

Plan Change 13 (Air Quality) Appeals Subcommittee

NOTICE IS GIVEN

that the next meeting of the **Plan Change 13 (Air Quality) Appeals Subcommittee** will be held in **Mauao Room 1, Bay of Plenty Regional Council, 87 First Avenue, Tauranga** on:

Wednesday, 12 February 2020 commencing at 9.30 am

Fiona McTavish
Chief Executive
3 February 2020



Proposed Plan Change 13 (Air Quality) Appeals Subcommittee

Membership

Chairperson	Cr Andrew von Dadelszen
Member All members must hold current RMA Commissioner Accreditation	Cr Matemoana McDonald
Quorum	Two members, consisting of the number of members
Meeting frequency	As required

Purpose and Role

To guide the resolution of any Environment Court appeals on Proposed Plan Change 13 to the Regional Natural Resources Plan.

Power to Act

- To make all decisions necessary to fulfil the role and scope of the committee subject to the limitations imposed for the duration of Environment Court Appeals on Proposed Plan Change 13 to the Regional Natural Resources Plan unless discharged earlier by the Strategy and Policy Committee.
- The Chief Executive has delegated the authority to resolve Environment Court appeals on Proposed Plan Change 13 to the Regional Natural Resources Plan to, subject to the direction of the Appeals Subcommittee. The Chief Executive has delegated the authority to staff according to the Chief Executive Delegations Manual, subject to the direction of the Appeals Subcommittee and Council's legal advisors. For the avoidance of doubt, this shall include senior planning staff resolving appeals consistent with direction received from the Appeals Subcommittee.
- The Strategy and Policy Committee Chair has delegated authority to appoint replacement members to the Appeals Subcommittee if necessary.

Power to Recommend

Proposed Plan Change 13 (Air Quality) Appeals Subcommittee recommends and reports to the Strategy and Policy Committee.

Public Forum

1. A period of up to 15 minutes may be set aside near the beginning of the meeting to enable members of the public to make statements about any matter on the agenda of that meeting which is open to the public, but excluding any matter on which comment could prejudice any specified statutory process the council is required to follow.
2. The time allowed for each speaker will normally be up to 5 minutes but will be up to the discretion of the chair. A maximum of 3 public participants will be allowed per meeting.
3. No statements by public participants to the Council shall be allowed unless a written, electronic or oral application has been received by the Chief Executive (Governance Team) by 12.00 noon of the working day prior to the meeting and the Chair's approval has subsequently been obtained. The application shall include the following:
 - name of participant;
 - organisation represented (if any);
 - meeting at which they wish to participate; and matter on the agenda to be addressed.
4. Members of the meeting may put questions to any public participants, relevant to the matter being raised through the chair. Any questions must be asked and answered within the time period given to a public participant. The chair shall determine the number of questions.

Membership

Chairperson:	A von Dadelszen
Councillors:	M McDonald
Committee Advisor:	S Kameta

Recommendations in reports are not to be construed as Council policy until adopted by Council.

Agenda

- 1 Apologies**
- 2 Public Forum**
- 3 Acceptance of Late Items**
- 4 General Business**
- 5 Confidential Business to be Transferred into the Open**
- 6 Declarations of Conflicts of Interests**
- 7 Previous Minutes**
- 7.1 Plan Change 13 (Air Quality) Appeals Subcommittee Minutes - 16 January 2020** **11**
- 8 Reports**
- 8.1 Update on Consent Orders** **15**
 - APPENDIX 1 - Proposed Plan Change 13 Version 9.2 clear copy - 5 December 2019 21
 - APPENDIX 2 - Consent Order on Plan Change 13 - Tauranga City Council and WBOPDC ENV-2019-AKL-000070 and ENV-2019-AKL-000075 53
 - APPENDIX 3 - Consent Order on Plan Change 13 - ENV-2019-AKL-000074 Trustpower Limited v Bay of Plenty Regional Council 63
 - APPENDIX 4 - Draft consent order Timberlands 73

9 Public Excluded Section

99

Resolution to exclude the public

THAT the public be excluded from the following parts of the proceedings of this meeting.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General Subject of Matter to be Considered	Reason for passing this resolution in relation to this matter	Grounds under Section 48(1) LGOIMA 1987 for passing this resolution
9.1 Public Excluded Plan Change 13 (Air Quality) Appeals Subcommittee Minutes - 16 January 2020	Please refer to the relevant clause in the open minutes.	That the public conduct of the whole or the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist.
9.2 Update on Mediations for Plan Change 13 (Air Quality)	To maintain legal professional privilege	To deliberate in private, Council's decision where a right of appeal lies.

9.1 Public Excluded Plan Change 13 (Air Quality) Appeals Subcommittee Minutes - 16 January 2020	101
9.2 Update on Mediations for Plan Change 13 (Air Quality)	105
APPENDIX 1 - Mediation Agreement Signed - Fonterra	115
APPENDIX 2 - Mediation agreement signed - Bulk Solid Handling	121
APPENDIX 3 - Mediation agreement signed - Reverse Sensitivity	129
APPENDIX 4 - Mediation agreement - Objectives, Policies, AQ R1, Method, and Definition	135
APPENDIX 5 - Mediation agreement signed - Open Burning	145
APPENDIX 6 - Mediation agreement signed - Agrichemical Spraying	153
APPENDIX 7 - Extract from NZ Standard Management of Agrichemicals	165

10 Confidential Business to be Transferred into the Open

11 Readmit the Public

12 Consideration of General Business

Previous Minutes

Minutes of the Plan Change 13 (Air Quality) Appeals Subcommittee Meeting held in Mauao Room 1, Bay of Plenty Regional Council, 87 First Avenue, Tauranga on Thursday, 16 January 2020 commencing at 9.30 am

Present:

Chairman: Councillor Andrew von Dadelszen

Councillors: Matemoana McDonald

In Attendance: Karen Parcell – Team Leader Kaiwhakatinana, Sarah Omundsen – General Manager Regulatory Services, Shari Kameta – Committee Advisor

1 Apologies

Nil

2 Public Forum

Nil

3 Acceptance of Late Items

Nil

4 General Business

Nil

5 Confidential Business to be Transferred into the Open

Nil

6 Declaration of Conflicts of Interest

Cr von Dadelszen declared a perceived conflict of interest in relation to Agenda item 8.1 (Ballance Agri-Nutrients appeal).

6.1 Public Excluded Section

Resolved

Resolution to exclude the public

THAT the public be excluded from the following parts of the proceedings of this meeting.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General Subject of Matter to be Considered	Reason for passing this resolution in relation to this matter	Grounds under Section 48(1) LGOIMA 1987 for passing this resolution
Plan Change 13 (Air Quality) Updated Direction on Appeal Points for Mediation	To maintain legal professional privilege	To deliberate in private, Council's decision where a right of appeal lies

von Dadelszen/McDonald
CARRIED

The meeting closed at 10.45 am at the conclusion of the public excluded section of the meeting.

Confirmed DATE

Cr Andrew von Dadelszen
Chairperson

Reports



Receives Only – No Decisions

Report To: Plan Change 13 (Air Quality) Appeals Subcommittee

Meeting Date: 12 February 2020

Report From: Julie Bevan, Policy & Planning Manager

Update on Consent Orders

Executive Summary

At its meeting in October 2019 the Appeals Subcommittee agreed to recommended relief on five appeal points. Staff lodged three memorandums to the Environment Court setting out the agreements between parties.

Two consent orders have been received from the Court resolving the appeals from Tauranga City Council and Trustpower Limited in full, and the appeal from Western Bay of Plenty District Council in part.

A third memorandum has been lodged setting out an agreement to resolve the appeal from Timberlands Limited in part. The draft consent order is lying in Court pending the outcome of consent documents or hearings on related appeal points.

This report presents a summary of the agreements according to topic:

- Topic 1B Crematoria
- Topic 1D Mobile or emergency diesel generators
- Topic 1E Roads and free range farming
- Topic 2 Definition of 'bulk solid material'
- Topic 4I Definition of 'free range farming'

Recommendations

That the Plan Change 13 (Air Quality) Appeals Subcommittee

- 1 Receives the report, Update on Consent Orders.**

1 Purpose

This report updates the Appeals Subcommittee on appeal points to Plan Change 13 to the Regional Natural Resources Plan (the plan change), that have been resolved by consent orders from the Environment Court.

2 Background

The plan change was notified in February 2018. Hearings were held in October 2018 and the decisions version of the plan was approved by the Regional Direction and Delivery Committee of the Regional Council and released in April 2019.

Ten appeals were received and fourteen parties notified the Environment Court of their interest in various appeal points.

Following a number of meetings and negotiations, some appeal points have been resolved. This report gives a full summary of each of these appeal points by topic number:

- Topic 1B Crematoria
- Topic 1D Mobile or emergency diesel generators
- Topic 1E Roads and Free-range farming
- Topic 2 Definition of “bulk solid material”
- Topic 4I Definition “free range farming”

Version 9.2 of the plan change, showing the changes made as a result of the consent orders (as well as all unresolved appeal points), is attached as Appendix 1.

3 Topic 1B – Crematoria

The plan change included a clause in rule AQ R21 that listed “crematoria installed after 27 February 2018” as a discretionary activity. This allowed any existing crematoria to continue to operate as a permitted activity, while new crematoria needed to apply for a resource consent as a discretionary activity.

Following a number of submissions to this rule staff recommended a change that clarified that only new facilities, or existing facilities that increased the character, intensity or scale of the effects of the discharge to air after 27 February 2018 were discretionary activities.

The Hearing Panel recommended that new crematoria remained as discretionary activities but that existing crematoria be classified as controlled activities. This would allow the effects of existing discharges to be assessed to ensure appropriate controls are in place. The Hearing Panel amended AQ R21(g), added a new controlled activity rule AQ R27, and the Regional Council approved these recommendations.

Tauranga City Council appealed these rules AQ R21(g) and AQ R27 and there were no interested parties. The appeal sought to clarify that rule AQ R21(g) does not apply to replacements or upgrades to existing crematoria facilities, as follows:

AQ R21 Specific activities – Discretionary – Ngā mahinga tauwhāiti – Ka whiriwhirihiā

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.

Advice Notes

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.](#)

AQ R27 Crematoria – Controlled – (tba) – 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.
- (b) Setting conditions to require stack emissions monitoring and testing of soil samples to assess mercury accumulation.
- (c) Duration of consent and consent condition review including the timing and purpose of the review
- (d) Compliance monitoring.
- (e) Payment of administrative charges.

Staff recommended the relief as sought by the appellant and this was approved by the Appeals Subcommittee via memorandum dated 3 September 2019. A memorandum was lodged with the Environment Court and the Consent Order dated 21 November 2019 is included as Appendix 2.

This resolves the appeal from Tauranga City Council in full.

4 Topic 1D – Mobile or emergency diesel generators

This rule was not included in the proposed plan change. However, the proposed plan change contained two rules that were amended through the process which has led to this appeal point regarding diesel fired generators.

Rule AQ R18, sets out the permitted activity conditions for fuel burning equipment, which inadvertently captured diesel fired generators. Therefore the appellant requested the exclusion of diesel fired generators and the Hearing Committee agreed to this change.

The Port of Tauranga requested a new rule to specifically permit emergency diesel generators with conditions. The Hearing Committee also heard from Mercury Energy

requesting an additional clause to AQ R23 providing for diesel-fired combustion sources at geothermal drilling and generation sites. These strict conditions were accepted and recommended by the Hearing Committee.

Upon release of the decisions version of the plan, the appellant noted that the combination of all changes to the rules resulted in their 1000 kVa diesel fired generator falling outside the requirements of the permitted activity rule AQ R23. The appellant acknowledged their further submission to Port of Tauranga's submission which proposed the 600 kVa threshold, but upon reflection realise that this would not allow their 1000 kVa generator as permitted.

The appellant requested removal of the maximum load of 600 kVa however staff recommended amending the maximum permitted size to match the appellant's generator – 1000 kVa.

The appellant also requested a change to condition 1(a) allowing a discharge to occur for no more than 48 hours consecutively, and to remove the word "geothermal" from clause (b) condition (i). Staff recommended these changes and the Subcommittee agreed to this relief at the meeting on 1 October 2019.

AQ R23 Mobile or emergency diesel generators and pumps – Permitted – (tba) – E whakaaehia ana

- (1) The discharge of *contaminants* to air from the internal combustion of diesel in any mobile or emergency generator or pump with a maximum load of ~~600~~ **1000** kilovolt-amperes is a permitted activity provided the following conditions are met:
 - (a) the discharge must not occur for more than 48 hours during any single event within 50 metres of a **sensitive area**, and
 - (b) fuel used in the generator or pump must comply with the Engine Fuel Specifications Regulations 2011, and
 - (c) the discharge must not be noxious or dangerous, offensive or objectionable beyond the boundary of the **subject property**.
- (2) For the internal combustion of diesel in any mobile or emergency generator or pump with a total combined output of less than 5000 kilovolt-amperes, the discharge is a permitted activity provided:
 - (a) the discharge is associated with ~~geothermal~~ electricity generation activities, including geothermal drilling, and
 - (b) the discharge must not occur for a period of more than 3 months per wellhead or generation site, and
 - (c) the discharge must not occur within 200 metres of a **sensitive area**, excluding discharges to air from pumps which may be located adjacent to *water bodies* and buildings that are defined as a **sensitive area** and are uninhabited for the duration of the discharge, and
 - (d) fuel used in the generator or pump must comply with the Engine Fuel Specifications Regulations 2011, and

the discharge must not be noxious or dangerous, offensive or objectionable beyond the boundary of the **subject property**

A memorandum was lodged with the Environment Court and the Consent Order dated 5 December 2019 is included as Appendix 3.

This resolves the appeal from Trustpower Limited in full.

5 Topic 1E – Roads and Free-range farms

The appellant requests a change to AQ R4 from “contaminants” to “dust” to more precisely fit the intent of the rule which is to permit the discharge of dust from vehicle movements on unsealed roads.

