Section 42A Report

Proposed Plan Change 13 Air Quality
to the Regional Natural Resources Plan

October 2018

Bay of Plenty Regional Council
5 Quay Street
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NEW ZEALAND

Contents

Part 1: Introduction

1.1 Purpose

1 This report has been prepared by the Bay of Plenty Regional Council (the Regional Council) in accordance with Section 42A of the Resource Management Act 1991 (the Act) to consider all submissions and further submissions received following the public notification of Proposed Plan Change 13 Air Quality (the plan change) and to make recommendations on those submissions. The assessments and recommendations are not binding on the Hearing Panel.

2 This report:

(i) outlines the statutory considerations to the plan change process

(ii) discusses general issues

(iii) analyses both the original and further submissions received following notification of the plan change

(iv) makes recommendations as to whether the submissions should be accepted, rejected or determined as out of scope, and

(v) concludes with a recommendation for changes to the plan change provisions based on the preceding discussion in the report.

3 Some changes are recommended to the provisions of the plan change and to the consequential changes as notified and these are contained in Attachment 1 and Attachment 2 to this report. A summary of all recommendations on submissions and further submissions is contained in Attachment 3 to this report.

1.2 Authors

4 My name is Karen Elizabeth Parcell and I am a Senior Policy Analyst at the Bay of Plenty Regional Council. I hold a Bachelor of Science in Psychology and a Post Graduate Diploma in Forensic Science. I have been employed with the Regional Council since July 2004, working as a Consent Officer for three years, followed by eleven years in planning. I have worked in air quality for eighteen years.

5 I am the principal author of this report with the overall responsibility for preparing recommendations for amendments to the plan change resulting from submissions and further submissions.

6 A range of Regional Council staff have also been involved in the development and notification of the plan change and have contributed to this report:

(i) Sandra Barns, Economist

(ii) Stephen Lamb, Natural Resources Policy Manager

(iii) Shane Iremonger, Science Team Leader Coastal Land and Air

(iv) Marion Henton, Senior Planner

7 Although this is a Council Hearing, I note that I have read the Code of Conduct for Expert Witnesses contained in the Practice Note issued by the Environment Court December 2014. I have complied with that Code when preparing my written statement of evidence and I agree to comply with it when I give any oral presentation.

8 The scope of part of this report relates to the policy/planning aspects of Proposed Plan Change 13. I confirm that the issues addressed are within my area of expertise as an expert policy planner.

9 Any data, information, facts and assumptions I have considered in forming my opinions are set out in the part of the report in which I express my opinions.

10 I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

11 I have used and/or relied upon the following documents in forming my opinion: The Resource Management Act, The Local Government Act 1974, The Operative Bay of Plenty Policy Statement, the Operative Regional Natural Resources Plan, the Section 32 Report, and supporting research completed for Plan Change 13.

1.3 Content of the Officer's Report

12 This report brings relevant information and issues regarding management of air quality to the attention of the Hearing Panel, along with recommendations on the submissions and further submissions.

13 As submitters will speak and present evidence at the hearing, the recommendations contained within this report are preliminary only, relating only to the written submissions and any information accompanying each submission. The conclusions and recommendations made in this report are my own, based on the information to hand at the time of writing, and are not binding on the Hearing Panel. It should therefore not be assumed that the Hearing Panel will reach the same conclusion as I have, upon considering all the evidence brought before the hearing.

14 A total of 80 submissions and 30 further submissions were received. Submissions received sought a range of outcomes. There is considerable support for the overall structure and approach of the plan change and the main points of contention are with fine details of the provisions.

15 I consider the following to be the key issues in contention with the plan change:

(i) Implications on plan changes and resource consent applications following the Courts' decisions in the *King Salmon* and *Davidson* cases.

(ii) Regulations for industrial or trade premises.

(iii) Rotorua burner regulations

(iv) Agrichemical use and spray drift

(v) Regulation of methyl bromide and other fumigants

(vi) Provisions to manage reverse sensitivity

1.4 Summary

16 In summary, the primary reasons for developing Plan Change 13 are to:

(i) Address the air quality issues identified in the Regional Policy Statement. These issues are the impacts of odours, particulates and chemicals on human health, amenity, and well-being, and the effects of fine particulate matter on human health.

(ii) Meet the ambient air quality standards of the National Environmental Standards for Air Quality (NESAQ). The Rotorua Airshed currently breaches the PM_{10} limit set in the NESAQ, and is at risk of breaching the standard in 2020. The provisions in the current plan are not sufficient to achieve the required emissions reduction.

(iii) Resolve deficiencies identified during the plan review. Some activities are causing adverse effects as managed under the existing plan. The Council receives about 1,000 air-related complaints annually, including many about permitted activities. Some provisions require amendments to assist with compliance and enforcement and to improve air quality.

17 Good quality air, unpolluted by contaminants, is under pressure in many areas of the world. In general, the Bay of Plenty region has good air quality, but there are areas of the region where air quality is not as good as it could be, and this is affecting health and well-being.

18 The Regional Council is responsible for sustainably managing air quality in the region. This involves managing activities that discharge contaminants to air. In doing this, Council aims to ensure businesses and communities continue to grow and thrive, while limiting the impacts of poor air quality on human health and well-being.

