

Policy AQL6: Avoid dust nuisance ## 03-020 01 00

18	R Vore	Support.
89	J McSweeney	Support.
117	TrustPower Ltd	Retain Policy AQL6 and make any similar amendments with like effect.
120	Christchurch City Council, Fendalton Service Centre	Support.
131	M Coffey	Add extra clause for dust in driveways caused by continuous or heavy traffic associated with a particular business which affect close neighbours and cause problems and adverse effects.
147	Ashburton District Council	Support.
215	Canterbury Aoraki Conservation Board	Support.
329 (point 1)	Lyttelton Port Company Ltd	As an alternative to deleting Policy AQL 6, add new clause: 'Recognise and provide for the handling of bulk materials at Lyttelton Port while avoiding and mitigating adverse effects on the environment caused from the associated discharges of dust.'
329 (point 2)	Lyttelton Port Company Ltd	Delete Policy AQL 6, or make amendments - refer 3-20-2, 3-20-1, 3-20-11, 3-20-14, 3-20-20, 3-20-23, 3-20-24, 3-20-29, 3-20-31, 3-55-1. Make any consequential amendments to the Plan as necessary.
338	Transit New Zealand, Christchurch	Delete the word 'Avoid' and replace it with 'Control'.
347	Federated Farmers Of New Zealand Inc, North Canterbury Branch	Delete references dealing with nuisance effects of odour, particles, smoke and dust. (Refer 3-1-21)
355 (point 1)	Omya New Zealand Ltd	Make the discharge of contaminants to air from extraction handling, processing, conveying, transporting and storage of bentonite minerals at any location a permitted activity. Make any consequential amendments to the plan where necessary.
355 (point 2)	Omya New Zealand Ltd	Add a new clause: 'Recognise and provide for the extraction, handling and processing of bentonite minerals while avoiding and mitigating any adverse effects on the environment caused from the associated discharges of dust.' Make any consequential amendments to the plan where necessary.

371	NZMP	Retain as worded.
390	Mayfield Hinds Irrigation Society Ltd	Delete Policy AQL 6.
406	Tasman Farms Limited	Retain Policy AQL 6, but recognise that some land uses cannot contain all effects on-site.
424	Kennedys Bush Road Neighbourhood Association	Support.
429 (point 1)	Selwyn District Council	Apply Policy AQL6 to urban areas only. Make any other consequential amendments as necessary.
429 (point 2)	Selwyn District Council	Delete Policy AQL 6 and replace with a policy which recognises and supports the role of district councils in managing non-point source dust effects from land uses such as developing roads and sections, construction activities, quarrying and mining, intensive livestock farming and managing potential reverse sensitivity effects through land use planning. Make any other amendments as necessary.
429 (point 3)	Selwyn District Council	Delete provisions managing dust nuisance from non point discharges where the effects are already addressed under district plans and proposed district plans. Make any other consequential amendments as necessary.
906	Canterbury Horticultural Society Inc	Concerns expressed and policy AQL6 not supported in its present form.
F5	Rangitata Diversion Race Management Ltd	Supports submission 117:
F275 (point 1)	Ravensdown Fertiliser Co-Operative Ltd	Supports submission 329 (point 1)
F275 (point 2)	Ravensdown Fertiliser Co-Operative Ltd	Opposes submission 390:
F275 (point 3)	Ravensdown Fertiliser Co-Operative Ltd	Opposes submission 906.
F338	Transit New Zealand	Supports submission 429 (point 3)
F347 (point 1)	Federated Farmers of New Zealand	Supports submission 429 (point 2):
F347 (point 2)	Federated Farmers of New Zealand	Supports submission 429 (point 1)

F347 (point 3)	Federated Farmers of New Zealand	Supports submission 429 (point 3)
F365	Meridian Energy Limited	Supports submission 338
F401 (point 1)	NZ Vegetable & Potato Growers Fed. Inc. and NZ Fruitgrowers' Fed Inc.	Opposes submission 131
F401 (point 2)	NZ Vegetable & Potato Growers Fed. Inc. and NZ Fruitgrowers' Fed Inc.	Supports in part submission 429 (point 2)
F428	Transpower NZ Ltd	Opposes submission 429 (point 1)
F435 (point 1)	Tegel Foods Ltd	Supports in part submission 406
F435 (point 2)	Tegel Foods Ltd	Opposes in part submission 429 (point 2)

Consideration

Submissions 18, 89, 117, 120, 147, 215, 371, 406, 424, Further Submissions F5, and F435 (point 1)

These various submissions support Policy AQL6 and most do not seek any amendments to it. These submissions can be accepted because the Commissioners do not recommend any immediate changes to the policy as a result of their considerations of the submissions which follow.