The rule was deliberately worded to apply to “vehicle movements” on unsealed roads, not “vehicle emissions”, or just “vehicles”. Therefore any other contaminant is unlikely to be captured. However, the appellant’s relief would further clarify the rule, making it clear that dust from vehicle movements on unsealed roads is the only contaminant permitted by this rule.

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.

The appellant also requests some minor changes to AQ R21(j)(i) to make it clear that existing free range farms cannot increase the level of effects which existed at 27 February 2018 and to refer specifically to free-range farming operations.

AQ R21(j)(i)

(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.

There were no interested parties to these appeal points and the Subcommittee agreed to the relief sought during its meeting in October 2019.

A memorandum was lodged with the Environment Court and the Consent Order dated 21 November 2019 is included as Appendix 2.

This resolves the appeal from Western Bay of Plenty District Council in part.

6 Topic 2 – Definition of ‘bulk solid materials’

Timberlands Limited (Timberlands) have appealed the definition of bulk solid material (ENV-2019-AKL-000073). Port of Tauranga, and Swaps are both s274 parties to this appeal. Reasons given for the appeal is that the definition of bulk solid material is of concern as it lists a number of materials that could include logs.

In October 2019 the Subcommittee agreed to a revised version of the definition to resolve the appellant’s issue. This relief was accepted by the all parties as follows:

Bulk solid material means ~~means~~ materials consisting of, or including, fragments that could be discharged as dust or **particulates**. These materials include but are not limited to: gravel, quarried rock, **fertiliser**, coal, cement, flour, rock aggregate, grains, compost, palm kernel extract, tapioca, and woodchip (but do not include logs).

A draft memorandum was sent to the Court in December 2019. However, as other appeal points relate directly to Rule AQ R22, which includes the definition of Bulk Solid Material, the parties seek that the draft consent order lie in Court pending the outcome of either later draft consent documents or hearings relating to the above appeals.

The draft memorandum lodged with the Court is included as Appendix 4.

7 Topic 4I – Definition of ‘free range farming’

The Hearing Committee also recommended inclusion of the words “are housed indoors” to this definition. The appellant requested that these words were deleted as they could potentially allow challenge and argument as to what indoors means. The phrase is considered superfluous by the appellant as the intent of free range farming is to allow animals free access to the outdoors rather than to require them to be indoors at all times.

In October 2019 the Subcommittee agreed to the following relief as requested by the appellant.

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.

A memorandum was lodged with the Environment Court and the Consent Order dated 21 November 2019 is included as Appendix 2.

This resolves the appeal from Western Bay of Plenty District Council in part.

8 Community Outcomes

This project directly contributes to the Healthy Environment Community Outcome in the Council’s Long Term Plan 2018-2028.

Karen Parcell
Team Leader Kaiwhakatinana

for Policy & Planning Manager

3 February 2020

APPENDIX 1

**Proposed Plan Change 13 Version 9.2 clear copy -
5 December 2019**



Version 9.2
December 2019

PROPOSED

Plan Change 13 (Air Quality)

to the Regional Natural Resources Plan

APPEALS VERSION

Clear Copy

This version incorporates the decisions on submissions and further submissions made by the Bay of Plenty Regional Council.

Appeals: Provisions subject to appeal are highlighted in yellow.

Note: additions to provisions requested by appellants are not shown

Bay of Plenty Regional Council
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Contents

AQ Air Quality	1
Objectives	1
Policies	1
Rules	5
Interpretation of the terms noxious or dangerous, offensive or objectionable.....	19

AQ Air Quality

He tapu te hā – the breath is sacred.

This chapter of the regional plan provides policies and rules to manage the discharge of *contaminants* to air from **anthropogenic** sources. **Anthropogenic** means created by or caused by humans. **Anthropogenic** discharges include odour, dust, **particulates**, smoke and spray which come from a variety of human activities. Natural sources of *contaminants* such as pollen, and gas and odour discharges from **geothermal fields** or volcanoes, are not managed by this regional plan.

Other than the adverse *effects* on ambient or local air quality, this regional plan does not address greenhouse gases or climate change. Nor does the regional plan take into account indoor air quality (for example in workplace buildings) and it does not address health and safety issues related to air quality on work sites or in private homes as these matters are covered by other legislation.

Terms in this chapter that are defined in the Definition of Terms are highlighted in bold. Terms defined in the Act, in other Acts of Parliament, or in national regulations, that have been included in the Definition of Terms for information only, are shown in italics.

Objectives

- AQ 01 Protect air from adverse effects — Te tiaki i te hau mai i ngā pānga kino**
Protection of the mauri of air and human health from adverse *effects* of **anthropogenic** *contaminant* discharges to air.
- AQ 02 Ambient air quality — Te pai o te hau**
The region's **ambient air** quality meets the National Environmental Standards for Air Quality (2004) (or its amendment or replacement).
- AQ 03 Local air quality — Te pai o te hau o te rohe**
Sustainable management of discharges of *contaminants* to air according to their adverse *effects* on human health, cultural values, amenity values and the **receiving environment**.

Policies

- AQ P1 Classification of activities — Te wehewehenga o ngā mahinga**
Manage the discharge of *contaminants* to air **according to the following**:
- (a) Provide for the discharge of *contaminants* to air by permitting discharges from activities where the discharge can be suitably managed with general conditions to avoid, remedy or mitigate any adverse *effects* of the discharge.
 - (b) **Classify** all other discharges where (a) does not apply, as controlled, restricted discretionary, discretionary, or non-complying activities.

AQ P2 Hazardous substances — Ngā matū mōrearea

Seek to avoid adverse *effects* from discharges of **hazardous substances** and hazardous air pollutants to air and where avoidance is not practicable, remedy or mitigate the adverse *effects* of the discharge using the *best practicable option*.

AQ P3 Management of discharges — Te whakahaere i ngā tukunga

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, protect human health, and avoid, remedy or mitigate adverse *effects* on cultural values, amenity values, and the *environment*
- (b) **avoid** the discharge of *contaminants* at a rate or volume that may cause an exceedance or breach of the **ambient air** quality standards of the National Environmental Standards for Air Quality (or its replacement or amendment).
- (c) **avoid** reduction in visibility where it may cause adverse *effects* on vehicle, aircraft, or *ship* safety
- (d) avoid, remedy or mitigate the discharge of *contaminants* that may cause adverse *effects* on regionally significant **infrastructure/industry**

AQ P4 Matters to consider — Ngā take hei whiriwhiri

Have particular regard to the following matters when considering the acceptability of any discharge of *contaminants* to air:

- (a) The proximity of **sensitive areas** to the discharge including the *effect* of new activities discharging *contaminants* into air near established **sensitive areas**.
- (b) Areas where the discharge may cause an exceedance or breach of the **ambient air** quality standards of the National Environmental Standards for Air Quality or exceed the Health-based Guideline Values in Table 1 of the Ambient Air Quality Guidelines (or their replacements or amendments).
- (c) Adverse *effects* on air quality values identified in the relevant iwi and hapū resource management plans during assessments of resource consent applications.
- (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) Whether a change to an activity expressly allowed by an existing resource consent will cause a net increase of **particulates** into an **airshed** in breach of the ambient air quality standard for **particulates** of the National Environmental Standards for Air Quality.
- (h) The operational requirements and locational constraints relevant to the discharge and/or activity.
- (i) Any other recognised air quality guidelines or standards (not listed) that are appropriate to the discharge.
- (j) The FIDOL factors (frequency, intensity, duration, offensiveness, location) when determining adverse *effects* in relation to odour and dust discharges.
- (k) The investment of existing **infrastructure** that mitigates adverse *effects* of discharges of *contaminants* to air.

AQ P5 Open burning — Te tahutahu ahi

Manage **open burning** by:

avoiding the discharge of *contaminants* to air from **open burning** within 100 metres of any neighbouring **dwelling house**, except where carried out as part of a **recreational/cultural** activity, provided the burning is managed to minimise production of noxious or dangerous, offensive or objectionable discharges

permitting **open burning**:

- (a)
 - (i) provided the burning is managed to minimise production of noxious or dangerous, offensive or objectionable discharges
 - (ii) of animal carcasses and/or vegetative material burned in accordance with quarantine or disease control requirements
- (b)
 - (iii) for the purposes of firefighting research or training.

AQ P6 Solid fuel burners — Ngā pāka ahi

Avoid significant adverse *effects* on the *environment* from the operation of **solid fuel burners** installed in **dwelling houses** or buildings by avoiding:

- (a) excessive discharge of **particulates** (eg. caused by burning wet wood or restricting oxygen flow to the fire)
- (b) any discharge that is noxious or dangerous, offensive or objectionable (eg. burning painted or **treated timber** or *waste*).

AQ P7 Solid fuel burners in Rotorua Airshed — Ngā pāka ahi i te Takiwā Hau o Rotorua

Avoid discharges of **particulates** to air from certain **solid fuel burners** in the **Rotorua Airshed**, in particular discharges from:

- (a) new **solid fuel burners**, except **pellet burners**, replacement low emissions **woodburners/ultra-low emission burners**, and new **woodburners/ultra-low emission burners** where an **offset** is provided
- (b) **indoor open fires, coal burners, multifuel burners**, and **woodburners** installed before September 2005
- (c) **solid fuel burners** that have been **refurbished** since their installation
- (d) **solid fuel burners** used or designed for use other than as a **space heater** except where exceptional circumstances apply.

AQ P8 Agrichemical spraying — Te tōrehu matū ahuwheua

Agrichemical sprayers will manage adverse *effects* on human health and the *environment* by:

- (a) avoiding spray drift beyond the boundary of the **subject property** and into non target *water bodies* where reasonably practicable
- (b) mitigating *effects* particularly on **sensitive areas** where avoidance of spray drift is not possible
- (c) managing **agrichemical** spraying activities according to the risk of spray drift becoming noxious or dangerous, offensive or objectionable
- (d) encouraging best practice to manage potential adverse *effects* on air quality.

AQ P9 Fumigation for quarantine application or pre-shipment application — Auahina ki te paitini mō te tono taratahi, tono utanga-tōmua rānei

Protect human health and the *environment* from adverse *effects* from use of fumigants for **quarantine application** or **pre-shipment application** by:

- (a) enforcing the *best practicable option* for use of the fumigant, including via the use of **effective recapture** technology of fumigant gases, the use of safer fumigants, or alternative methods
- (b) ensuring compliance with relevant exposure levels and management regime set by the New Zealand Environmental Protection Authority to protect human health
- (c) having particular regard to protecting the health of persons in **sensitive areas** from fumigant exposure.

AQ P10 Offsets in Rotorua Airshed — Ngā whakatautika i te Takiwā Hau o Rotorua

Any **offsets** required in the **Rotorua Airshed** by Regulation 17 of the National Environmental Standards for Air Quality must:

- (a) be expressed in kilograms per year and calculated using annual mass emission rates based on the maximum consented discharge rate
- (b) be based on quantifiable emissions reduced from another source or sources that can be shown to have occurred, either by measurement, monitoring or other robust means
- (c) permanently remove the emissions used as **offsets** from the **Rotorua Airshed**
- (d) be located within the **Rotorua Airshed** or where emissions can be shown to contribute to the **Rotorua Airshed**
- (e) be carried out as close as practicable to where the *effects* of the emissions being **offset** may occur
- (f) be above and beyond any emissions decrease that would otherwise occur or would otherwise be required by the Regional Council
- (g) assume that all **TSP** is **PM₁₀** unless demonstrated otherwise
- (h) treat all **PM₁₀** as equal, having the same health *effects* irrespective of the source of **PM₁₀**
- (i) be effective before any emission from the proposed activity occurs
- (j) use the emission factors set out in Table AQ1 for each **solid fuel burner** type, where domestic sources are selected to provide reductions of emissions unless alternative emission factors for domestic sources have been determined based on robust evidence consisting of, but not limited to, actual measurements based on a suitable methodology.

Table AQ1 Emission factors for domestic sources

Source ¹	PM ₁₀ Emission Factor Grams per kilogram (g/kg*)	Annual Fuel Use Tonnes per year	PM ₁₀ Annual Emission Kilograms per year	Number of solid fuel burners to equal 1 tonne per year of PM ₁₀
Pre-2005 woodburners	10	2.5	25	40
Post-2005 (NESAQ compliant) solid fuel burners	4.5	2.5	11	91
Multifuel burners (wood)	10	2.5	25	40
Multifuel burners (coal)	19	1.8	34.2	29
Pellet burners	1.4	1.0	1.4	714

*Wet weight

Rules

Rules in this chapter apply to the management of discharges of *contaminants* to air from sources within the Bay of Plenty Region, including the *Coastal Marine Area*.

AQ R1 General activities – Permitted — Ngā mahinga noa – E whakaaehia ana

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:

- (a) The discharge must not be noxious or dangerous, offensive or objectionable beyond the boundary of the **subject property** or into any *water body*.
- (b) The discharge of smoke or water vapour must not adversely affect the safety of any vehicle, aircraft, or *ship*.

Advice Note - Discharges of dust into air associated with activities within a plantation forestry activity are managed by the National Environment Standards for Plantation Forestry (2017). The plantation forestry activities are as listed in subparts 1-9 of the National Environment Standards for Plantation Forestry and do not include discharges or from roads or tracks managed by local authorities, the Department of Conservation or the New Zealand Transport Agency.

AQ R2 General activities – Discretionary — Ngā mahinga noa – Ka whiriwhiriha

Any discharge of *contaminants* into air that cannot comply with any permitted activity rule, and is not specifically addressed by any other rule of this Air Quality chapter, is a discretionary activity.

¹ Emission factors based on *Rotorua Domestic Heating Survey* (2005) and the Ministry for the Environment's *Home heating emission inventory and other sources evaluation* (2015).