19 In the past the focus of air quality management has been on reducing point source discharges, such as those from large scale industrial processes like pulp and paper mills. These discharges are, for the most part, managed through resource consent conditions. The conditions often require monitoring, installation of equipment to reduce discharges, and other requirements to manage the effects of the discharges.

20 With large point-source discharges under better control, most of the air quality issues the region faces today are from diffuse sources such as home heating fires, open burning, and agrichemical spraying. The current plan requires updating to improve management of these sources.

Part 2: Air quality background

2.1 Air quality in the region

21 Overall, the Bay of Plenty has good air, however there are areas within the region that have poor air quality. Poor air quality can affect the health and wellbeing of people living in those areas. These air quality issues are explored in depth in the Section 32 report and are summarised briefly here.

2.2 Open burning

22 Open burning in urban and rural areas is permitted under the current air plan, provided good management practice is used, there are no harmful concentrations of gases beyond the property boundary, and no objectionable or offensive discharges.

23 In 2015, the Council received 525 complaints about outdoor smoke. Three quarters of those complaints were about open burning, and were from people living in residential areas. These complaints tended to be about burning household or garden waste.

24 The level of complaints suggests that open burning in residential areas is no longer acceptable and cannot be controlled. Smoke and other emissions can have adverse effects on health, and people living in residential areas generally have other accessible options for disposing of household rubbish and garden waste.

2.3 Rotorua domestic burners

25 In 2005 and the Regional Council carried out monitoring and research in the Rotorua airshed, including an emissions inventory, a home heating survey and airshed modelling. The inventory showed that although industry contributes to poor air quality, the main source of fine particulates in the Rotorua airshed in winter is domestic burners. The home heating survey confirmed that the older burners (not designed to the same standard as modern domestic burners) are a feature of the airshed. The findings of that research remain relevant in 2018.

26 The 2007 modelling showed that annual PM_{10} emissions from domestic sources would have to reduce by 60 tonnes to meet the National Environmental Standards for Air Quality (NESAQ). To do that, 7,650 (89% of a total 8,550) domestic burners would need to be converted to cleaner heating, and backyard burning would have to cease.

27 In 2010, the Rotorua Lakes Council introduced the Rotorua Air Quality Control Bylaw (the Bylaw). The Bylaw restricts new burner installations to certain types and models, phases out indoor open fires and requires old burners to be removed when a property is sold.

28 The Regional Council has introduced incentives such as the Hot Swap loans and grants, resulting in the conversion of around 4,500 burners to cleaner heating. The annual number of conversions (via the incentive schemes) has declined to about 250 per year.

29 As a result of actions to date the number of exceedances of the NESAQ has fallen to around 10 per year in the last 10 years. The height of the individual exceedances has reduced from highs of around 120µg/m^3 to around 80µg/m^3.

30 The Bylaw was reviewed and updated in 2017. A key reason for the review was to address the continuing breaches of the NESAQ. The 2010 bylaw allowed new burners into the catchment provided they met the NESAQ standard. The update tightened the standard from 1.5 g/kg to 0.6 g/kg. The prohibition on indoor open fire use and the point-of-sale removal of non-complying wood burners remained in place.

31 With four years to the NESAQ 2020 deadline and at least 3,150 burners still to convert (from original calculations) current actions are not expected to achieve the NESAQ targets.

2.4 Agrichemical spraying

32 Agriculture and horticulture are important economic sectors in the Bay of Plenty economy. On many properties, application of herbicides and insecticides is part of producing goods for market.

33 The Council receives about 100-120 complaints annually about agrichemicals, most of those in spring, and many related to perceived poor practices by property owners or people applying agrichemicals. These practices include lack of notification or inadequate notification when spraying occurs.

34 People contacting the Council expressed health concerns for themselves and their families, with particular concerns for individuals with existing health issues, or times when people may be particularly sensitive (e.g. in pregnancy), or for children. People also reported symptoms such as headaches which they considered were as a result of contact with the agrichemicals.

35 The complaints data showed that a growing number of people want more information. People were concerned that they didn't know what chemicals were being sprayed and they didn't know what precautions they should take with themselves, their families and their animals.

36 In some cases, the activities of a property owner affected the economic activities of another, such as spray drifting onto an organic property and potentially compromising organic certification.

2.5 Fuel burning equipment (boilers)

37 There are a range of different terms used to describe fuel burning equipment, including "combustion sources" (in the current plan), "heat plants" (Energy Efficiency and Conservation Authority or EECA), and "boilers". This report uses the term "boilers".

38 Boilers combust fuel within an enclosed chamber, transferring from the combusted material directly for the production of useful heat or power.

39 The EECA database records 194 boilers in the Bay of Plenty. Full detail is not available on all of these (for example, size, fuel type, sector, age). The following paragraphs are based on the boilers recorded in the EECA database.

40 Most boilers in the region are used in the public sector, followed by commercial, industrial and the agricultural sector. Under the current plan, 115 (59%) of the boilers in the database are within the limits for size and fuel type to be a permitted activity.

41 Boilers are mostly used in the public sector (36, 43%). This includes schools and hospitals. These are fuelled by electricity (26%), natural gas (26%) and wood (21%). Under the current plan half (34) of these boilers are permitted. The activity status of the remaining 38 is not clear because of insufficient information.