Submissions 390 and 906, opposed by Further Submission F275 (points 2 & 3)

Submission 390 and 906 sought that Policy AQL6 should be deleted.

Environment Canterbury has as one of its statutory functions, the control of discharges of dust. This function can be undertaken through a regional plan. In context the Commissioners consider that the policy is appropriate to guide and direct decision-making and to achieve the outcomes sought in Objective AQL1. No change is recommended by the Commissioners as a result of submissions 390 and 906 and it is recommended that they be rejected. The further submission in opposition should be accepted.

Submission 131 opposed by Further Submission F401 (point 1), Submission 329 (points 1 & 2) supported by Further Submission F275 (point 1), Submission 355 (points 1 & 2)

The submissions seek that Policy AQL6 should be deleted, or amended to add provisions that recognise and provide for activities at specific sites such as the Port of Lyttelton and a bentonite mine that can and do generate dust.

The purpose of the Policy is to seek to manage the effects on the environment of the discharge of dust in certain circumstances, no matter what the source; it is not to advocate for any particular activity. The Commissioners do not support specific reference being made to the two industries proposed. There is no good reason to single those industries out for preferential treatment. For the reasons advanced immediately above, they do not recommend that the policy be deleted. It is recommended that the submissions be rejected.

Submission 338 supported by Further Submission F365

These submissions suggest that the word “control” should replace the word “avoid” in the title. They suggest that the clauses in the Policy describe the action intended; the title does not need to do this, and that it would be better to remain neutral in terms of action.

The actions sought in the Policy in respect of dust are; “*shall not cause*”, and “*avoid*”. The title for the policy uses “*avoid*”. The use of “*shall not cause*”, implies stronger action than the word control suggested by the submissions. It is, however, consistent with avoidance.

Land use planning is an important tool to ensure that ‘reverse sensitivity’ where new ‘sensitive’ land uses encroach into areas where air quality is affected by existing discharges of dust does not develop. This is recognised in policy AQL6 (b). The use of the term “avoid” in respect of such encroachment is appropriate. The explanation to the Policy emphasises how important it is that reverse sensitivity effects do not occur.

The use of the word avoid is not in the Commissioners’ view inappropriate and it is recommended that these submissions be rejected.

Submissions 347, 429 (points 2 & 3) supported by Further Submission F338, F347 (points 1 & 3), F401 (point 2) (in part) opposed by F435 (point 2)

These submissions sought to amend or replace Policy AQL6 with a policy that recognises the responsibilities that territorial authorities have for the management of dust effects of land use, and for the control of the effects of land use to avoid potential ‘reverse sensitivity’ adverse effects occurring. Some also sought to delete provisions relating to the management of dust effects where controls on odour are included in district plans. Submission 247 sought to delete references to inter alia particles, smoke and dust.

The consideration given to submissions 286, 347 (point 2), 373 (point 2), 429 (points 2 & 3), 434 (point 3) and 435 (point 3) and Further Submissions F347 (points 1, 2, 3 & 4), F427 at ## 03-017 26 00, in relation to Policy AQL5 is relevant here and it is adopted. If the regional council is to perform its function in respect of the integrated management of resources in the region it must establish and implement objectives, policies and methods that have effect over the region. It can influence the decision-making of territorial authorities in the exercise of their functions. The issue is the overlap of responsibilities between authorities under the RMA, not the duplication of responsibilities in Chapter 3. No changes are recommended to Policy AQL6 as a result of the submissions on this issue, and it is recommended that the submissions are rejected; submission F435 (point 2) can be accepted.

Submission 429 (point 1) supported by Further Submission F347 (point 2), opposed by Further Submission F428

Submissions 429 and F347 sought that Policy AQL6 should be applied to urban areas only.

Many potential sources of dust are from activities undertaken in rural areas; quarrying, mining, intensive agriculture, and livestock farming. The adverse effects of dusts are an issue for rural areas as well as urban areas. The Commissioners are aware of the issues raised by submission 347 in relation to the urbanisation of rural land and the higher expectations of non-rural people in terms of air quality. The Commissioners accept that some rural activities such as the cultivation of land by necessity increase the risk that dust may be created. The assessment criteria outlined in Appendix AQL4 take into account location and the Commissioners believe this adequately addresses the issues raised in these submissions. No change is recommended as a result of these submissions, and it is recommended that submission F429 (point 1), and F347 (point 2) be rejected. Submission F428 can be accepted.

The Commissioners accept that the drafting of Policy AQL6 could be improved. The submissions have sought deletion as another option; however the Commissioners believe deletion would adversely affect the integrity of the plan and they therefore do not recommend acceptance of these submissions.

