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Federated Farmers of New Zealand

Submission on Proposed Plan Change 13 to the Bay of Plenty Regional Natural Resources Plan

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SUBMISSION TO BAY OF PLENTY REIGONAL COUNCIL ON PROPOSED PLAN CHANGE 13 TO THE BAY OF PLENTY REGIONAL NATURAL RESOURCES PLAN

Form 5

Submission on publicly notified proposal for policy statement or plan
Clause 6 of First Schedule, Resource Management Act 1991

To: The Chief Executive
Bay of Plenty Regional Council
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Name of submitter: Federated Farmers of New Zealand (**FFNZ**)

This is a submission on Proposed Plan Change 13 (**PC13**) to the Bay of Plenty Regional Natural Resources Plan (**RNRP**).

FFNZ could not gain an advantage in trade competition through this submission.

The specific provisions of the proposal that FFNZ's submission relates to and the decisions it seeks from Council are as detailed on the following pages. FFNZ also seeks any consequential changes necessary to give effect to the relief sought.

FFNZ wishes to be heard in support of its submission.

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INTRODUCTION

- 1.1 FFNZ welcomes the opportunity to submit on PC13. We recognise the work Council has undertaken in preparing the plan change including consulting with the public through workshops and open days and allowing feedback to a draft plan.
- 1.2 We acknowledge Council's work on managing and protecting air quality.
- 1.3 FFNZ is a primary sector organisation with a long and proud history of representing the needs and interests of New Zealand farmers involved in a range of rural businesses.
- 1.4 FFNZ aims to add value to its members' farming businesses. Our key strategic outcomes include the need for New Zealand to provide an economic and social environment within which:
 - a. Our members may operate their business in a fair and flexible commercial environment;
 - b. Our members' families and their staff have access to services essential to the needs of the rural community; and
 - c. Our members adopt responsible management and environmental practices
- 1.5 FFNZ represents a variety of dairy, dry stock and horticulture (primarily kiwifruit combined with dairy or dry stock) land users in the Bay of Plenty. We acknowledge submissions from individual members on PC13.

IMPORTANCE OF FARMING AND AGRICULTURE

- 1.6 Farming and primary production activities are important for the social, economic and culture wellbeing of people and communities in the Bay of Plenty region.
- 1.7 The economic importance of the agriculture sector to New Zealand's economy is well recognised. Its direct and indirect contribution to New Zealand's economy is about 15%.
- 1.8 As a broad indicator the Bay of Plenty's Regional Economic Development Strategy 2010 identified the primary sector as the most significant employers in the region, accounting for 14 percent of employment in the economy. Any plan provision which affects farm business has the potential to also impact, positively or negatively, on regional and national economies.
- 1.9 Agriculture does not just bring economic benefits to the district, it also contributes to the wellbeing of communities and culture of the district. Farming is the fabric that keeps rural communities together.
- 1.10 Farming is such a large part of New Zealand's culture that a lot of depictions of the 'typical' New Zealander involve farming. For example, New Zealanders are proud of their 'number 8 wire' mentality – referring to a type of fencing wire used on farms that Kiwis will use to solve any problem.

GENERAL COMMENTS

- 1.11 We recognise that farming activities can have an impact on air quality. Normal farming activities (such as raising stock, burning rubbish and spreading fertiliser) involve or generate odour, smoke and dust.

- 1.12 Reverse sensitivity, particularly from residential or urban activities creeping into rural areas, is one of the biggest issues for farmers. This is recognised by Harrison Grierson, in their report to Council dated May 2012. They record that most complaints regarding rural areas are from rural lifestyle property owners and that “rural lifestyle property owners have an expectation of the rural environment that includes lower tolerances to smoke nuisance.”¹
- 1.13 Waste disposal is another important issue from an air quality perspective (in terms of odour from storage and smoke from burning). There is a need for a holistic and practical approach to waste disposal options. With farmers disposing an average of 37 tonnes of waste per property per year, there is a need adopt an integrated approach to provide both education and reliable and cost effective disposal and recycling options.
- 1.14 We recognise that there is a need for some regulation to protect air quality and, in our experience, the majority of farmers want to look after and take responsibility for their environment. However, it is fundamental that the right balance is struck between sensibly managing air quality issues and allowing normal farming activities to occur. This means taking into account the cost of compliance with any new rules and the time pressures for landowners to meet these obligations. In this regard, we commend the effects based approach taken to the Rotorua Urban Airshed but, as discussed in more detail below, consider that more consideration needs to be given to the proposal to prohibit the burning of treated or painted timber and plastic (particularly agricultural wrap).
- 1.15 We welcome moves to simplify and clarify air quality rules.

BURNING PLASTIC

- 1.16 FFNZ considers that there is no other sensible option for farmers but to dispose of some non-organic materials in open burning.
- 1.17 Agricultural packaging is a significant by-product of farming and the availability of sensible disposal options will help to reduce the associated environmental effects.
- 1.18 The current problems with recycling of agriculture wrap is:
- a. Agricultural wrap can only be recycled if it is clean and dry. This means that there is time and cost involved in cleaning and drying the wrap.
 - b. Even if there were time and resources available to clean and dry the wrap, in a winter feeding regime this will not always be possible. For example, some bales are placed in paddocks pre-winter, therefore the bottom layer of the bale wrap cannot be picked up until the bale is eaten and by then it cannot be recycled.
 - c. Once the agricultural wrap is clean and dry, it needs to be placed in bags and collected by a recycler. We understand that there is one recycling option in the Bay of Plenty region in rural areas which involves a contractor charging farmers for bags and collection.

¹ Harrison Grierson “Review of the Bay of Plenty Regional Air Plan Open Burning Rules” dated May 2012 at page 14.

- 1.19 It is both the process of cleaning, drying and packaging agricultural wrap into bags for collection and the cost of collection that may not make this practical or cost effective for farmers.
- 1.20 Accordingly, even with the best intentions farmers may end up with a stock pile of wrap they are unable to recycle either due to an inability to clean and dry it, a lack of options for recycling or the cost of recycling being prohibitively high.
- 1.21 Another alternative is for a farmer to hire a rubbish skip (and avoid the time and labour involved in cleaning and drying agricultural wrap for the expensive contractor). The result would be agricultural wrap ending up in landfill and a potentially worse environmental outcome than burning the wrap.
- 1.22 A further potential perverse incentive, if burning is prohibited, is that the most cost effective way of disposing of agricultural wrap may be simply to bury it on the property.
- 1.23 We consider that currently the only reasonable option to dispose of the packaging in rural areas is by burning. The Harrison Grierson report commissioned by the Council accepts that burning may be the most practical option to deal with waste.²
- 1.24 The proposed plan will make the burning of plastics (in particular, agricultural wrap) a non-complying activity. We do not think it is fair or reasonable when there are no viable alternatives.
- 1.25 Also we are not aware of any regulation or national standard that prohibits the burning of plastic (in particular agricultural wrap).
- 1.26 In the circumstances we strongly oppose the inclusion of plastics in AQ R10.
- 1.27 Farmers however want to emphasize that the burning of plastics are due to the lack of viable alternatives. Farmers are willing to recycle farming by products, such as bale or silage wrap. It is the very limited recycling or ag recovery options and those options are expensive that make it an unreasonable option.
- 1.28 In this regard FFNZ invites the Regional Council and territorial authorities to investigate alternatives and practical options for disposing of agricultural wrap or other recycling initiatives.
- 1.29 A potential disposal alternative that could be investigated is the disposal of agricultural wrap by incineration in specialised high temperature boilers and incinerators.
- 1.30 We consider that Council should work with farmers to identify practical and cost effective recycling or disposal options.
- 1.31 An alternative could be to phase out burning of agricultural wrap in a similar way as domestic wood burners are to be phased out in the Rotorua Urban Airshed. This would need to be coupled with cost effective and economically viable recycling or disposal options that addressed our concerns.

² **Harrison Grierson** - Review of the Bay of Plenty. Regional Air Plan Open Burning Rules - Final. Report May 2012 page 14

1.32 Another option is to transfer to district councils under s33 RMA the management of discharge of waste by burning. District councils already have bylaws about open burning and waste disposal.

1.33 FFNZ proposes adding a method in the plan to address the concerns set out above.

The Bay of Plenty Regional Council will adopt a collaborative approach with primary industry stakeholders, territorial authorities and farmers to develop alternatives to open burning of plastic especially agriculture wrapping in rural areas. The approach will include research of alternatives, development of alternatives with territorial authorities and agriculture stakeholders and education of farmers.

REVERSE SENSITIVITY

1.34 There is a current trend to move to live in the countryside as a lifestyle change. It is often accompanied with romantic visions of pastoral landscapes that do not take into account the reality of a working rural environment. Expectations of blissful idylls in the countryside is unrealistic.

1.35 Dust, odour and other discharges to air on a farm is incidental to getting the job done and mostly impossible to avoid without day-to-day farming activities coming to a halt. It will often be economic disproportionate to remedy or mitigate.

1.36 FFNZ has heard from our members about complaints from “lifestylers” regarding their normal production activities.

1.37 It is therefore important for farmers that the effects of reverse sensitivity are recognised and considered by the consenting authority.