42 About one-third (52, 30%) of boilers are used in the commercial sector – almost exclusively accommodation. All boilers used by the commercial sector are fuelled by geothermal energy. Under the current plan all boilers in the commercial sector have permitted activity status.

43 One-fifth (36, 21%) of boilers are used in the industrial sector, which includes wood processing (14), Pulp and paper (7), dairy processing (6), meat processing (5) and other manufacturing (5). These are fuelled by natural gas (42%), wood (33%), and coal (17%). The remaining boilers are fuelled by diesel and black liquor or green sawdust. Under the current plan half of the boilers have permitted status; the remainder have discretionary status.

44 Nineteen (6%) boilers are used in the agricultural sector –specifically horticulture. These are fuelled by geothermal (47%), coal (32%) natural gas (21%). Under the current rules half of these are permitted. The activity status of the remainder is not clear because of insufficient information.

45 The fuel type for boilers has changed over time. In the older plants coal is the dominant fuel, followed by natural gas and wood. In plants installed in the 10 years 1990 - 2000 natural gas is the dominant fuel, followed by wood. For those plants installed since 2000 natural gas remains the dominant fuel, followed by electricity, then wood. Two plants installed in 2007 in Whakatāne (horticulture sector) are fuelled by coal. One plant installed in 2003 in Kawerau (education sector) is solar powered.

46 The Rotorua district has 78 boilers (2014 data). More than half of these are used in the commercial sector, mostly in accommodation. About quarter are accounted for in the public sector, such as schools and hospitals. A small number are used in industry (wood processing, meat processing). Geothermal energy is an important energy source for boilers in the Rotorua District, although other fuel sources such as wood, coal and sawdust are also used.

2.6 Methyl bromide and fumigation

47 Methyl bromide is a broad spectrum pesticide used as a fumigant to control pest insects, nematodes, weeds, pathogens and rodents. It is also used for storage of durable commodities such as grains and timber, and perishable commodities such as fresh vegetables, flowers, and disinfestations of structures (e.g. buildings, ships and aircraft).

48 Methyl bromide is odourless and colourless which makes it difficult to measure and monitor and can make it particularly hazardous.

49 Methyl bromide is an ozone-depleting substance and was widely used as a soil fumigant in developed countries prior to the phase-out under the Montreal

Protocol. New Zealand is a signatory to the Montreal Protocol and phased out non-quarantine use of methyl bromide in 2007.

50 Methyl bromide use is regulated in New Zealand by the Ozone Layer Protection Act 1996 (OLPA) and the Ozone Layer Protection Regulations 1996 (OLPR). These regulations give effect to New Zealand's obligations under the Convention and the Protocol to phase out ozone depleting substances except for critical uses. Methyl bromide for the purpose of quarantine and pre-shipment is exempt from the phase-out programme, subject to certain provisions including use in pre-shipment and quarantine application (see s32 evaluation report).

51 In New Zealand, fumigation by methyl bromide is used as a biosecurity measure. About 90% of methyl bromide is used for export goods, including logs and timber products, kiwifruit, dried food product and general goods. Imports fumigated include vehicles, vehicle parts and tyres.

52 At the Port of Tauranga methyl bromide is used to fumigate containers, ships holds, and log shipments. The latter are generally fumigated via a tent or tarpaulin on the Port. After treatment the residue is released into the air (apart from the greater than 20% recaptured, rising to 60% in April 2018).

53 In 2010, the Environmental Risk Management Authority, now the Environmental Protection Authority (EPA) reassessed the use of methyl bromide due to concerns with a possible link to motor neurone disease. The EPA approved the continued use of methyl bromide despite community concern because it considered there is no practical alternative. EPA has put in place controls covering importing, transporting, storing, using and disposing of methyl bromide.

54 A 10-year limit was set for recapture as "appropriate and necessary" for New Zealand to meet its obligations under the Montreal Protocol. From October 2020 all methyl bromide fumigations must use recapture technology.

2.7 Mount Maunganui area

55 The Mount Maunganui area encompasses the Port of Tauranga, Mount Maunganui and Sulphur Point areas. Any assessment of air in the geographic area would include methyl bromide, fumigation, and emissions from boilers, but because these have been discussed under other topics, the main air emissions discussed here are dust and particulates, sulphur dioxide and hydrogen sulphide.

56 Council regularly monitors dust levels in Mount Maunganui. In 2016 the Council carried out a dust audit focused on the Port and associated operations. The audit concluded that the levels of dust in this area most likely exceed the ambient standard for PM_{10}. The 2016 audit showed that the Mount Maunganui and Sulphur Point areas experience elevated levels of dust under certain meteorological conditions. The main sources and activities were bulk cargo handling, log handling, unsealed yards, vehicles and cargo handling equipment. Under Regulation 15 of the NESAQ, the Council is required to monitor any contaminant where it is likely to breach.

57 Shipping emissions are one of the sources of contaminants discharged to air from port activity. The Resource Management (Marine Pollution) Regulations 1998 manages discharges from shipping emissions and states that no rules may be included in a regional plan to manage discharges that are part of

normal operations of ships. This means that the Council cannot manage shipping emissions using the Plan Change.

58 Sulphur dioxide (SO_2) is produced mainly from the combustion of fossil fuels that contain sulphur, such as coal and oil (for example, coal burnt for heating, diesel-powered vehicles). SO_2 is also produced from some industrial processes, such as fertiliser manufacturing, aluminium smelting and steel making. Industrial sources include traffic, shipping, and train activity.