The recommendation of the reporting officer at the hearing was to amend Policy AQL6 as follows and to make any consequential amendments as necessary:

Policy AQL6: Discharge of Avoid-dust into air nuisance

- (a) Prevent a Any dust-discharge of dust into air that is likely to shall not cause corrosion, or have a be noxious, or dangerous, or cause objectionable or offensive effect on the environment ~~dispersal or deposition of particles~~ beyond the boundary of the site where the discharge originates.
- (b) Prevent Avoid the encroachment of sensitive activities on an existing activity ~~ies that discharges ing~~ dust into air, unless adverse effects of the discharge can be avoided or mitigated by the encroaching activity.

The reporting officer's recommendations made sense to the Commissioners, but they have reservations about the extent of the changes suggested. They went well beyond the scope of the submissions. The Commissioners believe a variation is required to address the issues raised in regard to Policy AQL6. The Commissioners recommend no change to Policy AQL6 at this time, but do recommend that ECan consider a variation to improve the drafting of the clause in light of the reporting officer's comments at the hearing.

Recommendation

Reject

Submissions 131, 329 (points 1 & 2), 338, 347, 355 (points 1 & 2), 390, ,429 (points 1, 2 & 3), 906 and Further Submissions F 275 (point 1), F338, F347(points 1, 2 & 3), F365 and F401 (points 1 & 2).

Accept

Submissions 8, 89, 117, 120, 147, 215, 371, 406, 424, Further Submissions F5, F275 (points 2 &3), F428 and F435 (points 1 & 2).

Amendment Required

1. None required.

2. It is recommended that ECan consider notifying a variation to amend Policy AQL6 as follows and to make any consequential amendments as necessary:

Policy AQL6: Discharge of Avoid-dust into air nuisance

- (a) Prevent a ~~Any dust discharge of dust into air that is likely to shall not~~ cause corrosion, or have a ~~be~~ noxious, or dangerous, or cause ~~or cause~~ objectionable or offensive effect on the environment ~~dispersal or deposition of particles beyond the boundary of the site where the discharge originates.~~
- (b) Prevent ~~Avoid~~ the encroachment of sensitive activities on an existing activity ~~ies~~ that discharges ~~ing~~ dust into air, unless adverse effects of the discharge can be avoided or mitigated by the encroaching activity.

Policy AQL6 (a) ## 03-020 02 00

329	Lyttelton Port Company Ltd	As an alternative to deleting Policy AQL 6, delete (a) and replace with: 'The dispersal and deposition of dust from any discharge should not cause corrosion, and should not be noxious, dangerous, objectionable or offensive.' Make any consequential amendments to the Plan as necessary.
338	Transit New Zealand, Christchurch	Amend Policy AQL 6(a) to read: 'Any dust discharge shall ...of particles beyond the boundary of the property where the discharge originates.'
355	Omya New Zealand Ltd	Delete clause (a) and replace with 'The dispersal and deposition of dust from any discharge shall not cause corrosion, and should not be noxious, dangerous, objectionable or offensive.' Make any consequential amendments to the plan where necessary.
378	Canterbury Growers Society Ltd	Add the words 'from industrial and trade premises' after 'Any dust discharge...'
401	NZ Vegetable & Potato Growers Fed. Inc. and NZ Fruitgrowers Fed Inc.	Add the words 'from industrial and trade premises' after 'Any dust discharge...'
428	Transpower NZ Ltd	Amend Policy AQL 6 (a) to read: '...shall not cause corrosion, soiling, dispersal of particles beyond the boundary of the site where the discharge originates that is noxious or dangerous, or objectionable or offensive.' Make any consequential amendments to the plan where necessary.
F347 (point 1)	Federated Farmers of New Zealand	Supports submission 401
F347 (point 2)	Federated Farmers of New Zealand	Supports submission 428
F428	Transpower NZ Ltd	Opposes submission 378

F435	Tegel Foods Ltd	Opposes submission 329
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Consideration

Submissions 329, opposed by Further Submission F435, 338, 355 and 428, supported by F347 (point 2)

The submissions suggested that Policy AQL6 (a) is poorly drafted and considered that the word “shall” is inappropriate. They suggested that this policy provides guidance rather than a mandatory requirement. The submissions suggested amendments to the clause, generally, as follows:

- (a) ~~Any dust discharge shall not cause corrosion, be noxious or dangerous, or cause objectionable or offensive dispersal or deposition of particles beyond the boundary of the site where the discharge originates. The dispersal and deposition of dust from any discharge should not cause corrosion, and should not be noxious, dangerous, objectionable or offensive.~~

Section 1.2 Definitions of Terms of the Proposed NRRP defines “Policy” to mean,

“a statement that guides or directs decision-making. A policy indicates a commitment to a course of action in working towards an objective”.

