each policy. These amendments are made pursuant to clause 16(2) to the First Schedule to the RMA.

120. The Christchurch City Council sought an amendment to proposed Rule AQL 29A to provide for "recycling and composting" as falling within the ambit of residential areas where alternatives to outdoor burning are available. This amendment was recommended to be accepted by ECAN officers, as it is consistent with the objectives and policies of the Air Plan. We concur with this view and the amendments sought by the submitter.

121. The following amendments are made pursuant to Clause 16(2) of the First Schedule, RMA, to correct minor errors and omissions;

- Rule AQL 29B – change wording under ‘Activity’ in the first paragraph to read “zones” instead of “zone”
- Change note 1 to read “served by kerbside collection of this waste”

- Change App. AQL 2(i)(f) by replacing “diesel oil or refined oil” with “petroleum products”
- Change Rule AQL 81A by replacing “PM₁₀” with “contaminants to air”
- Change Rule AQL 6A by replacing “PM₁₀” with “contaminants to air”

Conclusions

The amendments to Variation 15 as described above are shown in **Appendix 1** to these recommendations. **Appendix 2** and **Appendix 3** set out Variation 16 and Change 1 as notified, as we propose no amendments to the text of these provisions. Our recommendations on whether the submissions and further submissions be accepted, accepted in part, or rejected, are set out in **Appendix 4**.

Dated this *15th* day of November 2010



Robert Nixon (Chair)
Hearing Commissioner



John Iseli
Hearing Commissioner

APPENDIX 1

Variation 15 as amended by recommendations of the Hearings Panel

NRRP Chapter 1 (Overview)

Sections 1.2 (Definitions of Terms)

Insert a new definition of Kerbside Collection at Page 1-16 as follows:

Kerbside collection means a regular service to collect waste from the road boundary of the property which is provided by the territorial local authority to its ratepayers with or without a fee as part of its functions under the Local Government Act 2002. It includes kerbside collection services that are undertaken by private contractors on behalf of the territorial local authority. It does not apply to services provided by private contractors paid for directly by the property owner or occupier.

Insert a new definition of refuse handling system at Page 1-20 as follows:

Refuse handling or disposal system means any facilities or services provided by the territorial local authority with or without a fee, to collect, transfer, or dispose of that waste stream as part of its functions under the Local Government Act 2002. It includes landfills, waste transfer stations, and recycling facilities.

Insert a new definition of Residential or Living Zone at Page 1-20 as follows:

Residential or Living Zone means any land which is shown in any operative District Plan in the Canterbury Region as zoned residential or living, but excludes Rural and Rural Residential zones or zones of similar effect. It includes any site which is not used for residential purposes, but which is zoned Residential or Living.

NRRP Chapter 3 (Air Quality)

Amend Policy 4, explanation and principal reasons, page 3-12 to clarify Policy 4 applies to outdoor burning except in residential areas and by adding a new first paragraph and deleting sentence two and three from paragraph 7 of the Explanation and principal reasons as follows:

~~**Policy AQL4 Restrict outdoor burning except in residential and living zoned areas**~~

Policy AQL 4 Restrictions on outdoor burning outside residential and living zoned areas

Restrict the discharge to air of contaminants associated with outdoor burning, except:

Explanation and principal reasons

Add a new first paragraph on page 3-12:

Policy 4 applies to outdoor burning in land zoned in operative District Plans as rural, rural residential or to similar effect, commercial, and industrial. Policy 4A applies in residential and living zones, which are defined in this plan NRRP Chapter 1 (Overview) as:

Residential and Living Zone means any land which is shown in any operative District Plan in the Canterbury Region as zoned residential or living, but excludes Rural and Rural Residential zones or zones of similar effect. It includes any site which is not used for residential purposes, but which is zoned Residential or Living.

Delete sentence two and three from paragraph 5 page 3-13

~~“ This effectively restricts outdoor burning in residential areas unless the circumstances identified in Policy AQL4(c)(iii) prevent alternative disposal of vegetative material. Such circumstances can only be assessed on a case-by-case basis through resource consent processes, taking into account the principles of the RMA. “~~

Insert new Policy, after 3-22

Policy AQL4A Restrictions on outdoor burning within residential and living zoned areas

To restrict discharges to air from outdoor burning in residential and living zoned areas by:

1. avoiding nuisance effects on surrounding residents where there are alternatives for managing these waste streams, and
2. minimising nuisance effects on surrounding residents where there are no alternatives for managing these waste streams.