1.38 The operative Bay of Plenty Policy Statement (**RPS**) specifically addresses reverse sensitivity. The RPS only has three policies relating to air quality and one addresses reverse sensitivity. Policy AQ 1A is an air quality policy that instructs the discouraging of reverse sensitivity associated with odours, chemicals and particulars. FFNZ has not seen any provisions in the proposed plan that gives effect to this policy of the higher order document or that addresses our members’ concerns about reverse sensitivity.

1.39 It is important for our members that the consenting authority when exercising its discretion in a resource consent application considers the importance of agriculture and the impact of reverse sensitivity. This can be done by recognition in objectives and policies in the regional plan.

1.40 Accordingly, FFNZ seeks as relief new objectives, policies and methods to discourage reverse sensitivity and recognise the importance of agriculture to the region.

Relief

Two new objectives

AQ O4 - Provide for discharges of contaminants to air from activities that are appropriate in the particular zone in which they are located.

AQ O5 - Decision-making on the discharge of contaminants to air in the Bay of Plenty recognised the social, economic and culture benefits of farming and primary industry.

Three new policies

Prevent or mitigate reverse sensitivity on lawfully established farming and horticulture activities in rural areas.

Recognise and address the impact of reverse sensitivity on primary production.

Recognise the contribution of fertilizer and agrichemical spray to pest controls and control of disease and the contribution to the health of fruit, crop and pasture.

Three new methods

The Council will advocate for buffer zones and zone planning mechanisms around odorous and potentially odorous rural areas to reduce reverse sensitivity.

In resource consent applications recognise and consider the effects of reverse sensitivity effects.

In resource consent applications recognise and consider the benefits of fertilizers and agrichemical spray for primary production.

NON REGULATORY METHODS

- 1.41 FFNZ accepts that inclusion of non-regulatory methods in a regional plan is optional rather than mandatory.³
- 1.42 FFNZ take no issue with excluding:
- a. methods involving significant expenditure which should be introduced outside the statutory regional plan to allow it to be considered in the budgeting exercise in a Long Term Plan.
 - b. detailed operational methods more appropriate for an implementation plan and which will be or are already included in such a plan.
- 1.43 However, we have concerns with excluding all other methods from a regional plan. There are benefits to including non-regulatory methods in a regional plan. It gives valuable signals to plan users and rate payers on how the objectives and policies will be implemented.
- 1.44 Even 'business as usual' methods are important. Firstly, users and rate payers will not always know the standard practises used by the Council. Stating them in a regional plan gives plan users this information. Objectives and policies are about an environmental issue that will impact many parties. Without giving some clue about what methods will be used to achieve these anticipated outcomes and course taken there is a gap. Secondly Council's practises and 'business as usual' change. Stating the 'business as usual' method that will be used, gives certainty to ratepayers so they can organise their affairs accordingly. Thirdly stating a method leads to it becoming business as usual. As an example stating that reverse sensitivity has to be taken into account in resource consent applications means that it has to be considered and is now business as usual for council. However if the method is not stated

³ RMA, s67.

then Council has no reason to consider reverse sensitivity in resource consent applications and this will become the new normal course of business for the Council.

- 1.45 Although we are supportive of removal of some of the unnecessary methods we consider removal of all operational non regulatory methods from the plan is too harsh especially since these methods have previously been through the public participation process (Schedule 1 process).
- 1.46 Further FFNZ has recommended new methods. These gives important signals to council and our members about what methods will be used to achieve the anticipated environmental outcome.
- 1.47 For instance, FFNZ recommends a method to develop alternatives for open burning of agricultural product wrapping. If development of alternatives is not progressed, we fear we will be in the same position in future where we are now ie without any viable alternative. Stating a method about developing alternatives to open burning enables FFNZ to remind Council of its responsibility in developing alternatives. Holding Council to account should not be discouraged - it is vital in an open and democratic society.
- 1.48 We consider that FFNZ's recommended methods comply with the Regional Councils new requirements for inclusion of non-regulatory methods in a regional plan. Reverse sensitivity does not have a regulatory response and without the methods there will be an obvious gap. Also the development of alternatives does not have a regulatory response and without this method there will be an obvious gap in management of the issue.
- 1.49 We consider that even if these methods did not comply they should still be included in the regional plan as they are necessary. We consider without these methods there will be a gap in the policy framework (no method or rule for objectives and policies) and they give important signals to users and rate payers on how the Council is intended on giving effect to specific objectives and policies in the Air plan and how Council is practically going to address some environmental issues.

SPECIFIC COMMENTS

- 1.50 The amendments we seek, and the reasons for them, are set out in the table below. In addition, we seek any consequential changes necessary to give effect to the relief we seek and/or to address the concerns we raise.

Page	Reference	Support/oppose	Decision sought	Reasons
1	AQ 01	Support in part	<p>Amend as follows:</p> <p>Protect air from adverse effects — Te tiaki i te hau mai i ngā pānga kino</p> <p>Protect the mauri of air and human health from adverse effects of anthropogenic contaminant discharges to air, and enhance air quality where degraded.</p> <p>Or alternatively adopt a new objective to be more specific on protection and restoration of the mauri of air and consequently removing such references from this objective.</p>	<p>This objective is to give effect to the RPS objective 1 which states:</p> <p>“The adverse effects of odours, chemical emissions and particulates are avoided, remedied or mitigated so as to protect people and the environment”</p> <p>We note the RPS objective does not have the extra requirement to “enhance ...where degraded” and we have concern whether the consequences of this extra duty have been properly considered.</p>
1	AQ 03	Support in part	<p>Amend as follows:</p> <p>Local air quality — Te pai o te hau o te rohe</p> <p>Manage discharges of contaminants to air according to their adverse effects on human health, cultural values, amenity values and the environment.</p> <p>In the alternative, include a definition for “amenity values” where the working rural environment is considered as part of the assessment of the “amenity values.”</p>	<p>While we acknowledge the need to manage discharges this objective raises several concerns.</p> <p>The term “amenity values.” The rural environment is a working one where everyday farming activities create dust, odour, smoke and other discharges. Amenity values in a rural setting are a product of agricultural practices that are not always clean and fresh smelling, but necessary to enable landowners to economically and sustainably farm the land. As a working environment, a farm needs to be kept clean and tidy. This requires storage or disposal of waste and in turn this results in the generation of odour and smoke. Any restrictions on rural discharges to air need to be considered in</p>

Page	Reference	Support/oppose	Decision sought	Reasons
				<p>balance with the significant benefits accruing from agricultural production.</p> <p>Our concern is that the inclusion of amenity effects in the objectives prioritises the importance of preventing momentary nuisance emissions over farmers' abilities to manage their land in accordance with good management practice.</p>
	New objective		<p>Adopt a new Objective to enable discharges or effects on air quality that are appropriate.</p> <p>Insert</p> <p>Enable appropriate activities</p> <p>Provide for discharges of contaminants to air from activities that are appropriate in the particular zone in which they are located.</p> <p>Or an objective that give relief to our concerns.</p>	<p>Our concern is that there is no enabling objective. All three of the objectives focus on restricting discharges while there is no objective that allows it.</p> <p>This is an enabling objective which also is the objective for discouraging reverse sensitivity. (See our earlier submissions).</p> <p>We consider that it is important that appropriate discharges in appropriate zones are enabled to provide for economic and social well-being.</p> <p>This objective (and accompanying policies and methods) is needed to give effect to reverse sensitivity provisions in the RPS.</p>
	New objective		<p>Insert the following new objective</p> <p>Decision-making on the discharge of contaminants to air in the Bay of Plenty recognised the social, economic and culture benefits of farming and primary industry.</p> <p>Or an objective that addresses our concerns.</p>	<p>Adopt a new objective to expressly recognise the importance of primary production.</p> <p>Agriculture (including horticulture) is a major employer in the Bay of Plenty and contributes massively to the economic wellbeing of the Bay of Plenty but also contributes to the culture and social wellbeing in rural areas.</p>

Page	Reference	Support/oppose	Decision sought	Reasons
				<p>We also refer to our earlier submissions on reverse sensitivity and consider this objective are required to give effect to the RPS provisions on reverse sensitivity.</p>
	<p>Three new Reverse sensitivity policies.</p>		<p>Add the following new policies or policies that address our concerns:</p> <ol style="list-style-type: none"> 1. Prevent or mitigate reverse sensitivity on lawfully established farming and horticulture activities in rural areas. 2. Recognise and address the impact of reverse sensitivity on primary production. 3. Recognise the contribution of fertilizer and agrichemical spray to pest and disease controls and the health of fruit, crop and pasture. 	<p>We also refer to our earlier submissions on reverse sensitivity and consider these policies are required to give effect to the RPS provisions on reverse sensitivity.</p>
1	AQ P1	Support	<p>Amend as follows AQ P1 Classification of activities — Te wehewehenga o ngā mahinga Manage the discharge of contaminants to air according to the following: (a) Permit discharges from activities where the discharge can be suitably managed with general conditions to avoid, remedy or mitigate any adverse effects of the discharge.</p>	<p>We consider that restricted discretionary activity status should also be able to be used as a tool if circumstances are appropriate.</p>