This definition is taken directly from the Canterbury Regional Policy Statement, which adopted it from a Court of Appeal decision, *ARC v North Shore CC (1995)*.

A policy can direct, and it can be appropriate to use mandatory terms such as “shall”, where such direction is intended.

Using consistent terms in the various policies in Chapter 3 should be encouraged. This will enhance certainty of meaning, by reducing inconsistency and therefore the possibility of variation in interpretation. The use of terms that are used in the RMA is likely to increase certainty of meaning, as these terms are likely to be either defined in the Act, or to have been interpreted by the Courts to have a specific meaning in an RMA context.

The particles that comprise dust are contaminants in the air, and their discharge is controlled under section 15 of the RMA. Therefore it would enhance the clarity of the policy if the activity was consistently referred to as “*a discharge of dust*” and the effect of the discharge consistently described as having the potential to create “*a noxious, dangerous, offensive or objectionable effect on the environment.*”

However the submissions do not provide the scope for such changes. In the Commissioners’ view it would be desirable to amend the wording as detailed above, albeit that it is not necessary to do so. If Environment Canterbury see merit in such changes, then it will need to notify a variation to this effect. In the interim it is recommended that the submissions should be rejected (except for further submission F435 which should be accepted).

Submission 378 opposed by Further Submission F428 and Submission 401 supported by Further Submission F347 (point 1)

The primary submissions sought that the phrase “from industrial or trade premises” should be added to Policy AQL6 (a).

Environment Canterbury has the statutory function of controlling discharges of contaminants to air from any source. Section 15(1)(d) prohibits the discharge of a contaminant to air from any industrial or trade premises unless authorised by a rule in a regional plan or a resource consent. Section 15(2) states that no person may discharge a contaminant to air in manner that contravenes a rule in a regional plan, unless a resource consent is held or the discharge is from an activity with existing use status. Discharges controlled by Chapter 3 may come from locations or sites that are not industrial or trade premises.

This is not inappropriate. All discharges can contribute to poor air quality, regardless of the activity from which they originate. The Policy should in the Commissioners' view apply to all sites.

No change is recommended by the Commissioners as a result of these submissions, and it is recommended that the submissions be rejected (except for F428).

Recommendation

Reject

Submissions 329, 338, 355, 378, 401, 428, Further Submission F347 (points 1 and 2).

Accept

Further Submissions F428 and F435.

Amendment Required

None required.

Policy AQL6 (b) ## 03-020 05 00

275	Ravensdown Fertiliser Co-Operative Ltd	Retain Policy AQL 6(b).
329	Lyttelton Port Company Ltd	Support.
347	Federated Farmers Of New Zealand Inc, North Canterbury Branch	Delete Policy AQL6.
378	Canterbury Growers Society Ltd	Retain Policy AQL 6(b).
391	Carter Holt Harvey Panels MDF Ltd	Retain Policy AQL 6(b).
401	NZ Vegetable & Potato Growers Fed. Inc. and NZ Fruitgrowers Fed Inc.	Retain Policy AQL 6(b).
F275	Ravensdown Fertiliser Co-Operative Ltd	Opposes submission 347

F347	Federated Farmers of New Zealand	Supports submission 401
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Consideration

Submissions 275, 378, 401 supported by Further Submission F347, Submission 329 and 391

These various submissions support Policy AQL6(b) and do not seek any changes to it.

The Commissioners recommend acceptance of these submissions as they are not recommending any changes to Policy AQL6(b).

Submission 347 opposed by Further Submission F275

These submissions sought to have Policy AQL6(b) deleted.

As discussed above, the Commissioners consider that the policy could be improved by redrafting. However, no submissions provide the scope for this and therefore no immediate changes are recommended. Deletion of the policy would, in the Commissioners’ view, adversely affect the integrity of the plan and be inconsistent with objective AQL1; they therefore recommend that Submission 347 be rejected, and F275 be accepted.

Recommendation

Reject

Submission 347.

Accept

Submission 275, 329, 378, 391, 401, Further Submission F275 and F347.

Amendment Required

None required.

Explanation and principal reasons ## 03-020 10 00

355	Omya New Zealand Ltd	Add a new paragraph to read: ‘Policy 6(c) recognises the economic importance of extraction industries such as bentonite mining in the Canterbury region. Such operations are anticipated, provided the best practicable measures are undertaken to avoid or mitigate adverse effects.’ Make any consequential amendments to the plan where necessary.
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Consideration

Submission 355

The submission sought that Policy AQL6 should identify that dust nuisance from a specific industry should be anticipated.

The intent of Policy AQL6 is not to identify any particular industry. Objective AQL1 and Policy AQL6 are directed at managing the effects on the environment from the discharge of dust, no matter its source. This issue was considered above, ##03-020 01 00, 131, F401(point 1), 329 (points 1 & 2), F275 (point 1), 355 (points 1 & 2). That analysis is adopted.