59 Although the Mount Maunganui airshed is largely industrial, there is residential housing in close proximity including a community of five papakāinga, privately owned family homes, the Whareroa Marae, and a kohanga reo early childhood centre in the marae grounds.

60 The Regional Council receives odour complaints from residents and workers in the Mount Maunganui industrial area. Concerns have been raised about the health effects on young children and the elderly in the housing units surrounding the Whareroa Marae. Complainants describe symptoms consistent with exposure to SO_2 including irritation to eyes, nose and throat. To collect more information about adverse air quality the Council installed an air quality monitoring trailer at the marae site in September 2015.

61 Hourly levels of SO_2 measured at Whareroa Marae between 26 September 2015 and 31 October 2017 showed two breaches of the upper limit of the NES (570 $\mu g/m^3$): 27 February 2016 (628 $\mu g/m^3$); and 5 March 2016 (751 $\mu g/m^3$). There have been eight exceedances of the lower limit (350 $\mu g/m^3$).

62 The NESAQ set the ambient limit for SO_2 at 120 micrograms per cubic metre, in line with the World Health Organisation (WHO) guideline. Since then the WHO has revised the guideline to 20 micrograms per cubic metre. NESAQ concentration limits are 350 micrograms per cubic meter (expressed as a 1-hour mean), with nine allowable exceedances in a 12-month period, and an absolute limit of 570 micrograms per cubic metre (expressed as a 24-hour mean).

63 Hydrogen sulphide (H_2S) threshold set in the Ambient Air Quality Guidelines (AAQGs) is 7mg/m^3 (1 hour average). The odour can be offensive and can generate complaints to the Council. The issue of resource consent conditions and compliance with the AAQGs is a consenting and compliance matter. Provided the air plan continues to require consents for anthropogenic activities that discharge H_2S, no change is necessary.

64 Other contaminants are discharged from industries and processes including carbon monoxide, oxides of nitrogen, and volatile organic compounds.

65 Natural sources of contaminants are not addressed by the Plan Change.

66 If an ambient standard is breached, regulations of the NESAQ take effect. For example, if the monitoring network in the Port/Mount Maunganui area records an exceedance of the PM_{10} standard, Regulation 17 requires the Council to decline resource consent applications for new or increased discharges of PM_{10} unless the applicant can offset the increase elsewhere in the airshed.

67 Due to the exceedances of SO_2 recorded in the Mount Maunganui area, Regulation 21 (NESAQ) applies. Under Regulation 21 the Council must decline a consent application to discharge SO_2 into air if the discharge is likely cause the concentration to breach the ambient standard.

Part 3: Statutory Considerations

A number of key statutory documents must be noted as part of considering the plan change. These are outlined below.

3.1 Resource Management Act 1991

68 Plan Change 13 to the Regional Natural Resources Plan was prepared under the Resource Management Act (referred to as the Act or RMA), pursuant to Part 5 (Standards, Policy Statements and Plans) and Schedule 1. Under section 63 the purpose of the preparation, implementation, and administration of regional plans is to assist a regional council to carry out its functions in order to achieve the purpose of the Act (set out in section 3.5 below). The Act provides at section 65 directions around the preparation and change of regional plans, including the requirement to amend a regional plan to give effect to the Regional Policy Statement (RPS) once it is reviewed and made operative. This is to be done in the timeframe specified in the RPS, or as soon as reasonably practicable if no time is specified.

69 Section 66 of the Act sets out the matters to be considered by Council, and which it must prepare and change a regional plan in accordance with. This includes (under section 67(3) and (4)) that a change to a Regional Plan must give effect to any national policy statement, and any Regional Policy Statement; and not be inconsistent with any other regional plan for the region. It shall consider the extent to which consistency is required with the regional policy statements or plans of adjacent councils. Council shall take into account relevant planning documents recognised by an iwi authority.

70 These statutory directions are addressed below, and in the section 32 report.

71 The purpose of the Act under section 5 is to promote the sustainable management of natural and physical resources, with sustainable management meaning:

…managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—

(a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

72 In achieving this purpose section 6 of the Act lists aspects of national importance that shall be recognised and provided for. The following are directly relevant to Plan Change 13:

(e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:

73 Section 7 of the Act references other matters that the Council shall have particular regard to when exercising functions and powers under the Act. Of direct relevance to Plan Change 13 are the following:

(c) the maintenance and enhancement of amenity values:

(d) intrinsic values of ecosystems:

(f) maintenance and enhancement of the quality of the environment:

74 Section 8 of the Act requires the principles of the Treaty of Waitangi to be taken into account with the management, use, development and protection of natural and physical resources.

75 Section 15, 15A and 15B of the Act restrict discharge of contaminants into the environment:

- *Discharges of contaminants into air from industrial or trade premises are not authorised by the RMA unless the discharge is expressly allowed by a national environmental standard or other regulation, a rule in a regional plan as well as a rule in a proposed regional plan for the same region (if there is one), or a resource consent.*
- *Discharges of contaminants into the air from a place or any other source, whether movable or not, cannot contravene a national environmental standard unless the discharge is expressly allowed by other regulations, a resource consent, or under s20A.*
- *Discharges of contaminants into the air from a place or any other source, whether movable or not, cannot contravene a regional rule unless the discharge is expressly allowed by a national environmental standard or other regulations, a resource consent, or under s20A.*
- Section 15A restricts dumping and incineration of waste or other matter in the coastal marine area.
- Section 15B restricts the discharge of harmful substances from ships or offshore installations.