AQ R3 Miscellaneous discharges – Permitted — Ngā tukunga matahuhua – E whakaaehia ana

The discharge of *contaminants* to air from:

- (1) spray irrigation, soil injection, truck spreading, 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** or **lime**
- (4) the disturbance of land and soil carried out according to rules LM R1, LM R2, and LM R3 of this regional plan
- (5) **contaminated land remediation** permitted by DW R24 of this regional plan
- (6) roasting of coffee beans
- (7) **fully enclosed in-vessel composting** producing up to 200 tonnes per year (of finished product) where emissions are captured and filtered
- (8) **free range farms** of up to 100 **poultry** birds
- (9) **open burning** for **recreational/cultural** purposes

are permitted activities provided the discharge does not cause any noxious or dangerous, offensive or objectionable *effect* beyond the boundary of the **subject property**.

Advice Note – Discharge of **liquid waste**, and the use and application of **fertiliser** or **lime** must also meet all other requirements of this regional plan (see DW Discharges to Water and Land and OSET On-site Effluent Treatment).

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.

AQ R5 Venting of geothermal gas and steam – Permitted — Te tuku kapuni ngāwha me te koromamao – E whakaaehia ana

The discharge of geothermal gases and steam into air from any **bore** or soakage hole associated with the **anthropogenic** use of *geothermal water* and *geothermal energy* is a permitted activity, provided the following conditions are complied with:

- (a) The gas or steam must be a **vertical discharge** from a vent unless the discharge is located at least 200 metres from a **sensitive area**.
- (b) The discharge must not be noxious or dangerous, offensive or objectionable beyond the boundary of the **subject property**.
- (c) The take or discharge of *geothermal water* must be less than 1,000 tonnes per day.

Advice note – This rule manages the discharge to air from *geothermal water* and/or *geothermal energy* use. The use of *geothermal water* and *geothermal energy* must comply with the rules in the GR Geothermal Resources module and the Rotorua Geothermal Regional Plan.

AQ R6 Open burning – Permitted — Te tahutahu ahi noa – E whakaaehia ana

Except where AQ R3, 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 within 100 metres of any neighbouring **dwelling house**, unless written approval is obtained from the occupier/s of all such neighbouring **dwelling houses**, and the following conditions are complied with:

- (a) No materials either listed in AQ R10 or prohibited by the regulations of the National Environmental Standards for Air Quality are burned.
- (b) The discharge of smoke must not adversely affect the safety of any vehicle, aircraft, or *ship*.

- (c) The discharge must not be noxious or dangerous, offensive, or objectionable beyond the boundary of the **subject property**.

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 Fire and Emergency New Zealand Act 2017.

AQ R7 Open burning for emergency disposal of diseased carcasses and vegetation – Permitted — Te tahutahu ahi noa mō te whakawātea ohotata – E whakaaehia ana

The discharge of *contaminants* to air from the emergency **open burning** of dead diseased marine mammals, dead diseased livestock, or infected or diseased vegetation is a permitted activity provided the following conditions are complied with:

- (a) Disposal must be carried out under the instruction of the responsible authority.
- (b) The discharge of smoke must not adversely affect the safety of any vehicle, aircraft, or *ship*.

Advice Note: Appropriate government departments at the time of notification are the Ministry for Primary Industries (livestock and vegetation) or the Department of Conservation (marine mammals). Regional Council's Pollution Hotline (or its equivalent) should be notified before burning begins, or as soon as practicable after burning commences.

AQ R8 Open burning for firefighter training – Permitted — Te tahutahu ahi noa mō te whakangungu tinei ahi – E whakaaehia ana

The discharge of *contaminants* to air from the burning of materials (including buildings and vehicles) for the purpose of firefighting research or training firefighters is a permitted activity provided the following conditions are complied with:

- (a) The fire must be under direct control of Fire and Emergency New Zealand, a **defence fire brigade, or industry brigade**.
- (b) The recognised body under (a) must notify:
 - (i) the Regional Council at least 24 hours before the training takes place and
 - (ii) the occupier of any properties within a 100 metre radius of the training site, no earlier than 72 hours and no later than 12 hours before the training takes place.
- (c) Notification under (b) must include:
 - (i) intended time and location of the training activity, and
 - (ii) details of any materials listed in AQ R10 that may be burned as part of the training and the potential adverse effects of these discharges.
- (d) No burning may be carried out within the **Rotorua Airshed** between the months of April to September of any calendar year.
- (e) The discharge of smoke must not adversely affect the safety of any vehicle, aircraft, or *ship*.

Advice Note: Regulation 9 of the National Environmental Standard for Air Quality prohibits the burning of coated wire except in certain cases such as when burnt as part of firefighter training.

AQ R9 Open burning– Non-complying — Te tahutahu – Tautuku-kore

Except where AQ R7 and AQ R8 apply, the discharge of *contaminants* to air from **open burning** within 100 metres of **any neighbouring dwelling house** is a non-complying activity unless:

- (a) written approval is obtained from the occupier/s of **any neighbouring dwelling house** within 100 metres of the **open burning**, or
- (b) the fire is for **recreational/cultural** purposes only

AQ R10 Burning of specified material – Non-complying — Te tahutahu i ngā papanga kua tautuhia – Tautuku-kore

Except as provided for in AQ R8 and AQ R21 the discharge of *contaminants* to air from the combustion of any of the following materials is a non-complying activity:

- (a) **treated timber** or painted timber (except pellets used in **pellet burners**)
- (b) any plastics (including packaging), foam, nappies or polystyrene
- (c) chlorinated organic chemicals including but not limited to **dioxins**, furans, polychlorinated biphenals (PCB)
- (d) contaminated material from contaminated sites and buildings
- (e) commercial food *waste*
- (f) domestic *waste*, except paper and cardboard
- (g) material that may contain heavy metals including but not limited to lead, zinc, arsenic, chromium, cadmium, copper, mercury, thorium (except **solid fuels** used in **fuel burning equipment**)
- (h) materials or metals used in motor vehicles
- (i) mineral fibres including but not limited to asbestos and insulation material
- (j) paint and other surface protective coatings
- (k) **pathological waste**
- (l) pesticides and pesticide *waste* (excluding cardboard pesticide containers)
- (m) rubber
- (n) soft furnishings and upholstery.

Advice Note: In addition to the materials in this rule, National Environmental Standards for Air Quality regulations prohibit the discharge of *contaminants* to air from the burning of the following materials:

- bitumen on a road
- coated wire
- tyres
- *oil* (in the open air)
- *waste* at landfills

except where the regulations provide otherwise. For full understanding of these restrictions, check the regulations of the National Environmental Standards for Air Quality as well as the provisions of this regional plan.

AQ R11 Solid fuel burners outside the Rotorua Airshed – Permitted — Ngā pāka ahi i waho o te Takiwā Hau o Rotorua – E whakaaehia ana

The discharge of *contaminants* to air from a **solid fuel burner** installed in any **dwelling house** or *building* outside the boundary of the **Rotorua Airshed**, is a permitted activity provided:

- (a) The discharge from the **solid fuel burner** complies with the regulations of the National Environmental Standards for Air Quality and any local bylaw
- (b) The **solid fuel burner** is operated so that all reasonable steps are taken to minimise the amount of smoke discharged
- (c) The discharge must not be noxious or dangerous, offensive or objectionable beyond the boundary of the **subject property**
- (d) No materials either listed in AQ R10 or prohibited by the National Environmental Standards for Air Quality regulations are burned.

AQ R12 Solid fuel burners in the Rotorua Airshed – Permitted — Ngā pāka ahi i roto i te Takiwā Hau o Rotorua – E whakaaehia ana

The discharge of *contaminants* to air from a **solid fuel burner** installed in any **dwelling house** or building inside the boundary of the **Rotorua Airshed** is a permitted activity if:

- (a) the discharge is from an **existing indoor open fire** provided the **indoor open fire** is:
- (i) located within a building which has been entered onto the **Heritage List** by **Heritage New Zealand**; or
 - (ii) on *industrial or trade premises* where the **indoor open fire** is used exclusively for the smoking and cooking of food for wholesale or retail sale

OR

- (b) the discharge is from a **pellet burner**, provided the **pellet burner** only burns the approved fuel for the device as specified in AS/NZS 4014.6:2007 Domestic solid fuel burning appliances – Test fuels – Wood pellets, or the functional equivalent

OR

- (c) the discharge is from either:
- (i) an **existing woodburner** installed before 1 September 2005, until 31 January 2020, or
 - (ii) a **coal burner or multifuel burner**, until 31 January 2020, or
 - (iii) an **existing woodburner** installed after 1 September 2005, or
 - (iv) an **existing outdoor solid fuel burner on a business premises, until 31 January 2020**

OR

- (d) the discharge is from a **woodburner** or **ultra-low emission** burner that:
- (i) **replaced** an **existing woodburner, coal burner, or multifuel burner** that was used primarily as a **space heater** in the same **dwelling house** or building, and
 - (ii) the **woodburner** has an **emission rate** less than or equal to 0.60, and
 - (iii) has a **thermal efficiency** of no less than 65%, and
 - (iv) is an **Authorised solid fuel burner**

AND

- (e) the discharge from **solid fuel burners** permitted in (a) to (d) complies with the following conditions:
- (i) the **solid fuel burner** is operated so that all reasonable steps are taken to minimise the amount of smoke discharged
 - (ii) the discharge is not noxious or dangerous, offensive or objectionable beyond the boundary of the **subject property**
 - (iii) no materials either listed in AQ R10 or prohibited by the National Environmental Standards for Air Quality regulations are burned.

AQ R13 Solid fuel burners in the Rotorua Airshed – Discretionary — Ngā pāka ahi i roto i te Takiwā Hau o Rotorua – Ka whiriwhirihia

The discharge of *contaminants* to air from a **woodburner** or **ultra-low emission burner** installed in any **dwelling house** or building inside the boundary of the **Rotorua Airshed** that is not otherwise permitted by AQ R12(c) or AQ R12(d):

- (a) was **offset** by replacing or removing an **existing woodburner, coal burner or multifuel burner** with an **emission rate** of 0.60 or greater, in a **dwelling house** or building within the **Rotorua Airshed**, and
- (b) the **woodburner** has an **emission rate** less than or equal to 0.60, and

- (c) has a **thermal efficiency** of no less than 65% and
 - (d) is an **Authorised solid fuel burner**
- is a discretionary activity.

AQ R13A Existing outdoor solid fuel burners in the Rotorua Airshed – Discretionary – (tba) – Ka whiriwhirihiā

After 1 February 2020, the discharge of *contaminants* to air from an **existing outdoor solid fuel burner** on a business premises inside the boundary of the **Rotorua Airshed** is a discretionary activity.

AQ R13B Solid fuel burners with secondary emission reduction devices in the Rotorua Airshed – Discretionary – (tba) – Ka whiriwhirihiā

The discharge of contaminants to air from a **woodburner** installed in any **dwelling house** or building after 1 September 2005 that is fitted with a **secondary emission reduction device**, is a discretionary activity.

AQ R14 Solid fuel burners in the Rotorua Airshed – Non-complying – Ngā pāka ahi i roto i te Takiwā Hau o Rotorua – Tautuku-kore

Within the **Rotorua Airshed** the discharge of *contaminants* to air from any **solid fuel burner** that is not a permitted or discretionary activity according to a rule in this regional plan, is a non-complying activity. This applies from 27 February 2018 except in the following cases:

- (a) The discharge of *contaminants* to air from any **woodburner** that was installed in any **dwelling house** or building before 1 September 2005, or from any **refurbished solid fuel burner**, is a non-complying activity from 1 February 2020.
- (b) The discharge of *contaminants* to air from any **coal burner** or **multifuel burner** in any **dwelling house** or building is a non-complying activity from 1 February 2020.

AQ R15 Agrichemical spraying – Permitted – Tōrehu matūahuwhenua – E whakaaehia ana

All discharges of *contaminants* to air from the use of **agrchemicals** under any part of this rule must comply with the following conditions:

- (1) **General use of agrichemicals**
 - (a) The discharge must not be noxious or dangerous, offensive or objectionable 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.
 - (b) Where the use of the **agrchemical** is for the prevention, eradication or management of unwanted organisms or pests, the **agrchemical** must be used under the direction of the responsible authority under the Biosecurity Act 1993.
 - (c) Where the **agrchemical** is sprayed using **drone application**, the **drone** must not operate more than **10** metres above the target while **agrchemicals** are being distributed from the **drone**. If this condition cannot be complied with, the spray method is **aerial application**, and conditions relevant to **aerial application** must be complied with.
 - (d) Persons carrying out spraying of **agrchemicals**, other than the use of hand-held application methods, must be certified by an industry approved training programme, designed to encourage best practice to prevent spray drift in accordance with New Zealand Standard 8409:2004 (or its replacement or amendment).

- (2) Method of application of **agricultural chemicals**
- (a) The discharge of *contaminants* into air from **agricultural chemical** spraying using **hand-held non-motorised application** methods is a permitted activity provided conditions 3(a) and 4(d) are complied with.
 - (b) **Hand-held motorised application** methods or application methods using a **low pressure boom** is a permitted activity provided conditions 3(a), 3(d), 4(c), 4(d), are complied with.
 - (c) Any other application method is a permitted activity provided conditions 3(a), 3(b), 3(c), 4(a), 4(b), 4(c), 4(d), 5(a), 5(b), 5(c) and 5(d) are complied with.

