

SUBMISSION IN OPPOSITION TO PLAN CHANGE 61 SELWYN DISTRICT PLAN

To Selwyn District Council

Applicant: **Rupert and Catherine Wright**

Name of submitter: **W.D. Boyes & Sons Limited trading as Canterbury Clay Bricks**

- 1 This is a submission on proposed Plan Change 61 to rezone 30.76 hectares of land located east of Darfield on SH73 from Rural outer plains to a mix of Business 2 and Living 1 (up to 35 allotments). The subject land is bounded by West Coast Road and Creyke Road (**the proposal**).

The submitter

- 2 Canterbury Clay Bricks is an established brick business which supplies clay bricks nationally and internationally for residential and commercial construction. Canterbury Clay Bricks is the only manufacturer of kiln fired clay bricks in the South Island of New Zealand.
- 3 The business operations of Canterbury Clay Bricks are fully accommodated within a purpose-built manufacturing plant located at 1/7 Horndon Street, Darfield. The plant is located close to its clay supplies within the surrounding hills of Darfield and includes the manufacture and warehousing of the bricks including re-constituted brick and recycled glass.
- 4 A range of activities occur on site including:
- 4.1 Manufacture, production and restoration of bricks including formation, blending of clay, drying and kilning of material. The facility houses two kilns – a tunnel kiln for continuous brick firing and a second smaller kiln for intermittent batch brick firing;
 - 4.2 A number of commercial fans (inlet and exhaust) operate to disperse emissions from the kilns. Fans operate 24 hours a day and can generate a low hum when they become unbalanced;
 - 4.3 Lighting;
 - 4.4 Distribution of bricks;
 - 4.5 Vehicle movements on internal unsealed roads;

- 4.6 Loading and unloading of raw products;
 - 4.7 Stockpiling of raw materials; and
 - 4.8 Product screening, mixing, grinding and crushing which occurs under a large open-ended canopy.
- 5 The business operates five days a week with the core plant (the main kiln and dryers) running 24 hours a day, seven days a week. Canterbury Clay Bricks has been operating for 60 years from the same location.
 - 6 Canterbury Clay Bricks currently operates within a Business 2 zone as defined by the operative Selwyn District Plan and is separated from the proposal site by West Coast Road – a distance of approximately 35 metres.
 - 7 Canterbury Clay Bricks could not gain a competitive advantage in trade competition through this submission.
 - 8 I am authorised to lodge this submission on behalf of W.D. Boyes & Sons Limited.

Reasons for submission

- 8.1 Canterbury Clay Bricks **oppose** the proposal in full for the following reasons:
 - 8.1.1 The plan change doesn't assist the Council to carry out its functions, including it is not an appropriate way to manage the effects of the use or development of land and its associated natural and physical resources;
 - 8.1.2 It does not appropriately consider or give effect (as appropriate) to higher policy and planning documents; nor does it accord with Part 2 of the RMA;
 - 8.1.3 It inadequately considers the actual and potential effects on the environment on Canterbury Clay Bricks, including, in particular, adverse effects;
 - 8.1.4 Does not adequately assess s32 RMA, including the proper identification of environmental, economic, social and cultural costs; and

- 8.1.5 The status quo would be the most appropriate way for the achieving the objectives and policies of the Selwyn District Plan and would better meet the purpose of the RMA.
- 8.2 Without limiting the generality of the above, Canterbury Clay Bricks also opposed the proposal for the following specific reasons:
- 8.2.1 Reverse sensitivity effects in relation to the Canterbury Clay Bricks site, the poultry operation at Horndon Street and the proposed Wastewater Treatment Plant (**WWTP**) which has been ear-marked to locate on Selwyn District Council (**Council**) owned land on Creyke Road;
- 8.2.2 Inadequacy of the NZ Air Ltd air quality assessment (and PDP review) in relation to the assumptions made and modelled data used to calculate the impact of Canterbury Clay Bricks operation on the proposal;
- 8.2.3 The proposal does not represent an efficient use of a natural and physical resource given there is already land zoned for residential and business use in Darfield that is better suited to development than the proposal site;
- 8.2.4 Lack of demand for additional residential and business zoned land within the surrounding area. Large areas of land in close proximity have recently been rezoned to residential with little to no development occurring;
- 8.2.5 Traffic concerns for the frequent users of Horndon Road, in particular, heavy truck movements entering and exiting the Canterbury Clay Bricks site; and
- 8.2.6 Lack of consultation on the proposal.