No change is recommended by the Commissioners as a result of this submission, and it is recommended that it be rejected.

Recommendation**Reject**

Submission 355.

Amendment Required

None required.

Explanation and principal reasons - Paragraph 1 ## 03-020 11 00 to 03-020 13 00

329	Lyttelton Port Company Ltd	As an alternative to deleting Policy AQL 6, amend the first paragraph of the Explanation and principal reasons to read: 'Repetitive discharges of dust, causing soiling of clean surface and therefore visual impacts, can constitute a nuisance. Few forms of dust would be classified as "noxious" or "dangerous" but may be "offensive" or objectionable depending on the sensitivity of the receiving environment and the nature of the dust that is discharged, and the frequency, intensity or duration of the discharge.' Make any consequential amendments to the plan as necessary.
355 (point 1)	Omya New Zealand Ltd	Delete the first sentence: 'Dust nuisance... visual impact.' , and replace with 'Repetitive discharges of dust, causing soiling of clean surface and therefore visual impacts, can constitute a nuisance.' Make any consequential amendments to the plan where necessary.
355 (point 2)	Omya New Zealand Ltd	Amend to read: "dangerous" but may be "offensive" or "objectionable" depending on the sensitivity of the receiving environment and the nature of the dust that is discharged, and the frequency. Intensity or duration of the discharges.' Make any consequential amendments to the plan where necessary."
F435	Tegel Foods Ltd	Supports in part submission 355 (point 2):

Consideration

Submissions 329, 355 (points 1&2) supported in part by Further Submission F435

The submissions sought to amend the wording of paragraph 1 in the Explanation and principal reasons for Policy AQL6, to introduce a frequency component, and to connect the extent of the effects of the dust to the sensitivity of the receiving environment.

The criteria that Environment Canterbury will use to assess whether a discharge of dust will result in offensive or objectionable effects are listed in Appendix AQL4. These criteria include frequency, intensity, duration, offensiveness and location. The Commissioners consider the use of the criteria in Appendix AQL4 adequately address the matters raised by the submissions, and that no additional change is needed as a result of these submissions. It is recommended that they be rejected.

The reporting officer recommended various changes as follow:

Amend paragraph 1 of the Explanation and principal reasons of Policy AQL6 as follows:

“Discharges of D-dust nuisance has into air can have adverse visual impacts on amenity values, such as the and cause soiling of clean surfaces, reducing amenity values, and can have adverse economic impacts. and it has visual impacts. Few forms of dust would be classified as “corrosive”, “noxious” or “dangerous” but some forms of dust may most can be “offensive” or “objectionable”, depending upon the nature and location of the discharge.”

The Commissioners consider that there is no scope to make the changes suggested by the reporting officer. If ECan decides to embrace them, it will have to do so by way of variation. The Commissioners are not convinced that they are necessary.

Recommendation

Reject

Submissions 329 and 355 (points 1&2). Further Submission F435.

Amendment Required

None required.

Explanation and principal reasons - Paragraph 2 ## 03-020 14 00

329	Lyttelton Port Company Ltd	As an alternative to deleting Policy AQL 6, delete the second paragraph of the Explanation and principal reasons - ‘Dust associated with ...is of significant concern.’ Make any consequential amendments to the Plan as necessary.
355	Omya New Zealand Ltd	Delete second paragraph: ‘Dust Associated ...of significant concern.’ Make any consequential amendments to the plan where necessary.

Consideration

Submissions 329 and 355

These submissions sought that the paragraph 2 of the Explanation and principal reasons for Policy AQL6 should be deleted.

Paragraph 2 identifies specific activities where the discharge of dust can be of “significant concern”. The nature of the concern is not explained. The policy identifies specific activities. It assumes that dust from these activities will always be of concern.

Rewording the paragraph to record that the identified activities have the potential to discharge dust that may cause adverse effects would improve the paragraph, but the submissions do not give the Commissioners the scope to do this. The Commissioners share the submitters concern and recommend that the paragraph should be deleted, and the submissions accepted.

Recommendation

Accept

Submission 329 and 355.

Amendment Required

Delete paragraph 2, Explanation and principal reasons for Policy AQL6, p.3-20.