(3) Signage

Where specified by condition (2), the following conditions apply:

- (a) Where **agricultural chemicals** are sprayed on **public amenity areas** signs must be displayed at every entrance where the public usually have entry to the area where the **agricultural chemical** is being sprayed (except where the entrance is from private property). Where **agricultural chemicals** are sprayed on other areas, signs must be displayed at the main entrance to the property. Signs required by this condition must clearly state:
 - (i) "CAUTION – SPRAYING IN PROGRESS" or similar wording
 - (ii) the name and type of **agricultural chemical** used
 - (iii) a start and end date for spray operations
 - (iv) the name and phone number of the person carrying out the spraying
 - (v) that while signs are in place, it is not safe to enter.
- (b) Where **agricultural chemicals** are sprayed within **50** metres of any **public amenity area** (**ground-based application** or **drone application** complying with condition 1(c)) or **200** metres (**aerial application** excluding **drone application** complying with condition 1(c)), signs must be prominently displayed on the boundary of the **public amenity area** and must clearly state "caution – spraying in progress" or similar wording.
- (c) Signs required by 3(a) or 3(b) should remain in place until all airborne spray has settled and the **agricultural chemical** has dried on its target surface. Signs must be removed within 5 days once the area is safe to re-enter.
- (d) Any vehicles being used to apply **agricultural chemical** spray on **public amenity areas** must display prominent signs front and back that clearly state "CAUTION – SPRAYING IN PROGRESS" or similar wording.

(4) Notification

Where specified by condition (2), the following conditions apply:

- (a) The owner/occupier or agent must notify the occupier of any properties within **50** metres (**ground-based application** or **drone application** complying with condition 1(c)) and **200** metres (**aerial application** excluding **drone application** complying with condition 1(c)) of where the **agricultural chemical** is being sprayed:
EITHER
 - (i) by notification, required no earlier than 72 hours, or **20 days** for spraying carried out on plantation forestry or in a conservation area, and no later than 12 hours before the **agricultural chemical** spraying. Notification must include the following:
 - the address and location of proposed application
 - the date/s of proposed application

- name and type of **agricultural** to be applied
- name and phone number of person carrying out the spraying.

OR

- (ii) according to a notification agreement with the occupier. The notification agreement must:
- 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.
- (b) Details of notification (including but not limited to date and time of notification, parties notified, method of notification) must be recorded.
- (c) Where **agricultural** 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.
- (d) Where **agricultural** are sprayed on **public amenity areas**, the owner/occupier or agent **must publicly notify (according to section 2AB(1)(a) of the Act)** the **agricultural** spraying no earlier than **10 days** or **20 days** for spraying carried out on plantation forestry or in a conservation area, and no later than 24 hours before the **agricultural** spraying. Notification must include the following information:
- (i) The name and type of **agricultural** used.
 - (ii) A start and end date for spray operations.
 - (iii) Contact details of the authority responsible for the spraying.
- (5) Spray Risk Management Plan
- Where specified by condition (2), the following conditions apply:
- (a) Prior to the **agricultural** 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:
- (i) A plan or map identifying the location of any **sensitive areas** within **50** metres of the land being sprayed by **ground based application** or **drone application** (complying with condition 1(c)), or within **200** metres of the land being sprayed by **aerial application** (excluding **drone application** complying with condition 1(c)).
 - (ii) Areas to be sprayed, type of **agricultural** 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 areas**.
 - (iv) Strategies to mitigate any spray drift caused by particular weather conditions,
 - (v) Strategies to manage any specific hazard associated with the **agricultural** 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 upon request within 20 working days of such a request being made.**

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** include: **certification, personal protection equipment**, storage, transport, and disposal.

Users (particularly large-scale) should also comply with the New Zealand Standard Management of Agrichemicals NZS 8409:2004.

AQ R16 **Spraypainting – Permitted — Peita tōrehu – E whakaaehia ana**

The discharge of *contaminants* to air from the spray application, of surface coatings, including those containing di-isocyanates, or spray on anti-fouling paint (excluding the application of protective coatings to **transmission line support structures**, the use of water based paints, or up to 0.5 litres per hour and 5 litres per month of solvent based paints) is a permitted activity if:

- (a) The spraying is carried out, at a rate of no more than 2 litres per hour, in a spray booth, room, or enclosure fitted with an air extraction system and air filtering system to control the discharge of **particulates** and where the systems are maintained in accordance with the manufacturer's instructions
- (b) All *contaminants* and exhaust air from the enclosed spraying and drying areas must discharge to an emission stack or stacks, and the discharge from the emission stack or stacks is 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.
- (c) Where spraypainting is carried out, on surfaces of fixed or large structures that cannot practicably be dismantled and transported to a spray booth, the discharge must be controlled using the *best practicable option* such as screening and paint technologies; and, when surface coatings containing di-isocyanates or anti-fouling paints are used:
 - (i) The owner/occupier/agent must notify the occupier of any property within 50 metres of the spray application site at least 24 hours prior to commencing the work.
 - (ii) An exclusion zone must prevent any public access within 15 metres of the spray application site.
- (d) The discharge must not be noxious or dangerous, offensive or objectionable beyond the boundary of the **subject property**.

Advice Note: The discharge of *contaminants* to air from blasting and applying protective coatings to a **transmission line support structure** is managed by the National Environmental Standards for Electricity Transmission Activities 2009.

AQ R17 **Abrasive blasting – Permitted — Te whakapahū pākaha – E whakaaehia ana**

The discharge of *contaminants* to air from an abrasive blasting operation (excluding blasting of **transmission line support structures**) is a permitted activity provided the following conditions are complied with:

- (a) The discharge from any abrasive blasting operation must be controlled either:
 - (i) through use of a sealed abrasive blasting booth where the air is extracted from the booth using a filtering system maintained according to the manufacturer's instructions
 - OR
 - (ii) where abrasive blasting is carried out on surfaces of fixed or large structures that cannot practicably be dismantled and transported to a blasting booth the discharge must be controlled using a current, best practice method such as screening, wet nozzles, or vacuum.
- (b) Material used for blasting must not contain more than 5% free silica on a dry weight basis.
- (c) The site and work areas must be kept clean and free of accumulations of deposited abrasive blasting material and other debris.
- (d) For mobile abrasive blasting operations:
 - (i) 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 the work

- (ii) all blasting material and other debris must be removed from site once the operation is completed.
- (e) The discharge must not be noxious or dangerous, offensive or objectionable beyond the boundary of the **subject property**, or discharge into any *water body*.

Advice Note: The discharge of *contaminants* to air from blasting and applying protective coatings to a **transmission line support structure** is managed by the National Environmental Standards for Electricity Transmission Activities 2009.

AQ R18 Fuel burning equipment (Boilers) – Permitted — Ngā taonga ngingiha kora (Ngā kōhua nunui) – E whakaaehia ana

(1) General discharges from **fuel burning equipment**

All discharges of *contaminants* to air from **fuel burning equipment** under any part of this rule must comply with all of the following conditions:

- (a) The discharge must be an **unimpeded vertical discharge** from an emission stack.
- (b) The **fuel burning equipment** and any emission control equipment must be maintained in accordance with the manufacturer's specifications at least once every year by a person competent in the maintenance of that equipment.
- (c) The sulphur content of any fuel burnt must be less than 1% by weight.
- (d) The discharge of smoke or water vapour must not adversely affect vehicle safety, aircraft safety, or *ship* safety.
- (e) The discharge must not be noxious or dangerous, offensive or objectionable beyond the boundary of the **subject property** or into any *water body*.

(2) Equipment installed before 27 February 2018

- (a) For **fuel burning equipment** generating a gross heat energy output (within the combustion chamber) of less than 40kW (of any fuel), the discharge is a permitted activity.
- (b) For **fuel burning equipment** generating a gross heat energy output within the combustion chamber:
 - A. between 40kW up to 500kW, from the combustion of clean *oil*, coal or **untreated wood**
 - OR
 - B. between 40kW up to 1MW from the combustion of natural or liquefied petroleum gas

the discharge is a permitted activity provided conditions (1)(a) to (1)(e) are met and any emission stacks constructed after December 2003 rise at least 6 metres above the ground and 3 metres above the highest ridgeline on the roof of any building less than 20 metres from the emission stack.

- (c) For **fuel burning equipment** generating a gross heat energy output within the combustion chamber:
 - A. greater than 500kW up to 2MW from the combustion of clean *oil*, coal or **untreated wood**
 - OR
 - B. greater than 1MW up to 4MW from the combustion of natural or liquefied petroleum gas

the discharge is a permitted activity provided:

- (i) conditions (1)(a) to (1)(e) are met and any emission stacks constructed after December 2003 rise at least 12 metres above

- ground level and at least 3 metres above the highest ridgeline on the roof of any building less than 20 metres from the emission stack
- (ii) the emission stack is designed so that the minimum velocity of the discharge as it leaves the chimney at full load is 7 metres per second.
- (d) For **fuel burning equipment** generating a gross heat energy output within the combustion chamber:
- A. greater than 2MW up to 5MW from the combustion of clean *oil*, coal or **untreated wood**
- OR
- B. greater than 4MW up to 10MW from the combustion of natural or liquefied petroleum gas
- the discharge is a permitted activity provided:
- (i) conditions (1)(a) to (1)(e) are met and any emission stacks constructed after December 2003 rise at least 14.9 metres above ground level and at least 3 metres above the highest ridge line on the roof or any building within 20 metres
- (ii) the emission stack is designed so that the minimum velocity of the discharge as it leaves the chimney at full load is 7 metres per second
- (iii) The concentration of **particulates** shall not exceed 400 milligrams per cubic metre corrected to 0 degrees Celsius dry gas basis, 1 atmosphere pressure and 8% oxygen
- (iv) The mass discharge of **particulates** shall not exceed 2.5 kilograms per hour.
- (3) Equipment installed after 27 February 2018
- The discharge of *contaminants* to air from **fuel burning equipment** generating a gross heat energy output within the combustion chamber of up to and including:
- A. 500kW gross heat energy output from the combustion of clean *oil*, coal or **untreated wood**
- OR
- B. 10MW gross heat energy output from the combustion of natural or liquefied petroleum gas
- is a permitted activity provided the following conditions are complied with:
- (a) The total combined gross heat output from all **fuel burning equipment** installed on the property after 27 February 2018 must not exceed the limits in 3(A) and 3(B). Where more than one fuel type is used, the combined gross heat output must not exceed the lowest kilowatt or megawatt threshold of any of the fuel types used.
- (b) The emission stack exit velocity must not be less than 10 metres per second except for a 15 minute period during start-up.
- (c) All emission stacks must rise at least:
- (i) 12 metres above the ground
- AND
- (ii) and 3 metres above the highest ridgeline on the roof of any building within 20 metres from the emission stack.
- (d) **Fuel burning equipment** using clean *oil*, coal or **untreated wood**, must not discharge any amount of **particulates** into any part of the **Rotorua Airshed** at any time.

AQ R19 Intensive farming – Controlled — Ngā mahi ahuhenua – E whakahaerehia ana

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.

The Regional Council reserves control over the following matters:

- (a) Setting conditions to control dust, odour, **particulates**, including but not limited to any matter contained in relevant industry codes of practice.
- (b) Duration of consent.
- (c) Compliance monitoring.
- (d) Review of the conditions of the consent and the timing and purpose of the review.
- (e) Payment of administrative charges.

AQ R20 Fumigation for quarantine application or pre-shipment application – Discretionary or Non-complying — Auahina ki te paitini mō te tonono taratahi, tonou utanga-tōmua rānei – Ka whiriwhirihia, Tautuku-kore rānei

The discharge of *contaminants* into air from fumigation for **quarantine application or pre-shipment application**:

Using fumigants other than methyl bromide, is a discretionary activity.

- (a) Using methyl bromide with **effective recapture**, is a discretionary activity.
- (b) Using methyl bromide without **effective recapture**, is a non-complying activity.
- (c)

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:

- (a) **Agrichemical** manufacture.
- (b) Asphalt or bitumen manufacture or processing.
- (c) Breweries.
- (d) Cement manufacture.
- (e) Chemical manufacture or mixing.
- (f) Composting, except where provided for by AQ R3, where the compost is for sale or commercial use.
- (g) Crematoria where a new facility with a new discharge to air is being established after 27 February 2018.
- (h) Distilling operations including but not limited to petroleum refining.
- (i) **Enclosed incinerators** where any of the materials listed in AQ R10 are burned.
- (j) Farming activities as follows:
 - (i) **free range farming** of pigs, or more than 100 **poultry** birds, where either a free range farming operation farm 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.
- (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 metallurgical processing, steel galvanising and steel mills.

- (o) Milk powder or milk based powder manufacture.
- (p) Paint manufacture.
- (q) Pesticide manufacture.
- (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, torrefaction, or gasification of carbonaceous material.
- (w) Synthetic **fertiliser** manufacture
- (x) *Waste* processing activities as follows:
 - (i) municipal sewage treatment plants (excluding pump stations and associated odour beds)
 - (ii) *waste* facilities including refuse transfer stations, resource recovery, recycling centres, baling stations
 - (iii) landfills (excluding **untreated wood waste** and **cleanfill**).

Advice Notes:

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.

AQ R22 Handling of bulk solid materials – Discretionary – (tba) – Ka whiriwhirihiā

Unless otherwise permitted by AQ R26, the discharge of *contaminants* to air from the **handling of bulk solid materials** where:

- (a) the rate of **bulk solid material handling** exceeds 20 tonnes in any hour, and the discharge occurs less than 100 metres from any **sensitive area**, or
- (b) the rate of **bulk solid material handling** exceeds 50 tonnes in any hour, is a discretionary activity.

AQ R23 Mobile or emergency diesel generators and pumps – Permitted – (tba) – E whakaaehia ana

- (a) The discharge of *contaminants* to air from the internal combustion of diesel in any mobile or emergency generator or pump with a maximum load of 1000 kilovolt-amperes is a permitted activity provided the following conditions are met:
 - (i) the discharge must not occur for more than 48 hours during any single event within 50 metres of a **sensitive area**, and
 - (ii) fuel used in the generator or pump must comply with the Engine Fuel Specifications Regulations 2011, and
 - (iii) the discharge must not be noxious or dangerous, offensive or objectionable beyond the boundary of the **subject property**.
- (b) For the internal combustion of diesel in any mobile or emergency generator or pump with a total combined output of less than 5000 kilovolt-amperes, the discharge is a permitted activity provided:
 - (i) the discharge is associated with electricity generation activities, including geothermal drilling, and

- (ii) the discharge must not occur for a period of more than 3 months per wellhead or generation site, and
- (iii) the discharge must not occur within 200 metres of a **sensitive area**, excluding discharges to air from pumps which may be located adjacent to *water bodies* and buildings that are defined as a **sensitive area** and are uninhabited for the duration of the discharge, and
- (iv) fuel used in the generator or pump must comply with the Engine Fuel Specifications Regulations 2011, and
- (v) the discharge must not be noxious or dangerous, offensive or objectionable beyond the boundary of the **subject property**.

