



## **Submission on Proposed Plan Change 13 (Air Quality) to the Regional Natural Resources Plan**

*Prescribed FORM 5, Clause 6 of Schedule 1, Resource Management Act 1991*

### **Submitter details**

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### **Introduction**

- 1 This is a submission on the Proposed Plan Change 13 (Air Quality) to the Regional Natural Resources Plan (Air Plan).
- 2 Port of Tauranga is submitting on a number of aspects of the Air Plan.
- 3 Port of Tauranga could not gain an advantage in trade competition through this submission.

### **Scope of Submission**

The submissions of the Air Plan that this relates to all aspects of the plan including:

- Objectives;
- Policies;
- Rules and
- Definitions.

### **Submission**

Our submission is set out below:

### **Decision sought from Council**

Port of Tauranga seeks the following decision from Bay of Plenty Regional Council:

- Amend the Air Plan in accordance with the 'relief sought' in the attached table (Attachment A), or words to like effects (additions underlined, deletions ~~struckthrough~~).
- Any other further or consequential amendments required to address Port of Tauranga's concerns with the Air Plan, including edits, deletions or additions to any issues, objectives, policies, rules, maps, assessment or discretion criteria, or any explanatory text.

### **Hearing**

- 1 Port of Tauranga wishes to be heard in support of its submission.
- 2 If others make a similar submission, Port of Tauranga will not consider presenting a joint case with them at a hearing.

Date: 18 April 2018



Signature: \_\_\_\_\_

Rob Van de Munckhof (authorised to sign on behalf of Port of Tauranga Limited)

## Attachment A: Specific submissions

This section sets out the submissions by Port of Tauranga in relation to on Proposed Plan Change 13 (Air Quality) to the Regional Natural Resources Plan.

Specific Provision	Support / Oppose	The Submission is:	Relief Sought ( <u>additions underlined</u> , <u>deletions struck through</u> ):
All of Proposed Plan Change	Support with modification	Port of Tauranga generally supports the intention of the objectives, policies, rules and definitions set out in the Proposed Plan Change but considers that increased recognition of the regional significance of Port of Tauranga's assets in Bay of Plenty and the contribution to the regional and national economy should be reflected. Port of Tauranga's assets and operations make a significant contribution to the regional and national economy.	To retain the objectives, policies, rules and definitions of the Proposed Plan Change, except where otherwise requested by this submission. Any further and consequential amendments to achieve the intent of this submission.
Objective AQ 01	Support with modification	Port of Tauranga supports the intent of the objective but considers that "mauri" needs to be clearly defined in the context of this section of the plan or removed if this is not achievable. The Port of Tauranga considers that the current definition of Mauri in the Natural Resources Plan is not sufficient for the purposes of this objective. Port of Tauranga also considers that the Objective should refer to significant adverse effects. The current objective would seek to protect human health from all adverse effects which could only be achieved by having no discharges which is inconsistent with the purpose of the RMA.	Amend Objective AQ 01 to read: <i>Protect the <del>mauri</del> of air and human health from significant adverse effects of anthropogenic contaminant discharges to air, and enhance air quality where degraded.</i>
Objective AQ 02	Oppose	Port of Tauranga opposes the specific reference to the National Environmental Standards for Air Quality (2004) and Ambient Air Quality Guidelines (2002). Both documents are subject to change over time, and if these documents were updated, the plan would be inconsistent and could be seeking to meet a standard which is no longer appropriate. Port of Tauranga also consider that since the purpose of the NES and Ambient Air Quality Guidelines is to set standards and guidelines to protect human health, that Objective AQ 01 is sufficient to manage the potential effects of discharges to air.	Delete objective The region's ambient air quality meets the National Environmental Standards for Air Quality (2004) and the Ambient Air Quality Guidelines (2002).
Objective AQ 03	Support	Port of Tauranga supports the proposed objective	None