Assessment against Section 6 and 7 of the Act

76 Overall, the plan change seeks to manage the discharges of contaminants to air to ensure maintenance and enhancement of the quality of the environment (which includes people and communities). Management is carried out by controlling discharges of particulates, odour, chemicals, and gases with the first priority to protect human health. The provisions of the plan also protect air quality in general, including maintenance and enhancement of amenity values, and the intrinsic values of ecosystems.

77 The plan change protects the mauri of air. Tangata whenua consider the mauri of air to be a taonga.

Assessment against Section 8 of the Act

78 Consultation with tāngata whenua and consideration of Iwi Management Plans (IMPs) is discussed in further detail in Part 4.

79 IMPs provide a mechanism for tāngata whenua interests to be considered in Council processes. There are specific legislative requirements which place a duty on Council staff to take IMPs into account.

80 In preparing Plan Change 13, IMPs were reviewed to identify and understand the expectations of iwi and hapū with regard to natural resource management, and in particular air quality, and to inform engagement with iwi and hapū about the Plan Change.

81 Of the 38 IMPs lodged with Council, 22 contained provisions directly relevant to the Plan Change. Key issues included horticultural and agrichemical sprays, industrial discharges, domestic fires, burning of waste, odour and dust, and the use of the fumigant methyl bromide.

82 The relevant information from the IMPs is provided in the s32 evaluation report (see subsection 4.2).

83 Direct engagement with Māori, taking into account the principles of active protection, mutual benefit, equity and equal treatment, included 10 hui across the region from July 2016 to October 2017, where presentations were made and the draft air plan was discussed. The key issues for Māori constituencies were identified, along with the desired responses and remedies to the draft plan change.

3.2 National Policy Statements and National Environmental Standards

84 Regional plans must give effect to national policy statements (NPS), including the New Zealand Coastal Policy Statement, and ensure that national environmental standards (NES) and regulations are met. Plans must also comply with any other national regulation made under the RMA.

85 The following national planning instruments have been consulted and objectives, policies and rules have been included in the Plan Change to give effect to national policies, and achieve national environmental standards.

- NES for Air Quality 2004 (NESAQ)
- NES for Sources of Drinking Water 2007 (NES-SDW)
- NES for Electricity Transmission Activities 2009 (NES-ETA)
- NES for Plantation Forestry 2017 (NES-PF)
- NES for Assessing and Managing Contaminants in Soil to Protect Human Health 2011 (NES for Contaminated Soil)
- NPS on Electricity Transmission (2008) NPS-ET
- New Zealand Coastal Policy Statement 2010 (NZCPS)
- NPS on Urban Development Capacity 2016 (NPS-UDC)
- Resource Management (Marine Pollution) Regulations 1998

3.3 Bay of Plenty Regional Policy Statement (Operative 2014)

86 Under the RMA (s67(3)), a regional plan must give effect to the Operative Regional Policy Statement (RPS). Topic areas within the RPS of particular relevance are:

- Air quality
- Coastal environment
- Integrated resource management

- Iwi resource management

87 Objective 1 requires the adverse effects of odours, chemical emissions and particulates are avoided, remedied or mitigated so as to protect people and the environment.

88 In the RPS, Method 2 requires regional plans to give effect to Policy AQ 2A; Method 3 requires resource consents, notices of requirement, and changes, variances, reviews and replacement of plans to give effect to Policy AQ 1A. In the air quality chapter of the RPS, implementation of Method 3 (to achieve Policy AQ 1A) is specifically assigned to city and district councils.

89 Provisions in the Plan Change have been designed to give effect to the relevant provisions of the RPS. Details of this assessment are provided in Appendix 5 of the Section 32 report.

3.4 Operative Regional Plan provisions

90 The Bay of Plenty Regional Air Plan (the current air plan) became operative in 2003 and was reviewed in 2013. The review recommended that the current air plan be replaced with a new plan. The Council is in the process of amalgamating six of its plans into one Regional Natural Resources Plan and for that reason this matter has been promulgated as a plan change (Plan Change 13) to the Operative Regional Natural Resources Plan. When Plan Change 13 is operative, the current air plan will be removed.

91 The Proposed Regional Coastal Environment Plan (the Coastal Plan) is currently in its final appeals process and will be operative in the near future. Once operative, the Coastal Plan will supersede the current Operative Regional Coastal Environment Plan. For this reason the Operative Regional Coastal Environment Plan has not been considered.

92 The Coastal Plan clearly states that it does not manage discharges of contaminants to air in the coastal marine area as these are addressed in the Regional Air Plan. The Coastal Plan contains provisions regarding integrated management, iwi resource management, and the port zone that have been considered alongside this Plan Change. There are no inconsistencies.

93 Plan Change 13 provisions have been aligned with the current provisions of the Regional Natural Resources Plan with the addition of new clauses in AQ R3 and advice notes where appropriate.