Explanation and principal reasons

Policy 4A applies in residential and living zones, which are defined in this plan NRRP Chapter 1 (Overview). It does not include rural and rural residential zones or zones of similar effect. It also does not include rural, or rural residential zoned land that is used primarily for rural purposes. It does however, include sites used for non-residential purposes in these zones. There is an exemption for land which has been rezoned for future residential development but is still in rural use.

In residential and living zoned areas, almost all households have the ability to reduce their waste stream by managing their own on-site recycling initiatives such as composting or worm farms for organic waste. In addition, alternative waste management services are often provided to the property. Ratepayer funded kerbside collection services and transfer stations provide alternatives to the need to burn waste such as vegetation, cardboard, paper and untreated wood. These services are increasingly available in cities, towns, and small settlements in the Canterbury Region.

In Christchurch, ratepayers can also opt, at their expense, for a larger green waste bin where required, or purchase additional waste disposal from the private sector. Such services reduce the need for burning as a disposal method for green waste. In other localities in Canterbury, e.g. Timaru and Ashburton, residential green waste burning is prohibited under territorial authority by-laws. For the purposes of policy 4A, residentially and living zoned areas with access to kerbside recycling and refuse handling or disposal systems are considered to have alternatives to outdoor burning.

The nuisance effect of residential burning, even in the “shoulder season” between winter and summer is considerable on neighbours in residential areas. Residential burning causes a significant number of complaints to ECan enforcement staff. The ECan enforcement system is complaint based. The complaints received include:

- Smoke entering neighbours houses, requiring window closure,

- Smoke entering gardens forcing people indoors
- Smoke soiling or infusing freshly washed clothes, requiring re-washing.
- Smoke and odour reducing amenity value on an otherwise fine day, and
- Smoke exacerbating respiratory problems

In addition potential cumulative effects of smoke from multiple residential outdoor fires could create wide scale localised nuisance effects across residential areas, and may impact on ambient air quality which is currently very good in summer time. Therefore, even if individuals could manage their outdoor burning to mitigate their nuisance effects on neighbours, the cumulative effects of multiple outdoor fires needs to be managed. This cannot be done if the activity is not controlled through the resource consent process. Therefore, the approach taken is to manage residential outdoor burning as a non-complying activity in areas where kerbside recycling or recycling depots are available within the township.

For other (much smaller) residentially and living zoned areas, the burning of vegetation, paper, and untreated wood will be managed as a permitted activity. The policy acknowledges that these nuisance effects on neighbouring properties may still occur in smaller residential areas. However, in the absence of ready alternatives to manage these waste streams, a permitted activity with conditions to minimise potential nuisance effects is the most appropriate option.

Methods

The methods used or to be used to implement Policy AQL4A are:

Method AQL4A(a) Promotion and education

Environment Canterbury will produce information brochures and co-ordinate education programmes as appropriate with territorial authorities, community groups, industry and other agencies to promote:

- worm farms; and
- on-site composting practices; and
- waste minimisation initiatives; and
- kerbside recycling; and
- recycling depots; and
- understanding of the requirements of the regional rules implementing Policy AQL4A

Method AQL4A(b) Regional rules

Environment Canterbury will apply Regional Rules AQL29A and AQL29B in Section 3.3, to manage outdoor burning in residential and living zones.

Method AQL4A(c) Resource consents

Resource consents may be granted for outdoor burning which cannot meet the conditions for permitted activities in residential areas without kerbside collection services or recycling facilities; and may, in exceptional cases, be granted for a non-complying activity in townships which have these services; if the consent authority is satisfied nuisance effects can be appropriately mitigated.

Method AQL4A(d) Compliance and enforcement

Environment Canterbury may apply for enforcement orders, issue abatement notices and use other enforcement mechanisms in Part XII of the RMA, where there are adverse effects of the discharge to air of contaminants associated with outdoor burning. Such adverse effects may arise out of a breach of the rules set out in the NRRP, or a breach of resource consent conditions. It is appropriate for Environment Canterbury to take such enforcement action as necessary to prevent a recurrence of any discharge, or to mitigate the effects of any discharge.