<b>Specific Provision</b>	<b>Support / Oppose</b>	<b>The Submission is:</b>	<b>Relief Sought (additions underlined, deletions struck through):</b>
Policy AQ P1	Support	Port of Tauranga supports the intent of the policy but considers the current rule framework of the Plan Change does not align with the policy because all industrial trade activities are assigned a discretionary status irrespective of the likely nature and scale of their resultant adverse effects.	
Policy AQ P2	Support with modification	Port of Tauranga supports the intent of the policy but considers that it should be amended. It appears the BOPRC has confused "hazardous substances" with "hazardous air pollutants" and "contaminants". Hazardous substances are defined under the Hazardous Substances and New Organisms Act and include a range of hazards of specific chemicals and mixtures. The RMA is focused on managing the discharge of contaminants into air which may or may not meet the definition of a hazardous substance under HSNO.  The policy as currently drafted sets a bottom line of avoiding all discharges of hazardous substances and case law (Davidson) has made it clear that bottom lines must be achieved. Port of Tauranga suggests that the qualification which commences with "and where avoidance is not possible..." would be subject to legal challenge in terms of the bottom line that precedes it. "Avoid" literally means there is no allowance for a discharge of any amount, irrespective of scale, and effects. The inclusion of "seek to avoid" at the commencement of the policy ensures that it clear that avoidance is preferable but not of itself a bottom line.	Amend Policy AQ P2 to read:  <u>Seek to avoid discharges of hazardous air pollutants</u> <del>substances to it and where avoidance is not possible, remedy or mitigate the discharge using the best practicable option.</del>
Policy AQ P3	Support with modification	Port of Tauranga supports the intent of the policy but considers that it should be amended. In terms of (a), the current drafting of the policy requires adverse effects to be avoided and this by inference means discharges must not result in any adverse effects. This outcome is not consistent with the intent of other provisions in the Proposed Plan Change or resource management practice in general. Port of Tauranga suggests that the inclusion of "remedy and mitigate" is consistent with the hierarchy of sustainable management measures set out within the RMA.  Port of Tauranga considers the text "contribute to" in (b) is inappropriate. This is because an activity could result in an insignificant contribution to an exceedance or breach of the ambient air quality standards of the NESAQ or exceed the health-based values of the AAQGs and therefore not be provided for. The incorporation of the text	Amend Policy AQ P3 to read:  Activities that discharge contaminants to air must be managed, including by use of the best practicable option, to:  (a) safeguard the life supporting capacity of the air, avoid, remedy or mitigate significant adverse effects on human health, and manage adverse effects on cultural values, amenity values, and the environment <del>(b) avoid the discharge of contaminants at a rate or volume that may contribute to, or cause a</del>

Specific Provision	Support / Oppose	The Submission is:	Relief Sought ( <u>additions underlined</u> , deletions <del>struck through</del> ):
		<p>“contributes to” removes the significance test and could see an activity which has a negligible effect on compliance with the standards and guidelines refused consent. Port of Tauranga also consider that (b) is appropriate in its entirety in a resource management practice context to avoid all adverse effects. If this were the case, then most if not all discharges to the environment would be prohibited by regional plans. In particular we note that the NES for Air Quality has an allowance for both existing discharges and new discharges below a level at which the effects or contribution is significant and where this is significant to allow for offsetting the discharges. Port of Tauranga supports (d) but considers the inclusion of “significant” into (d) is necessary.</p> <p>In Port of Tauranga’s view (e) is superfluous and to some extent conflicts with the other provisions. Consequently, it is requested that (e) is deleted in its entirety.</p>	<p><del>exceedance or breach of the ambient air quality standards of the NES/AQ or exceed the health-based values of the AAQGs</del></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 significant adverse effects on regionally significant infrastructure</p> <p><del>(e) minimise the discharge of contaminants into areas beyond the boundary of the subject property where it may cause adverse effects on human health, cultural values, amenity values, or the environment.</del></p>
AQ R1	Support with modification	<p>Port of Tauranga supports the inclusion of a permissive “catch all” provision and so generally supports the proposed rule. However, Port of Tauranga opposes the inclusion of (c). The way the rule is currently drafted, it makes all industrial or trade premises a discretionary activity irrespective of size, scale and effects. Port of Tauranga is concerned that some of its activities may be considered in the future to be “industrial or trade premises”.</p> <p>Port of Tauranga also considers it inappropriate for clause (a) to refer to any water body. As written it could be interpreted as applying to a water body within the property where the discharge is being undertaken which should be managed under the provisions of the Regional Natural Resources Plan.</p> <p>A minor amendment to clause (a) is also proposed to match how it is used within the RMA and to make it clear that it all applies to effects beyond the property boundary.</p>	<p>Amend Rule AQ R1 to read:</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 <u>effects of the discharge</u> must not be noxious, <u>or dangerous, offensive or objectionable</u> beyond the boundary of the subject property <del>or into any water body.</del></p> <p>(b) The discharge of smoke or water vapour must not adversely affect the safety of any vehicle, aircraft, or ship.</p> <p><del>(e) The discharge is not from industrial or trade premise</del></p>