3.5 Other Relevant Statutory Instruments

Ozone Layer Protection Act 1996, Ozone Layer Protection Regulations 1996

94 The Vienna Convention for the Protection of the Ozone Layer (the Convention) followed by the Montreal Protocol on Substances that Deplete the Ozone Layer (the Protocol) required use of methyl bromide to be phased out by January 2015. New Zealand ratified the Protocol in 1987, except for quarantine and pre-shipment application.

95 This is regulated in New Zealand by the Ozone Layer Protection Act 1996 (OLPA) and the Ozone Layer Protection Regulations 1996 (OLPR). These regulations give effect to New Zealand's obligations under the Convention and the Protocol to phase out ozone depleting substances by January 2005 except

for critical uses. Under these regulations the importation of methyl bromide is prohibited except for quarantine and pre-shipment purposes.

Hazardous Substances and New Organisms Act 1996

96 The risks of hazardous substances are managed under the Hazardous Substances and New Organisms Act 1996 (HSNO) to safeguard people and the environment. The HSNO is administered by the Environmental Protection Authority (EPA).

97 The Resource Legislation Amendment Act 2017 removed the control of hazardous substances as an explicit function of councils. This means councils no longer have an explicit obligation to regulate hazardous substances in RMA plans, or policy statements. Consequential changes have also been made to the HSNO Act and the Health and Safety at Work Act (2015) in light of this change.

98 The intent of this change is to remove the perception that councils must always place controls on hazardous substances under the RMA and to ensure councils only place additional controls on hazardous substances if they are necessary to control effects under the RMA that are not covered by other Acts.

99 In most cases the HSNO Act will be adequate to avoid, remedy or mitigate adverse environmental effects (including potential effects) of hazardous substances. However, councils still have a broad function of achieving integrated management, and must still control discharges of contaminants into or onto land, air or water (s30(f)).

100 The discharge of agrichemicals to air may occur as spray drift which may cause adverse effects. Spray drift is not controlled by other regulations which focus on different aspects of hazardous substances. This regulatory gap is filled by provisions in regional plans to avoid, remedy or mitigate adverse effects of spray drift. Regional plans do not need to regulate the storage, transport, disposal or overall use of these substances as these are all required by the HSNO Act.

3.6 Local Government Act 2002

101 Schedule 1 of the Resource Management Act provides the process required to be completed with the preparation, change and review of any policy statement or plan. Clause 3 of Schedule 1 identifies the consultation required during the preparation of a plan or policy and requires this to be completed in accordance with s82 of the Local Government Act (LGA).

102 Section 82 of the LGS ensures that all parties who will or may be affected by, or have an interest in the matter are provided with reasonable access to information, and the opportunity to present their views to the local authority. Specific mention is provided for consultation with Māori in ss82(2). The local authority must give consideration to the views and preferences of any persons affected by or with an interest in the matter.

103 Plan Change 13 was developed with consultation with the community. From April to June 2016 the Draft Plan was available for consultation. During this consultation period three workshops were held – one in each of the three main centres (Tauranga, Rotorua and Whakatāne), along with an open day and evening. Printed fact sheets and rules information was provided. Presentations and discussions were held with interested parties on their

request. The discussion document and supporting technical information was made available to the community on the Council website.

104 Specific iwi and hapū consultation took the form of community meetings, with 10 meetings/presentations/discussions held across the region from July 2016 to October 2017.

105 All submissions received on Plan Change 13 were collected and considered, and revisions made to address concerns raised by the community where appropriate, whilst acknowledging the need to uphold the requirements under the RMA and the RPS.

106 Further detail on the consultation for Plan Change 13 is provided in the s32 report.

3.7 Statutory Acknowledgements

107 Deeds of Settlement and Settlement Legislation achieved with each iwi, regional councils are required to include statutory acknowledgments in relevant regional plans and policy statements, and to have regard to them in resource consent decision making.

108 A number of co-governance/co-management arrangements have been established as a result of treaty settlement processes:

109 The Integrated Planning Protocol between Tūhoe Te Uru Taumatua, Bay of Plenty Regional Council, Hawke's Bay Regional Council, Wairoa District Council and Whakatane District Council is to provide an integrated and consistent framework for all Council planning processes within the Ngai Tūhoe rohe. It seeks to promote effective engagement and prevent misunderstandings around roles and statutory obligations. The protocol includes principles and expected levels of engagement.

110 This Protocol is of particular relevance to this Plan Change as it requires Council to carry out early communications and share a Draft Plan Change with Tūhoe Te Uru Taumatua for comment.

111 The Draft Plan Change was provided to Tūhoe Te Uru Taumatua in December 2016. During discussions at this meeting it became clear that Tūhoe have few if any air quality concerns. Tūhoe Te Uru Taumatua will be kept informed of developments in the Plan Change.

3.8 Statutory Summary

112 The below table provides a summary of the statutory documents that are required to be met as part of a plan change and considered as part of any recommendations made in response to submissions.