~~“Dust associated with activities such as loading and unloading bulk materials at ports, abrasive sandblasting, quarries, flour milling, saw milling, seed cleaning, and coal and fertiliser storage, is of significant concern”.~~

Explanation and principal reasons - Paragraph 3 ## 03-020 17 00 to 03-020 20 00

329	Lyttelton Port Company Ltd	As an alternative to deleting Policy AQL 6, add new paragraph after the paragraph ending ‘ ...at neighbouring properties.’ to read: Policy 6 (c) recognises the economic importance to region of Lyttelton Port being able to load and unload bulk materials. Such operations are anticipated, provided the best practicable measures are undertaken to avoid or mitigate adverse effects.’ Make any consequential amendments to the Plan as necessary.
355	Omya New Zealand Ltd	Delete ‘minimise’ and replace with ‘avoid, remedy or mitigate’. Make any consequential amendments to the plan where necessary.

Consideration

Submission 329

This submission sought that the explanation should identify that dust from a specific industry –the Port of Lyttelton- is anticipated.

The intent of Policy AQL6 is not to identify any particular industry. It is directed at managing the effects on the environment from the discharge of dust, no matter its source. The Commissioners consider that it is not appropriate that particular industries are referred to in the Explanation and principal reasons. It is recommended that the submission is rejected.

Submission 355

This submission sought to amend the phrase “*Good practice can minimise emissions...*”, in paragraph 3 of the Explanation and principal reasons for Policy AQL6 with ‘*Good practice can avoid, remedy or mitigate emissions...*’.

The effects of a discharge can often be avoided, remedied or mitigated. The intent of the paragraph is to note that good management practices can minimise adverse effects for neighbours. This should be more clearly stated in the Explanation and principal reasons for Policy AQL6, however the submission provides little scope to do this. The Commissioners would prefer that the paragraph should record that good practice can avoid, remedy or mitigate the adverse effect of dust emissions. They recommend that the submission be accepted in part, and that ECan consider a variation to improve the wording of the paragraph.

Recommendation

Reject

Submission 329.

Accept in part

Submission 355.

Amendment Required

1. Delete the word “minimise” in paragraph 3 of Explanation and principal reasons for Policy AQL6, p.3-20 and replace with “avoid, remedy, or mitigate”.
2. That Environment Canterbury consider notifying a variation to paragraph 3 of the Explanation and principal reasons for Policy AQL6, p. 3-20 to read that good practice can avoid, remedy or mitigate the adverse effects of dust emissions so that neighbours do not experience significant nuisance effects.

Explanation and principal reasons - Paragraph 4 ## 03-020 23 00 to 03-020 24 00

<p>329 (point 1)</p>	<p>Lyttelton Port Company Ltd</p>	<p>As an alternative to deleting Policy AQL 6, delete the words ‘processes resulting in’ and replace with ‘activities that may cause’. Make any consequential amendments to the Plan as necessary.</p>
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329 (point 2)	Lyttelton Port Company Ltd	As an alternative to deleting Policy AQL 6, delete the word 'gradual'. Make any consequential amendments to the Plan as necessary.
355 (point 1)	Omya New Zealand Ltd	Delete the words 'processes resulting in' and replace with 'activities that may cause'. Make any consequential amendments to the plan where necessary.
355 (point 2)	Omya New Zealand Ltd	Delete the word 'gradual'. Make any consequential amendments to the plan where necessary.

Consideration

Submissions 329 and 355

The submission sought amendments to the wording of paragraph 4 of the Explanation and principal reasons for Policy AQL6, as follows:

“Dust nuisance problems are often associated with land use activities. Therefore, the issue of reverse sensitivity can be addressed by requiring sensitive activities to locate well away from activities that may cause ~~processes resulting in~~ objectionable or offensive dust emissions. This will minimise problems associated with ~~gradual~~ encroachment of residential and other development on existing industrial and trade processes. In general, existing industrial and trade activities have been developed in areas that are removed from sensitive areas and activities. Poor land use planning shall not diminish the value of the investment of the existing industrial and trade activities.”

The Commissioners believe this amendment has merit, as it records that it is activities, rather than processes, that may cause adverse effects from dust. The amendment also correctly notes that encroachment of sensitive activities is a problem whether this occurs gradually or suddenly. It is recommended that the submissions are accepted.

Recommendation

Accept

Submissions 329 and 355.

Amendment Required

Amend paragraph 4 of Explanation and principal reasons for Policy AQL6 p.3-20 as follows:

Dust nuisance problems are often associated with land use activities. Therefore, the issue of reverse sensitivity can be addressed by requiring sensitive activities to locate well away from ~~processes resulting in~~ activities that may cause, objectionable or offensive effects from dust emissions. This will minimise problems associated with ~~gradual~~ encroachment of residential and other development on existing industrial and trade processes. In general, existing industrial and trade activities have been developed in areas that are removed from sensitive areas and activities. Poor land use planning shall not diminish the value of the investment of the existing industrial and trade activities.”

