

IN THE ENVIRONMENT COURT  
I MUA I TE KOOTI TAIAO O AOTEAROA

IN THE MATTER of the Resource Management Act 1991  
(the Act)

AND of appeals under clause 14(1) of the  
Schedule 1 of the Act

BETWEEN WESTERN BAY OF PLENTY DISTRICT  
COUNCIL  
(ENV-2019-AKL-000070)  
TAURANGA CITY COUNCIL  
(ENV-2019-AKL-000075)  
Appellants

AND BAY OF PLENTY REGIONAL COUNCIL  
Respondent

Environment Judge D A Kirkpatrick sitting alone under s 279 of the Act  
In Chambers at Auckland

---

**CONSENT ORDER**

---

- [A] Under s 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:
- (1) the appeals are allowed in part subject to the amendments set out in this order;
  - (2) the appeal by Tauranga City Council is otherwise dismissed.
  - (3) The appeal by Western Bay of Plenty District Council is resolved in part.
- [B] Under s 285 of the Resource Management Act 1991, there is no order as to costs.
- 



## REASONS

### **Introduction**

- [1] These appeals concern the Bay of Plenty Regional Council's (**Regional Council**) decisions on Proposed Plan Change 13 (Air Quality) to the Bay of Plenty Natural Resource Plan (**Plan Change 13**).

### **Crematoria**

- [2] Tauranga City Council appealed the Regional Council's decisions on Plan Change 13 in relation to crematoria, and in particular appealed two rules in Plan Change 13 to provide further clarification of the rules as they relate to replacements or upgrades of existing crematoria facilities.
- [3] The parties have agreed that this appeal point can be resolved by making the following amendments to Plan Change 13:
- (a) Amending the advice note to discretionary rule AQ R21(g) to clarify that this rule does not apply to replacements, maintenance or upgrades of existing crematoria facilities; and
  - (b) Amending controlled activity rule AQ R27(a) to clarify that this rule applies to upgrades, maintenance and replacements of existing crematoria.
- [4] There are no s 274 parties to the appeal.

### **Roads and Free Range Farming**

- [5] Western Bay of Plenty District Council appealed the Regional Council's decisions on Plan Change 13 in relation to roads and free range farming, and in particular appealed two rules and one definition in Plan Change 13 to provide further clarification of the rule relating to discharges of dust from vehicles on unsealed roads, and further clarification to the rule and definition of free range farming.
- [6] The parties have agreed that these appeal points can be resolved by making the following amendments to Plan Change 13:
- (a) Amending permitted activity rule AQ R4 to clarify that it relates to discharges of dust from vehicles on unsealed roads; and



(b) Amending discretionary rule AQ R21(j)(i) to further clarify that existing free range farms cannot increase the level of effects which existed at 27 February 2018, and to remove superfluous words from the definition of 'free range farming' to improve the clarity of the definition.

[7] There are no s 274 parties to these aspects of the Western Bay of Plenty District Council appeal. The remaining parts of Western Bay of Plenty District Council's appeal remain live.

[8] In making this order the Court has read and considered the appeal and the joint memorandum of the parties.

[9] The Court is making this order under s 279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to s 297 of the Act. The Court understands for all present purposes that:

(a) all parties to the proceedings have executed the memorandum requesting this order; and

(b) all parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to relevant requirements and objectives of the Resource Management Act 1991, including in particular Part 2.

### Order

1. Therefore, the Court orders, by consent, that:

(a) Rule AQ R4;

(b) Rule AQ R21(j);

(c) Advice note to Rule AQ R21;

(d) Rule AQ R27(a); and

(e) The definition of "free range farming"

in Plan Change 13 (Air Quality) to the Bay of Plenty Natural Resources Plan are amended as shown in **Appendix A** of this order.

2. A clean version is included in Appendix B.



3. There is no order for costs.

DATED at Auckland this *20th* day of *November* 2019



---

D A Kirkpatrick  
Environment Judge



**APPENDIX A – tracking in underline and ~~strikethrough~~**

1. Amend Rule AQ R4 of Plan Change 13 (Air Quality) to the Bay of Plenty Natural Resources Plan (Plan Change 13) as follows:

**AQ R4 Roads – Permitted – Ngā huarahi – E whakaaehia ana**

The discharge of ~~contaminants~~ dust to air from vehicle movements on **unsealed roads** is a permitted activity.

