

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 to the Act

BETWEEN FEDERATED FARMERS OF NEW  
ZEALAND  
(ENV-2019-AKL-000063)

WESTERN BAY OF PLENTY  
DISTRICT COUNCIL  
(ENV-2019-AKL-000070)

HORTICULTURE NEW ZEALAND  
(ENV-2019-AKL-000072)

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

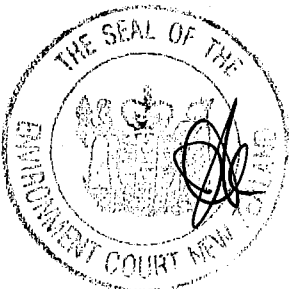
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CONSENT ORDER

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

- (1) the appeals are allowed subject to the amendments set out in this order;



(2) the consent order resolves the following aspects of the Appellants' appeals:

- (a) Western Bay of Plenty District Council – reasons for appeal and relief sought as set out in paragraphs 14-17 of the appeal;
- (b) Horticulture New Zealand – appeal points 9 and 10 of the appeal;
- (c) Federated Farmers of New Zealand – appeal paragraphs 7(d), (f) and (g), paragraph 10 (to the extent it is relevant to the appeal points), and Schedule 1 appeal points (d), (f), (g).

[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 Resources Plan (**Plan Change 13**).

### Open burning

[2] Western Bay of Plenty District Council (**Western Bay**), Horticulture New Zealand (**Hort NZ**) and Federated Farmers of New Zealand (**Federated Farmers**) have appealed the Regional Council's decisions on Plan Change 13 in relation to the open burning policy and rules.

[3] Federated Farmers sought amendments to the policy and rules to provide less restrictive rules for open burning associated with rural production activities (including a less restrictive default status). Hort NZ, Tauranga City Council, Trustpower Ltd, Western Bay, Bay of Plenty District Health Board and Lakes District Health Board joined this aspect of the appeal as s 274 parties.

[4] Western Bay sought clarity around the provisions relating to written approval from neighbours, which were included through the Decisions Version of Plan Change 13. Tauranga City Council and Hort NZ joined this aspect of the appeal as s 274 parties.



- [5] Hort NZ sought amendments to the policy and rules to provide less restrictive rules for open burning associated with rural production activities (including a less restrictive default status). Trustpower Limited, Tauranga City Council, Port of Tauranga Limited, and Bay of Plenty District Health Board and Lakes District Health Board joined this aspect of the appeal as s 274 parties.
- [6] The parties have agreed that the appeal points can be resolved by making the following amendments to Plan Change 13:
- (a) Amending Policy AQ P5 to take account of the amended rule framework;
  - (b) Providing new Rules AQ R8a and AQ R8b for open burning carried out as part of rural production activities as either a controlled or restricted discretionary activity, depending upon their proximity to neighbouring dwelling houses; and
  - (c) Providing for consequential amendments to Rules AQ R6 and AQ R9.
- [7] All s 274 parties to the aspects of the appeals settled by this consent order have signed the memorandum of the parties setting out the relief sought.
- [8] In making this order the Court has read and considered the appeals and the joint memorandum of the parties dated 9 April 2020.
- [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

- [10] Therefore, the Court orders, by consent, that Plan Change 13 (Air Quality) to the Bay of Plenty Natural Resources Plan is amended to provide



amendments to Policy AQ P5 and Rules AQ R6, R8a, R8b and R9 as shown in **Appendix A** of this order.

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

[12] There is no order for costs.

DATED at Auckland this *10<sup>th</sup>* day of *June* 2020



A handwritten signature in black ink, appearing to read "D Kirkpatrick", written over a horizontal line.

D A Kirkpatrick  
Environment Judge

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

1. Amend Policy AQ P5 as follows:

**AQ P5 Open burning - Te tahutahu ahi**

Manage **open burning** by:

- (a) 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 or where open burning of vegetative material is carried out as part of rural production activities, provided the burning is managed to minimise production of noxious or dangerous, offensive or objectionable discharges;
- (b) permitting **open burning**:
  - (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;
  - (iii) for the purposes of firefighting research or training.
- (c) providing for **open burning** of vegetative material associated with rural production activities provided the burning is managed to minimise production of noxious or dangerous, offensive or objectionable discharges.

2. Amend Rule AQ R6 as follows:

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

Except where AQ R3, AQ R7, and AQ R8, AQ R8a, AQ R8b or AQ R10 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.



3. Insert Rules AQ R8a and AQ R8b as follows:

**AQ R8a Open burning carried out as part of rural production activities – Controlled**

Except where AQ R7, AQ R8 or AQ R10 apply, the discharge of contaminants to air from open burning of vegetative material carried out as part of rural production activities where the fire is located between 50 to 100 metres of any neighbouring dwelling house is a controlled activity.