Method AQL4A(e) Response to complaints and enquiries

Environment Canterbury will:

- i. provide a 24-hour pollution hotline to respond to any complaints about outdoor burning; and
- ii. provide a database to record the details of any complaints received about outdoor burning and to verify, where practicable, any complaints; and
- iii. provide a customer services line during office hours to respond to any enquiries about outdoor burning; and
- iv. in association with territorial authorities and other authorities that receive complaints, develop and implement a procedure to investigate and resolve complaints regarding outdoor burning and investigate any other methods to jointly address complaints about outdoor burning; and
- v. undertake enforcement of the provisions of the NRRP where necessary.

Insert new rule explanations AQL29A and 29B, page 3-357A

New Rule AQL29A – Explanation

Outdoor Burning of vegetation, paper, cardboard and untreated wood in residential and living zones- non complying activity

Residential burning has localised and cumulative effects. In the worst case example of a significant number of outdoor fires in larger urban areas, it has the potential to significantly affect air quality and create localised nuisance effects. The larger cities in the Region, such as Christchurch and Timaru have ready access to alternatives to outdoor burning, to dispose of green waste, cardboard, paper, and untreated wood. Most of the towns are served by

transfer stations and recycling depots.

Allowing outdoor burning is not the most effective and efficient method to manage the disposal of green waste, especially in residential areas where kerbside collection, recycling depots or transfer stations are provided. This means that non complying activity status is appropriate for this activity, but there may be exceptional circumstances when a consent may be granted.

New Rule AQL29B - Explanation

Outdoor Burning of vegetation, paper, cardboard and untreated wood in residential and living zones- permitted activity.

In residential and living zones where kerbside collection, transfer stations, or recycling depots are not available, outdoor burning may be the only or most practical option to dispose of green waste, paper, cardboard, and untreated wood. In these cases, the activity is classified as a permitted activity, subject to conditions to ensure that outdoor burning is undertaken in a manner that minimises the likelihood of nuisance effects.

Insert to Table 3.1 Summary of Rules

Discharges to air from outdoor burning				
Area rule applies	Rule N^o	Description	Activity Status	Page N^o
<u>Residential and Living zones in the Canterbury Region</u>	<u>AQL29A</u>	<u>Outdoor burning of vegetation, paper, cardboard and untreated wood in residential and living zones - non complying activity</u>	<u>Non Complying</u>	153
	<u>AQL29B</u>	<u>Outdoor burning of vegetation, paper, cardboard and untreated wood in residential and living zones- permitted activity</u>	<u>Permitted</u>	154

Rule AQL29A Outdoor burning of vegetation, paper, cardboard and untreated wood in residential or living zones – non-complying activity

Activity	Activity Status	Cross Ref.
<p><u>Subject to Rule AQL35, AQL36, and AQL37, the discharge of contaminants into air in residential or living zones from the outdoor burning of vegetation, paper, cardboard and untreated wood where the residential area is :</u></p> <p><u>a. Served by a kerbside collection of this waste, or</u> <u>b. Is located in a township which has recycling, composting, or a refuse handling or disposal system for this waste,</u></p> <p><u>is a non complying activity.</u></p> <p><u>This rule does not apply to land which is zoned Residential or Living in any operative district plan, and is still used predominantly for rural purposes. In this case, Rule AQL29 shall apply.</u></p>		<p><u>15</u></p>

Rule AQL29B Outdoor burning of vegetation, paper, cardboard and untreated wood in residential and living zones- permitted activity