Explanation and principal reasons - Paragraph 5 ## 03-020 29 00 to 03-020 31 00

329 (point 1)	Lyttelton Port Company Ltd	As an alternative to deleting Policy AQL 6, delete the words 'to remedy or mitigate the adverse effects of established activities'. Make any consequential amendments to the Plan as necessary.
329 (point 2)	Lyttelton Port Company Ltd	As an alternative to deleting Policy AQL 6, amend to read: '...use planning to, where possible, ensure activities...' Make any consequential amendments to the Plan as necessary.
355 (point 1)	Omya New Zealand Ltd	Delete the words 'to remedy or mitigate the adverse effects and established activities'. Make any consequential amendments to the plan where necessary.
355 (point 2)	Omya New Zealand Ltd	Amend to read: '...land use planning to, where possible, ensure activities discharging...' Make any consequential amendments to the plan where necessary.

ConsiderationSubmissions 329 (points 1 & 2) and 355 (points 1 & 2)

These submissions sought amendments to the wording of paragraph 5 of the Explanation and principal reasons for Policy AQL6 so that it better explains the concept of reverse sensitivity.

The notion of reverse sensitivity does not remedy or mitigate effects from existing activities. Its recognition provides a means of avoiding adverse effects arising from sensitive activities encroaching on activities with existing discharges. The Commissioners recommend that the submissions be accepted.

Recommendation**Accept**

Submissions 329 (points 1 & 2) and 355 (points 1 & 2).

Amendment Required

Amend paragraph 5 of Explanation and principal reasons for Policy AQL6 as follows:

~~“Recognising t~~“The concept of reverse sensitivity ~~to remedy or mitigate the adverse effects of established activities~~ is an important policy tool which can be used to separate incompatible new activities with from established activities. This concept recognises the importance of the use of land use planning, where possible, to ensure activities discharging objectionable or offensive levels of contaminants into the air are kept separate from sensitive land use activities such as residential use or vice versa.”

Method AQL6(d) Compliance and enforcement ## 03-021 05 00

348	Environment Canterbury	Add a new first sentence into the method of compliance and enforcement to read: 'Environment Canterbury will undertake monitoring and ensure compliance with resource consents conditions.'
429	Selwyn District Council	Add Kura Tawhiti (Castle Hill) to the Areas of Statutory Acknowledgement shown in Appendix TGW3. Make any other consequential amendments as necessary.
F275	Ravensdown Fertiliser Co-Operative Ltd	Supports submission 348
F347 (point 1)	Federated Farmers of New Zealand	Supports submission 429:
F347 (point 2)	Federated Farmers of New Zealand	Opposes submission 348

ConsiderationSubmission 429 and Further Submission F347 (point 1)

These submissions do not relate to Method AQL6(d). They relate to Appendix TGW3: Ngai Tahu statutory acknowledgement areas which have already been considered by the Commissioners in relation to submissions on Figure TGW2-1: Areas Affected by Ngai Tahu Claims Settlement Act 1998 ## 02-005 01 00 - 02-005 02 00, 386 (point 3), 429, F347, F386 (point 3). That analysis is adopted and no recommendation in relation to these submission are made in the present context.

Submission 348, supported by F275, opposed by F347 (point 2)

The submitter 348 and F295 sought the addition of a sentence to the method to clarify the role of Environment Canterbury in compliance monitoring.

Environment Canterbury is required to monitor the exercise of resource consents and take appropriate action where this is shown to be necessary (section 35(2)(d) of the RMA). The addition of the statement proposed does not change this duty. Section 3.7.3, Compliance Monitoring in Chapter 3 clearly outlines the monitoring and reporting programme that ECan will undertake, and it gives guidance to reference documents and the customer service number. No change is recommended. It is recommended that submission 348 and further submission 275 be rejected. There is no procedural issue with submission 348, nevertheless it is recommended that further submission F347(point 2) be accepted in part - to the extent that it opposes submission 348.

Recommendation**Reject**

Submissions 348, 429, and Further Submissions F275 and F347 (point 1).

Accept in part

Further Submission F347 (point 2).

Amendment Required

None required.

Method AQL6(e) Response to complaints and enquiries ## 03-021 15 00

347	Federated Farmers Of New Zealand Inc, North Canterbury Branch	Amend Method 6(e) to signal that Ecan staff will only investigate complaints where the nuisance is (i) ongoing and (ii) arises from the effects of an Ecan consent.
378	Canterbury Growers Society Ltd	Ensure that the complaints database only contains verified complaints. Make any consequential amendments to the plan where required. (Refer 0-0.)
401	NZ Vegetable & Potato Growers Fed. Inc. and NZ Fruitgrowers Fed Inc.	Ensure that the complaints database only contains verified complaints. Make any consequential amendments to the plan where required. (Refer 0-0.)
F347	Federated Farmers of New Zealand	Supports submission 401

ConsiderationSubmission 347

This submission sought that Method AQL6(e) should be deleted or amended so that complaints of adverse effects should only be investigated where they are on-going and related to compliance with resource consent conditions.