AQ R24 Flaring of natural gas – Permitted – (tba) - E whakaaehia ana

The discharge of *contaminants* to air from the combustion of natural gas by temporary flaring is a permitted activity provided the following conditions are met:

- (a) the equipment is designed specifically for flaring of natural gas
- (b) the discharge must be an **unimpeded vertical discharge** from the emission stack
- (c) the equipment must be maintained in accordance with the manufacturer's specifications at least once per year by a person competent in the maintenance of that equipment
- (d) the discharge must not be noxious or dangerous, offensive or objectionable beyond the boundary of the **subject property**.

AQ R25 Agrichemical spraying – Controlled – Torehu matuahuhenua - E whakahaerehia ana

The discharge of *contaminants* to air from the use of **agrchemicals** not otherwise permitted by AQ R15 is a controlled activity.

The Regional Council reserves control over the following matters:

- (a) the location where spraying will take place, frequency of spraying, application method, and proximity of spraying to sensitive activities
- (b) measures to manage spray drift including setting conditions to ensure the discharge is not noxious or dangerous, offensive or objectionable, beyond the boundary of the **subject property**
- (c) measures to notify neighbouring properties that spraying will take place (including notification and signage)
- (d) notification agreements with neighbours
- (e) the preparation of and contents of a spray risk management plan
- (f) duration of consent and consent condition review including the timing and purpose of the review

AQ R26 Cement storage and handling – Permitted – (tba) – E whakaaehia ana

The discharge of *contaminants* to air from the storage, **handling**, redistribution, or packaging of cement, and cement additives is a permitted activity provided the following conditions are complied with:

- (a) The cement is delivered using a fully enclosed conveyance system and stored in silos.
- (b) The silos must be fully enclosed and fitted with a fabric filtration system that is installed and maintained in accordance with the manufacturer's specifications.
- (c) Cement additives such as fly ash and microsilica must be bagged and debagged within an enclosed structure fitted with appropriate dust control

equipment that is installed and maintained in accordance with the manufacturer's specifications.

- (d) There must be no accumulation of dust or **particulates** on site.
- (e) The discharge must not be noxious or dangerous, offensive or objectionable beyond the boundary of the **subject property** or into any *water body*.

AQ R27 **Crematoria – Controlled – (tba) – 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.
- (b) Setting conditions to require stack emissions monitoring and testing of soil samples to assess mercury accumulation.
- (c) Duration of consent and consent condition review including the timing and purpose of the review
- (d) Compliance monitoring.
- (e) Payment of administrative charges.

Interpretation of the terms noxious or dangerous, offensive or objectionable

Several rules in the Air Quality chapter use the terms 'noxious or dangerous' or 'offensive or objectionable' as included in section 17 of the Act. These terms are not defined in the Definitions of Terms as they need to take account of case law precedents as they develop. However, some guidance is provided to give some certainty as to how the Council will interpret and implement these terms to determine whether an activity complies with permitted conditions or a resource consent condition.

In assessing whether an activity is noxious, dangerous, offensive or objectionable, the decision maker acts as representative of the community at large, weighs all competing considerations and ultimately makes a value judgement on behalf of the community as a whole. The decision maker must consider whether an "ordinary and reasonable person" would consider the action offensive and objectionable.

Noxious or dangerous

The dictionary definition of 'Noxious' means harmful, unwholesome. 'Dangerous' means involving or causing exposure to harm.

Noxious or dangerous in the context of the Air Quality chapter is an activity or discharge of *contaminants* to air that is harmful to people, property, or the *environment*. This may include, but is not limited to, the following:

- (a) Human health *effects*.
- (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.
- (c) Exceedance of a maximum residue limit for an **agricultural** on, or in, food or stock feed at harvest or slaughter.

- (d) Adverse *effects* on ecosystems including *water bodies*. This includes exotic and indigenous flora and fauna.
- (e) 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.
- (f) A discharge of **fertiliser** or **agricultural** spray that compromises the organic status of another property.
- (g) Damage to paintwork, windows or surfaces from deposition of airborne *contaminants*.
- (h) Reduced visibility that endangers the passage of any vehicle, aircraft, or *ship*.

Offensive or objectionable

The dictionary definition of 'offensive' is giving or meant to give offence, disgusting, foul-smelling, nauseous, repulsive. 'Offensive' is defined as 'open to objection, unpleasant, offensive.

To determine if a discharge is offensive or objectionable, the Regional Council will make an overall judgment that considers the FIDOL factors as follows:

Frequency – how often an individual is exposed.

Intensity – the strength or concentration.

Duration – the length of exposure.

Offensiveness/character – the hedonic tone (pleasant, neutral, unpleasant) or type.

Location – the type of land use and nature of human activities in the vicinity of the source.

When assessing discharges (odour, smoke, dust and **particulates**) the Regional Council will use the following approach:

- (a) An experienced, warranted Council Officer will make an assessment of the situation taking into account the FIDOL factors.
- (b) If the discharge is deemed to be offensive or objectionable by the warranted Council Officer, the discharger may be asked to take whatever action is necessary to avoid, remedy or mitigate the effects of the discharge on the *environment*.
- (c) If the discharger disputes the warranted Council Officer's assessment or the problem is ongoing, then further evaluation may be required. This evaluation could include:
 - (i) An assessment by another experienced, warranted Council Officer.
 - (ii) For odour, monitoring using olfactometry or other appropriate technology.
 - (iii) For particulates, monitoring of particulates beyond the boundary will be compared with the National Environmental Standards for Air Quality for particulates if people may be exposed.

Definition of Terms

Aerial application means any application of **agricultural chemicals** where the product is applied from an aircraft including but not limited to planes, helicopters and **drones**.

Airshed (as defined by the National Environmental Standards for Air Quality) *means:*

- (a) *The region of a regional council excluding any area specified in a notice under paragraph (b).*
- (b) *A part of the region of a regional council specified by the Minister for the Environment by notice in the New Zealand Gazette to be a separate airshed.*

Ambient air means the air outside buildings and structures. This does not include indoor air or contaminated air discharged from a source.

Anthropogenic means created by or caused by humans.

Authorised solid fuel burner means a **solid fuel burner** that is either:

- (a) on the Ministry for the Environment's Authorised Wood Burner list or
- (b) has been authorised under the New Zealand Domestic Solid Fuel Burner Authorisation Manual 2011 (or its amendment or replacement).

Bulk solid material means materials consisting of, or including, fragments that could be discharged as dust or **particulates**. These materials include but are not limited to: gravel, quarried rock, **fertiliser**, coal, cement, flour, rock aggregate, grains, compost, palm kernel extract, tapioca, and woodchip.

Coal burner means a **solid fuel burner** designed to burn coal, which has one or more of the following design features:

- (a) fuel combustion air supplies with separate controls
- (b) grate in the base of the firebox
- (c) ash pan under the grate.

Defence fire brigade means a unit of any other part of the Armed Forces established and trained under the authority of the Chief of Defence Force under the Defence Act 1990 for the prevention, suppression, and extinguishment of fires.

Dioxins means the group of chemicals known as polychlorinated dibenzodioxins and polychlorinated dibenzofurans, and other chemicals such as polychlorinated biphenyls, which are known to have dioxin-like *effects*.

Drone means an Unmanned Aerial Vehicle (UAV) or Remotely Piloted Aircraft System (RPAS).

Drone application means **aerial application** of **agricultural chemicals** using a **drone**.

Dwelling house means any building, whether permanent or temporary, that is occupied, or is intended to be occupied, in whole or in part, as a residence; and includes any structure or outdoor living area that is accessory to, and used wholly or principally for the purposes of, the residence; but does not include the land upon which the residence is sited.

Effective recapture in relation to fumigation, means a process that captures any fumigant from fumigation enclosures (such as buildings, shipping containers or gas proof sheets covering target product) on activated carbon or other medium so that it is not released into the atmosphere when the fumigation enclosure is ventilated such that the concentration of fumigant (not absorbed by the target product) within the fumigation enclosure at the beginning of the fumigation period is reduced by 80% prior to ventilation of the fumigation enclosure.

Emission rate when used in relation to **solid fuel burners** means the amount of particles (in grams) discharged from a **solid fuel burner** for each kilogram of dry wood burnt. The discharge must be measured in accordance with:

- (a) the method specified in Australian/New Zealand Standard AS/NZS 4013:2014, Domestic solid fuel burning appliances – Method for determination of flue gas emission, or
- (b) for a **woodburner** excluded from that method, another method that is functionally equivalent.

Enclosed incinerator means an incinerator with a burning chamber that is closed off during use and with a regulated supply of air to the fire.

Existing in relation to **solid fuel burners** means a **solid fuel burner** which:

- (a) is in situ and has a building permit issued under the Local Government Act 2002, or
- (b) is in situ and has a building consent issued under the Building Act 2004, or
- (c) is the subject of a building consent or building permit application that has been accepted in writing by the Rotorua District Council on or before 27 February 2018, provided the consent or permit includes the **solid fuel burner** as a part of the consent or permit and the consent or permit is not declined, or
- (d) has been verified by a delegate of the Rotorua District Council or Regional Council as lawfully installed.

Forestry road as defined by the National Environmental Standards for Plantation Forestry

- (a) *means a road that has the width, grade, strength, and pavement surface that allows a fully laden logging truck to safely traverse it and has all-weather access; but*
- (b) *does not include a road managed by a local authority, the Department of Conservation, or the New Zealand Transport Agency.*

Forestry track as defined by the National Environmental Standards for Plantation Forestry

- (a) *means a track that allows the passage of forestry machinery or vehicles, but does not provide the width, grade, strength, and pavement surface to allow a fully laden logging truck to safely traverse it or lacks all-weather access; but*
- (b) *does not include a track managed by a local authority, the Department of Conservation, or the New Zealand Transport Agency.*

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

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, rail vehicles, *ships*, aircraft, **solid fuel burners**, diesel fuelled generators, and **enclosed incineration**.

Fully enclosed in-vessel composting means composting produced within a container (including but not limited to tanks, drums, silos, bunkers, or tunnels) where air flow and temperature are fully controlled during the composting process.

Ground-based application means any application of **agrichemicals** from a source located on the ground.

Hand-held motorised application means an application method of **agrichemicals** where the applicator is held, and the **agrichemicals** applied, by hand, and where some part of the application method involves motorised pumping.

Hand-held non-motorised application means an application method of **agrichemicals** where the applicator is held, and the **agrichemicals** applied, by hand, and where no part of the application method involves motorised pumping.

Handling in relation to bulk solid material means extraction, quarrying, mining, processing, screening, conveying, transferring, blasting, loading, unloading or crushing of any material.

Heritage List means the New Zealand Heritage List/Rarangi Korero.

Heritage New Zealand means Heritage New Zealand Pouhere Taonga.

Incineration *in relation to waste or other matter, means its deliberate combustion for the purpose of its thermal destruction.*

Incinerator means a device used for **incineration** where the primary purpose of the device is to deliberately combust *waste* or other matter by thermal destruction.

Industry brigade means a group of persons organised as an industry brigade in accordance with Section 69 of the Fire and Emergency New Zealand Act 2017.

Indoor open fire means an appliance or a structure inside a **dwelling house** or building that can burn **solid fuel** but cannot effectively control the rate of air supply to the combustion chamber. It includes a fireplace that has a cover or doors that cannot effectively control the rate of air supply to the combustion chamber, but excludes any **solid fuel burner** where the firebox is enclosed with a regulated supply of air to the fire.

Intensive farming means **poultry farms, piggeries, other livestock farms, and mushroom production carried out within buildings, structures, pens or yards where the stocking density limits, or prevents, dependence on natural soil on the site, and/or where food is required to be brought to the site. Excludes free-range farming, and greenhouses.**

Liquid waste means any *waste liquid composed of less than 20% solids and does not include hazardous substances.*

Low pressure boom means any boom with the following design conditions:

- the liquid pressure through the boom is less than 3 bar
- (a) the height of the discharge point on the boom is less than 1 metre from the ground
- (b) the nozzles point down
- (c) the nozzles are designed to create coarse droplets of greater than 250 microns in diameter.
- (d)

Multifuel burner means a **solid fuel burner** designed to burn wood and/or coal, which has one or more of the following design features:

- (a) fuel combustion air supplies with separate controls
- (b) grate in the base of the firebox
- (c) ash pan under the grate.

Offset means an emission reduction in one part of the **Rotorua Airshed** to compensate for an emission increase elsewhere in the **Rotorua Airshed**.

Oil (as defined by the National Environmental Standards for Air Quality) *means petroleum in any form other than gas including crude oil, fuel oil sludge, oil refuse, and refined oil products (for example, diesel fuel, kerosene, and motor gasoline).*

Open burning means the combustion of any material in the open air, other than in purpose built equipment designed to control the combustion process. Includes bonfires, **incinerators** and **recreational/cultural** outdoor burning but excludes, **enclosed incinerators, solid fuel burners, fuel burning equipment**, flaring of natural gas, smokers, fireworks, candles, lamps, and outdoor patio gas heaters.

Particulates means particulate matter where the particle size is small enough to become airborne. Includes:

- (a) **TSP** – total suspended particulate
- (b) **PM₁₀** – particulate matter that is less than 10 micrometres in diameter
- (c) **PM_{2.5}** – particulate matter that is less than 2.5 micrometres in diameter.

Pathological waste means *waste* that is offensive to the senses or hazardous to human health including anatomical wastes such as human tissue and organs, animal tissue, organs and carcasses, materials that may be subject to contamination by highly infectious organisms, and any product contaminated by radiation used in medical treatments.