Activity	Conditions		Cross Ref.
<p><u>Subject to Rule AQL35, AQL36, and AQL37, the discharge of contaminants into air in residential or living zones from the outdoor burning of vegetation, paper, cardboard and untreated wood is a permitted activity where the residential area is not:</u></p> <ol style="list-style-type: none"> <u>Served by kerbside collection of this waste; or</u> <u>Located in a township which has a refuse handing or disposal system for this waste.</u> <p><u>provided it complies with all of the conditions of this rule. Where any activity does not meet the conditions of this rule, it is a discretionary activity.</u></p> <p><u>This rule does not apply to land which is zoned Residential or Living in any operative district plan, and is still used predominantly for rural purposes. In this case, Rule AQL29 shall apply.</u></p>	<ol style="list-style-type: none"> The discharge shall only occur in the months of September, October, March, or April. Only vegetation, paper, cardboard, and untreated wood sourced from the property shall be burned on the property. Outdoor burning shall only occur up to 3 times per calendar year on any one property. The discharge shall not occur from the combustion of material with a moisture content of more than 25% dry weight, or If the moisture content cannot be determined the material shall have been left to dry for at least six weeks prior to burning and within the two days prior to burning there shall have been less than 5 mm of rainfall. The dispersal or deposition of particles shall not cause an objectionable or offensive effect beyond the boundary of the property where the discharge originates. 		<p><u>15</u></p>

Notes:

1. Criteria for assessing compliance under this rule are outlined in:
 - a) Appendix AQL2 Guide to minimise smoke emissions from outdoor burning under Rule AQL29B, and
 - b) Appendix AQL3 Criteria for assessing offensive or objectionable dispersal or deposition of smoke particles, and
 - c) Appendix AQL5: Criteria for assessing offensive or objectionable odour.

2. Outdoor burning may be subject to further restrictions which must also be complied with: These may include:
 - a) Other rules in this Plan, and
 - b) Bylaws and controls of Territorial Authorities, Rural Fire Authorities, and the Department of Conservation.

3. Burning of standing crop stubble and/or vegetative residue is provided for in rural areas under rules AQL28.

Insert new Appendix 2, 3.8 Air Quality appendices, page 3-298B

Appendix AQL2 Guide to minimise smoke emissions from outdoor burning in residential areas under Rule AQL29B

- 1) Burning of vegetation, cardboard, paper and untreated wood under Rule AQL29B:
 - a) Except stumps, standing dead vegetation and crop residue, vegetation should be allowed to dry for at least six weeks prior to burning.
 - b) Prior to burning there should be at least two days of fine weather when less than five millimetres of rain has fallen.
 - c) Regard should be had to the forecast wind strength and direction during the intended day of burning. Burning should not occur when either:
 - i) Very strong winds (such as north-westerly gales) are predicted; or
 - ii) Cold/frosty, clear, calm & highly stable conditions which encourage the development of temperature inversions.
 - d) Vegetation and wood should be stacked loosely, not compacted.
 - e) A small fire should be started with the driest material and fed gradually with further material once the fire is “blazing”. Fires should not smoulder slowly.
 - f) The fire should not be left unattended once started.
 - g) Small quantities of petroleum products may be used as accelerants. Note that burning of rubber, used or waste oil is prohibited under Rule AQL36.

Advisory notes

Burning resulting in the dispersal or deposition of particles that causes an objectionable or offensive effect beyond the boundary of the property where the discharge originates, may be subject to enforcement action.

However, following the steps in 1 to 3 above should help prevent such adverse effects. In deciding on whether enforcement action will be taken, Environment Canterbury staff will be guided by the “Criteria for Assessing Offensive or Objectionable Dispersal or Deposition of Smoke Particles” in Appendix AQL3.

APPENDIX 2

Variation 16 as confirmed by recommendation of Hearings Panel

Variation 16 Rangiora: Emergency Provisions

a) Rangiora Policy Provisions

Add to Policy AQL27, page 3-58 explanation and principle reasons, a final sentence

Rule 81A allows this discharge as a permitted activity by small scale fuel burning devices, which includes open fires when the electricity network is disrupted.

2 Rule Explanation

Add new rule explanation AQL81A, page 3-278

Rule AQL81A Emergency discharge by small scale fuel burning devices when electricity network supply terminated - permitted activity.

Policy AQL27 allows for non complying small scale solid fuel burning devices to be used when there is a planned network disruption of greater than 3 hours, or unknown at the time of disruption. Note that open fires are included in the definition of small scale fuel burning devices and are covered by these policies.

The intention of the above policies is that they apply only when the network is disrupted. It does not apply when electric power connection to a specific household, business or building has been intentionally disconnected for non payment or other reasons.

