

**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 to the Act
BETWEEN	FONTERRA LIMITED (ENV-2019-AKL-000069) Appellant
AND	BAY OF PLENTY REGIONAL COUNCIL Respondent

Environment Judge D A Kirkpatrick sitting alone under s 279 of the Act

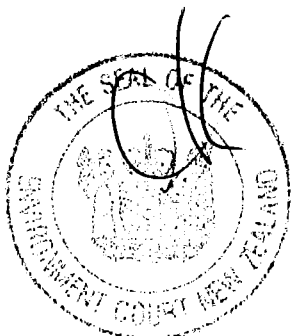
IN CHAMBERS at Auckland

CONSENT ORDER

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

- (1) the appeal is allowed subject to the amendments set out in the order;
- (2) the appeal is otherwise dismissed.

[B] Under s 285 of the Resource Management Act 1991, there is no order as to costs.



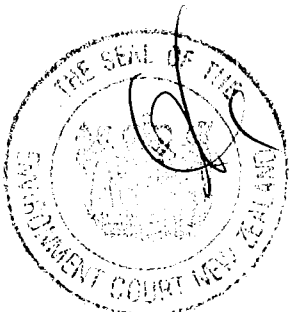
REASONS

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**).

Wastewater and dairy liquids from manufacturing process

- [2] Fonterra Limited (**Fonterra**) appealed the Regional Council's decisions on Plan Change 13 in relation to Rule AQ R3 (Miscellaneous discharges – permitted) to provide for discharges to air associated with the irrigation, truck spreading, soil injection or land soakage of milk, dairy factory wastewater, dairy liquids and/or other dairy factory by-products not listed in that rule. In the alternative, Fonterra sought an amendment to the definition of 'liquid waste' to specifically include the above by-products of the dairy manufacturing process.
- [3] The parties have agreed that this appeal point can be resolved by making the following amendments to Plan Change 13:
- (a) Providing a new Rule AQ R28 relating to spray irrigation or soil injection of dairy factory effluent as a controlled activity; and
 - (b) Providing a new Rule AQ R29 relating to land soakage or truck spreading of dairy factory effluent as a restricted discretionary activity.
- [4] The Bay of Plenty District Health Board and the Lakes District Health Board are interested parties to this appeal under s 274 of the Act, and have signed the memorandum of the parties setting out the relief sought.
- [5] In making this order the Court has read and considered the appeal and the joint memorandum of the parties dated 12 March 2020.
- [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 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

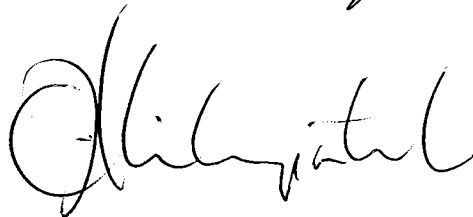


- (b) all parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to relevant requirements and objectives of the Resource Management Act 1991, including in particular Part 2.

Order

- [7] Therefore, the Court orders, by consent, that Plan Change 13 (Air Quality) to the Bay of Plenty Natural Resources Plan is amended to include new Rules AQ R28 and AQ R29 as shown in **Appendix A** of this order.
- [8] A clean version is included in **Appendix B**.
- [9] There is no order for costs.

DATED at Auckland this *28th* day of *May* 2020



D A Kirkpatrick
Environment Judge



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

1. Provide a new Rule AQ R28 within Plan Change 13 (Air Quality) to the Bay of Plenty Natural Resources Plan (Plan Change 13) as follows:

**AQ R28 Spray irrigation and soil injection of dairy factory effluent –
Controlled**

The discharge of *contaminants* to air from the spray irrigation or soil injection of dairy factory waste milk, dairy factory wastewater, dairy factory liquids and/or other dairy factory by-products, is a controlled activity, provided that:

- (1) any discharge of contaminants to air is not located closer than 300 metres to any existing water bottling facility.