Specific Provision	Support / Oppose	The Submission is:	<b>Relief Sought (additions underlined, deletions struck through):</b>
AQ R3	Support	Port of Tauranga supports the inclusion of a permitted activity rule for the ventilation and displacement of liquids in storage tanks and tankers.	Retain Rule AQ R3 as drafted.
AQ R4	Support	Port of Tauranga considers it would be unreasonable to have to obtain discharge permits for vehicle movements on unsealed roads and generally supports the rule. It is unclear though, why ships are specifically excluded. While the discharge from ships is managed under other legislation, the specific exclusion of ships rather than staying silent could create confusion over the status of discharges.	The discharge of contaminants to air from:  (a) any internal combustion engine used to power vehicles and aircraft ( <del>but not ships</del> ) is a permitted activity provided there is no clearly visible smoke for a continuous period of 5 seconds or more when the engine is idling  (b) vehicle movements on unsealed roads is a permitted activity
AQ R16	Support with modification	Port of Tauranga undertakes spray painting of infrastructure components to protect them from corrosion. Due to the location of the infrastructure and topographic conditions surrounding its infrastructure, it may be impracticable for Port of Tauranga to erect spray booths and stacks as required by (a) and (b). Given the locations of Port of Tauranga's operations and activities it considers that (c) is the only permitted activity condition required to ensure the discharge from spray painting results in acceptable adverse effects beyond the subject property boundary.  Port of Tauranga considers that the OR (ii) BPO method alternative provided under Rule AQ R 17 would be acceptable for its spray painting operations as would (d) under Rule AQ 17 as all operations would be "mobile". Port of Tauranga notes that blasting and painting are almost always undertaken together (i.e. it would be unusual to blast and then not paint it almost immediately). Therefore, it is unusual for the rules of the Proposed Plan Change to allow blasting to occur under a BPO method without a booth but not apply the same philosophy to the painting operation.	Amend Rule AQ R16 to read:  <i>The discharge of contaminants to air from the spray application of surface coatings containing di-isocyanates, organic plasticisers, or spray on anti-fouling paint (excluding the application of protective coatings to transmission line support structures) is a permitted activity provided the following conditions are complied with:</i>  (a) <i>The spraying is carried out in a spray booth, room, or enclosure fitted with an air extraction system that discharges all contaminants and exhaust air to an emission stack.</i>  (b) <i>The discharge must be an unimpeded vertical discharge from the emission stack at least 3 metres above the ridge height of the building and 3 metres above the highest ridgeline of any roof within 30 metres.</i>  <b><u>where (a) and (b) cannot be met due to the mobile nature on an operation then the discharge must be</u></b>