Page	Reference	Support/oppose	Decision sought	Reasons
			<p>(b) Classify all other discharges where (a) does not apply, as controlled, restricted discretionary, discretionary, or non-complying activities.</p>	
AQ P2	Oppose	<p>Amend as follows</p> <p>AQ P2 Hazardous substances—Ngā-matū mō-te-ārae</p> <p>Avoid discharges of hazardous substances to air and where avoidance is not possible, remedy or mitigate the discharge using the best practicable option.</p>	<p>The s32 report states⁴ that hazardous substances are administered by the Environmental Protection Authority (EPA) pursuant to Hazardous Substances and New Organisms Act 1996 (HSNO). It then continues to provide reasons why hazardous substances should not be included in this policy.</p> <ol style="list-style-type: none"> 1. Any RMA controls on hazardous substances will duplicate those under HSNO and confuse users of hazardous substances. 2. Resource Legislation Amendment Act 2017 removed the control of hazardous substances as an explicit function of councils. The intent is to remove the perception that councils must always place controls on hazardous substances under the RMA. 3. Council should only place additional controls on hazardous substances if they are not covered by other Acts and necessary to control effects under the RMA. <p>We agree.</p> <p>The proposed policy will:</p> <ol style="list-style-type: none"> 1. duplicate the HSNO, 2. is worded to control each and every hazardous substance discharged into air which will enhance the 	

⁴ S32 report at page 23

Page	Reference	Support/oppose	Decision sought	Reasons
				<p>perception that council must always place controls on hazardous substances and</p> <p>3. is not worded to control effects under the RMA.</p> <p>The policy is also unnecessary as proposed Policy AQ P8 is to control the adverse effects of spray drift so there is no necessity for this policy.</p>
2	AQ P3	Support in part	<p>We seek amendments as indicated below or amendments that will address our concerns.</p> <p>AQ P3 Management of discharges — Te whakahaere i ngā tukunga</p> <p>Activities that discharge contaminants to air must be managed, including by use of the best practicable option, to:</p> <p>(a) safeguard the life supporting capacity of the air, avoid where practicable adverse effects on human health, and manage adverse effects on cultural values, amenity values, and the environment</p> <p>(b) avoid the discharge of contaminants at a rate or volume that may contribute to, or cause an exceedance or breach of the ambient air quality standards of the NESAQ or exceed the health based values of the AAQGs</p> <p>(c) avoid reduction in visibility where it may cause adverse effects on vehicle, aircraft, or ship safety</p> <p>(d) avoid the discharge of contaminants that may cause adverse effects on regionally significant infrastructure</p> <p>(e) minimise the discharge of contaminants into areas beyond the boundary of the subject property where it may cause adverse effects on human</p>	<p>FFNZ supports the policy in part but has some concerns.</p> <p>FFNZ does not agree that all activities that discharge contaminants to air must be managed. We note that the RMA s15 only requires contaminants from industrial or trade premises into air to be managed and then only when there may be adverse effects.</p> <p>We are concerned with the use of the word “avoid” as it has a threshold that prevents the occurrence of the effect. Accordingly, any activity that may result in the effect becomes prohibited. We do not consider that the plan wants to prohibit activities rather it wants the persons doing the activities to take practical steps to avoid adverse effects and where it accidentally occurs despite reasonable efforts then to minimise the effects. We recommend the term ‘where practicable’ to temper the unintended consequence of using the word ‘avoid’.</p> <p>The above is supported by RPS Objective 1 which states that adverse effects from discharges to air should be avoided, remedied or mitigated so as to protect people and the environment. We consider this is a signal that a blanket prohibition is not intended.</p>

Page	Reference	Support/oppose	Decision sought	Reasons
2	AQ P4	Support in part	<p>health, cultural values, amenity values, or the environment.</p> <p>We seek the amendments as indicated below or amendments that will address our concerns.</p> <p>AQ P4 Matters to consider — Ngā take hei whiriwhiri</p> <p>When considering the acceptability of any discharge of contaminants to air, regional plan users must have particular regard to the following matters:</p> <ul style="list-style-type: none"> (a) The proximity and nature of sensitive activities to the discharge. (b) The particular zone and the <u>appropriateness of the activity in the zone</u>, the location of any Gazetted airsheds, or areas where the discharge may cause an exceedance or breach of the ambient air quality standards of the NESAQ or exceed the health-based values of the AAQGs. (c) Adverse effects on air quality values identified in the relevant iwi and hapū resource management plans. (d) The effect of the prevailing weather conditions, including rainfall, wind speed and wind direction. (e) The effect of the discharge on human health, cultural values, amenity values, the environment, and regionally significant infrastructure. (f) Cumulative effects. (g) The effect of new activities discharging contaminants into air near established sensitive activities. 	<p>FFNZ supports that the matters to be considered should be transparent for all users.</p> <p>(a) The nature of the sensitive activities is an important element that should be considered.</p> <p>(b) Normal farming activities (such as raising stock, burning rubbish and spreading fertiliser) involve or generate odour, smoke and dust. These types of effects are part of any rural environment. Accordingly, the acceptable discharges in a rural zone will be different from acceptable discharges in an urban zone. Hence the need for consideration of the location and sensitivity of the receiving environment.</p> <p>New matters:</p> <p>There is a clear distinction in reasonableness between a once a decade discharge of low intensity and duration and a daily discharge of high intensity and long duration. The frequency, intensity and duration impact on whether or not the discharge is acceptable and should be included as matters to be considered.</p>

Page	Reference	Support/oppose	Decision sought	Reasons
2	AQ P5	Support	<p>(h) <u>The frequency, intensity and duration of the discharge.</u></p> <p>AQ P5 Open burning — Te tahutahu ahi</p> <p>Avoid the discharge of contaminants to air from open burning on urban properties while permitting open burning:</p> <p>(a) carried out as part of a recreational/cultural activity, and/or outside urban areas, provided the burning is managed to minimise production of noxious or dangerous, offensive or objectionable discharges to the extent that it causes an adverse effect</p> <p>(b) of animal carcasses and/or vegetative material burned in accordance with quarantine or disease control requirements</p> <p>(c) for the purposes of firefighting research or training.</p>	<p>We support that open burning is a permitted in rural areas.</p> <p>See reasons at Rule AQ R1 for the proposed amendment.</p>
	AQ P8	Support	<p>Amend as follows:</p> <p>AQ P8 Agrichemical spraying — Te tōrehu matū ahuwhenua</p> <p>Agrichemical sprayers will manage adverse effects on human health and the environment by:</p> <p>(a) avoiding spray drift beyond the boundary of the subject property and into water bodies where reasonable practicable possible.</p> <p>(b) mitigating <u>minimising spray drift effects</u> particularly on <u>near sensitive activities</u></p>	<p>FFNZ agrees with the intent of the policy but have some concerns.</p> <p>Our concern under AQ P8 (a) is with the requirement to “avoid” spray drift “where possible”. Anything is possible. The RMA is not a risk avoidance regime but a risk management one.</p> <p>We consider the intent with the phrase “where possible” was to recognise that even with the best intent spray drift may occur. We consider that changing the word ‘possible’ to ‘reasonable practicable’ better captures that idea.</p> <p>We suggest amending the wording for AQ P8 (b) because:</p>

Page	Reference	Support/oppose	Decision sought	Reasons
			<p>where avoidance of spray drift is not possible-reasonable practicable</p> <p>(c) using a risk management approach for agrichemical spraying activities with a higher risk of becoming noxious or dangerous, offensive or objectionable.</p>	<ul style="list-style-type: none"> • Subclause (a) refers to the activity (rather than the effect) in the phrase “avoid spray drift”. For consistency the next phrase should also refer to the activity (spray drift) not the effects. • NZS8409 requires the minimisation of spray drift not the mitigation of effects.
	<p>Three new methods for reverse sensitivity</p>		<p>Insert three new methods or similar methods to address our concerns.</p> <ol style="list-style-type: none"> 1. The Bay of Plenty Regional Council will advocate for buffer zones and zone planning mechanisms around odorous and potentially odorous rural areas to reduce reverse sensitivity. 2. In resource consent applications recognise and consider the effects of reverse sensitivity. 3. In resource consent applications recognise and consider the benefits of fertilisers and agrichemical spray for primary production. 	<p>We refer to our earlier submissions on reverse sensitivity and consider these policies are required to give effect to the RPS provisions on reverse sensitivity.</p>
	<p>New method for burning of plastic</p>		<p>Insert New Method or similar provisions to address our concerns.</p> <p>The Bay of Plenty Regional Council will adopt a collaborative approach with primary industry stakeholders, district councils and farmers to develop alternatives to open burning of plastic</p>	<p>There are currently no viable alternatives to burning of agriculture wrapping.</p> <p>We consider that an obvious omission is a method regarding recycling or disposal of agricultural waste (particularly agricultural packaging).</p>