2. Amend Rule AQ R21(j) and the Advice Note to Rule AQ R21 of Plan Change 13 as follows:

**AQ R21 Specific activities – Discretionary – Ngā mahinga tauwhāiti – Ka whiriwhiriha**

The discharge of *contaminants* into air from any of the following activities is a discretionary activity:

...

- (g) Crematoria where a new facility with a new discharge to air is being established after 27 February 2018.

...

- (j) Farming activities as follows:

- (i) **free range farming** of pigs, or more than 100 **poultry** birds, where either a new ~~farm~~ free range farming operation is being established or where an existing farming operation increases ~~is increasing the~~ character, intensity or scale of the effects of ~~the activity, that existed as at~~ after 27 February 2018.

- (ii) **intensive farming** not controlled by AQ R19

...

Advice Note: The operation of an **incinerator** at a school or healthcare institution is prohibited under the National Environmental Standards for Air Quality, unless a resource consent was granted before 30 October





2006. To avoid doubt, Rule AQ R21(g) does not apply to replacements, maintenance or upgrades to existing crematoria facilities.

3. Amend Rule AQ R27(a) of Plan Change 13 as follows:

**AQ R27 Crematoria – controlled – E whakahaerehia ana**

From 1 February 2020, the discharge of *contaminants* to air from crematoria facilities that were established before 27 February 2018, is a controlled, non-notified activity for which applications will be considered without the need to obtain the written approval of affected persons.

The Regional Council reserves control over the following matters:

- (a) Setting conditions to control cremator operation, upgrades, maintenance and replacements, the number of cremations and contaminants discharged from the facility, including but not limited to any matter contained in relevant industry codes of practice.

...

4. Amend the definition of 'free range farming' in Plan Change 13 as follows:

**Free-range farming** means farms where poultry or pigs (other than those kept as pets) ~~are housed indoors,~~ but have free access to the outdoors.



**APPENDIX B – clean**

1. Amend Rule AQ R4 of Plan Change 13 (Air Quality) to the Bay of Plenty Natural Resources Plan (Plan Change 13) as follows:

**AQ R4 Roads – Permitted – Ngā huarahi – E whakaaehia ana**

The discharge of dust to air from vehicle movements on **unsealed roads** is a permitted activity.

2. Amend Rule AQ R21(j) and Advice Note to Rule AQ R21 of Plan Change 13 as follows:

**AQ R21 Specific activities – Discretionary – Ngā mahinga tauwhāiti – Ka whiriwhirihia**

The discharge of *contaminants* into air from any of the following activities is a discretionary activity:

...

- (g) Crematoria where a new facility with a new discharge to air is being established after 27 February 2018.

...

- (j) Farming activities as follows:

- (i) **free range farming** of pigs, or more than 100 **poultry** birds, where either a new free range farming operation is being established or where an existing farming operation increases character, intensity or scale of the effects that existed as at 27 February 2018;

- (ii) **intensive farming** not controlled by AQ R19

...

Advice Note: The operation of an **incinerator** at a school or healthcare institution is prohibited under the National Environmental Standards for Air Quality, unless a resource consent was granted before 30 October



2006. To avoid doubt, Rule AQ R21(g) does not apply to replacements, maintenance or upgrades to existing crematoria facilities.

3. Amend Rule AQ R27(a) of Plan Change 13 as follows:

**AQ R27 Crematoria – controlled – E whakahaerehia ana**

From 1 February 2020, the discharge of *contaminants* to air from crematoria facilities that were established before 27 February 2018, is a controlled, non-notified activity for which applications will be considered without the need to obtain the written approval of affected persons.

The Regional Council reserves control over the following matters:

- (b) Setting conditions to control cremator operation, upgrades, maintenance and replacements, the number of cremations and contaminants discharged from the facility, including but not limited to any matter contained in relevant industry codes of practice.

...

4. Amend the definition of 'free range farming' in Plan Change 13 as follows:

**Free-range farming** means farms where poultry or pigs (other than those kept as pets) have free access to the outdoors.

