

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

Chief 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 subject to the amendments set out in this order;



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

- (a) Federated Farmers of New Zealand – appeal paragraphs 7(b), (c), (d), (e) and (i), paragraph 10 (to the extent it is relevant to the appeal points), and Schedule 1 Appeal points (b), (c), (e), (f) and (i);
- (b) Western Bay of Plenty District Council – to the extent that there are any remaining aspects of its appeal, while noting that its appeal in relation to the definition of 'public amenity area' has been moved to Topic 6: Agrichemical Spraying and resolved as part of that consent order;
- (c) Horticulture New Zealand – appeal points 1, 2, 3, 4 (while noting that the request to amend Policy AQ P3 by inserting a new clause (e) is now covered in Topic 6: Agrichemical Spraying), 5, 7, 8, 13 and 14.

[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**).

Omnibus Topic

[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 a number of the objectives, policies, rules, methods and definitions (categorised as the 'Omnibus' Topic).

[3] Federated Farmers in its appeal sought:

- (a) New enabling objective(s) and policies and amendments to other provisions to enable the air discharges that support the operation



requirements of agricultural production in rural areas with specific relief as set out in the notice of appeal;

- (b) Amendments to Policy AQ P3(b) and (c) to include the words 'where practicable';
 - (c) Amendments to Policy AQ P4 to include balancing policy to support operational requirements, with specific relief set out in the notice of appeal;
 - (d) Amendments to Rule AQ R1 by omitting the term 'offensive or objectionable' from the permitted activity conditions applying to agricultural production activities, with specific relief as set out in the notice of appeal; and
 - (e) An amendment to the definition of "intensive farming", as set out in the notice of appeal.
- [4] Western Bay in its appeal sought clarity around the definition of 'public amenity area' and in particular, clarification of whether footpaths and cycle-lanes were captured or excluded by the definition. This matter was originally listed under the Omnibus Topic, but was subsequently considered to relate more specifically to Topic 6: Agrichemical Spraying. Consequently, it was moved to that Topic and has been resolved through the draft Consent Order on Agrichemical Spraying.
- [5] Hort NZ in its appeal sought:
- (a) Amendments to Objective AQ O3 to recognise that the background receiving environment varies across the region;
 - (b) Amendments to Policy AQ P1 to provide policy framework for consented activities, with specific relief as set out in the notice of appeal;
 - (c) Amendments to Policy AQ P2 to provide use of best practicable option to manage hazardous substances;



- (d) Amendments to Policy AQ P3 to insert a new clause (e) relevant to the management of agri-chemicals¹ and, either deletion of 'industry' from Policy AQ P3(d) or a definition of 'regionally significant industry' be inserted;
- (e) Amendments to Policy AQ P4 to provide consideration of extent to which discharges are managed; to require consideration of the nature of the background receiving environment; and to delete AQ P4(c) which requires consideration of relevant iwi and hapu resource management plans, with specific relief as sought out in the notice of appeal;
- (f) Deletion of Rule AQ R1(a) and replacement with "the activity is managed by taking all reasonable steps to minimise the potential for noxious or dangerous, offensive or objectionable effects beyond the boundary of the subject property".
- (g) Deletion of text in Rule AQ R3 following sub clause (9) or amendment as set out in the notice of appeal;
- (h) Insertion of the definition of "fertiliser" from the National Planning Standards; and
- (i) Addition of a new Method to promote recycling methods, as set out in the notice of appeal.

[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 P1 to further clarify the intent of the policy;
- (b) Amending Policy AQ P3 to provide further clarification around the intent of the policy;
- (c) Amending Policy AQ P4 to recognise the nature of the receiving environment and clarify the locational restraints on rural production activities; and
- (d) Amending the definition of 'intensive farming' and 'fertiliser'.



¹ Note that this appeal point was transferred by the parties into the Agri-chemical Spraying Topic 6 to amend Policy AQ P8 which is more directly relevant to agri-chemical spraying practices, and consequently resolved through that Topic.