Page	Reference	Support/oppose	Decision sought	Reasons
			<p>especially agriculture wrapping in rural areas. The approach will include research of alternatives, development of alternatives with territorial authorities and agriculture stakeholders and education of farmers.</p>	<p>Agricultural packaging is a significant by-product of farming (generating an estimated 5,874 tonnes of waste per year in the Bay of Plenty⁵) and the availability of sensible disposal options will help to reduce the associated environmental effects. We consider this even more important in the context of a Plan that proposes to prohibit the burning of plastic (we note our concerns regarding Rule 10 below and our view that burning certain plastics ought to be permitted).</p> <p>FFNZ strongly supports convenient, cost effective and environmentally friendly waste disposal options. Significant do-it-yourself re-using and recycling already occurs in the agricultural sector. Old tyres are considered an essential resource on farms and are used in large quantities for weighing down silage pit covers, but may also be employed for other purposes. Plastic containers including feed bags are also reused in a variety of ways.</p> <p>Burning and burying waste on farms is a last resort that farmers are sometimes driven to by a lack of other practical options and a desire (and need) to keep the farm looking tidy.</p> <p>Part of the issue is a lack of education or awareness but a more significant part of the issue is that there are very limited recycling or ag recovery options available and those options are expensive.</p> <p>In respect of plastic containers, not all containers are recyclable. It is mostly agricultural containers that are part of the Ag Recovery programme (provided they are triple rinsed and from participating brands). Many containers, such as oil containers, cannot be recycled and need to be disposed of some other way. This creates difficulties in rural environments where there is no rubbish collection and the only available option may be to burn the containers.</p>

5 GHD Report for Waikato Regional Council and Bay of Plenty Regional Council, 51/32432, July 2014 at page 29.

Page	Reference	Support/oppose	Decision sought	Reasons
				<p>A potential disposal alternative that could be investigated is the disposal of agricultural wrap and containers by incineration in specialised high temperature boilers and incinerators and working with industry or stakeholder groups to develop a collection scheme for this purpose.</p> <p>We note that all of this is consistent with the Rural Waste Survey for Waikato and the Bay of Plenty that was undertaken by GHD and published in July 2014. In particular:</p> <p>a. The Survey identified farm waste as a significant issue with the average farm producing a total of 37.1 tonnes of organic and inorganic waste per year.⁶</p> <p>b. It found that “plastics are a common waste that were mostly burnt or buried on the farms surveyed.” But some farms did use Ag Recovery and Plasback.⁷</p> <p>c. It found that the main barriers to recycling were legacy farmer behaviour, a lack of awareness and a lack of tangible waste management options.⁸</p> <p>d. It also found that the cost of recycling was an important barrier.⁹</p> <p>Importantly, the Survey recommends collaborative approaches, research and education, not stricter planning rules. In particular, it recommends that steps are taken to:¹⁰</p> <p>a. understand the level of risk related to current practices;</p>

⁶ GHD Report for Waikato Regional Council and Bay of Plenty Regional Council, 51/32432, July 2014 at page 25.

⁷ Ibid at 28.

⁸ Ibid at 50.

⁹ Ibid at 50.

¹⁰ Ibid at 52.

Page	Reference	Support/oppose	Decision sought	Reasons
4	AQ R1	Support with some amendments.	<p>AQ R1 General activities – Permitted — Ngā mahinga noa – E whakaaehia ana</p> <p>Any discharge of contaminants into air which is not subject to any other rule in this regional plan and excluding the discharge of dust to air associated with a plantation forestry activity, is a permitted activity provided the following conditions are complied with:</p> <p>(a) The discharge must not be noxious or dangerous, offensive or objectionable to the extent that it causes an adverse effect beyond the boundary of the subject property or into any water body.</p> <p>(b) The discharge of smoke or water vapour must not adversely affect the safety of any vehicle, aircraft, or ship.</p> <p>(c) The discharge is not from industrial or trade premises.</p>	<p>b. develop collaborative approaches to address issues; c. raise awareness of current disposal and recycling options; and d. raise awareness and create opportunities to share best practice.</p> <p>Proposed AQ R1’s overarching purpose is to generally permit activities that discharge contaminants into air. We agree with this purpose.</p> <p>FFNZ also does not have an issue with making the activities permitted subject to relevant standards. However, the permitted activity standards should not be set too high or be subjective or uncertain. For this reason, we consider that it is imperative that the standards are reasonable, practical and certain.</p> <p>Condition</p> <p>(a) (i) We consider that the term “offensive or objectionable” should be defined in the plan. We note that the S32 report and explanation states whether a discharge is “offensive or objectionable” in condition (a) is a subjective test.¹¹ This is problematic because if this statement is correct then the rule will be ultra vires.</p> <p>It is well settled law that a consenting authority may not reserve itself a discretion to approve a permitted activity. Although some element of judgment or degree of evaluation is permissible (and normal with factual situations) a consenting authority cannot retain itself the right to subjectively decide whether or not an activity is permitted.</p>

¹¹ S32 Report at p 187.

Page	Reference	Support/oppose	Decision sought	Reasons
				<p>If the Council reserves itself some subjective formula or test to accept or reject an otherwise permitted activity (as stated in the S32 report) then it will be acting ultra vires.</p> <p>We do not ask that the term be deleted because we consider it is not a subjective test and the S32 report is wrong in this regard. Case law on the term “offensive or objectionable” has stated that it is an objective test as it can be measured against an external standard (“ordinary reasonable person”) It is not a subjective test as alleged in the S32 report.</p> <p>This substantiate our concern that the term should be clarified for plan users (and Council) or some guidance provided (see our submissions on definitions).</p> <p>(ii) “The requirement of “no discharge...beyond the boundary” is problematic.</p> <p>A. In many activities there may well be some (however slight) odour, smoke or spray drift beyond the boundary. Then the question immediately arises whether or not this is a permitted activity or whether there is a breach of the plan.</p> <p>B. Secondly it is not targeting any adverse effects. For example, if the spray was applied on an area of land within the property boundary, but a sudden gust takes odour or spray onto other land owned by the same person, there would be no adverse effects.</p> <p>Also there may be positive effects as a result of spray drift onto neighbouring land. This scenario is specifically recognised in Appendix G4 of NZS8409:2004 where it is recognised that there may be “no drift hazard because there is nothing at risk from the spray drift.”</p>

Page	Reference	Support/oppose	Decision sought	Reasons
				<p>Our members are concerned as spray drift may occur because the applicator cannot control (or guarantee) wind direction or speed. They can act as reasonable as they want but there is no controlling nature.</p> <p>FFNZ recommends the text as recommended by the Ministry of Environment¹² “ <i>offensive or objectionable to the extent that it causes an adverse effect beyond the boundary...</i>”.</p> <p>FFNZ suggested that this wording aligns with RPS Objective 1, AQ 2A and AQ 3A which stresses the management of adverse effects from discharges to air.</p>
5	AQ R2	Support	<p>We recommend two alternatives,</p> <p>-either:</p> <p>a. specify activities that default to controlled or restricted discretionary status if the permitted status is not met. The matters for control or discretion can be limited to those of the permitted rule standard.</p> <p>- Or -</p>	<p>(c) We support condition (c). S15 RMA presumption excludes contamination to air from industrial and trade premises while generally permitting other activities.</p> <p>FFNZ appreciates that there needs to be a rule providing for activity status of a discharge to air if the permitted standards in AQ R1 is not met. While we accept a discretionary activity status is better than a non-complying activity status it is still onerous and difficult to obtain a resource consent and is more expensive and time consuming for both the applicant and the council.</p> <p>To temper the onerous and restrictive nature of discretionary activity we expected the Plan to provide provisions which would default to controlled or restricted discretionary status as it is inappropriate that all activities that cannot comply with the</p>

¹² Ministry of Environment Good Practice Guide for Assessing and Managing Odour in New Zealand 2003, para [3.4.1] at 15.

Page	Reference	Support/oppose	Decision sought	Reasons
			<p>b. Change the default to restrictive discretionary activity status with discretion restricted to the following matters:</p> <ul style="list-style-type: none"> (i) the reasons for and any likely effects of the departure from the permitted activity standards, terms and clauses. (ii) whether the discharge is to be undertaken in accordance with current good practice (such as the Good Practice Agrichemical spray Management Guidelines). (iii) potential or actual adverse effects on the surrounding environment. (iv) the proximity and nature of nearby activities. (v) Frequency, duration and intensity of the discharge. 	<p>permitted standards should default to discretionary activity status. This is not the case in the proposed plan.</p> <p>We are concerned that an over restrictive default activity status will increase the cost and uncertainty for those that need to apply for resource consent and increase the time and cost for Council in processing consent applications. There appears to be no benefit from this approach because the only relevant matter for discretion is likely to be the particular standard or threshold the activity does not meet.</p>
5	AQ R3	Support	<p>AQ R3 Miscellaneous discharges – Permitted – Ngā tukunga matahuhua – E whakaaehia ana</p> <p>The discharge of contaminants to air from:</p> <ul style="list-style-type: none"> (1) spray irrigation, soil injection, or land soakage of liquid waste (2) the ventilation and displacement of liquids in storage tanks and tankers (3) the use and application of fertiliser. 	<p>We support AQ R3 in general. We strongly support: AQR3 (1), (3) and (4)</p> <p>FFNZ supports AQ R3 (1) and the advice note which allows discharge of contaminants to air from spray irrigation, soil injection, or land soakage of liquid waste if certain standards are met.</p> <p>We consider the permitted activity status is a good integrated management practise, promotes re-cycling and enables better use of resources.</p>