A specific rule is required to make using small scale solid fuel burners in this situation a permitted activity, because:

- It clarifies when the rule exemption will apply.
- The emergency provisions of section 330 of the RMA do not apply in this situation, and
- It gives effect to the policies above

The emergency provisions of section 330 of the RMA cannot be used by operators of small scale fuel burning devices in an electricity supply network disruption event. The emergency

provisions only apply to public works, local authorities, network utility operators, and consent authorities. The emergency provisions also require that resource consent be sought post event. The practicalities of requiring an air discharge consent for large numbers of people means it is not practicable, and a specific permitted activity rule is a more appropriate method.

The rule will make the discharge of PM₁₀ from any small scale fuel burning device (including open fires) a permitted activity when the electricity supply network is disrupted for either maintenance or repair.

[Insert to Table 3.1 Summary of Rules page 3-91]

Discharges to air from outdoor burning				
Area rule applies	Rule N°	Description	Activity Status	Page N°
	<u>AQL81A</u>	<u>Emergency discharge by small scale fuel burning devices when electricity network supply terminated</u>	<u>Permitted</u>	203

Insert new rule 81A page 3-91**Rule AQL81A Emergency discharge by small scale fuel burning devices when electricity network supply terminated - permitted activity.**

Activity	Conditions	Activity Status	Cross Ref.
<p><u>Notwithstanding Rules AQL74, 78, 79, 80, and 81, when either:</u></p> <ol style="list-style-type: none"> 1. <u>Any person operating a small scale solid fuel burning devices is notified by the electricity network utility network operator that electricity supply shall be interrupted for a period of not less than 3 hours for maintenance or upgrading purposes, or</u> 2. <u>The electricity network supply is disrupted through weather, accidents, or any unforeseen circumstances;</u> 3. <u>the discharge of contaminants to air from any small scale solid fuel burning device is a permitted activity, for the duration of the power outage.</u> 		<u>Permitted</u>	<u>58</u>

Note: This rule does not apply to the disconnection of an individual's electricity power supply due to unpaid power accounts or any other disputes with the electricity network utility operator.

APPENDIX 3

Plan Change 1 as confirmed by recommendation of the Hearings Panel

Plan Change 1 Christchurch, Kaiapoi, and Ashburton: Emergency Provisions

a) Christchurch Policy Provisions

Delete from Policy AQL17, page 3-43 explanation and principle reasons, paragraph 4 sentence three:

Add to Policy AQL17, page 3-43 explanation and principle reasons, paragraph 4, as a final sentence

Rule 6A allows this discharge as a permitted activity by small scale fuel burning devices, which includes open fires when the electricity network is disrupted.

b) Kaiapoi Policy Provisions

Add to Policy AQL35, page 3-69 explanation and principle reasons, a final sentence

Rule 6A allows this discharge as a permitted activity by small scale fuel burning devices, which includes open fires when the electricity network is disrupted.

c) Ashburton Policy Provisions

Add to Policy AQL44, page 3-78 explanation and principle reasons, a final sentence

Rule 6A allows this discharge as a permitted activity by small scale fuel burning devices, which include open fires when the electricity network is disrupted.

2 Rule Explanation

Add new rule explanation AQL6A to page 3-241

Rule AQL6A Emergency discharge by small scale fuel burning devices when electricity network supply terminated - permitted activity.

Policy AQL17 (b) Christchurch states that non complying small scale solid fuel burning devices can be used when there is an emergency when power is cut off for an extended period. Policies AQL35 (Kaiapoi), and AQL44 (Ashburton) allow for non complying small scale solid fuel burning devices to be used when there is a planned network disruption of greater than 3 hours, or unknown at the time of disruption. Note that open fires are included in the definition of small scale fuel burning devices and are covered by these policies.

The intention of the above policies is that they apply only when the network is disrupted. It does not apply when electric power connection to a specific household, business or building has been intentionally disconnected for non payment or other reasons.

A specific rule is required to make using small scale solid fuel burners in this situation a permitted activity, because:

- It clarifies when the rule exemption will apply.
- The emergency provisions of section 330 of the RMA do not apply in this situation, and
- It gives effect to the policies above

The emergency provisions of section 330 of the RMA cannot be used by operators of small scale solid fuel burning devices in an electricity supply network disruption event. The emergency provisions only apply to public works, local authorities, network utility operators, and consent authorities. The emergency provisions also require that resource consent be sought post event. The logistics of requiring an air discharge consent for large numbers of people means it is not practicable, and a specific permitted activity rule is a more appropriate method.