Specific Provision	Support / Oppose	The Submission is:	Relief Sought (additions <u>underlined</u> , deletions <del>struck through</del> ):
			<p><i>controlled using a current, best practice method such as screening and paint technologies and the owner/occupier/agent must notify the occupier of any properties within 50 metres of the blasting site at least 24 hours prior to commencing work.</i></p> <p><i>(c) The discharge must not be noxious or dangerous, offensive or objectionable beyond the boundary of the subject property.</i></p>
AQ R17	Support	As discussed above in submission point to AQ R16, Port of Tauranga undertakes abrasive blasting of infrastructure components to prepare them for painting. Due to the location of the infrastructure and topographic conditions surrounding its infrastructure, it will invariably be impracticable for Port of Tauranga to erect a sealed blasting booth as required under (a)(i). Therefore the retention of (a)(ii) is critical to Port of Tauranga.	Retain AQ R17 as drafted.
AQ R18	Support	Port of Tauranga supports the proposed rule, subject to the amendments to the definition of fuel burning equipment to exclude emergency and mobile generators and the new permitted activity rule for emergency or mobile generators.	Retain AQ R18 subject to proposed changes to definition of fuel burning equipment and new rule for emergency or mobile generators.
New Rule	-	Port of Tauranga operate mobile generators as part of port operations both as back-up power and to provide power to areas of the port where mains power is unavailable. The generators are typically diesel fired. Rule AQ R18 and the supporting Section 32 analysis are focused on the burning of fuel in boilers and does not address discharges from internal combustion engines just as standby and portable generators. Port of Tauranga considers that is appropriate to include a permitted activity rule for diesel fired generators that are operated to provide emergency electricity or are mobile. A permitted activity limit of 600KVA has been proposed. This is the equivalent of the current limit for the combustion of clean oil in AQ R18 of 500kw. The proposed rule limit has been proposed using the load as the limit as this is typically used in the specification for diesel fired generators and can be readily determined from specification sheets.	<p>New Rule:</p> <p><i>The discharge of contaminants to air from the internal combustion of diesel in any mobile or emergency generator with a maximum load of 600 KVA is a permitted activity provided the following conditions are met:</i></p> <p><i>(a) The discharge must not be noxious or dangerous, offensive or objectionable beyond the boundary of the subject property; and</i></p> <p><i>(b) The discharge must not occur for more than 48 hours within 50m of a sensitive activity.</i></p>

Specific Provision	Support / Oppose	The Submission is:	<b>Relief Sought (additions underlined, deletions struck through):</b>
		In addition as mobile generators have the potential to be used in close proximity to sensitive activities, a clause limiting the duration of any discharge where is located within 50m of sensitive activity.	
AQ R21	Support	Port of Tauranga supports the intention of the rule which seeks to identify the specific Industrial or Trade Activities which discharge contaminants to air where the significant effects could occur. While Port of Tauranga supports the proposed rule, it considers a minor amendment to clarify it only applies to the discharges where not otherwise permitted in the plan.	The discharge of contaminants into air from any of the following activities is a discretionary activity, <b>where not otherwise permitted in the plan:</b> ... The discharge of contaminants into air from any of the following activities is a discretionary activity, where not otherwise permitted in the plan:
Definitions- Fuel burning equipment	Oppose	Port of Tauranga seek clarification to the definition of Fuel burning equipment to make it clear this does not apply to the combustion of diesel within portable or emergency generators.	Fuel burning equipment often referred to as a "boiler" means a device used for the combustion of fuel within an enclosed combustion chamber in which heat is transferred from the products of combustion directly for the production of useful heat or power. For clarity this excludes vehicles, ships, aircraft, solid fuel burners, <b>Mobile and emergency generators</b> and enclosed incineration.
Definitions – noxious or dangerous	Oppose	Port of Tauranga considers the definition should be deleted. Noxious or dangerous is used within the RMA and case law has considered this based on a normal English language definition. The inclusion of the definition could result in a conflict between further court interpretation under the Act and the definition in the plan. Further guidance on what is considered noxious or dangerous is also included the MFE Good Practice guides for odour, dust and industry. No similar definition is provided for offensive or objectionable which are used together with noxious or dangerous within the plan.	<del>Noxious or dangerous means an activity or discharge of contaminants to air that causes, or is likely to cause, an adverse effect on property and/or the environment.</del> <del>This may include, but is not limited to, the following:</del> <del>(a) Human health effects from acute exposure or chronic exposure. These include allergic reactions, toxic poisoning or exposure to carcinogens.</del> <del>(b) Contamination of potable water supplies where the concentration of contaminant in the water supply is at a level that exceeds the safe level for human consumption.</del>