Page	Reference	Support/oppose	Decision sought	Reasons
			<p>(4) the disturbance of land and soil carried out according to rules LM R1, LM R2, and LM R3 of this regional plan</p> <p>(5) contaminated land remediation permitted by DW R24 of this regional plan</p> <p>are permitted activities provided the discharge is not noxious or dangerous, offensive or objectionable to the extent that it causes an adverse effect beyond the boundary of the subject property or into any water body.</p> <p>Advice Note - Discharge of liquid waste, and the use and application of fertiliser must also meet all other requirements of this regional plan (see DW Discharges to Water and Land and OSET On-site Effluent Treatment).</p>	<p>Firstly, it supports the concept of integrated management because it considers other provisions already controlling the activity. The discharge into air from the use of liquid waste is a secondary effect when the primary effects are already evaluated and controlled by provisions for discharge to land, discharge to water, the allocation of water and the treatment of effluent. Accordingly, the activity is well scrutinised and managed and only when the permitted standards for discharge to air are not met should the activity be reconsidered.</p> <p>Secondly it promotes recycling. Liquid waste on a farm is generally stock faeces and urine mixed with water and captured for re-use. Not only is it more environmental friendly but it also re-uses water and effluent.</p> <p>Thirdly effluent spreading can have less odour and other adverse effects than storing effluent (which can have higher methane emissions and typically has a worse odour). It is a more efficient and effective option to manage the issue and should be encouraged.</p> <p>For all these reasons we support that AQ R3 (1).</p> <p>AQ R3 (3) We support the use and application of fertiliser as a permitted activity. We consider that fertiliser should be appropriately defined (see submissions on definitions).</p> <p>AQ R3 (4) Similar to (1) the primary effect (disturbance of land and soil) is already considered and controlled by provisions in the plan (LM R1, LM R2 and LM R3). Accordingly, only when the</p>

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				<p>permitted standards for discharge to air are not met should the activity be reconsidered.</p>
				<p>Amendment</p>
				<p>We refer to our submission reasons under AQ R1. The reasons raised under AQ R1 is especially relevant for the use and application of fertiliser. Fertiliser and agrichemicals are often specifically made with an added unpleasant odour to inform passers-by that a fertiliser and agrichemical is being applied nearby. Accordingly, it will most likely be objectionable because of the odour - as that is precisely the purpose as objectionable smells are easily recognised.</p>
				<p>From time to time conditions may arise that cause the odour of fertilisers or agrichemicals to drift beyond the property or some of the material to drift over the boundary.</p>
				<p>Spray drift is never a desired outcome for farmers because it wastes the compounds used. While we agree that operators should take all reasonable actions to prevent this from occurring, there will always be the possibility that the applied compounds drift beyond the property. Further the odour which is specifically made as a warning and hard to contain will most likely drift past the boundary and be objectionable as it is designed to do.</p>
				<p>However the fertiliser or agrichemical or odour that drifts beyond the boundary may not cause any adverse effect although the smell may be deemed objectionable. This could be because of a number of reasons including because only the odour drifted past the</p>

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6	AQ R6	Support	<p>Open burning – Permitted — Te tahutahu ahi noa – E whakaaehia ana</p> <p>Except where AQ R7 and AQ R8 apply, the discharge of contaminants to air from open burning is a permitted activity provided the fire is not located on an urban property and the following conditions are complied with:</p> <p>(a) No materials either listed in AQ R10 or prohibited by the regulations of the NESAQ are burned.</p> <p>(b) The discharge of smoke must not adversely affect the safety of any vehicle, aircraft, or ship.</p> <p>(c) The discharge must not be noxious or dangerous, offensive, or objectionable to the extent that it causes an adverse effect beyond the boundary of the subject property.</p>	<p>boundary, or the volume is negligible or that the fertiliser is not harmful.</p> <p>We consider a better and reasonable approach is to add the proviso that offensive or objectionable should at least be to an extent that it causes adverse effects. We consider this is the right balance as any slightly offensive and objectionable odour will not be caught by the provision but any objectionable discharge (including odour) that has an actual adverse effect will be captured. Similar considerations apply to dust spray that is so diluted or slight that it has no effect.</p>
				<p>We support the general aim of AQ R6 that open burning in rural areas should generally be a permitted activity.</p> <p>We note that the greatest issue or complaints about open burning is in urban areas.</p> <p>Amendment</p> <p>We refer to our previous submission reasons under AQ R1 and AQ R3.</p>

Page	Reference	Support/oppose	Decision sought	Reasons
6	AQ R7		<p>Advice Note: This rule manages open burning according to the potential for adverse effects on air quality. Open burning must also be carried out according to local bylaws and the Forest and Rural Fires Act 1977.</p> <p>Open burning for emergency disposal of diseased carcasses and vegetation – Permitted — Te tahutahu ahi noa mō te whakawātea ohotata – E whakaaehia ana</p> <p>The discharge of contaminants to air from the emergency burning in the open of dead diseased marine mammals, dead diseased livestock, or diseased vegetation is a permitted activity provided the following conditions are complied with:</p> <p>(a) Disposal must be carried out under the instruction of the responsible authority.</p> <p>(b) Regional Council's Pollution Hotline (or its equivalent) must be notified a minimum of one hour before burning begins as soon as is reasonably practicable before the burning and if not practicable as soon as practicable during or after the burning.</p> <p>(c) The discharge of smoke must not adversely affect the safety of any vehicle, aircraft, or ship.</p> <p>Advice Note: Appropriate government departments at the time of notification are the Ministry for Primary</p>	<p>We consider that it is important to provide for the burning of diseased carcasses and vegetation in an emergency.</p> <p>An emergency means “a situation that poses an immediate risk to health, life, property, or environment and require urgent intervention to prevent a worsening of the situation”.</p> <p>AQ R7 only applies in an emergency situation as stated in the rule.</p> <p>Accordingly if AQ R7 only applies in an emergency and the person is instructed by the responsible authority to burn a dead diseased carcass for disposal then requirements (b) will impede the purpose of this rule (ie. prevent the worsening of an adverse effect).</p> <p>We suggest an amendment to the wording of (b).</p>

Page	Reference	Support/oppose	Decision sought	Reasons
7	AQ R9	Support	Industries (livestock and vegetation) or the Department of Conservation (marine mammals). Retain	We support AQ R9. In particular, that the rule is limited to open burning on an urban property. We also support a clear definition of urban property.
7	AQ R10	Oppose in part	We recommend three alternatives or amendments to address our concerns. Option 1: Our favoured alternative is to seek amendments to AQ R10 to exclude the burning of plastic and treated or painted timber in rural areas so that it continues to be a permitted activity. Option 2: The other alternative restrict the volume of the material that are permitted to be burnt in the rural zone. Option 3: The last alternative permits the burning of the material if there are no recycling options. The suggested wording for options are shown as option 1 / option 2 / option 3. Burning of specified material – Non-complying — Te tahutahu i ngā papanga kua tautuhia – Tautuku-kore	<p>We recognise that the burning of many of these items is unlikely to be in appropriate and adversely affect air quality. However, we oppose AQ R10 in part because we have concerns about the prohibition of the burning of non-organic material in rural areas.</p> <p>Scale and significance of the issue</p> <p>Harrison Grierson report on open burning firstly states that complaints about open burning largely relate to urban areas (not rural). It states that open burning in urban areas is the single biggest problem. AQ R6 necessitates a resource consent for open burning in urban areas, accordingly AQ R10 does not have to deal with these materials in urban areas.</p> <p>For those complaints relating to rural areas the main problems are damp vegetation and poor fire management (not the burning of treated timber or plastics).¹³</p>

¹³ Harrison Grierson "Review of the Bay of Plenty Regional Air Plan Open Burning Rules" dated May 2012 at page 17.

Page	Reference	Support/oppose	Decision sought	Reasons
			<p>Except as provided for in AQ R8 and AQ 21(i) the discharge of contaminants to air from the combustion of any of the following materials is a non-complying activity:</p> <p>(a) treated or painted timber, except:</p> <p>(i) for approved fuel for pellet burners as specified in AS/NZS 4014.6:2007 Domestic solid fuel burning appliances – Test fuels – Wood pellets, or the functional equivalent</p> <p>(ii) <u>in rural zones / in rural zones and the materials are less than 50m2 / in rural zones and at properties where no large scale collection of the material by territorial authorities exists.</u></p> <p>(b) any plastics (including wrapping), foam, nappies, or polystyrene, or plastics (except in rural zones / in rural zones less than 50m2 in total / in rural zones and at properties where no large scale collection of the material by territorial authorities exists).</p> <p>(c) chlorinated organic chemicals including but not limited to dioxins, furans, polychlorinated biphenals (PCB)</p> <p>(d) contaminated material from contaminated sites and buildings</p> <p>(e) commercial food waste</p> <p>(f) domestic waste, except paper and cardboard</p>	<p>We submit that the open burning of plastics and treated or painted timber on farms are not a significant problem that require strict regulations.</p> <p>Alternative options</p> <p>Inorganic materials such as agricultural wrap, plastic containers, feed and mineral bags/sacks, and treated or painted timber/posts need to be disposed of. They need to be disposed of to ensure a safe, clean and tidy working and farming environment. With the average farm producing 37.1 tonnes of organic and inorganic waste per year, disposal is a big issue.</p> <p>We consider that provision needs to be made for the burning of small quantities of non-organic material in rural areas, particularly if there is no cost effective or practical alternative means of disposal. We support recycling and the prevention of burning of harmful substances. All reasonable attempts should be made to recycle. Many farmers will re-use or re-purpose items or use Ag Recovery or Plasback recycling options.</p> <p>However, it needs to be recognised that some plastics cannot be recycled or the recycling process is not cost effective (or even available in remote areas) and that burning small quantities of plastic, treated or glued timber, wood which is painted, stained or oiled, or wood that contains nails, on a hot fire, is not a significant threat to the environment or human health.</p> <p>We support an approach that aims to minimise rather than prohibit the outdoor burning of non-organic material in rural areas. Any prohibition on burning should focus on those materials which are</p>