Table 1 Summary of Statutory Documents

Statutory Document	Requirement
Resource Management Act 1991	
	The purpose of section 5 is upheld.
	Matters of national importance are recognised and provided for.
	The matters listed in section 7 shall be given particular regard to.
	The principles of the Treaty of Waitangi shall be taken into account.
	The content of a regional plan shall adhere to those specified within Section 67 of the Act.
	The process and timeframes within Schedule 1 are adhered to.
Local Government Act 2002	Consultation is completed in accordance with section 82 during development of the plan.
National Policy Statements and National Environmental Standards	A regional policy and plan must uphold the intent and direction of the NPS. Alignment must be achieved with the objectives and policies of the NPS and NES.
Resource Management (Marine Pollution) Regulations 1998	No regional rule may apply to discharges from ships.
Bay of Plenty Regional Policy Statement (Operative 2014)	
Objective 1	Requires the adverse effects of odours, chemical emissions and particulates are avoided, remedied or mitigated so as to protect people and the environment.
Policy AQ 1A	Discourage reverse sensitivity associated with odours, chemicals and particulates.
Policy AQ 2A	Manage adverse effects from the discharge of odours, chemicals and particulates.
Policy AQ 3A	Manage adverse effects of fine particulate contamination.
Operative Regional Natural Resources Plan	Provisions must be consistent with the operative provisions of this plan
Ozone Layer Protection Act 1996; Ozone Layer Protection Regulations 1996	Regional Council has no role under these regulations.
Hazardous Substances and New Organisms Act 1996	Regional Councils no longer required to control use, storage, transport and disposal of hazardous substances

Part 4: Consideration of submissions and further submissions

4.1 Structure of Part 4

113 This part of the report is structured according to the order provisions appear in the proposed plan. However the provisions relevant to five key topic areas (open burning, Rotorua burner rules, agrichemical use, methyl bromide and fumigation, reverse sensitivity) are each presented in their in own sections after the analysis of the general plan provisions.

114 Analysis of definitions used in one topic area or provision are included in the analysis alongside the relevant provisions. However, if definitions are relevant to more than one section, they are analysed in the Definitions of Terms in section 4.40.

4.2 How submissions have been considered

115 For efficiency and in accordance with Clause 10(3) of the First Schedule of the Act, the evaluation has been undertaken on both an issues and provisions based approach (consistent with clause 10(2)(a)), as opposed to a submission by submission approach. While every effort has been made to address specific submission points, due to the number of submissions and further submission points, some discussions are generic and may not contain specific recommendations on each submission point.

116 Each of the key topics discuss the key issues raised in the submissions and further submissions, makes an overall recommendation and gives reasons for such recommendations.

117 Where changes are recommended in response to submissions, these are shown as:

(i) Text recommended to be added to the plan change is underlined, red font or underlined green font in the consequential changes

(ii) ~~Text recommended to be deleted from the plan change is in in red font and strikethrough~~ ~~or green font and strikethrough in the consequential changes.~~

118 A track change version of Proposed Plan Change 13 showing Council staff recommendations contained within this Report is included in Attachment 1 of this report.

4.3 Implications of King Salmon decision on plan changes and resource consent applications – use of the terms 'avoid' and 'protect'

119 A number of submission points on various sections of the plan discuss the implications of the word "avoid" and, to a lesser extent, "protect".

120 Some submissions refer explicitly to the Supreme Court's decision in *King Salmon* (relating to a private plan change in the Marlborough Sounds), where the plan change was held not to give effect to the directive policies of the New Zealand Coastal Policy Statement 2010 (NZCPS). Other submissions refer to the High Court decision in *Davidson* and the extent to which the reasoning in King Salmon should be applied to resource consent applications, although that decision was appealed. The Court of Appeal has recently released its decision on the *Davidson* matter, and that is discussed further below.

121 As the discussions will be relevant to several sections of the plan change, some general comments and introduction is included here to avoid extensive repetition. Where matters need to be addressed further in a specific planning provision context, further comments are provided in the relevant sections.

122 Some submitters have expressed concerns that using the word "protect" imposes too high a requirement, akin to the 'avoidance' of any adverse effects. Some submissions state this goes against the framework of the Act which provides for an ability to avoid, remedy, or mitigate, adverse effects. Similar concerns are expressed by some submitters about the use of the term "avoid" and whether that is to be interpreted in all cases as "not allow" or "prevent the occurrence of" as described in *King Salmon*.

123 It should be remembered that plan changes (such as Plan Change 13) are required by the RMA to 'give effect' to the higher order planning documents. In this case that includes the NZCPS in relation to coastal areas, and the Bay of Plenty Regional Policy Statement (RPS). The meaning of the term 'give effect to' means implement and is well canvassed as a result of the Supreme Court's decision in *King Salmon*. The Supreme Court held that the NZCPS contains specific directive policies which are intended to be in the nature of a bottom line, and as such taking an overall broad judgment approach when undertaking a private plan change would minimise the significance of those directive policies and as such would not 'give effect' to the higher order documents.

124 As noted above, the Court of Appeal has recently released its decision in *Davidson* which specifically considered the extent to which the reasoning in *King Salmon* should be applied to resource consent applications. It is worthwhile briefly noting this decision, as it appears that a number of the submissions have assumed that by including the word 'avoid' in various objectives and policies in Plan Change 13, that activities which could not 'avoid' such effects might automatically be refused consent.

125 In summary, the Court of Appeal's decision is clear that the 'overall broad judgment' approach in relation to plan change applications was rejected by the Supreme Court because of the prescriptive nature of the relevant provisions in the NZCPS in that case (Policies 13 and 15) and the statutory obligation to give effect to them. However, if the Supreme Court had intended to reject that approach for resource consent applications, it would have made that explicit.