Specific Provision	Support / Oppose	The Submission is:	Relief Sought (additions <u>underlined</u> , deletions <del>struck through</del> ):
Definitions – public amenity area	Support with modification	Port of Tauranga considers the current definition for public amenity area includes a number of specific areas which are not always areas where people congregate for extended periods of time. People are only present at a specific location on cycleways, parks and reserves (where playgrounds, sports fields and seating are not provided) and walkways for a short period of time.	<p>(e) <del>Exceedance of a maximum residue limit for an agricultural on, or in, food or stock feed at harvest or slaughter.</del></p> <p>(d) <del>Adverse effects on ecosystems including water bodies. This includes exotic and indigenous flora and fauna.</del></p> <p>(e) <del>Damage to crops or plants where contaminants have affected the growth or quality of the crop such that levels exceed safe levels for human consumption and/or the market value of the crop is reduced.</del></p> <p>(f) <del>A discharge of fertiliser or agricultural spray that compromises the organic status of another property.</del></p> <p>(g) <del>Damage to paintwork, windows or surfaces from deposition of airborne contaminants.</del></p> <p>(h) <del>Reduced visibility that endangers the passage of any vehicle, aircraft, or ship.</del></p> <p>Public amenity area means a public area where members of the public are likely to congregate for extended periods of time, including (but not limited to): backcountry huts, barbecues, changing facilities, eyeleways, outdoor sports facilities, <del>parks and reserves</del>, playgrounds and playground equipment, public toilets, seating and picnic tables, shelters, squares, and walkways.</p>
Definitions – sensitive activity	Support with modification	Port of Tauranga supports the proposed definition subject to modifications. A number of the activities listed may not be sensitive to all contaminants and in all circumstances. For example, public water supply catchments, wetlands will not be sensitive to discharges of odour, dust or particulate. Further food manufacturing facilities are typically located within industrial areas where other discharges to air will	<p>Sensitive activity means an activity that may be adversely affected by contaminants and includes:</p> <p>(a) <u>residential buildings and areas (including marae);</u></p> <p>(b) <u>childcare centres, schools, educational facilities</u></p>

Specific Provision	Support / Oppose	The Submission is:	Relief Sought (additions <u>underlined</u> , deletions <del>struck through</del> ):
		<p>be present and can be sources of discharges to air themselves (for example odour from roasting).</p>	<p>(c) <u>hospitals, nursing homes, aged care facilities</u> (d) <u>offices, consulting rooms, gymnasiums, community centres</u>  (e) <u>hotels, motels, caravan parks, camping areas, tourist accommodation</u>  (f) <u>correctional facilities</u>  (g) <u>public amenity areas</u>  (h) <u>manufacturing or storage of food or beverages</u>  (i) <u>manufacturing or storage of electronics</u>  (j) <u>public water supply catchments and intakes</u> (k) <u>water bodies, watercourses (as listed in Schedule 3) and associated riparian vegetation</u> (l) <u>incompatible crops or farming systems (e.g. organic farms, greenhouses)</u>  (m) <u>wetlands, indigenous vegetation habitat areas and reserves</u>  (n) <u>household water supplies (including roofs from which a water supply is obtained)</u>.</p>