Page	Reference	Support/oppose	Decision sought	Reasons
		<p>(g) material that may contain heavy metals including but not limited to lead, zinc, arsenic, chromium, cadmium, copper, mercury, thorium</p> <p>(h) materials or metals used in motor vehicles</p> <p>(i) mineral fibres including but not limited to asbestos and insulation material</p> <p>(j) paint and other surface protective coatings</p> <p>(k) pathological waste</p> <p>(l) pesticides and pesticide waste (excluding cardboard pesticide containers)</p> <p>(m) rubber</p> <p>(n) soft furnishings and upholstery.</p> <p>Advice Note: In addition to the materials in this rule, NESAQ regulations prohibit the discharge of contaminants to air from the burning of the following materials:</p> <ul style="list-style-type: none"> • bitumen on a road • coated wire • tyres • oil • waste at landfills <p>except where the regulations provide otherwise. Regional plan users should check the regulations of</p>	<p>highly dangerous and unable to be burned relatively cleanly and safely, such as materials containing asbestos and halogenated plastic.</p> <p>In regards to plastic, most farmers want to be environmentally responsible and burning plastic is not necessarily a desirable outcome but more often than not there is simply no cost effective and time efficient alternative. This is reflected in the GHD Survey, which found that plastic waste is commonly burnt or buried and some containers are reused on site.</p> <p>As identified above, disposal of agricultural wrap is a particular issue. In principle, we support the move towards greater recycling. However, at present this may not be a viable or practical option for the following reasons:</p> <ol style="list-style-type: none"> a. Agricultural wrap can only be recycled if it is clean and dry. This means that there is time and cost involved in cleaning and drying the wrap. b. Even if there were time and resources available to clean and dry the wrap, in a winter feeding regime this will not always be possible. For example, some bales are placed in paddocks pre-winter, therefore the bottom layer of the bale wrap cannot be picked up until the bale is eaten and by then it cannot be recycled. c. Once the agricultural wrap is clean and dry, it needs to be placed in bags and collected by a recycler. We understand that the cost of this is a considerable expense for any farming operation. 	

Page	Reference	Support/oppose	Decision sought	Reasons
			<p>the NESAQ as well as the provisions of this regional plan.</p>	<p>Accordingly, even with the best intentions farmers may end up with a stock pile of wrap they are unable to recycle either due to an inability to clean and dry it, a lack of options for recycling or the cost of recycling being prohibitively high.</p> <p>In theory, there are potentially alternatives to individual bale wrapping such as cropping. However, in practice they will not always be viable. For example, in wetter coastal areas where driving stock onto crops is not an option.</p> <p>We note that prohibiting burning agricultural wrap may create perverse incentives such as having agricultural wrap filling up landfills or being buried on the property. It may also cause people to burn it illegally and without education or standards as to how to manage effects. We consider that all of this could potentially have worse adverse long term effects than the short term effects of burning agricultural wrap in accordance with permitted activity standards.</p> <p>In respect of plastic containers, there are often limited disposal options because not all containers can be recycled. Containers that are part of the Agrecovery programme (mostly agrichemical containers) can be recycled. However, other containers, e.g. oil containers, cannot be recycled and need to be disposed of in some other way. We consider that it would make sense to permit the burning of small quantities of non-recyclable plastic containers in rural areas.</p> <p>In respect of treated or painted timber, burning small quantities of this in a rural environment (i.e. where properties are spread out) is</p>

Page	Reference	Support/oppose	Decision sought	Reasons
				<p>unlikely to have adverse environmental effects. We consider that such activity should be permitted.</p> <p>All of this has been recognised in other regions with Councils providing for the burning of plastic and other specified inorganic waste in certain circumstances and only prohibiting the burning of that waste which has the worst environmental effects e.g. halogenated plastics and timber treated with CCA or organochlorine substances.</p> <p>As identified above (in the context of a suggested new Method) we consider that Council should work with farmers to identify practical and cost effective recycling or disposal options, alternatives to using agricultural wrap or other plastics and education programmes regarding the disposal of agricultural wrap and other non-organic material.</p> <p>We seek amendments to AQ R10 to exclude the burning of plastic and treated or painted timber in rural areas so that it continues to be a permitted activity. We consider that Council could increase non-regulatory actions (by the adoption of new methods as recommended) such as education and information to farmers on recommended management, disposal or recycling practices, as well as collaborating with industry and stakeholder groups to identify, develop or encourage recycling and disposal alternatives.</p>
AQ R5, AQ R11, AQ R12, AQ R15, AQ R16,			Add to AQ R5, AQ R11, AQ R12, AQ R15, AQ R16, AQ R17, AQ R18 and other provisions.	To ensure consistent use of language between the objectives, policies, and rules. FFNZ consider that all the rules that refers to "noxious or dangerous, offensive or objectionable should have the added provisions "to the extent that it causes an adverse effect" for the reasons provided above in AQ R1 and AQ R3.

Page	Reference	Support/oppose	Decision sought	Reasons
9	AQ R17, AQ R18		<p>“..noxious or dangerous, offensive or objectionable to the extent that it causes an adverse effect beyond the boundary of the subject property..”</p>	
	AQ R15		<p>Amend as follows with further amendments to address our concerns about signs and notification that are over onerous:</p> <p>AQ R15 – Agrichemical Spraying – Permitted</p> <p>All discharges of contaminants to air from the use of agrichemicals under any part of this rule must comply with the following conditions:</p> <p>(1) General use of agrichemicals</p> <p>(a) The discharge must not be noxious or dangerous, offensive or objectionable to the extent that it causes an adverse effect beyond the boundary of the subject property, in any non-target water body, or in any non-target watercourse listed in Schedule 3 of this regional plan.</p> <p>(b) Where the use of the agrichemical is for the prevention, eradication or management of unwanted organisms or pests in a declared biosecurity emergency under the Biosecurity Act 1993, the agrichemical must be used under the direction of the responsible authority under the Biosecurity Act 1993.</p> <p>(c) Where the agrichemical is sprayed using drone application, the drone must not operate more than 5 metres above the target while agrichemicals are being distributed from the drone. If this condition cannot be complied with, the spray method is aerial</p>	<p>FFNZ supports that agrichemical spraying remains a permitted activity if certain standards are met. This aligns with the treatment of agrichemical sprays in other regions including Taranaki and Hawkes Bay.</p> <p>We set out below our concerns with some of the standards to be met.</p> <p>General conditions</p> <p>1(a) See previous submissions on offensive and objectionable.</p> <p>1(b) We are concerned that 1(b) have too many qualifiers and will have the unintended consequence of undermining biosecurity and pest management abilities.</p> <p>The proposed condition 1(b) requires:</p> <ul style="list-style-type: none"> - that the organism go through the process of being registered as an unwanted organism pursuant to the Biosecurity Act, - but also that on the recommendation of a Minister, the Governor-General, by Proclamation, declare a biosecurity emergency, - And further that the agrichemicals must be used under the direction of the responsible authority under the Biosecurity Act 1993.

Page	Reference	Support/oppose	Decision sought	Reasons
			<p>application, and conditions relevant to aerial application must be complied with.</p> <p>(2) Method of application of agrichemical</p> <p>(a) The discharge of contaminants into air from agrichemical spraying using: hand-held, non-motorised application methods is a permitted activity provided conditions 3(a), 3(c), 3(d) and 4(e) are complied with.</p> <p>(b) Hand-held, motorised application methods or application methods using a low pressure boom is a permitted activity provided conditions 3(a), 3(c), 3(d), 3(e), 4(e), 4(e) are complied with.</p> <p>(c) Any other application method (including drone application complying with condition 1(c)) is a permitted activity provided conditions 3(a), 3(b), 4(a), 4(b), 4(c), 5(a), 5(b), 5(c) and 5(e) are complied with.</p> <p>(3) Signage</p> <p>Where specified by condition (2), the following conditions apply:</p> <p>(a) Where agrichemicals are sprayed on public amenity areas signs must be displayed at every entrance where the public usually have entry to the area where the agrichemical is being sprayed, and must clearly state:</p> <p>(i) "CAUTION – SPRAYING IN PROGRESS" or similar wording</p> <p>(ii) the name and type of agrichemical used</p>	<p>Condition 1(b) will therefore (unintentionally) exclude:</p> <ul style="list-style-type: none"> - any emergency situation that has not been formally declared a biosecurity emergency. - any person instructed by MPI to apply the agrichemical to prevent an unwanted organism but the situation does not have the necessary immediacy to be an emergency. - Management of pests as instructed by the Regional Council or MPI in an emergency but the pest is not registered as an unwanted organism. <p>We consider the qualifier that the agrichemicals must be used under the direction of the responsible authority under the Biosecurity Act 1993 is the only necessary qualifier.</p> <p>2. Methods</p> <p>Hand-held, non-motorised application – We support less stringent conditions for handheld application. FFNZ also support the distinction between public amenity areas and private areas. We consider these are sensible and practical distinction that recognises that there is very little risk of an adverse effect due to the amount of direct control over hand held application method and in private areas.</p> <p>Accordingly, we support that conditions 3(b), 3(e), 4(a) – (d) and 5(a) to (d) do not apply to this method of application.</p> <p>Hand-held, motorised application and low pressure boom application – We consider that the same conditions for all hand-</p>

