

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 an appeal under clause 14(1) of the  
Schedule 1 of the Act

BETWEEN THERMAL BREWING COMPANY  
LIMITED

(ENV-2019-AKL-000076)

Appellant

AND BAY OF PLENTY REGIONAL COUNCIL

Respondent

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

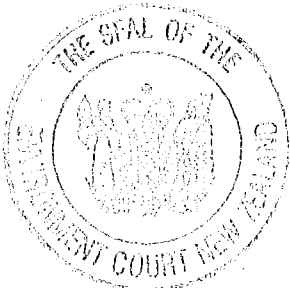
IN CHAMBERS at Auckland

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CONSENT ORDER

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- [A] Under section 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:
- (1) the appeal is allowed subject to the amendments to Plan Change 13 set out in **Appendix A** and **Appendix B** to this order;
  - (2) 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] This appeal concerns 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**).

### Rules AQ R12(c)(iv) and AQ R13A

- [2] Thermal Brewing Company Limited (**Thermal Brewing**) appealed the Regional Council's decisions on Plan Change 13 in relation to the provisions relating to discharges from its outdoor open fireplace at its business premises in Rotorua.
- [3] The parties have agreed that the appeal points can be resolved by making certain amendments to Plan Change 13, Rule AQ R12(c)(iv) and Rule AQ13A.
- [4] The effect of the amendments is to allow as a permitted activity until 31 January 2025 the discharge of contaminants from the existing outdoor solid fuel burner on Thermal Brewing's business premises (**existing solid fuel burner**); and as a discretionary activity the discharge of contaminants from the existing solid fuel burner after 1 February 2025.
- [5] There are no s 274 parties to the appeal.
- [6] In making this order the Court has read and considered the appeal and the joint memoranda of the parties dated 7 February 2020 and 19 February 2020.
- [7] 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**

[8] Therefore, the Court orders, by consent, that Rules AQ R12(c)(iv) and AQ R13A in Plan Change 13 (Air Quality) to the Bay of Plenty Natural Resources Plan are amended as shown in **Appendix A** of this order.

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

[10] There is no order for costs.

[11] The appeal is otherwise dismissed.

DATED at Auckland this

*21<sup>st</sup>*

day of

*February*

2020



M J L Dickey  
Environment Judge



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

[1] Amend Rule AQ R12(c)(iv) as follows:

**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:

...

OR

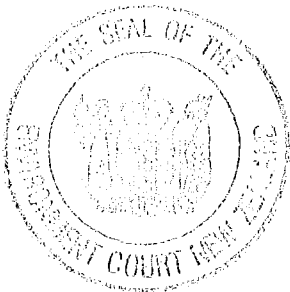
(c) the discharge is from either:

- (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 located at 1182 Tutanekai Street, Rotorua, until 31 January ~~2020~~ 2025.

[2] Amend Rule AQ R13A as follows:

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

After 1 February ~~2020~~ 2025, the discharge of *contaminants* to air from an **existing outdoor solid fuel burner** on a business premises located at 1182 Tutanekai Street, Rotorua, and inside the boundary of the **Rotorua Airshed** is a discretionary activity.



## APPENDIX B – clean

[1] Amend Rule AQ R12(c)(iv) as follows:

### 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:

...

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 located at 1182 Tutanekai Street, Rotorua, until 31 January 2025.

[2] Amend Rule AQ R13A as follows:

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

After 1 February 2025, the discharge of *contaminants* to air from an **existing outdoor solid fuel burner** on a business premises located at 1182 Tutanekai Street, Rotorua, and inside the boundary of the **Rotorua Airshed** is a discretionary activity.