Further particulars in relation to our opposition

Reverse Sensitivity

- 9 Reverse sensitivity is a well-established concept and it has commonly arisen in the context of odour, dust and noise effects. It is important to establish rules that control the location of sensitive activities (such as residential development) to ensure existing activities are not restricted or closed down due to ongoing pressure and complaints.

- 10 There are three sites that have the potential to create reverse sensitivity impacts:
- 10.1 The Canterbury Clay Bricks;
- 10.2 The poultry farm at 15 Horndon Street; and
- 10.3 The site bounded by Creyke and Pole Road (Part Lot 1 DP 6651 contained in Record of Title CB4C/1039) which has been ear-marked for a new WWTP and disposal site to service the Darfield township.
- 11 It is accepted that the law requires operations to make all reasonable efforts to internalise the effects of its activity. Canterbury Clay Bricks is lawfully established in the correct zone, operates good practice measures, adopts consistent operation criteria and has put in place all mitigation measures which are reasonable in the circumstances.
- 12 In the *Winstone Aggregates Limited v Auckland Regional Council* decision¹ the Environment Court stated:
- “[47] A determination of what is reasonable is dependent upon a careful consideration of the evidence, including an assessment of the practical mitigation measures available, and the economics of implementing those measures.”*
- 13 The economic implications on Canterbury Clay Bricks if the proposal is granted will be significant. Odour and potentially dust experienced within the proposal site may be found to be offensive and/or objectionable given the new receiving environment - new residents, landowners and occupiers in the proposal site are likely to be more sensitive than Canterbury Clay Bricks existing neighbours.
- 14 Despite Canterbury Clay Bricks having made all reasonable efforts to internalise the effects of its operation, this provides no guarantee that the proposed new residential and business lots will not make complaints relating to Canterbury Clay Bricks existing and ongoing operations.
- 15 Canterbury Clay Bricks requires the applicant to agree to register a “no complaints” restrictive covenant (which would also bind subsequent purchasers) on all new records of

¹ A049/02 at para 47

title issued under the proposal. Canterbury Clay Bricks sees this as the only outcome that will ensure the continued and unimpeded future operation of Canterbury Clay Bricks.

Business 2 Zone

- 16 Over half of the proposal site (17.5ha) is intended to be rezoned Business 2. The activities that can occur within this zone are wide ranging and can occur without resource consent provided they meet other general rules in the Selwyn District Plan including earthworks, building, utilities, signs and notice boards, hazardous substances etc.
- 17 Examples of other Business 2 zone activities currently operating in Darfield include:
 - 17.1 Seed Cleaning (Darfield Seed Cleaning);
 - 17.2 Farm equipment supplier (Harvester Markets Limited);
 - 17.3 Engineering and Agricultural supplies, fabrication machining and maintenance (Agman Engineering);
 - 17.4 Transportation (Frews Transport);
 - 17.5 Civil Construction Yard (HEB);
 - 17.6 Concrete plant (Firth Concrete Plant); and
 - 17.7 Panel beaters and mechanic (Darfield Collision Centre)
- 18 Business 2 activities can also include variations of office blocks, showrooms, production and storing warehousing and more minor activities such as coffee shops and takeaway food outlets. All of which may find the noise, dust or odour offensive. The application makes a great deal of the Business 2 zone acting as a buffer for the 35 residential allotments however there is no guarantee that the business zone operators will not also take issue with Canterbury Clay Brick's operations on the opposite side of West Coast Road.
- 19 Should complaints made by neighbouring business owners or new residents force Canterbury Clay Bricks to reduce current operations or worst case scenario shut down, this will have significant economic implications for the Canterbury region and the South Island as Canterbury Clay Bricks is the only manufacturer of kiln fired clay bricks in the South Island.

