

IN THE MATTER

of the Resource Management Act
1991

AND

IN THE MATTER

of an appeal under clause 14 of
the First Schedule to the Act

BETWEEN

CONTACT ENERGY LTD

(ENV-2012-AKL-000157)

Appellant

AND

**BAY OF PLENTY REGIONAL
COUNCIL**

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge J A Smith sitting alone under section 279 of the Act
IN CHAMBERS at Auckland.

CONSENT ORDER

Introduction

1. This appeal relates to the Proposed Bay of Plenty Regional Policy Statement. This consent order resolves this appeal as it relates to Method 3. As a result, this appeal will be resolved in its entirety.
2. In making this order the Court has read and considered the Appeal and the memorandum of the parties dated 13 November 2013.
3. The following parties gave notice of an interest to become parties to this appeal, are interested in the matters to be resolved by this consent order and have signed the memorandum of the parties setting out the relief sought:
 - (a) Royal New Zealand Forest & Bird Protection Society Inc;
 - (b) Federated Farmers of New Zealand Inc;



- (c) Te Tumu Kaituna 11B2 Trust, Te Tumu Kaituna 14 Trust, Te Tumu Landowners Group and Ford Land Holdings Pty Ltd;
- (d) Eastland Generation Ltd; and
- (e) Carrus Corporation Ltd.

4. The Court is making this order under section 279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 279. The Court understands for the present purpose that:

- 4.1 All parties to the proceedings with an interest in this Appeal have executed the memorandum requesting this order;
- 4.2 All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to the relevant requirements and objectives of the Resource Management Act, including in particular Part 2.

Order

5. Therefore the Court orders by consent that:

- 5.1 Part Three of the Proposed Bay of Plenty Regional Policy Statement is amended as shown below by deletion where text is struck through and addition where text is underlined.

Part three presents the policies and methods that, when implemented, will achieve the objectives of this Statement and address the regionally significant resource management issues (including the issues of significance to iwi authorities). The resource management issues and objectives are presented in the previous part two under topic headings.

Part three is divided into two sections. The first contains the policies and the second sets out the methods.

Within the first section, policies are grouped according to the topic under which the policy was originally drafted and are identified as follows:

- AQ = Air Quality
- CE = Coastal Environment
- EI = Energy and Infrastructure
- GR = Geothermal Resources
- IR = Integrated Resource Management
- IW = Iwi Resource Management



MN = Matters of National Importance
 NH = Natural Hazards
 UF = Urban and Rural Growth Management
 WL = Water Quality and Land Use
 WQ = Water Quantity

Within these topic groups the letter following the policy number further divides policies into four types as outlined below.

- (a) Policies giving direction to regional and district plans.

Broad policies that must be given effect by regional or district plans (in accordance with sections 67(3) and 75(3)(c) of the Act) as set out in methods of implementation 1 and 2. These policies are identified by the letter A after the main policy number e.g. CE 3A. NB: while these policies are primarily expressed through plans, in some cases 'A' type policies may also be so – are not relevant for to the assessment of resource consent applications and notices of requirement. The A policies that must be considered in the assessment of resource consent applications and notices of requirement are listed in Method 3.

- (b) Specific directive policies for resource consents, regional and district plans, and notices of requirement.

These policies are identified by the letter B after the main policy number e.g. CE 6B. ~~This section contains~~ These are specific policies that:

- must be given effect by regional or district plans (in accordance with sections 67(3)(c) and 75(3)(c) of the Act) as set out in methods of implementation 1 and 2;
- consent authorities must have regard to, where relevant, when considering applications for resource consent and any submissions received (in accordance with section 104(1)(b)(iv) of the Act); and
- territorial authorities must have particular regard to, where relevant, when considering requirements for designations or heritage orders and any submissions received (in accordance with sections 171(1)(a)(iii) and 191(1)(d) of the Act).

NB: in some cases these policies may also be linked to Methods 1 and/or 2 to ensure they are given effect to as soon as practicable by regional and/or district plans.

- (c) Policies that allocate responsibilities

These policies allocate the responsibilities for land-use controls for natural hazards, hazardous substances and indigenous biodiversity between the Bay of Plenty Regional Council and the region's city and district councils. These policies are identified by the letter C after the main policy number e.g. IR 7C.



(d) Guiding policies

These are guiding policies that outline actions to help achieve the objectives. These policies are identified by the letter D after the main policy number e.g. IW 8D.