Pellet burner means any **solid fuel burner** that burns manufactured pellets of compressed wood sawdust, and where the pellets and air are mechanically delivered to an enclosed combustion chamber at a controlled rate. Excludes **woodburners**, **coal burners** and **multifuel burners**.

Poultry means domestic fowl kept in captivity for sale or to produce meat, eggs, or other products. Includes: chickens, ducks, geese, guinea fowl, pigeons, turkeys, peacocks, doves, pheasants, swans, and quail.

Pre-shipment application in relation to fumigation, means the non-quarantine treatment applied within 21 days prior to export, to meet the official requirements of the importing country or the existing official requirements of the exporting country. Official requirements are those which are performed or authorised by a national plant, animal, environmental, health, or stored product authority.

Public amenity area means a public area where members of the public are likely to congregate for extended periods of time. This may include (but is not limited to): backcountry huts, barbecues, changing facilities, cycleways, outdoor sports facilities, parks and reserves, playgrounds and playground equipment, public toilets, seating and picnic tables, shelters, squares, and walkways.

Quarantine application in relation to fumigation, means treatment to prevent the introduction, establishment and/or spread of quarantine pests (including diseases), or to ensure their official control, where:

- (a) official control is that performed by, or authorised by, a national plant, animal or environmental protection or health authority, and
- (b) quarantine pests are pests of potential importance to the areas endangered thereby and not yet present there, or present but not widely distributed and being officially controlled.

Recreational/cultural in relation to **open burning** means any **open burning** for the purposes of cooking or amenity (eg. hangi, umu, barbeque, braziers, pizza ovens Guy Fawkes celebrations), or recognised cultural practices, but excluding **incinerators**.

Refurbished in relation to **solid fuel burners** means a **solid fuel burner** that has been altered after purchase or installation in the **dwelling house** or building in a way that could change its design standard.

Remove, removed or removing: in relation to **solid fuel burners** means the complete physical removal (taking out, taking away or cause to be no longer present) of a **solid fuel burner** from the **dwelling house** or building.

Replace, replaced or replacing: in relation to **solid fuel burners** means the complete physical removal (taking out, taking away or cause to be no longer present) of a **solid fuel burner** from the **dwelling house** or building and installation of a new **solid fuel burner** that complies with the requirements of this regional plan.

Rotorua Airshed means the area of Rotorua specified by the Minister for the Environment as a separate **airshed**, by notice in the *New Zealand Gazette*.

Secondary emission reduction device in relation to **solid fuel burners** means a secondary air emission treatment device that reduces the particulates from a **solid fuel burner**.

Sensitive area means an activity that is particularly sensitive to adverse *effects* associated with air *contaminant* discharges either due to the vulnerability of the population or area exposed to the *contaminant*, or due to the potential for people to be exposed for prolonged periods and may include:

- (a) residential buildings and areas (including marae)
- (b) childcare centres, schools, educational facilities
- (c) hospitals, nursing homes, aged care facilities
- (d) offices, consulting rooms, gymnasiums, community centres
- (e) hotels, motels, caravan parks, camping areas, tourist accommodation
- (f) correctional facilities
- (g) **public amenity areas**
- (h) manufacturing or storage of food or beverages

- (i) manufacturing or storage of electronics
- (j) public water supply catchments and intakes.
- (k) incompatible crops or farming systems (e.g. organic farms, greenhouses)
- (l) household water supplies (including roofs from which a water supply is obtained).

Ship as defined by the Maritime Transport Act 1994 *means every description of boat or craft used in navigation, whether or not it has any means of propulsion; and includes—*

- (a) *a barge, lighter, or other like vessel;*
- (b) *a hovercraft or other thing deriving full or partial support in the atmosphere from the reaction of air against the surface of the water over which it operates*
- (c) *a submarine or other submersible*

Solid Fuel means a solid substance that releases useable energy when burnt and includes wood, coal and its derivatives, and manufactured fuel pellets.

Solid fuel burner means a **solid fuel** burning appliance where combustion of the **solid fuel** occurs within a firebox, and where there may be a regulated supply of air to the fire. It includes (but is not limited to), **indoor open fires**, outdoor open fires, freestanding or built in **woodburners**, **pellet burners**, potbelly stoves, coal ranges, **coal burners**, chip heaters, water heaters or central heating units, **multifuel burners**, and similar appliances. It excludes small-scale domestic devices for smoking food, any portable unflued heaters fuelled by gas, alcohol or other liquid fuels, gas hobs or gas ranges used for cooking, any fuel burning appliance installed in a boat, caravan or motor home, and **fuel burning equipment** as defined by this regional plan.

Space heater means a domestic appliance designed for use within a building to generate warmth for human comfort. It includes **solid fuel burners** with water heating capabilities as a secondary purpose and appliances designed to heat water for space heating (eg. via radiators). It excludes cooking fires, ranges, and chip heaters where the primary purpose of the fire is to cook or heat water.

Subject property means the property where the discharge of *contaminants* to air originates.

Thermal efficiency means the ratio of useable heat energy output to energy input. The thermal efficiency must be calculated in accordance with:

- (a) the method specified in Australian/New Zealand Standard AS/NZS 4012:2014, Domestic solid fuel burning appliances – Method for determination of power output and efficiency, or
- (b) for a **woodburner** excluded from that method, another method that is functionally equivalent.

Treated timber means timber treated with preservatives, including boron compounds (except 2-thiocyanomethylthiobenzothiazole (TCMTB) compounds), copper chromium arsenic (CCA), or creosote, but does not include timber treated only with anti-sapstain compounds.

Transmission line support structure means a tower or pole used to support cables used for, or associated with, the overhead or underground transmission of electricity in the national grid .

Ultra-low emission burner means a woodburner that:

- (a) when tested according to Canterbury Method 1 (revision 1.6 June 2015) discharges no more than 0.77 grams of **particulates** per kilogram of dry wood burnt, and
- (b) is on the Regional Council's List of Approved Ultra-low Emissions Burners. This list will be available on the Regional Council's website and may be updated without further formality.

Unimpeded vertical discharge means the discharge from a vent or chimney is perpendicular to the ground and is not restricted in any way that increases the emission of particulates or restricts the dispersion of **particulates** (including smoke) away from the site.

Unsealed road means a road that is not sealed with a permanent surface of tarmac, concrete, or asphalt. For the purposes of this regional plan **unsealed roads** do not include road works on sealed roads, *forestry roads*, *forestry tracks*, or roads used for land development and/or earthworks.

Untreated wood means any wood material or product, including sawdust, which is not treated with copper chromium arsenic (CCA), or with any organochlorine preservative and can include timber treated only with anti-sapstain compounds.

Waste

- (a) means any thing disposed of or discarded, and*
- (b) includes a type of waste that is defined by its composition or source (for example, organic waste, electronic waste, or construction and demolition waste), and*
- (c) to avoid doubt, includes any component or element of diverted material, if the component or element is disposed of or discarded.*

Woodburner means a type of domestic **solid fuel burner** that burns wood, where combustion of wood occurs within a firebox, and where there is a regulated supply of air to the fire. It excludes **indoor open fires, pellet burners, coal burners, multifuel burners**, and also excludes cooking fires, ranges, and chip heaters where the primary purpose of the fire is to cook or heat water.

APPENDIX 2

Consent Order on Plan Change 13 - Tauranga City Council and WBOPDC ENV-2019-AKL-000070 and ENV-2019-AKL-000075

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 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 ~~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.



APPENDIX 3

Consent Order on Plan Change 13 - ENV-2019-AKL-000074 Trustpower Limited v Bay of Plenty Regional Council

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

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

IN THE MATTER of appeals under clause 14(1) of the Schedule 1 of the Act

BETWEEN TRUSTPOWER LIMITED
(ENV-2019-AKL-000074)
Appellant

AND BAY OF PLENTY REGIONAL COUNCIL
Respondent

Environment Judge M J L Dickey sitting alone under s 279 of the Act

IN CHAMBERS at Auckland

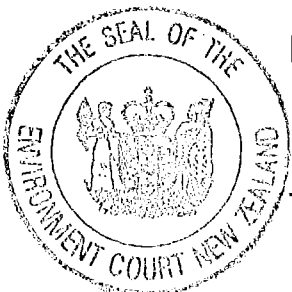
CONSENT ORDER

[A] Under s 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

(a) Rule AQ R23 in Plan Change 13 (Air Quality) to the Bay of Plenty Natural Resources Plan is amended as shown in **Appendix A** and **Appendix B** to this order.

(b) the appeal is otherwise dismissed.

[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 decisions on Proposed Plan Change 13 (Air Quality) to the Bay of Plenty Natural Resource Plan (**Plan Change 13**).

Mobile or emergency diesel generators and pumps

- [2] The appellant owns and operates the Matahina, Kaimai and Wheao hydro-electric power schemes (**HEPS**) in the Bay of Plenty. The appellant also operates a 0.8MW (1000 kVa) diesel generator at its head office in Tauranga (**the Generator**) and a number of small generators at its HEPSs, which are critical for maintaining safe operations in the event of a power failure including by being able to operate spillway gates. All of these generators are permitted under the operative rules.
- [3] Rule AQ R18 of the Plan Change sets permitted activity standards for fuel burning equipment, which the appellant considered under the notified version of the Plan Change would include diesel generators.
- [4] In its submissions the appellant submitted that the definition of "fuel burning equipment" inferred that a diesel generator would be considered to be fuel burning because these devices combust diesel to produce power. If that drafting was retained then AQ R18 would apply to the appellant's generators.
- [5] The appellant therefore proposed an amendment to the definition of fuel burning equipment to make it clearer that its generators are not classified as fuel burning equipment and caught by AQ R18.¹ This would mean that the appellant's diesel generators would be a permitted activity under Rule AQ R1. This submission was accepted, and the appellant understood that the Regional Council intended for diesel generators to be a permitted activity under Rule AQ R1.
- [6] However, the decisions version of the Plan Change included a new part to Rule AQ R23, which sets permitted activity standards for mobile or emergency diesel generators and pumps, which the appellant considers would apply to its generators.



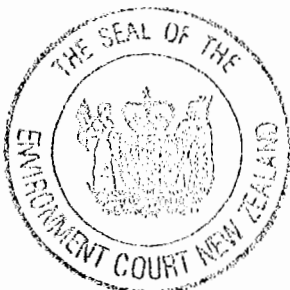
¹ Trustpower's submission to the Bay of Plenty Regional Council dated 18 April 2018 at page 9.

- [7] The appellant acknowledges that it lodged a further submission² supporting the original submission of Port of Tauranga Limited, which proposed a new rule for mobile or emergency generators and a 600 kVa limit.³ This submission resulted in the amendments to Rule AQ R23 in the Regional Council's decision.
- [8] At 1000 kVa, the Generator does not meet the permitted standards in Rule AQ R23, which would make it a discretionary activity under Rule AQ R2 (the smaller HEPS generators would meet the permitted standards under Rule AQ R23).
- [9] The appellant, on reflection, has realised that the 600 kVa limit would result in the Generator requiring consent as a discretionary activity under Rule AQ R2, which was not the intent of its original submission. The appellant considers that while it could revert to the relief sought in its original submission (i.e. that its mobile or emergency diesel generators be permitted activities under Rule AQ R1) it considers it is preferable to amend Rule AQ R23.
- [10] Accordingly, the appellant's appeal sought an amendment to Rule AQ R23 to delete reference to 'with a maximum load of 600 kilovolt amperes', to include reference to discharges not occurring for more than 48 hours 'consecutively', and for the reference to 'geothermal' electricity generation activities to be deleted,⁴ or such other relief as appropriate having regard to the appellant's submission and further submission and the reasons for the appeal.⁵

The agreement reached

- [11] The parties have agreed that this appeal can be resolved by making the following amendments to Plan Change 13:
- (a) Amending permitted activity rule AQ R23 to increase the size of mobile or emergency generator or pump, a clarification around operating time limits, and to remove unnecessary reference to 'geothermal' electricity generation.

² Trustpower's further submission to the Bay of Plenty Regional Council dated 30 July at page 3.
³ Port of Tauranga Limited's submission to the Bay of Plenty Regional Council dated 18 April 2018.
⁴ Notice of Appeal dated 26 April 2019 at [8](a).
⁵ Notice of Appeal dated 26 April 2019 at [8](b).



Consideration

[12] In making this order the Court has read and considered the appeal and the joint memorandum of the parties.⁶

[13] There are two s 274 parties to the appeal. Mercury NZ Limited joined as a s 274 party in support of the appeal, and Port of Tauranga Limited joined as a s 274 party neither supporting nor opposing the relief but sought to remain involved as a result of its earlier (accepted) submission on Rule AQ R23, and to ensure that any amendments are consistent with that earlier submission. Both parties have signed the memorandum seeking this order dated 21 November 2019.

[14] 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;
- (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; and

Scope

[15] The test to be applied as to whether the amendments are sought are in scope is that set out in *Toomey v Thames-Coromandel District Council*,⁷ which is as follows:

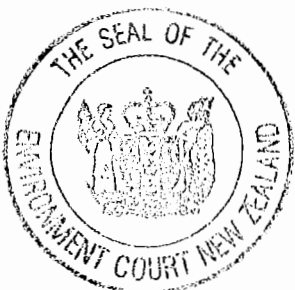
An appeal from a decision on a submission on a proposed plan must be on a provision or matter referred to in that submission.⁸ The scope of the relief sought on appeal must be fairly and reasonably within the scope of the original submission or the proposed plan provisions or somewhere in between.⁹

⁶ Joint memorandum of the parties in support of draft consent orders dated 21 November 2019.

⁷ [2017] NZEnvC 199.

⁸ Clause 14(2), Schedule 1 to the RMA.

⁹ *Re Vivid Holdings Limited* [1999] NZRMA 467.