- 20 The air quality assessment uses modelled data to predict the impact of Canterbury Clay Bricks operation on surrounding land use. The modelled data is an inaccurate reflection of the environmental conditions at the subject site and for this reason the conclusions reached in the report are flawed. The air quality assessment considers that the modelled approach taken is very conservative. Canterbury Clay Bricks disagrees.
- 21 The air quality assessment makes no comment on the future use and/ or intensification of the Canterbury Clay Bricks facility site and also fails to consider the significant adverse odour effects that may be generated if the proposed WWTP and disposal field locates on adjacent Council owned land on Creyke Road.
- 22 The air quality assessment fails to take into account the cumulative impacts of other sources within the area and concludes that background concentrations of pollutants are likely to be relatively low on the basis that the traffic volumes on West Coast Road are low. This assumption is inaccurate. The Fonterra Factory is located at 3792 West Coast Road and this stretch of road is very busy as it also provides the main thoroughfare to Darfield township.
- 23 In addition to those listed in the application material (seed cleaning factory and paint spray operation) other local business sources that may contribute to cumulative impacts include a large local coal yard and wood storage yards, a drying facility for chemically treated wood, a shingle quarry and various contractor yards and many dairy farms. There is also an extensive transport and fertilizer yard to the west of the proposal site.
- 24 In response to the Council's request for further information relating to emission rates from the brick drying process, NZ Air Ltd state that it has been informed that the Canterbury Clay Bricks plant production rates are commercially sensitive and therefore the information is not available. This is incorrect and Canterbury Clay Bricks was not approached for this information.
- 25 Critically, the air quality assessment fails to take proper account of the north westerly winds in the Darfield area. As set out in PDP's technical review of the NZ Air Ltd assessment "*the higher frequency of northerly wind directions measured in Darfield compared to what was modelled could potentially result in a underprediction of concentrations withing the proposed plan change area to the south of the brick manufacturing*"².

² Page 3, 5.2, para 3

- 26 Staff at Canterbury Clay Bricks have reported that in a north westerly breeze they have been able to smell odours from the nearby poultry farm. Future businesses and residents in the proposal site are in the directly downwind of Canterbury Clay Bricks site. This is of concern.
- 27 The air quality assessment places heavy reliance on the product (being the clay and other materials used to manufacture the bricks) being “*consistently damp/wet during the process*”³. This is incorrect. Materials such as raw clay can sit dry at the Canterbury Clay Bricks site before and after manufacturing.
- 28 The air quality assessment also makes the assumption that “*much of the final product preparation, extrusion, drying and baking activities occurred within a large **enclosed** building*”⁴. However, crushing occurs underneath an open-ended canopy with effects often exacerbated on a dry summer day with a north westerly breeze. Canterbury Clay Bricks consider the weather conditions prior to crushing and utilise a sprinkler system however these mitigation measures are not failsafe.
- 29 The modelled results as contained in the air quality assessment are not conservative as suggested. Both PDP and NZ Air Ltd have made the assumption that “*continuous operation would be highly unlikely*”⁵. This assumption is incorrect. Canterbury Clay Bricks runs from 15 January to 15 December each year with the core plant operating on a 24/7 basis.
- 30 It is acknowledged that the established pine landscape buffer, together with any new landscaping, along the northern boundary of the proposal site will assist to mitigate potential odour and dust emissions however these buffers are unlikely to protect against potential reverse sensitivity from all three sites – Canterbury Clay Bricks, the poultry farm and the proposed future WWTP. Further, it is critical that the existing treeline is not removed to make way for new species.
- 31 The buffers, whether they are landscaping or buildings in the Business 2 zone will take years to become established. Any potential screen offered by buildings within the Business 2 zone cannot be considered as a genuine buffer. It is unclear whether residential activity is sought to be authorised in advance of Business 2 zone development. If this is possible then there is a risk that these residents will be directly

³ Page 2 paragraph 2 in the response to the request for further information

⁴ Response to Further Information Question 2

⁵ (PDP Technical Assessment Review Page 3

exposed to the effects of existing surrounding land use and will be more likely to complain.