The Regional Council reserves control over the following matters:

- (a) Setting conditions to control odour discharges including:
- (i) application method;
 - (ii) application rate and volume;
 - (iii) location of discharge;
 - (iv) measures to ensure the discharge or its effects are not noxious or dangerous, offensive or objectionable beyond the boundary of the subject property;
 - (v) setback distances;
 - (vi) sludge management;
 - (vii) requirements to flush lines; and
 - (viii) requirement to prepare a management plan including methods to control odour and complaints procedure.
- (b) Duration of consent and consent condition review including the time and purpose of the review.
- (c) Monitoring requirements.
- (d) The administration charges under section 36 of the Act.

2. Provide a new Rule AQ R29 within Plan Change 13 (Air Quality) to the Bay of Plenty Natural Resources Plan (Plan Change 13) as follows:

**AQ R29 Land soakage or truck spreading of dairy factory effluent –
Restricted discretionary**

The discharge of *contaminants* to air from the land soakage or truck spreading of dairy factory waste milk, dairy factory wastewater, dairy factory liquids and/or other dairy factory by-products, is a restricted discretionary activity.

The Regional Council restricts its discretion to the following matters:

- (a) Control of odour discharges including:
- (i) application method;



- (i) application rate and volume;
 - (ii) location of discharge;
 - (iii) measures to ensure the discharge or its effects are not noxious or dangerous, offensive or objectionable beyond the boundary of the subject property;
 - (iv) setback distances;
 - (v) sludge management;
 - (vi) requirements to flush lines; and
 - (vii) requirement to prepare a management plan including methods to control odour and complaints procedure.
- (b) Duration of consent and consent condition review including the time and purpose of the review.
- (c) Monitoring requirements.
- (d) The administration charges under section 36 of the Act.



APPENDIX B – clean

1. Provide a new Rule AQ R28 within Plan Change 13 (Air Quality) to the Bay of Plenty Natural Resources Plan (Plan Change 13) as follows:

AQ R28 Spray irrigation and soil injection of dairy factory effluent – Controlled

The discharge of *contaminants* to air from the spray irrigation or soil injection of dairy factory waste milk, dairy factory wastewater, dairy factory liquids and/or other dairy factory by-products, is a controlled activity, provided that:

- (1) any discharge of contaminants to air is not located closer than 300 metres to any existing water bottling facility.

The Regional Council reserves control over the following matters:

- (a) Setting conditions to control odour discharges including:
 - (i) application method;
 - (ii) application rate and volume;
 - (iii) location of discharge;
 - (iv) measures to ensure the discharge or its effects are not noxious or dangerous, offensive or objectionable beyond the boundary of the subject property;
 - (v) setback distances;
 - (vi) sludge management;
 - (vii) requirements to flush lines; and
 - (viii) requirement to prepare a management plan including methods to control odour and complaints procedure.
- (b) Duration of consent and consent condition review including the time and purpose of the review.
- (c) Monitoring requirements.
- (d) The administration charges under section 36 of the Act.

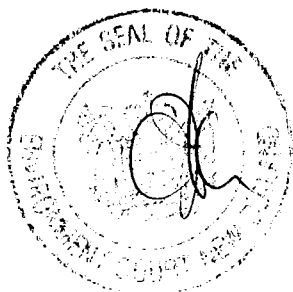
2. Provide a new Rule AQ R29 within Plan Change 13 (Air Quality) to the Bay of Plenty Natural Resources Plan (Plan Change 13) as follows:

AQ R29 Land soakage or truck spreading of dairy factory effluent – Restricted discretionary

The discharge of *contaminants* to air from the land soakage or truck spreading of dairy factory waste milk, dairy factory wastewater, dairy factory liquids and/or other dairy factory by-products, is a restricted discretionary activity.

The Regional Council restricts its discretion to the following matters:

- (a) Control of odour discharges including:
 - (i) application method;



- (ii) application rate and volume;
- (iii) location of discharge;
- (iv) measures to ensure the discharge or its effects are not noxious or dangerous, offensive or objectionable beyond the boundary of the subject property;
- (v) setback distances;
- (vi) sludge management;
- (vii) requirements to flush lines; and
- (viii) requirement to prepare a management plan including methods to control odour and complaints procedure.

- (b) Duration of consent and consent condition review including the time and purpose of the review.
- (c) Monitoring requirements.
- (d) The administration charges under section 36 of the Act.

