

CHAPTER 9: OTHER PLAN CHANGE COMMENTS

Introduction

Chapter 9 evaluates submissions about Proposed Plan Change 2 to the Regional Plan: Air for Otago (the proposed plan change) notification and consultation processes, and submissions that were generally in support of, or opposition to, the proposed plan change.

9.1 The consultation process

*Reference 320, 340, 350, 360 and 370 (Outside of Table of Proposed Changes)
Summary of Submissions by Issue; pages 251 to 254*

9.1.1 Overview

This evaluation addresses issues relating to how people have been able to participate in the plan change process:

- Seven submissions and seven further submissions concern the adequacy of the information made available to the public:
 - One submission is concerned about the legibility and presentation of the brochure.
 - One submission queries why the submission form was not as user friendly as the one circulated by the DCC to ascertain support for the stadium.
 - One submission seeks an extension to the consultation timeframe as the delivery of the information brochure had been delayed.
 - One submission considers it inappropriate that the brochure was delivered with 'junk' mail.
 - One submission seeks the immediate withdrawal of the information brochure due to inconsistencies between information in the brochure and the ORC website.
- Two submissions concern the ease of use of the submission form.
- Ten submissions raised issues relating to consultation:
 - Seven request further consultation with the community.
 - Three request further consultation with industry.
- Four submissions requested a delay in the introduction of the proposed plan change until more is known.
- One submission requests the plan change process be sped up.
- Two submissions query the apparent premature imposition of standards without public consultation.
- One submission queries why relevant information about domestic heating appliances was not made available in 2004.

9.1.2 Staff evaluation

Notification of proposed plan change

The requirements relating to notification of any proposed plan change are set out in clause 5 of the First Schedule of the RMA.

The proposed plan change was notified on Saturday 14 April 2007, and submissions closed 24 working days later on Friday 18 May 2007. A public notice was placed in newspapers across the region, including the Otago Daily Times, the Southland Times, The Press, the Central Otago News, the Taieri Herald and the Clutha Leader.

The Summary of Decisions Requested and Request for Further Submissions was notified on Saturday 23 June 2007, with further submissions closing 20 working days later, on Friday 20 July 2007.

These submission and further submission timeframes meet the statutory requirements for notification.

Information brochure

A public information brochure was designed to communicate a complex air quality issue and the changes proposed to the Air Plan to address air quality, in a simple but factual manner to a wide audience. It included a submission form and reference to where further information may be found, including the full text of the proposed plan change and related maps.

This brochure was delivered to over 85,000 residential, rural and business properties and boxholders in Otago, as well as directly through the post to some 10,000 ratepayers living outside of Otago. The main delivery was contracted to a postal delivery company. All brochure deliveries were completed between 23 and 26 April 2007, within the 10 working days of the plan change being notified, as required by clause 5(1A).

Additional copies of the brochure and the proposed plan change in full were distributed to all local libraries and city and district council offices throughout the region immediately prior to notification. The ORC website also contained full details of the proposal. Information Packs, containing the proposed plan change in full and some extra explanatory material, were sent out on request.

Submission form

The submission form was prepared in accordance with clause 6 of the First Schedule of the RMA. The RMA specifies the content but not the format of the submission form.

Consultation

The process for creating and amending regional plans is prescribed by the First Schedule of the RMA.

Consultation with relevant Crown Ministers, local authorities and tangata whenua was undertaken prior to notification of the proposed plan change.

As the highest levels of PM₁₀ in ambient air are due to discharges from domestic heating, preliminary consultation focussed on meeting with the communities in the worst affected areas.

A number of public meetings were held with the community prior to notification of the proposed plan change - in Alexandra in July 2006, and in February and

March 2007 across Otago. These meetings explained the requirements of the NESAQ, what the ORC considered to be necessary to achieve these and provided a forum for community response. As a result of this consultation, some amendments to the first draft of the proposal were made, including the amendment of airshed boundaries, the extension of boundary separation distances to the outdoor burning rule, and the creation of Airshed Category 1B and delay of any rules applying in that airshed until 1 October 2007.