Air Discharge CRC921703.1

- 32 Canterbury Clay Bricks renewed its original air discharge permit CRC921703 in October 2005. At which point several consent conditions were imposed including condition 13 which reads as follows:

“13 The discharges shall not cause objectionable or offensive odour or particulate matter (including dust and smoke), which is offensive or objectionable beyond the boundary of the property on which the consent is exercised.”

- 33 Canterbury Clay Brick's existing discharge permit is due to expire 30 August 2028. If the proposal is granted any future renewal of the existing discharge permit will be vastly more difficult to obtain. It is expected that an increase in the number of residential properties within the vicinity of the Canterbury Clay Bricks site will inevitably lead to more submissions in opposition and ultimately more onerous consent conditions being imposed or worst-case scenario a renewal application being declined.
- 34 In the current environment Canterbury Clay Bricks can comply with the conditions of its discharge permit. However, if the proposal is granted and land is rezoned for residential purposes it is possible that on infrequent occasions objectionable and/or offensive odours may be experienced at the proposal site.

Availability of Residential Land

- 35 There is currently no further need for additional business or residential zoned land in the immediate Darfield area. To the south of the proposal site there is a variety of residential zoned land where most of these sites are yet to be fully developed and significant areas of existing business zoned land have not yet been taken up. It is illogical for Council to consider rezoning adjacent land to areas that are appropriately zoned but not yet developed as this will create an oversaturation of residential and business zoned land.
- 36 A further complicating matter for the proposal, and in fact any residential lots within the vicinity, is that Council has ear-marked land on Creyke Road for a future Wastewater Treatment Plant (WWTP) and disposal site to service the Darfield township. It is acknowledged that the WWTP project remains in the feasibility stages however the potential future use of the Council owned land is likely to deter potential purchasers from investing in neighbouring residential developments. A WWTP is not compatible with residential development and again it seems illogical for Council to consider rezoning new residential land within the vicinity.

Traffic effects

- 37 Canterbury Clay Bricks consider that while an upgrade to the West Coast Road and Creyke Road intersection would assist with traffic flows, increased car movements on West Coast Road will inevitably put additional strain on Horndon Street and access to the Canterbury Clay Bricks business.
- 38 Increased traffic flows along West Coast Road generated by the proposal will make the entry and exit onto Horndon Street, much more difficult, particularly for trucks. It is likely that vehicles will need to queue on Horndon Street waiting to turn onto West Coast Road and this will restrict vehicle movements in and out of the Canterbury Clay Bricks Horndon Street site. Additional car movements on an already busy road raises the risk of a potential accident with those vehicles turning out of Horndon Street.

Consultation

- 39 No formal consultation between the applicant and Canterbury Clay Brick has occurred. An “off the cuff” conversation between myself and the applicants engineer at Baseline Group prior the proposal being lodged with the Council is recalled. However, this was simply an informal conversation with the Baseline Group Engineer when we discussed other matters personal to my own projects.
- 40 The close proximity of the proposal to the Canterbury Clay Bricks site (and to the poultry farm and potential location of the future Darfield WWTP) means that it is inevitable that new operators and/ or landowners will undoubtedly take issue with the business activities of these operations. It is not only residential activity that is cause for concern. Given the wide variety of uses able to establish in the Business 2 zone it is very likely that occupiers in this zone may also take issue with the activities of lawfully established existing businesses.
- 41 We seek that the Selwyn District Council **decline the plan change in full.**
- 42 **We wish to be heard** in support of our submission and if others make a similar submission, we will consider presenting a joint case with them at a hearing.

Dated 29 July 2020

Murray Boyes

Director and Shareholder of W.D. Boyes & Sons Limited

The address for service of the submitter is:

Address: 1/7 Horndon Street, Darfield

Phone: 027 434 3351

Email: murray@clay-bricks.co.nz