The rule will make the discharge of PM₁₀ from any small scale fuel burning device (including open fires) a permitted activity when the electricity supply network is disrupted for either maintenance or repair.

[Insert to Table 3.1 Summary of Rules page 3-85]

Discharges to air from outdoor burning				
Area rule applies	Rule N^o	Description	Activity Status	Page N^o
	<u>AQL6A</u>	<u>Emergency discharge by small scale fuel burning devices when electricity network supply terminated</u>	<u>Permitted</u>	101

Insert new rule 6A page 3-85

Rule AQL6A Emergency discharge by small scale fuel burning devices when electricity network supply terminated - permitted activity.

Activity	Conditions	Activity Status	Cross Ref.
<p><u>Notwithstanding Rules AQL4, 7, 10, 11, 11A, 85, 89, 90, 91, 92, 96, 99, 100, 101, 102 ,when either:</u></p> <ol style="list-style-type: none"> 1. <u>Any person operating a small scale solid fuel burning device is notified by the electricity network utility network operator , directly or indirectly that electricity supply shall be interrupted for a period of not less than 3 hours for maintenance or upgrading purposes, or</u> 2. <u>The electricity network supply is disrupted through weather, accidents, or any unforeseen circumstances;</u> 3. <u>the discharge of contaminants to air from any small scale solid fuel burning device is a permitted activity, for the duration of the power outage .</u> 		<p><u>Permitted</u></p>	<p><u>43(Christchurch)</u> <u>68(Kaiapoi)</u> <u>78(Ashburton)</u></p>

Note: This rule does not apply to the disconnection of an individual's electricity power supply due to unpaid power accounts or any other disputes with the electricity network utility operator.

APPENDIX 4

Recommendations on Submissions and Further Submissions

Variation 15

Organisation	Submission Points	Decision Requested	Comments Accept/Reject/AIP
Solid Energy	1.1	Retain proposed Variation 15	Accept
Association for Independent Research Inc	2.1	Amend Policy 4A to provide that outdoor burning in residential areas is not restricted where there is no offensive or objectionable effect beyond the property boundary	Reject
Association for Independent Research Inc	2.2	Add a new rule to the effect of providing for outdoor burning as a permitted activity subject to a condition that the burning not have effects which are offensive or objectionable beyond the property boundary	Reject
Christchurch Council	City 3.1	Amend Rule AQL29A by adding "recycling, composting, or" after... is located in a township which has.... In subparagraph b) of Rule AQL 29A	Accept

Variation 16

Organisation		Submission Points	Decision Requested	Comments Accept/Reject/AIP
Solid Energy NZ Ltd		1.1	Retain Variation 16	Accept
Association for Independent Research Inc		2.1	Amend definition of the term "emergency" to cover situations where electricity [or other popular, non solid sources of energy] is for some reason, in short supply or needs to be conserved leading to requests by the authorities for "savings to be made"	Reject
Christchurch Council	City	3.1	Retain proposed rule 6A	Accept

Change 1

Organisation		Submission Points	Decision Requested	Comments Accept/Reject/AIP
Solid Energy NZ Ltd		1.1	Retain Plan Change 1	Accept
Orion NZ Ltd		2.1	Insert "directly or indirectly" after electricity network utility operator to condition 1 of proposed Rule AQL6A	Reject
Association for Independent Research Inc		3.1	Amend definition of the term "emergency" to cover situations where electricity [or other	Reject

popular, non solid sources of energy] is for some reason, in short supply or needs to be conserved leading to requests by the authorities for "savings to be made"

Christchurch Council	City	4.1	Retain proposed rule 6A	Accept
-------------------------	------	-----	-------------------------	--------

Further Submissions

One further submission F2.1 was lodged by Orion NZ Ltd in support of submission point 3.1 from Submitter 3 (Association for Independent Research Inc).

Organisation	Submission Points	Decision Requested	Comments
			Accept/Reject/AIP
Orion NZ Ltd	F2.1	Submission 3.1	Reject
		supported by a proposed inclusion of a condition 3 to rule AQL6A allowing for the discharge from any small scale solid fuel burning device for the duration of the emergency zone as derived by The Electricity Commission.	