With regard to consultation with industry, the alterations in the proposed plan change are a direct reflection of the requirements of the NESAQ. As the proposed curved line path to compliance by 2013 is less stringent than the existing NESAQ straight line path which currently has effect by default (refer to Part 4.1 of this report), no specific meetings were held with industry representatives. Some retailers did attend the community briefings.

The proposed plan change was notified in April 2007, and a further series of public meetings were held in Central Otago in May 2007. Meetings were held in association with the Chamber of Commerce. All retailers of domestic heating appliance across the region received the Information Pack on the proposed plan change when the proposed plan change was notified.

On this basis, the ORC has met its statutory obligations to consult as part of preparation of the proposed plan change.

Effect of a proposed plan change

When a proposed plan change is notified, and the proposed rules are to be given effect from notification, activities are assessed in terms of both the operative plan and the proposed plan. Sections 77A to 77D of the RMA set out additional provisions for regional rules, and include the requirement for a resource consent for a discretionary activity where a proposed rule describes an activity as a prohibited activity (section 77C(c)).

Once the ORC has made its decision on the proposed plan change, including any consequential alterations arising out of submissions and any other relevant matters it considered relating to matters raised in decisions, it must give public notice that it has made its decision and serve notice of its decision on all submitters, together with a statement of the time within which an appeal may be lodged on that provision.

On or from the date of public notice that it has made its decisions on the proposed plan change given under clause 10(3), the plan is amended in accordance with its decisions.

The ORC may then approve part of a plan if all submissions or appeals relating to that part have been disposed of (clause 17(2), First Schedule of the RMA). The plan, or part of the plan, becomes operative on the date that is publicly notified (clause 20).

At all times the requirements of the NESAQ override any less stringent requirements of the Air Plan.

Timeframe to compliance with NESPM₁₀ in 2013

The ORC chose to start giving effect to the proposed rules from the date of notification, Saturday 14 April 2007, because action is required now to achieve compliance with the NESPM₁₀ by 1 September 2013. There is sufficient data to show that there is a significant PM₁₀ pollution issue in a number of urban areas throughout Otago, with air quality being worst in some parts of Central Otago. There is also sufficient data to set start points for the straight and curved line paths to compliance, and to determine the actions necessary to ensure the NESPM₁₀ is met. This issue is discussed in Part 4.1 of this report).

While better quality air monitoring results are always desirable, any delay in notifying the proposed plan change would risk not achieving the 2013 deadline as the proposed rule framework and airshed modelling is based on the rules starting to take effect from the beginning of the 2007 winter.

9.1.3 Staff recommendations

- (1) That the current timeframes for notifying the proposed plan change are confirmed.
- (2) That the ORC confirms it will continue to meet the requirements of the RMA in processing the proposed plan change.

Reasons

The notification and consultation processes used in preparing the proposed plan change meet the requirements of the RMA. The requirements of the NESAQ regarding the NESPM₁₀ are clear, and the ORC has proposed actions it considers necessary and appropriate to achieve the NESPM₁₀ by 1 September 2013.

9.2 Such further amendments to give effect

*Reference 375 (Outside of Table of Proposed Changes)
Summary of Submissions by Issue; page 254*

9.2.1 Overview

There are three submissions received regarding “such further amendments to Proposed PC2 as necessary” to give effect to proposed amendments sought.

9.2.2 Staff evaluation

The decision of the local authority may include any consequential alterations arising out of submissions and any other relevant matters it considered relating to matters raised in submissions as provided for in clause 10(2) in the First Schedule of the RMA.

9.2.3 Staff recommendation

That such further amendment to the proposed plan change be made as is required to give effect to the final decision.

Reason

This is provided for in the RMA.

9.3 Section 32 report: cost-benefit analysis

*Reference 570 (Outside of Table of Proposed Changes)
Summary of Submissions by Issue page 258*

9.3.1 Overview

Six submissions were received on the adequacy of the supporting 'Section 32 Report Consideration of alternatives, costs and benefits'. Five submissions consider that insufficient analysis is presented in the section 32 report, while three submissions request revisions to the cost-benefit analysis.