Page	Reference	Support/oppose	Decision sought	Reasons
			<p>(iii) a start and end date for spray operations</p> <p>(iv) the name and phone number of the applicator</p> <p>(v) that while signs are in place, it is not safe to enter.</p> <p>(b) Where agrichemicals are sprayed within 50 30 metres of any public amenity area (ground-based application or drone application complying with condition 1(c)) or 200 100 metres (aerial application), signs must be prominently displayed on the boundary of the public amenity area and must clearly state "caution – spraying in progress" or similar wording.</p> <p>(c) Where agrichemicals are sprayed within 10 metres of any public amenity area, signs must be prominently displayed on the boundary of the public amenity area and must clearly state "caution – spraying in progress" or similar wording.</p> <p>(d) Signs required by 3(a), 3(b) or 3(c) should remain in place until all airborne spray has settled and the agrichemical has dried on its target surface.</p> <p>(e) Any vehicles associated with agrichemical spraying must display prominent signs front and back that clearly state "CAUTION – SPRAYING IN PROGRESS" or similar wording.</p> <p>(4) – <i>Notification</i></p> <p>Where specified by condition (2), the following conditions apply:</p> <p>(a) The owner/occupier or agent must notify the occupier of any properties within 50</p>	<p>held applications is reasonable given the amount of control over the application method and the low risk of spray drift.</p> <p>We recommend that only conditions 3(a), 3(c), 3(d) and 4 (e) are required for all hand-held applications and low pressure boom applications.</p> <p>Other conditions</p> <p>3(b) and 4(a) and 5 (b) We consider distance chosen is too restrictive. We note Taranaki has chosen 30m and 100m.</p> <p>We have concerns about the notification and signage requirements and whether they are practical. In principle, we appreciate that notification and signage is a way of reducing complaints and getting along with your neighbours. However, we are concerned that these rules could impose a significant compliance cost on agrichemical contractors.</p> <p>In respect of notification, we support the different levels of notification depending on the type of application of agrichemicals. However, the extent of notification may not be practical or even necessary, depending on the type of agrichemical, the type of property and the location.</p> <p>In respect of signage, we do not see the need to provide signage where agrichemicals are being applied to private land. We agree that signage is necessary where the spraying is on public land but we do not see the need where the land is private. We also do not see the need to display signs at every entrance way. For example, this may not be practicable (or necessary) on a 1,200 ha sheep station. We consider that consideration of the nature of the property and the area (such as the consideration of sensitive areas in NZS8409:2004) ought to be applied.</p>

Page	Reference	Support/oppose	Decision sought	Reasons
			<p>30 metres (ground-based application or drone application complying with condition 1(c)) and 200 metres (aerial application) of where the agrichemical is being sprayed:</p> <p>EITHER</p> <p>(i) notification, required no earlier than 72 hours and no later than 24 hours before the agrichemical spraying. Notification must include the following:</p> <ul style="list-style-type: none"> · the address and location of proposed application · the date/s of proposed application · name and type of agrichemical to be applied · name and phone number of applicator. <p>OR</p> <p>(ii) according to a notification agreement with the occupier. The notification agreement must:</p> <ul style="list-style-type: none"> - contain (as a minimum) method of notification and minimum time for notification prior to spraying - be recorded in writing and signed by all parties - be reviewed and re-signed annually. <p>(b) Details of notification (including but not limited to date and time of notification,</p>	<p>We are concerned that the combined effect of all of the above requirements will be to significantly increase the cost of applying agrichemicals without addressing actual adverse effects. This could significantly increase farm operating costs, with potential effects being less spraying (which will reduce productivity and potentially have implications for the local economy).</p>

Page	Reference	Support/oppose	Decision sought	Reasons
			<p>parties notified, method of notification) must be recorded.</p> <p>(c) Where agrichemical spraying is being carried out by any person other than the owner/occupier or agent responsible for notification, the person carrying out the spraying must confirm that notification requirements have been met before spraying takes place.</p> <p>(d) The owner/occupier or agent must notify the occupier of any properties within 10 metres of agrichemical spraying according to 4(a)(i) or 4(a)(ii), 4(b) and 4(c), except where agrichemicals are sprayed on land under management by the Regional Council for maintenance of rivers and drainage schemes, land used for road or rail purposes, or land designated as an esplanade strip or esplanade reserve.</p> <p>(e) Where agrichemicals are sprayed on public amenity areas, the owner/occupier or agent must publicly notify the agrichemical spraying using an appropriate method from at least 24 hours prior, up to one week prior to the agrichemical use. Notification must include the following information:</p> <ul style="list-style-type: none"> (i) The name and type of agrichemical used. (ii) A start and end date for spray operations. (iii) Contact details of the authority responsible for the spraying. <p>(5) Spray Risk Management Plan</p>	

Page	Reference	Support/oppose	Decision sought	Reasons
			<p>Where specified by condition (2), the following conditions apply:</p> <ul style="list-style-type: none"> (a) Prior to the agrichemical spraying, a spray risk management plan must be prepared and implemented by the owner/occupier or agent. (b) The spray risk management plan must contain the following information: <ul style="list-style-type: none"> (i) A plan or map identifying the location of any sensitive activities within 50 30 metres of the land being sprayed by ground based application or drone application (complying with condition 1(c)), or within 200 100 metres of the land being sprayed by aerial application. (ii) Areas to be sprayed, type of agrichemical likely to be used during the year and the times of year that spraying is likely to occur. (iii) Strategies used to avoid contamination of sensitive activities. (iv) Strategies to mitigate any spray drift caused by particular weather conditions. (v) Strategies to manage any specific hazard associated with the agrichemical to be sprayed (eg. toxicity to bees). (c) The spray risk management plan must be reviewed and updated each year that spraying will be carried out. (d) The spray risk management plan must be made available to the Regional Council and to potentially affected parties upon 	

Page	Reference	Support/oppose	Decision sought	Reasons
14	AQ R19	Oppose	<p>request within 20 working days of such a request being made.</p> <p>Advice Note: This rule manages the air discharge component of agricultural use. Users must also comply with all other rules in this regional plan (see DW Discharges to Water and Land). Other matters that should be considered when using agricultural chemicals include: certification, personal protection equipment, storage, transport, and disposal. Users (particularly large-scale) should also comply with the New Zealand Standard Management of Agricultural Chemicals NZS 8409:2004.</p> <p>AQ R19 Intensive farming – Controlled – Ngā mahi ahūwhenua – E whakahaerehia ana</p> <p>The discharge of contaminants into air from a permanent, intensive farming operation established prior to 1 January 2001, is a non-notified, controlled activity for which applications will be considered without the need to obtain the written approval of affected persons.</p> <p>The Regional Council reserves control over the following matters:</p> <p>(a) Setting conditions to control dust, odour, particulates, including but not limited to any matter contained in relevant industry codes of practice.</p> <p>(b) Duration of consent.</p>	<p>Rule 18 of the operative regional air plan allowed (as a controlled activity) discharge of contaminants to air from intensive farming if the intensive farm existed prior to 1 Jan 2001.</p> <p>Accordingly any intensive farming activity established after 2000 is a discretionary activity according to AQ R20. Those existing and permanent intensive farms established before 2001 can obtain resource consent as a controlled activity.</p> <p>AO R19 merely continues the application of Rule18.</p> <p>The s32 report did not evaluate the impact if the status quo was to change (ie pre 2001 intensive farms are not a controlled activity anymore) . FPNZ does not know the extent of permanent intensive farming pre 2001 or what the impacted on these farms will be if the rule is changed or removed.</p>

Page	Reference	Support/oppose	Decision sought	Reasons
			<p>(c) Compliance monitoring.</p> <p>(d) Review of the conditions of the consent and the timing and purpose of the review.</p> <p>(e) Payment of administrative charges.</p>	<p>The s32 report states¹⁴ that some farms will not be able to continue as a business if the status quo is changed.</p> <p>We support keeping the status quo. There has been no significant issue raised with intensive farms established pre 2001 while the farms will suffer significant economic detriment (according to the s32 report) if the status quo is changed.</p>
15	AQ R21	Support in part	<p>Amend as follows:</p> <p>Specific activities – Discretionary</p> <p>The discharge of contaminants into air from any of the following activities is a discretionary activity:</p> <ul style="list-style-type: none"> (a) Agrichemical manufacture. (b) Asphalt or bitumen manufacturing or processing. (c) Breweries. (d) Cement manufacture. (e) Chemical manufacture or mixing. (f) Composting (including mushroom-based processes). (g) Crematoria installed after 27 February 2018. (h) Distilling operations including but not limited to petroleum refining. 	<p>Proposed AQ R21 is based on Rule 19 in the operative Regional Air Plan. The purpose is to name specific activities as discretionary activities (requiring a resource consent) which may otherwise be considered as a permitted activity under AQ R1 (Rule 17 in the operative plan). FFNZ supports the intent of ensuring that specific activities with significant risk of adverse effects be named as discretionary activities.</p> <p>However, FFNZ does not agree that such activities can be arbitrarily named without any basis for inclusion. Numerous new activities have been added to those in Rule 19 without any explanation or assessment in the S32 Report.</p> <p>As an example, “Composting” and “Glassmaking” have been added in proposed AQ R21. There is no explanation for this. Is there is a significant risk of an adverse effect from these activities? and how was this identified? What other options were considered?</p>

¹⁴ S32 report at p47.