The second section sets out the methods for implementing the policies. There are two main groups of methods:

- Directive methods to implement policies identified above as either #A, #B, or #C.
- Methods that implement the guiding policies (identified above as #D) or that support the delivery of the other policies.

Directive methods used to implement most policies are Methods 1, 2 and 3. Method 3 requires that policies shall be given effect to when preparing, changing, varying, reviewing or replacing a regional or district plan, and had regard to when considering a resource consent or notice of requirement. While Method 3 is most commonly used to implement 'B' type policies, in some cases (where listed in Method 3) it may be linked to 'A' type policies which are applicable to the assessment of resource consent applications and notices of requirement. Similarly Methods 1 and/or 2 are primarily used to implement 'A' type policies in regional and district plans but in some cases (where listed in Methods 1 and 2) these policies may also be linked to 'B' type policies to ensure they are given effect to as soon as practicable by the relevant plans. The policies linked to and intended to be implemented by Methods 1, 2 and 3 are identified in the beginning of Section 3.2.1 'Directive methods'.

A summary table is provided at the beginning of part three in which the policy titles are provided. The titles serve only as a guide, as the policies are not reproduced in full within the summary table.

In a box following each of the policies, is a cross reference to pertinent objectives and methods. These must be read in association with each policy, to appreciate the relationships between these policies and methods.

3.2.1 Directive methods

Method 1: District plan implementation

District plans shall give effect to Policies CE 6A, CE 8B, GR 4A, IR 8C, MN 1B, UF 1A, UF 2A, UF 3A, UF 4A, UF 5A, UF 6A, UF 7A, UF 17B, UF 18B, and UF 21B, and WL 7A.

If a district plan does not currently give effect to these policies, then the district council shall notify a variation or change as soon as reasonably practicable, but within two years from the date on which the Bay of Plenty Regional Policy Statement is made operative, to give effect to them as required by the Resource Management Act 1991.

Implementation responsibility: City and district councils.



Method 2: Regional plan implementation

Regional plans shall give effect to Policies AQ 2A, AQ 3A, CE 3A, CE 5A, CE 6A, CE 8B, GR 1A, GR 2A, GR 3A, GR 9B, IR 8C, MN 1B, WL 2B, WL 3B, WL 4B, WL 5B, WL 6B, WL 7A, WQ 1A and WQ 2A.

If a regional plan does not currently give effect to these policies, then Bay of Plenty Regional Council shall notify a variation or change as soon as reasonably practicable, but within two years from the date on which the Bay of Plenty Regional Policy Statement is made operative, to give effect to them as required by the Resource Management Act 1991.

Implementation responsibility: Regional council.

Method 3: Resource consents, notices of requirement and when changing, varying, reviewing or replacing plans

Policies AQ 1A, CE 6A, CE 8B, CE 9B, CE 10B, ~~CE 10XB~~, CE 11B, CE 12B, CE 13B, EI 1B, EI 2B, EI 3B, EI 4B, EI 5B, EI 6B, EI 7B, GR 5B, GR 6B, GR 7B, GR 8B, GR 9B, GR 10B, GR 11B, GR 12B, IR 1B, IR 2B, IR 3B, IR 4B, IR 5B, IR 6B, IR 7C, IR 8C, IR 9B, IW 1B, IW 2B, IW 3B, IW 4B, IW 5B, IW 6B, MN 1B, MN 2B, MN 3B, MN 4B, MN 5B, MN 7B, MN 8B, NH 6B, UF 8B, UF 9B, UF 10B, UF 11B, UF 12B, UF 13B, UF 14B, UF 15B, UF 16B, UF 17B, UF 18B, UF 19B, UF 20B, UF 21B, UF 22B, UF XYB, WL 1B, WL 6B, ~~WL 7B~~, WL 8B, WQ 3B, WQ 4B, WQ 5B, WQ 6B, WQ 7B and WQ 8B shall be given effect to when preparing, changing, varying, reviewing or replacing a regional or district plan, and had regard to when considering a resource consent or notice of requirement.

Implementation responsibility: Regional council, city and district councils.

- 5.2 The Proposed Bay of Plenty Regional Policy Statement is amended to include consequential changes to reference boxes to reflect the above lists.
- 5.3 This consent order disposes of all remaining relief sought in the above appeal in its entirety.
- 5.4 There is no order as to costs in relation to this order.

DATED at Auckland this

18th

day of

November

2013

J A Smith
Environment Judge