9.3.2 Staff evaluation

The ORC is obliged under section 32 of the RMA to prepare a report summarising the evaluation of the proposal undertaken and to make that report available for public scrutiny. In *Foodstuffs (Otago Southland) Properties v Dunedin City Council WO53/93*, it was noted that the evaluation required need not be disproportionate to the circumstances, and that the decision-maker judges whether there is sufficient information to make the evaluation in the circumstances.

Detailed analysis - Alexandra

The section 32 analysis acknowledges that there is a higher cost to residents to upgrade domestic heating appliance (on page 9 under Section 5.2.3 Option 3: Set a Higher Standard for Domestic Heating Appliances). However it does not quantify this cost. Neither does it attempt to quantify the trade-off between health, heating costs and cold homes. The NESAQ section 32 analysis also omitted this discussion. The recent ORC report, 'Central Otago Home Heating and Air Pollution, 2006 Survey Findings', found that just over half of the Alexandra and Arrowtown survey respondents used some form of solid fuel domestic heating appliance during the June 2006 cold spell (Question 5a on page 7). For Cromwell and Clyde, 64% of respondents mainly used solid fuel heaters. For Alexandra, the modelling assumptions made are set out in Part 5.2 of this report.

Airshed modelling

The original airshed modelling information undertaken in 2005 had not been prepared in an easily reproducible way. Recently, the airshed model assumptions and calculations have been reviewed. This information is discussed in Part 5.2 of this report.

Analysis of additional matters

The proposed plan change is one of the ORC's main regulatory responses to achieving the NESPM₁₀ standard. It does not cover the wider strategic response, discussed in Chapter 7 of this report, which is managed through the ORC's annual and long term planning programmes under the Local Government Act 2002. The adequacy of the 2004 NESAQ section 32 analysis is outside the scope of this proposed plan change. Issues around health data are discussed in Part 1.4 of this report.

9.3.3 Staff recommendation

That the ORC section 32 analysis report be amended to include:

- Additional information on airshed modelling and references to the *Predicted number of breaches of National Environmental Standard (NES) at Alexandra*, ORC, 2007.
- References to the *Long Term Council Community Plan 2006-2016* and *Annual Plan 2007-08* for the ORC.
- Reference to the report, *Health and Air Pollution in New Zealand*, by Fisher et al, 2007.

Reasons

The airshed modelling research has only recently been released and it forms an essential element of the justification for the proposed plan changes standards being, especially for Airshed 1, more stringent than the NESAQ.

Other matters, such as financial and educational programmes to support the achievement of improved ambient air quality, are managed through the ORC's annual and long term planning programmes rather than through the RMA and regulatory processes.

The ORC's role is to give effect to the NESAQ, not to re-litigate the regulations.

9.4 Full support of or opposition to the proposed plan change

*References 300 and 310 (outside of Table of Proposed Changes)
Summary of Submissions by Issue; pages 230 to 251*

9.4.1 Overview

- Ninety-five submissions fully support the proposed plan change.
- In addition, ten submissions support the proposed plan change, but with some provisos, including that industry discharges be addressed, that the provisions regarding historic homes and properties over 2 ha be modified, and that financial assistance be given. These provisos are addressed under the relevant chapters earlier in this report.
- 106 submissions and five further submission oppose the proposed plan change. Of these:
 - Eighty-one submissions oppose part or all of the proposed plan change.
 - Fourteen submissions oppose part or all of the proposed plan change, and seek specific further amendments. The amendments sought are addressed under the relevant chapters earlier in this report.
- Eleven submissions did not request a specific decision, but made comments opposing the proposed plan change.

9.4.2 Staff evaluation

All issues raised as reasons for support of, or opposition to, the proposed plan change have already been discussed in the preceding chapters of this report. The Hearings process may identify some new information and, accordingly, staff may alter their recommendations where there is sufficient justification.

9.4.3 Staff recommendation

That, subject to the amendments recommended in this report, the proposed plan change to the Regional Plan: Air for Otago be adopted.

Reason

The proposed plan change sets out how the Otago region will achieve compliance with the NESAQ and is necessary to promote the sustainable management of the natural and physical resources of the region.