The Regional Council restricts its matters of control to:

- (a) Setting conditions to control:
  - (i) type, composition, volume, and source of material burned;
  - (ii) duration of burn time;
- (b) Proximity of and effects on neighbouring properties and nearby dwelling houses;
- (c) Requirements and contents of a smoke management plan;
- (d) Duration of consent and consent condition review including the timing and purpose of the review;
- (e) Measures to avoid, remedy or mitigate the adverse effects of the activity on air quality.

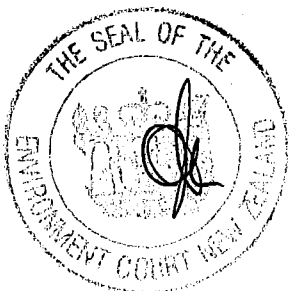
**AQ R8b Open burning carried out as part of rural production activities – Restricted Discretionary**

Except where AQ R7, AQ R8 or AQ R10 apply, the discharge of contaminants to air from open burning of vegetative material carried out as part of rural production activities where the fire is located closer than 50 metres from any neighbouring dwelling house is a restricted discretionary activity.

The Regional Council restricts its discretion to:

- (a) Type, composition, volume, and source of material burned;
- (b) Duration of burn time;
- (c) Proximity of and effects on neighbouring properties and nearby dwelling houses;
- (d) Consideration of alternatives to open burning;
- (e) Requirements and contents of a smoke management plan;
- (f) Duration of consent and consent condition review including the timing and purpose of the review;
- (g) Measures to avoid, remedy or mitigate the adverse effects of the activity on air quality.

4. Amend Rule AQ R9 as follows:



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

Except where AQ R7, and AQ R8, AQ R8a, AQ R8b, or AQ R10 apply, the discharge of *contaminants* to air from **open burning** within 100 metres of any neighbouring **dwelling house** is a non-complying activity unless:

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



## APPENDIX B – clean

1. Amend Policy AQ P5 as follows:

### AQ P5 Open burning - Te tahutahu ahi

Manage **open burning** by:

- (a) 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 or where open burning of vegetative material is carried out as part of *rural production activities*, provided the burning is managed to minimise production of noxious or dangerous, offensive or objectionable discharges;
- (b) permitting **open burning**:
  - (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;
  - (iii) for the purposes of firefighting research or training.
- (c) providing for **open burning** of vegetative material associated with *rural production activities* provided the burning is managed to minimise production of noxious or dangerous, offensive or objectionable discharges.

2. Amend Rule AQ R6 as follows:

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

Except where AQ R3, AQ R7, AQ R8, AQ R8a, AQ R8b or AQ R10 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**, 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.





3. Insert Rules AQ R8a and AQ R8b as follows:

**AQ R8a Open burning carried out as part of rural production activities – Controlled**

Except where AQ R7, AQ R8 or AQ R10 apply, the discharge of *contaminants* to air from **open burning** of vegetative material carried out as part of *rural production activities* where the fire is located between 50 to 100 metres of any neighbouring **dwelling house** is a controlled activity.

The Regional Council restricts its matters of control to:

- (a) Setting conditions to control:
  - (i) type, composition, volume, and source of material burned
  - (ii) duration of burn time
- (b) Proximity of and effects on neighbouring properties and nearby **dwelling houses**;
- (c) Requirements and contents of a smoke management plan;
- (d) Duration of consent and consent condition review including the timing and purpose of the review;
- (e) Measures to avoid, remedy or mitigate the adverse effects of the activity on air quality.

**AQ R8b Open burning carried out as part of rural production activities – Restricted Discretionary**

Except where AQ R7, AQ R8 or AQ R10 apply, the discharge of *contaminants* to air from **open burning** of vegetative material carried out as part of *rural production activities* where the fire is located closer than 50 metres from any neighbouring **dwelling house** is a restricted discretionary activity.

The Regional Council restricts its discretion to:

- (a) Type, composition, volume, and source of material burned;
- (b) Duration of burn time;
- (c) Proximity of and effects on neighbouring properties and nearby **dwelling houses**;
- (d) Consideration of alternatives to open burning;
- (e) Requirements and contents of a smoke management plan;
- (f) Duration of consent and consent condition review including the timing and purpose of the review;
- (g) Measures to avoid, remedy or mitigate the adverse effects of the activity on air quality.

4. Amend Rule AQ R9 as follows:

**AQ R9 Open burning– Non-complying — Te tahutahu – Tautukokore**



Except where AQ R7, AQ R8, AQ R8a, AQ R8b, or AQ R10 apply, the discharge of *contaminants* to air from **open burning** within 100 metres of any neighbouring **dwelling house** is a non-complying activity unless the fire is for **recreational/cultural** purposes only