[16] I am satisfied that the amendment sought to Rule AQ R23 is within the scope of the appellant's submissions and further submissions. The appellant's submission on the definition of fuel burning equipment makes it clear that the outcome sought by the appellant was that its diesel generators be a permitted activity. The appellant also made a further submission supporting Port of Tauranga Limited's submission seeking a new rule. This submission by Port of Tauranga Limited was the basis for the amendments made to Rule AQ R23 in the Regional Council's decision.

[17] I am also satisfied that there is no prejudice to any party in granting the relief sought, as Port of Tauranga Limited has consented to the amendments proposed by this order.

Order

[18] In the circumstances of this case I am prepared to grant the amendments sought by the parties on the grounds that an agreement has been reached between them. Accordingly, this order does not represent a reasoned decision of the Court, but confirms the agreement reached between the parties by consent.

[19] Therefore, the Court orders, by consent, that Rule AQ R23 in Plan Change 13 (Air Quality) to the Bay of Plenty Natural Resources Plan is amended as shown in **Appendix A** of this order.

[20] A clean version is included in **Appendix B**.

[21] There is no order for costs.

DATED at Auckland this *5th* day of *December* 2019


M J L Dickey
Environment Judge



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

1. Amend Rule AQ R23 of Plan Change 13 (Air Quality) to the Bay of Plenty Natural Resources Plan (Plan Change 13) as follows:

AQ R23 **Mobile or emergency diesel generators and pumps – Permitted – (tba) – E whakaaehia ana**

- (1) The discharge of *contaminants* to air from the internal combustion of diesel in any mobile or emergency generator or pump with a maximum load of ~~600~~ 1000 kilovolt-amperes is a permitted activity provided the following conditions are met:
 - (a) the discharge must not occur for more than 48 hours during any single event within 50 metres of a **sensitive area**, and
 - (b) fuel used in the generator or pump must comply with the Engine Fuel Specifications Regulations 2011, and
 - (c) the discharge must not be noxious or dangerous, offensive or objectionable beyond the boundary of the **subject property**.
- (2) For the internal combustion of diesel in any mobile or emergency generator or pump with a total combined output of less than 5000 kilovolt-amperes, the discharge is a permitted activity provided:
 - (a) the discharge is associated with ~~geothermal~~ electricity generation activities, including geothermal drilling, and
 - (b) the discharge must not occur for a period of more than 3 months per wellhead or generation site, and
 - (c) the discharge must not occur within 200 metres of a **sensitive area**, excluding discharges to air from pumps which may be located adjacent to *water bodies* and buildings that are defined as a **sensitive area** and are uninhabited for the duration of the discharge, and
 - (d) fuel used in the generator or pump must comply with the Engine Fuel Specifications Regulations 2011, and
 - (e) the discharge must not be noxious or dangerous, offensive or objectionable beyond the boundary of the **subject property**.



APPENDIX B – clean

1. Amend Rule AQ R23 of Plan Change 13 (Air Quality) to the Bay of Plenty Natural Resources Plan (Plan Change 13) as follows:

AQ R23 Mobile or emergency diesel generators and pumps – Permitted – (tba) – E whakaaehia ana

- (1) The discharge of *contaminants* to air from the internal combustion of diesel in any mobile or emergency generator or pump with a maximum load of 1000 kilovolt-amperes is a permitted activity provided the following conditions are met:
 - (a) the discharge must not occur for more than 48 hours during any single event within 50 metres of a **sensitive area**, and
 - (b) fuel used in the generator or pump must comply with the Engine Fuel Specifications Regulations 2011, and
 - (c) the discharge must not be noxious or dangerous, offensive or objectionable beyond the boundary of the **subject property**.
- (2) For the internal combustion of diesel in any mobile or emergency generator or pump with a total combined output of less than 5000 kilovolt-amperes, the discharge is a permitted activity provided:
 - (a) the discharge is associated with electricity generation activities, including geothermal drilling, and
 - (b) the discharge must not occur for a period of more than 3 months per wellhead or generation site, and
 - (c) the discharge must not occur within 200 metres of a **sensitive area**, excluding discharges to air from pumps which may be located adjacent to *water bodies* and buildings that are defined as a **sensitive area** and are uninhabited for the duration of the discharge, and
 - (d) fuel used in the generator or pump must comply with the Engine Fuel Specifications Regulations 2011, and
 - (e) the discharge must not be noxious or dangerous, offensive or objectionable beyond the boundary of the **subject property**.



APPENDIX 4

Draft consent order Timberlands

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

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal under Clause 14 of
Schedule 1 of the Act

BETWEEN **TIMBERLANDS LIMITED**

(ENV-2019-AKL-000073)

Appellant

AND **BAY OF PLENTY REGIONAL
COUNCIL**

Respondent

AND **SWAP STOCKFOODS LIMITED**

PORT OF TAURANGA LIMITED

S274 Parties

**JOINT MEMORANDUM OF THE PARTIES IN SUPPORT OF DRAFT CONSENT
ORDERS**

DATED 18 December 2019

MAY IT PLEASE THE COURT:

1. These appeals concern Bay of Plenty Regional Council's (**Regional Council**) decisions in relation to Proposed Plan Change 13 (Air Quality) to the operative Bay of Plenty Regional Natural Resources Plan (**Plan Change 13**).

Timberlands Appeal

2. An appeal against Regional Council's decisions on Plan Change 13 was lodged by Timberlands Limited (**Timberlands**) dated 24 April 2019 in relation to provisions relating to handling of bulk solid materials and the associated definition of 'bulk solid material' (**Timberlands Appeal**).
3. In particular, Timberlands' Appeal sought deletion or amendments to Rule AQ R22 and the definition of "Bulk Solid Material" to expressly exclude logs or log handling, which could inadvertently be captured by the rule.
4. There are two s274 parties to the Timberlands Appeal. Swap Stockfoods Limited (**Swaps**) joined as a s274 party in support of the appeal, and are also an appellant on Topic 2 matters which relate to Handling of Bulk Solid Material (ENV-2019-AKL-000065); and Port of Tauranga Limited (**POTL**) joined as a s274 party who neither supports nor opposes the relief but seeks to monitor the relief sought insofar as it relates to operations at the Port of Tauranga.
5. The parties have been in discussions and have agreed amendments to Plan Change 13 to resolve the concerns raised by the Appellant in relation to the above appeal points. The parties agree that, subject to the Court's approval, the appeal points are able to be resolved by consent.
6. This memorandum records those agreements and attaches draft consent orders which set out the agreed wording for the Court's approval. Relevant excerpts of the submissions referenced in this memorandum are included in Attachment A.
7. The resolution of the Timberlands Appeal point resolves the Timberland Appeal in full. The resolution of the Timberlands Appeal does not affect

the remaining appeals relating to Topic 2: Handling of Bulk Solid Material (namely appeals by Ballance Agri-nutrients Limited (ENV-2019-AKL-000077) and Swaps (ENV-2019-AKL:000065)), which remain active in relation to the wider Rule AQ R22, but are not concerned with clarifying the status around log handling.

8. However, as those appeals also relate directly to Rule AQ R22, which includes the definition of 'Bulk Solid Material', the parties seek that the draft consent order lie in Court pending the outcome of either later draft consent documents or hearings relating to the above appeals.

Timberlands Appeal – log handling

9. Timberlands is the manager of 176,000 hectares of planted production forest of which 120,000 hectares is located in the Bay of Plenty Region. Timber is processed through its log merchandising yards at Kaingaroa and Murupara with approximately 1.5 million tonnes exported through its log yard at the Port of Tauranga.
10. Plan Change 13 as notified included a general permitted activity rule AQ R1 but specifically excluded discharges from industrial or trade premises from that rule (Rule AQ R1(c)).
11. Timberlands lodged a further submission in support of submissions seeking that the exclusion of industrial and trade premises from Rule AQ R1 (clause (c)) be deleted.
12. The Regional Council's Decisions Version of Plan Change 13 was to accept the submissions seeking deletion of industrial and trade premises from the general permitted activity Rule AQ R1 but introduced a new Rule AQ R22 to more directly address issues relating to one type of industrial and trade premises, being those handling bulk solid materials, together with an associated definition of 'bulk solid material', as follows:

AQ R 22 Handling of bulk solid materials – Discretionary –(tba) – Ka whiriwhirihihi

Unless otherwise permitted by AQ R26, the discharge of contaminants to air from the handling of bulk solid materials where:

(a) The rate of bulk solid material handling exceeds 20 tonnes in any hour, and the discharge occurs less than 100 metres from any sensitive area, or

(b) The rate of bulk solid material handling exceeds 50 tonnes in any hour,

is a discretionary activity.

....

Bulk solid material means materials consisting of, or including, fragments that could be discharged as dust or particulates. These materials include but are not limited to: gravel, quarried rock, fertiliser, coal, cement, flour, rock aggregate, grains, compost, palm kernel extract, tapoca, and woodchip.

13. Timberlands in its appeal stated that although the definition of 'bulk solid material' does not expressly refer to logs or log handling, it provides a non-exclusive list of materials that could potentially include logs or log handling.

14. Accordingly, Timberlands in its Appeal sought:

(a) That Rule AQ R22 and the definition of 'bulk solid material' be deleted;

(b) Alternatively, Rule AQ R22 be amended to exclude bulk solid material handling unless there is any discharge to air that is 'noxious or dangerous, offensive or objectionable beyond the boundary of the subject property'; and/or

(c) That the definition of bulk solid material be amended to specifically exclude logs, or altered to refer solely to 'fine grained material'.

15. The parties have agreed that it would be appropriate for the intent of Timberlands Appeal relief to be accepted by amending the definition of 'bulk solid material' to specifically exclude log handling, which were not intended to be captured by Rule AQ R22.

16. The parties propose to amend PC13 in the following ways:

(a) Amend the definition of 'bulk solid material' as follows:

Bulk solid material means ~~means~~ materials consisting of, or including, fragments that could be discharged as dust or

particulates. These materials include but are not limited to: gravel, quarried rock, **fertiliser**, coal, cement, flour, rock aggregate, grains, compost, palm kernel extract, taploca, and woodchip (but do not include logs).

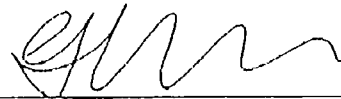
Court's Approval

17. The parties submit that the Court's approval of the agreed changes is appropriate in the present circumstances for the following reasons:
- (a) The amendments sought are within the scope of the relevant appeals.
 - (b) Agreement has been reached between the parties on all matters within the amendments.
 - (c) The parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to relevant requirements, including in particular Part 2.
18. The parties respectfully request that the Court dispose of the appeal points outlined within this memorandum by amending PC13 as set out in the attached draft consent orders, but with the order to lie in Court pending resolution of the remaining appeals by Ballance and Swaps which relate to associated Rule AQ R22.
19. No party seeks costs.

DATED this 18th day of December 2019

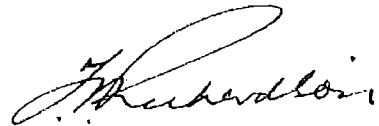


Rachael Zame
Counsel for the Respondent



Gill Chappell

Counsel for Timberlands Limited



Tim Richardson

Counsel for Swap Stockfoods Limited

Megan Exton

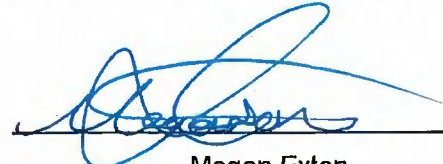
Counsel for Port of Tauranga Limited

Attachment A: Excerpts of Relevant Submissions and Further Submissions

Attachment B: Draft consent order

Gill Chappell
Counsel for Timberlands Limited

Tim Richardson
Counsel for Swap Stockfoods Limited



Megan Exton
Counsel for Port of Tauranga Limited

Attachment A: Excerpts of Relevant Submissions and Further Submissions

Attachment B: Draft consent order

Attachment A: Excerpts of Relevant Submissions and Further Submissions

030



Proposed Plan Change 13: Air Quality

A submission to the Bay of Plenty Regional Council

18 April 2018





**SUBMISSIONS ON PROPOSED CHANGE 13 TO THE BAY OF PLENTY NATURAL RESOURCES
REGIONAL PLAN UNDER CLAUSE 6 OF THE FIRST SCHEDULE TO THE RESOURCE
MANAGEMENT ACT 1991**

To: Bay of Plenty Regional Council
Email: alr@boprc.govt.nz
Submission on: Proposed Plan Change 13 – Air Quality
Submitter name: Trustpower Limited
Address for service: Trustpower Limited
Private Bag 12023
TAURANGA 3143
Att: Nicola Foran
Phone: 021 908 951
Email: nicola.foran@trustpower.co.nz

Trustpower Limited ("Trustpower") makes the following submission to the Bay of Plenty Regional Council Proposed Plan Change 13 (Air Quality) to the Regional Natural Resources Plan.


This submission has been prepared in general accordance with Form 5 in Schedule 1 of the Resource Management (Forms, Fees and Procedure) Regulations 2003. Section 1 of this submission provides context for the submission points (specific provisions; submission; decision sought) as set out in Section 2 of this submission.

Trustpower's submission on the individual provisions of Plan Change 13 is set out in Section 2 of this document.

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

Trustpower wishes to be heard in support of its submission.

If others make a similar submission, Trustpower will **not** consider presenting a joint case with them at the hearing.