The responsibilities of Environment Canterbury under section 30 of the RMA permit the control of discharges of contaminants. To do this may require the investigation of discharges to assess their effects and whether there is any breach of RMA or regional plan provisions. Compliance monitoring of resource consents is a separate duty. The Commissioners therefore do not recommend that this submission be accepted. In their view no change to Chapter 3 is appropriate in this regard.

Submission 378, 401 and Further Submission F347

The concern these submissions raise relates to Environment Canterbury's Environmental Incident Response (EIR) database - Environment Canterbury's environmental complaint and response record. Their concern is that the EIR database may contain complaints that are not verified, and that when information is made available to the public, it could provide a misleading impression of the compliance of some activities.

Section 35(5)(i) of the RMA requires Environment Canterbury to maintain a summary of all written complaints received by it during the preceding five years concerning alleged breaches of the Act or a plan, and information on how it dealt with each complaint.

The Commissioners were told that Environment Canterbury enters every complaint made to it into its EIR database (whether it was made in person, by phone, in writing, or by any other means). Environment Canterbury staff then evaluate what the appropriate response to the complaint should be and take action accordingly. The response made to all complaints is also entered into the EIR database.

Environment Canterbury EIR database is subject to Part 2 of the Local Government Official Information and Meetings Act 1987. This governs the public availability of the information on the database. All complaints made to Environment Canterbury are entered into the EIR database. Any examination of Environment Canterbury's EIR database (record of complaints) will allow Environment Canterbury's response to a complaint to be determined. The change sought by the submissions is not necessary, or in the Commissioners' view, desirable. For written complaints it would fail to meet Environment Canterbury's obligations in terms of section 35(5)(i) of the RMA.

While the Commissioners accept the concerns expressed by the submitters about complaints that are vexatious or which may be in relation to "normal farming activities", they do not believe this justifies removing the recording of complaints received by the Regional Council. This issue has also been considered elsewhere –see ##00-000 00 00, 378 (point 1), 401 (point 2), F347 (point 2), F352, F353, F354, F355, F401 (point 2), F435 (point 2). See also ##01-0 29 12 00 in relation to the same submissions. It is recommended that these submissions be rejected.

Recommendation

Reject

Submissions 347, 378, 401 and Further Submission F347.

Amendment Required

None Required.

Method AQL6(e) (iv) ## 03-021 23 00

125	Waimakariri District Council	Add after 'in association with territorial authorities' the following: "where appropriate, or where agreement on roles and responsibility has been reached."
F429	Selwyn District Council	Supports submission 125

Consideration

Submission 125 supported by Further Submission F429

These submissions sought that Method AQL6(e) should be amended to qualify the actions of Environment Canterbury and territorial authorities in respect of procedures to deal with complaints about dust.

Method AQL6(e) is to “develop and implement procedures” with territorial authorities and others. Part of the development of procedures will be reaching agreements with the submissions organisations on roles and responsibilities as appropriate. The change sought is therefore not recommended by the Commissioners. It is neither necessary nor appropriate. It is recommended that the submission be rejected.

Recommendation

Reject

Submission 125 and Further Submission F429.

Amendment Required

None required.

Method AQL6(f) Assessment criteria ## 03-021 28 00

275	Ravensdown Fertiliser Co-Operative Ltd	Retain Method AQL 6 (f).
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Consideration

Submission 275

This submission supports Method AQL6(f). There have been no contrary submissions and therefore the Commissioners recommend that the submission be accepted.

Recommendation

Accept

Submission 275.

Amendment Required

None required.

Method AQL6(g) Territorial authorities ## 03-021 32 00

379	Christchurch City Council, Civic Offices	Delete Method AQL 6 (g) or delete the word ‘shall’ and replace with the words ‘could take into account the following matters’.
F275	Ravensdown Fertiliser Co-Operative Ltd	Opposes submission 379:

Consideration

Submission 379, opposed by Further Submission F275

The submission sought Method AQL6(g) be deleted or amended in respect of the action that Environment Canterbury is seeking from territorial authorities.

The consideration under Method AQL5(g) ##03-019 35 00, 379, F401, F275 (point 2) is relevant and is adopted. The Commissioners believe it is appropriate that Environment Canterbury requires territorial authorities to act, in this case without specifying what provisions should be included in a district plan or how an authority should act in the exercise of its functions. Therefore the use of “shall” is appropriate and no change is recommended.

Recommendation

Reject

Submission 379.

Accept

Further Submission F275.

Amendment Required

None required.