- [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 21 May 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 Policies AQ P1, P3 and P4 and the definitions of 'fertiliser' and 'intensive farming' 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 10th day of July 2020



D A Kirkpatrick
Chief Environment Judge

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

1. Amend Policy AQ P1 as follows:

AQ P1 Classification of activities – Te wehewehenga o ngā mahinga

~~Manage~~ Provide for the discharge of *contaminants* to air by ~~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~~ Managing all other discharges where (a) does not apply, as controlled, restricted discretionary, discretionary or non-complying activities.

2. Amend Policy AQ P3 as follows:

AQ P3 Management of discharges – Te whakahaere i ngā tukunga

Activities that discharge *contaminants* to air must be managed, including by the 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** or **regionally significant** ~~industry~~.



For the purposes of this Policy AQ P3(d) **regionally significant industry** means industry based on the use of the natural and physical resources which have benefits that are significant at a regional or national scale. These may include social, economic or cultural benefits.

3. Amend Policy AQ P4 as follows:

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, for example for **rural production activities**.



- (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.
- (l) The nature of the receiving environment.

4. To amend the definition of 'intensive farming' as follows:

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, indoor calf rearing for up to three months in any calendar year, horse stables, intermittent herd shelters, mustering yard shelters and greenhouses. Also excluded are calf rearing in buildings/structures for up to three months in any calendar year and intermittent herd shelters, where these are ancillary to rural production activities.***

5. To amend the definition of 'fertiliser' for the purposes of the Air Quality Chapter of the Regional Natural Resources Plan (RNRP) only (and no other chapters of the RNRP), to the definition contained within the National Planning Standards, as follows:

For the purposes of the Air Quality Chapter of this regional plan only (and no other chapter):

Fertiliser means **a substance or biological compound or mix of substances or biological compounds in solid or liquid form, that is described as, or held out to be suitable for, sustaining or increasing the growth, productivity or quality of soils, plants, or indirectly, animals through the application to plants or soil of any of the following:**

- (a) nitrogen, phosphorus, potassium, sulphur, magnesium, calcium, chlorine, and sodium as major nutrients; or



- (b) manganese, iron, zinc, copper, boron, cobalt, molybdenum, iodine, and selenium as minor nutrients; or
- (c) fertiliser additives to facilitate the uptake and use of nutrients; or
- (d) non-nutrient attributes of the materials used in fertiliser.

It does not include livestock effluent, human effluent, substances containing pathogens, or substances that are plant growth regulators that modify the physiological functions of plants.



APPENDIX B – clean

1. Amend Policy AQ P1 as follows:

AQ P1 Classification of activities – Te wehewehenga o ngā mahinga

Provide for the discharge of *contaminants* to air by :

- (a) 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) Managing all other discharges where (a) does not apply, as controlled, restricted discretionary, discretionary or non-complying activities.

2. Amend Policy AQ P3 as follows:

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Activities that discharge *contaminants* to air must be managed, including by the use of the *best practicable option*, to:

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- (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** or **regionally significant industry**.

For the purposes of this Policy AQ P3(d) **regionally significant industry** means industry based on the use of the natural and physical



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- (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).
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- (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.
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- (j) The FIDOL factors (frequency, intensity, duration, offensiveness, location) when determining adverse *effects* in relation to odour and dust discharges.
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- (a) *nitrogen, phosphorus, potassium, sulphur, magnesium, calcium, chlorine, and sodium as major nutrients; or*
- (b) *manganese, iron, zinc, copper, boron, cobalt, molybdenum, iodine, and selenium as minor nutrients; or*
- (c) *fertiliser additives to facilitate the uptake and use of nutrients; or*



(d) *non-nutrient attributes of the materials used in fertiliser.*

It does not include livestock effluent, human effluent, substances containing pathogens, or substances that are plant growth regulators that modify the physiological functions of plants.