Page	Reference	Support/oppose	Decision sought	Reasons
			<ul style="list-style-type: none"> (i) Enclosed incinerators where any of the materials listed in AQ R10 are burned. (j) Free-range farming and intensive farming not controlled by AQ R10. (k) Glass-making. (l) Industrial resin or glue manufacture. (m) Kraft and chemical pulping or reconstituted wood panel manufacture. (n) Metal processing including (but not limited to) aluminium smelters, commercial foundries and metallurgic processing, steel galvanising and steel mills. (o) Milk powder or milk based powder manufacture. (p) Paint manufacture. (q) Pesticide manufacturing. (r) Pet food manufacture by the application of heat. (s) Processing of animal products including (but not limited to) animal rendering and by-product processing plants, commercial fellmongering, woolscourers, and dag crushing plants. (t) Processing of radioactive substances. (u) Pulp, paper, or paper board manufacturing. (v) Pyrolysis or gasification of carbonaceous material. (w) Synthetic fertiliser manufacture. (x) Waste processing activities as follows: 	<p>We also note there is no S32 analysis of the benefit and costs anticipated from making these activities discretionary activities.</p> <p>FFNZ also has a concern that the activities have not been properly defined which may capture unintended activities. For instance composting include your hobby gardener's compost.</p> <p>Accordingly we seek the removal of the activities newly included in the list.</p> <p>We consider that intensive farming should be clearly defined to ensure that it does not unintentionally capture other farms.</p>

Page	Reference	Support/oppose	Decision sought	Reasons
			<ul style="list-style-type: none"> (i) Municipal sewage treatment plants (excluding pump stations) (ii) Waste facilities including refuse transfer stations, resource recovery, recycling centres, baling stations. (iii) Landfills (excluding untreated wood waste and cleanfill). 	
17	Definitions	New	<p>Offensive or objectionable</p> <p>“Offensive” is defined as “...giving or meant or likely to give offence...disgusting, foul smelling, nauseous, repulsive...” and “Objectionable” is defined as “open to objection, unpleasant, offensive.”</p> <p>The determination of whether an effect is offensive or objectionable will depend on the specific circumstances of each situation and therefore can only be prescribed in general terms. It is an objective assessment on what the reasonable person as a representative of the community at large would consider to be offensive or objectionable.</p> <p>The Council intends to use the FIDOL factors as external guide to assess whether a discharge is offensive or objectionable.</p>	<p>We consider there should be some guidance given on what offensive or objectionable means. As stated before the S32 report stated it is a subjective test which is incorrect.</p> <p>The Court of Appeal held “The first point to make is that it is clear the assessment whether something is noxious, dangerous, offensive or objectionable is an objective one.”¹⁵ It is what the ordinary person, representative of the community at large, would consider to be objectionable.</p>

¹⁵ *Watercare Services Ltd v Mirihinnick* CA221/97

Page	Reference	Support/oppose	Decision sought	Reasons
			<p>Frequency – how often an individual is exposed to the odour;</p> <p>Intensity – the strength of the odour;</p> <p>Duration – the length of exposure;</p> <p>Offensiveness/character – the hedonic tone of the odour (pleasant, neutral, unpleasant)</p> <p>Location – the type of land use and nature of human activities in the vicinity of an odour source.</p>	
			<p>Fertiliser -- any substance or biological compound or mix of substances or biological compounds which is described as or held out to be for, or suitable for sustaining or increasing the growth, productivity or quality of plants or, indirectly, animals through the application of the following essential nutrients to plants or soils: nitrogen, phosphorus, potassium, sulphur, magnesium, calcium, chloride, sodium, as major nutrients or manganese, iron, zinc, copper, boron, cobalt, molybdenum, selenium, as minor nutrients or additives, substance to plants or soil in which they grow or will grow, and any other product which is considered to meet identified soil or plant nutrient deficiencies and is applied with this as the principle objective. Products discharged or applied as part of a waste treatment process require</p>	<p>The term is defined in the Regional Natural Resources Plan and no amendments are sought in the proposed plan change. The term is relevant to the interpretation and application of Rule 3.</p> <p>We are concerned that the definition of fertiliser may exclude certain fertiliser substances or compounds that are applied as part of a normal farming practice. For example, the definition does not include lime, additives or soil conditioners and we consider it unlikely that these substances fall within the definition of “essential nutrients.”</p> <p>We consider that it is very important to adopt a definition of fertiliser that encompasses all products likely to be applied to land as part of normal fertiliser practices to ensure that these activities are permitted in Rule 3. This is important to ensure the continuation of normal farming activities in rural zones. We also consider that any definition needs to be “durable” to ensure that as technology evolves farmers do not find themselves in five years time applying</p>

Page	Reference	Support/oppose	Decision sought	Reasons
			<p>resource consents and are not covered by this code. This definition is from The Code of Practices For Fertiliser Use 199853</p>	<p>a product or substance that is accepted as fertiliser but is not within the scope of the definition of fertiliser. This is particularly important as fertiliser methodologies or mixes change, such as a movement towards the use or incorporation of products such as mulch and compost.</p>
18	Definition	Support in part	<p>Intensive Farming</p> <p>Means agriculture production of plants and/or livestock where the <u>planting or stocking density limits</u> or <u>prevents dependence on natural soil quality on the site, and/or require high input of food required to be brought to the site.</u> Includes poultry farming, piggeries, mushroom production but excludes free-range farming, <u>the rearing of calves for the primary purpose of herd replacement for the subject property, the wintering of farm animals in sheds, the stabling of horses and greenhouses.</u></p>	<p>The term is relevant to the interpretation and application of Rule 20 and 21.</p> <p>It is not clear from Rule 21 what types of “intensive farming” activities the rule is intended to capture. We support a definition for intensive farming.</p> <p>We have concerns that this term could potentially capture a wide range of farming activities (many of which may be unintended).</p> <p>Our view is that pastoral farming activities are not intensive farming and an appropriate definition ought to exclude such activities. In particular, pastoral farming may include the use of supplementary feed and irrigation, rearing calves in sheds for 8-12 weeks, having animals confined temporarily due to seasonal conditions or adverse weather, keeping stock on feed pads and there is a growing interest in herd homes (where cows are kept in sheds over winter). We consider that a definition of “intensive farming” needs to be carefully worded to avoid capturing these activities. In our experience, definitions of “intensive farming” in other regions are typically based on the permanent housing of stock in buildings that is not dependent on the soil resource.</p> <p>We consider that any definition should attempt to be consistent with the relevant District Plans to avoid conflicts in the District and</p>

Page	Reference	Support/oppose	Decision sought	Reasons
				<p>Regional rules and to provide certainty for plan users. We note that Western Bay of Plenty District Council and Whakatane District Council have definitions of "intensive farming" that relate to the quality of soils and specifically exclude temporary housing of stock (such as wintering of stock and calf rearing) that are ancillary to a principal farming activity.</p>
19	Definition	Support	Retain definition of public amenity areas	<p>Our understanding is that the definition would not capture unformed roads and reserves due to the qualifier "where members of the public are likely to congregate for extended periods of time". We support the definition on that basis.</p>
			<p>Agrichemical any substance, whether organic or inorganic, manufactured or naturally occurring, modified or in its original state, that is used in any agriculture, pastoral, horticulture or related activity, to eradicate, modify or control <u>undesirable</u> flora and fauna. For the purposes of this regional plan, this definition includes agriculture compounds but excludes any fertiliser, vertebrate pest control products and oral nutrition compounds.</p>	<p>There is no new definition suggested for 'agrchemicals' but rather just an amendment to the definition in the Regional Natural Resources Plan. There has been no evaluation of this new definition. The new definition removes the word "undesirable" without any evaluation of the impact. FFNZ considers that the meaning of agrichemicals should include the word "undesirable".</p> <p>We also consider the term 'agriculture compounds' are confusing. Material relating to agriculture pastoral and horticulture is already included in the definition so it is difficult to know what the intention is. It seems that the intent is to capture fertiliser but then fertiliser is specifically excluded.</p> <p>We support the exclusion of vertebrate pest control products and oral nutrition compounds. We are not aware of any good reason to depart from NZS8409:2004 which states that vertebrate pest control products and oral nutrition compounds should not be subject to the controls applied to agrichemicals.</p>

Page	Reference	Support/oppose	Decision sought	Reasons