Signature: 

Nicola Foran
Lead Environmental Advisor- Regulatory
For, and on behalf of, Trustpower Limited

Dated: 18 April 2018



1.0 Introduction and Overview

- 1.1 Trustpower is a New Zealand based renewable energy generator and multi product retailer, offering electricity, gas and telecommunication services. With a history dating back to 1915, Trustpower's electricity generation portfolio consists of 19 hydro-electric power schemes ("HEPS") throughout New Zealand.
- 1.2 Trustpower owns and operates the following hydro-electricity generation schemes ("HEPS") in the Bay of Plenty Region:
- Matahina HEPS – comprises a large earth dam on the Rangitiki River, upstream of Te Teko. The scheme has an installed generation capacity of 80 MW and produces approximately 290 GWh of electricity per annum;
 - Kaimai HEPS – located in the Waioa River catchment within the lower Kaimai area approximately 20km southwest of Tauranga. The scheme consists of four power stations and has an installed generation capacity of 38 MW with an average annual generation output of 167 GWh; and
 - Wheao HEPS – comprises the damming and diversion of the Wheao and Rangitiki Rivers within the Kaimata Forest. The scheme has an installed generation capacity of 26.1 MW and produces approximately 111 GWh of electricity per annum.
- 1.3 The operation of these HEPS relies on the ability to undertake a number of activities involving the potential discharge of contaminants to air. These activities include weed control, via agricultural spraying, abrasive blasting of infrastructure components such as penstocks, and the burning of waste vegetative matter including logs, debris and weed removed from intake screens and log booms.
- 1.4 Trustpower also operates a 0.8MW diesel generator at its head office at 108 Durham Street, Tauranga and a number of small generators at its HEPS for continuing operations in the event of power failure emergencies. Consequently, Trustpower has a particular interest in the management of air quality in the Bay of Plenty Region.



AQ P5	Support with modification	<p>In Trustpower's view (e) is superfluous and to some extent conflicts with (a) to (d). The "beyond the boundary" issue is already dealt with by (a) to (d). Consequently, it is requested that (e) is deleted in its entirety.</p> <p>Trustpower supports the intent of the policy which is to provide for open burning outside of urban areas for specified uses and purposes. From time to time Trustpower needs to burn waste removed from intake screens and log booms within their HEPS. This waste comprises organic matter including logs, debris and weed. Provided these materials are dried sufficiently prior to burning, any adverse effects are likely to be minor, short lived and occur in remote locations away from sensitive receptors. For this reason, Trustpower considers the inclusion of the text under (d) to be appropriate. Further, Trustpower considers that the related Rule AQ R6 is enabling towards many activities, whereas this policy as currently drafted is very narrow to certain activities and so there is a disconnect that requires being addressed.</p>	<p>Amend Policy AQ P5 to read: <i>Avoid the discharge of contaminants to air from open burning on urban properties while permitting open burning:</i> <i>(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</i> <i>(b) of animal carcasses and/or vegetative material burned in accordance with quarantine or disease control requirements</i> <i>(c) for the purposes of firefighting research or training.</i> <i>(d) relating to the operation and maintenance of hydroelectric power schemes</i></p>
AQ P8	Support with modification	<p>Trustpower applies agrichemicals to the banks and even the surface of the water contained in the canals of its HEPS. These agrichemicals are used to control the growth of terrestrial and aquatic plants can cause issues in terms of access to and the efficient operation of infrastructure such as intake screens. In such circumstances Trustpower deliberately applies agrichemicals to water and there will be consequential spray drift to the target waterbody. Consequently, Trustpower considers the inclusion of the text "non target" to (a) is necessary as well the qualification around the relationship between the sensitive activity and the target water body under (b).</p>	<p>Amend Policy AQ P8 to read: <i>Agrichemical sprayers will manage adverse effects on human health and the environment by:</i> <i>(a) avoiding spray drift beyond the boundary of the subject property and into non target water bodies where possible</i> <i>(b) mitigating effects particularly on sensitive activities where avoidance of spray drift is not possible or the sensitive activity relates to the target water body</i> <i>(c) using a risk management approach for agrichemical spraying activities with a higher risk of becoming noxious or dangerous, offensive or objectionable.</i></p>
AQ R1	Support with modification	<p>Trustpower supports the inclusion of a permissive "catch all" provision for any of its future ancillary activities and</p>	<p>Amend Rule AQ R1 to read:</p>



		so generally supports the proposed rule. However, Trustpower opposes the inclusion of (c). The definition provided in the Regional Natural Resources Plan for an "industrial or trade premise" is too broad and ambiguous. Without the definition of industrial or trade premise clarified, Trustpower is concerned that some of its activities may be considered in the future to be industrial or trade premises. The way the rule is currently drafted it makes all industrial or trade premises a discretionary activity, irrespective of size, scale and effects.	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: (a) The discharge must not be noxious or dangerous, offensive or objectionable beyond the boundary of the subject property or into any water body. (b) The discharge of smoke or water vapour must not adversely affect the safety of any vehicle, aircraft, or ship. (c) The discharge is not from industrial or trade premise
AQ, R4	Support	Trustpower has unsealed access roads to its hydroelectric power schemes and considers it would be unreasonable to have to obtain discharge permits for vehicle movements on these roads.	Retain Rule AQ, R4 as drafted.
AQ, R6	Support	As set out under the submission point to AQ, P5, Trustpower needs to undertake open burning and therefore supports the rule as currently drafted.	Retain AQ, R6 as drafted.
AQ, R15	Support	As set under the submission point to AQ, P8, Trustpower applies agricultural chemicals to the banks and even the surface of the water contained in the canals of its hydroelectric power schemes. Further, the rule contains the reference to "non-target" that Trustpower is seeking for inclusion to the supporting Policy.	Retain AQ, R15 as drafted.
AQ, R16	Support with modification	Trustpower undertakes spray painting of infrastructure components such as penstocks to protect them from corrosion. Due to the location of the infrastructure and topographic conditions surrounding its infrastructure, it will invariably be impracticable for Trustpower to erect spray booths and stacks as required by (a) and (b). Given the remote locations of Trustpower's operations and activities it considers that (c) is the only permitted activity	Amend Rule AQ, R16 to read: 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

Further Submission on Plan Change 13 (Air Quality) to the Regional Natural Resources Plan

Clause 8 of Schedule 1, Resource Management Act 1991

Submission to be received by 4:00 pm on 31 July 2018

Further Submission Number
Office use only

FS05

TO: The Chief Executive EMAIL: air@boprc.govt.nz

Bay of Plenty of Regional Council
PO Box 364
Whakatāne 3158

Name: Timberlands Limited

This is a further submission in support of or opposition to a submission on Plan Change 13 (Air Quality) to the Regional Natural Resources Plan

1. I do wish to be heard in support of my further submission.
2. If others make a similar submission I would be prepared to consider presenting a joint case with them at any hearing.
3. I am a person who has an interest in the proposal that is greater than the interest the general public has on the following grounds:
Timberlands has an interest greater than that of the general public as manager of 176,000Ha of plantation forest.
Approximately 120,000Ha of this planted estate is in the Bay of Plenty and subject to the Air plan rules on spraying and burning.
Timberlands exports approximately 1.5 million tonnes, and is thus subject to the Air plan rules on fumigants and dust.

A signature is not required if you make your submission by electronic means. Further submission emailed on: 30 July 2018

Address for Service:

Timberlands Ltd PO Box PO Box 1284 Rotorua

Telephone:

Daytime: 027 224 1574

Email:

bridget@ieland.co.nz

Contact person

Bridget Robson

Note: A copy of your submission must be served on the original submitter within 5 working days after making this further submission

Further subs BOPRC air plan

Sub #	Submitter Name	Provision	support/ oppose	Reasons
67-2	Port of Tauranga	AQ O1	Support in part	Timberlands supports in part the amendment of Objective AQ O1 to read (addition in underline): Protect the mauri of air and human health from <u>significant</u> adverse effects of anthropogenic contaminant discharges to air, and enhance air quality where degraded for the reasons stated in the submission 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.
67-3	Port of Tauranga	AQ O2	Support in part	Timberlands supports in part the amendment of Objective AQ O2, in order to ensure that successors to the National Environmental Standards for Air Quality (2004) and Ambient Air Quality Guidelines (2002) are also covered by this objective, to ensure that consistency is retained between regional and national instruments.
33-3	Ballance AgriNutrients Ltd	AQ O3	oppose	Timberlands opposes the suggested amendment of AQ O3 to require lower performance levels in industrial areas. Although there may be different expectations of air quality from an amenity perspective in industrial areas, the health effects of diminished air quality are not spatially sensitive. While in industrial areas background odours and dust may occur, this should not lead to an automatic expectation of lower air quality.
67-5	Port of Tauranga	AQ P1	support	Timberlands supports the submission for the reasons expressed, that 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. Timberlands believes that the rule framework needs to include a restricted discretionary category for activities that don't meet AQ R1, but are not so significant in their effects that a full discretionary status is needed.
19-6	Z Energy	AQ P3(a)	support	Timberlands supports the submission for the reasons expressed, to manage the effects of the discharge of contaminants to air according to the receiving environment, rather than the environment in general.
36-20	Mercury NZ Ltd	AQ P3 (b)	Support in part	Timberlands supports in part the submission for the reasons given, namely that the text "contribute to" in (b) is inappropriate because it has no de minimus element to it. All discharge of contaminants will have a contribution to ambient air quality but the discharge in itself could be insignificant. The discharge needs to have a more than minor effect on compliance with the standards and guidelines.

Sub #	Submitter Name	Provision	support/ oppose	Reasons
19-22	Z Energy Ltd, BP Oil NZ Ltd & Mobil Oil NZ Ltd	AQ P3 (e)	support	Timberlands supports the submission for the reasons expressed, to manage the effects of the discharge of contaminants to air according to the receiving environment, rather than the environment in general.
30-7	Trustpower	AQ R1	Support in part	Timberlands supports in part the submission, which opposes the current rule drafting that makes all industrial or trade premises a discretionary activity, irrespective of size, scale and effects. To go from permitted to full discretionary is not a proportionate way of dealing with environmental effects.
76 17	Federated Farmers of New Zealand	AQ R2	support	Timberlands supports the submitters proposed solution to deal with the problem of activities that may not meet the threshold test for a permitted activity, but their size, scale or effect would not normally cause them to require a discretionary consent. Timberlands 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, however a full discretionary activity status is onerous, expensive and time consuming for both the applicant and the council. It would seem reasonable that the Plan would contain a consent cascade that would include controlled or restricted discretionary status. This is not the case in the proposed plan. The overly 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. There appears to be no benefit from this approach, particularly in cases where the relevant matter for discretion is likely to be a particular standard or threshold the activity does not meet. Timberlands supports changing the default to restricted discretionary activity status, with discretion restricted to: (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. The section 32 report advises that: <i>AQ R1 retains the restrictive presumption for industrial and trade premises under the RMA. If a discharge from this type of activity is not covered by a specific rule, it defaults to discretionary under AQ R2 rather than permitted as under the current plan.</i> <i>Other discharges, like dust and odour, rely on general rules AQ R1 to assess whether they are permitted or not. The general activity rule is designed to manage discharges either not anticipated at the time of plan drafting, or not expected to be sufficiently significant to require a specific rule (e.g. coffee roasters).</i> <i>The general rule is not intended to manage large scale sources, hazardous substance discharges or</i>

Sub #	Submitter Name	Provision	support/ oppose	Reasons
				<p>cumulative effects from diffuse sources (such as fugitive dust emissions). This is the current situation in General conditions in AQ R1 such as (a) "the discharge must not be noxious or dangerous..." can be difficult to prove and enforce in these situations and the burden of proof usually falls to the Regional Council. The monitoring and analysis required for this proof is expensive and time consuming. By contrast, a specific condition in a permitted activity is easy to prove, for example that a boiler stack is 12 metres high. The second part of condition (a) also requires that "the discharge must not be...offensive or objectionable..." This allows for situations where the discharge may not necessarily be noxious or dangerous but has an effect on cultural or amenity values. A condition regarding the offensiveness and objectionableness of discharges is still best practice and discussed further in Topic 7.</p> <p>This description explains why and how there needs to be a clear threshold test in AQ R1, but it does not explain why the threshold test then must default to full discretionary, rather than having an intermediate step of restricted discretionary that could deal with the known assessment parameters relevant to the type of discharge for which consent is being sought.</p>

Attachment B: Draft consent order

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

ENV-2019-AKL-000073

IN THE MATTER of appeals under clause 14(1) of the
Schedule 1 of the Resource
Management Act 1991

BETWEEN **TIMBERLANDS LIMITED**
(ENV-2019-AKL-000073)

Appellant

AND **BAY OF PLENTY REGIONAL
COUNCIL**

Respondent

AND **SWAPS STOCKFOODS LIMITED**

PORT OF TAURANGA LIMITED

S274 Partles

Environment Judge
the Act

sitting alone under s 279 of

CONSENT ORDER

[A] Under s 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that the appeal of Timberlands Limited is allowed in full in relation to the points set out herein.

[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**).

Definition of Bulk Solid Materials

2. Timberlands Limited (**Timberlands**) appealed the Regional Council's decisions on Plan Change 13 in relation to the provisions relating to handling of bulk solid materials.
3. The parties have agreed that this appeal point can be resolved by making the following amendments to Plan Change 13:
 - (a) Amending the definition of 'bulk solid material' to exclude logs.
4. There are two s274 parties to the appeal.
5. In making this order the Court has read and considered the appeal and the joint memorandum of the parties.
6. 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 section 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 the definition of 'bulk solid material' in Plan Change 13 (Air Quality) to the Bay of Plenty Natural Resources Plan is 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 this day of 2019

Environment Judge

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

1. Amend the definition of 'Bulk Solid Material' in Plan Change 13 (Air Quality) to the Bay of Plenty Natural Resources Plan (Plan Change 13) as follows:

Bulk solid material means ~~means~~ materials consisting of, or including, fragments that could be discharged as dust or **particulates**. These materials include but are not limited to: gravel, quarried rock, **fertiliser**, coal, cement, flour, rock aggregate, grains, compost, palm kernel extract, tapioca, and woodchip (but do not include logs).

APPENDIX B – clean

1. Amend the definition of 'Bulk Solid Material' in Plan Change 13 (Air Quality) to the Bay of Plenty Natural Resources Plan (Plan Change 13) as follows:

Bulk solid material means materials consisting of, or including, fragments that could be discharged as dust or **particulates**. These materials include but are not limited to: gravel, quarried rock, **fertiliser**, coal, cement, flour, rock aggregate, grains, compost, palm kernel extract, tapioca, and woodchip (but do not include logs).