126 The decision in *Davidson* also provides that where applications for resource consents fall for consideration under other kinds of regional plans, the appropriate process for consent authorities is to undertake a 'fair appraisal of the objectives and policies as a whole'. The Court states "If it is clear that a plan has been prepared having regard to pt 2 and with a coherent set of policies designed to achieve clear environmental outcomes, the result of a genuine process that has regard to those policies in accordance with s104(1) should be to implement those policies in evaluating a resource consent application."

127 As such, it is considered that 'broad brush' comments about the use of the words 'avoid' or 'protect', or their implications on resource consent applications, are not appropriate and matters should be addressed giving consideration to the specific wording of the objectives and policies of the plan change (including reading them 'as a whole'), and should be considered in the context of the higher order planning documents.

128 At this juncture it is noted that there are some objectives and policies of the plan change which have been designed to achieve clear environmental outcomes through being expressed in specific and directive terms. This is consistent with the purpose of the Act. Those matters are addressed further in other sections of this report.

129 Most activities in the plan change could cause adverse effects on human health, if not managed appropriately. Objective AQ O1 (summarised) is to protect human health from adverse effects of air discharges. This is achieved by providing policies and rules that manage discharges to avoid adverse effects on human health. A complete prohibition on all these activities would not be appropriate nor practicable and is not consistent with the purpose of the Act. No prohibited activities are included in the plan change.

4.4 Objectives

130 Objectives are statements of what is to be achieved through resolution of an issue. Objectives usually clearly state what is aimed for in overcoming the issue or promoting a positive outcome, or what the community has expressed as being desirable in achieving an outcome. Usually objectives will be specific in order to be clear enough to provide targets that policies seek to achieve.

131 The air quality objective in the RPS provides a high level statement regarding the management of contaminant discharges to air. It states 'the adverse effects of odours, chemical emissions and particulates are avoided, remedied or mitigated so as to protect people and the environment.' The plan change then steps this objective down to an appropriate level of detail required for the air quality chapter of a regional plan (ambient and local air quality). Specific environmental outcomes are included in AQ O1 and AQ O2.

132 The objectives also capture relevant aspects of the RPS outside the air quality chapter including 'Cumulative effects of existing and new activities are appropriately managed' (objective 10), 'Kaitiakitanga is recognised in and the principles of Te Tiriti o Waitangi are systematically taken into account in the practice of resource management' (objective 13), and 'the mauri of water, land, air, and geothermal resources is safeguarded and where it is degraded, where appropriate, it is enhanced over time' (objective 17).

4.4.1 AQ O1 – Protect air from adverse effects – Te tiaki i te hau mai i ngā pānga kino

Submission Points:	17-1, FS21-8, 19-1, FS21-9, 26-1, FS21-10, 33-1, FS8-10, FS13-8, FS23-1, 36-2, FS20-1, 36-18, FS20-2, FS21-14, FS26-1, 37-2, FS21-11, 45-1, FS21-12, 50-5, FS8-11, FS23-2, 51-2, FS22-1, 58-8, FS8-12, 66-2, FS13-10, 67-2, FS5-1, FS10-8, FS13-9, FS15-8, FS16-8, FS17-8, FS22-2, 68-1, FS21-13, FS21-20, 76-1, FS8-13, FS10-31, FS15-32, FS16-32, FS17-32, FS23-3

133 Key concerns raised by submitters span a number of issues: whether the objective should "protect"; inclusion of the concept of mauri; whether any adverse effect on human health should be protected or only significant adverse effects; definitions of terms (mauri and degraded); and the mix of policy intentions between protection and enhancement.

Protect or avoid

134 Submitters have expressed concerns around the use of the word "protect" because it is perceived to have an implication that no adverse effects are anticipated or provided for and must all be avoided. Some submitters state that this would go against the framework of the Act which provides for remedy and mitigation, and without these options, any and all adverse effects must be avoided, which is unreasonable.

135 This objective is intended to be directive and provide a clear outcome for the plan. It sets an environmental bottom line, that the mauri of air and human health must be protected. It is specific, applying only to anthropogenic contaminant discharges to air, not natural sources.

136 The objective is derived from Objective 1 of the RPS (to avoid, remedy or mitigate adverse effects of air contaminants) and Objective 17 of the RPS (safeguarding the mauri of air). Its focus is narrow, only protecting mauri and human health, therefore the use of the term 'protection' is appropriate.

137 'Protect' or 'protection is used in both the Ambient Air Quality Guidelines and the 2011 Users' Guide to the revised National Environmental Standards for Air Quality (the users' guide) which states the "ambient standards are the minimum requirements that outdoor air quality should meet in order to guarantee a set level of protection for human health and the environment'. The term is deliberately used in the users' guide as for some contaminates (eg particulates) there is no safe threshold for exposure and it is not possible to completely 'avoid' adverse effects on human health. The term 'avoid' is not used in this objective for this reason. Therefore staff do not recommend changing the wording from 'protect'.

138 When the provisions of the plan change are assessed as a whole, this objective should still be interpreted as a bottom line that must be achieved.

Mauri of air

139 The areas identified in AQ O1 as needing protection are mauri and human health. The bulk of submission points discuss concerns with whether these are the appropriate areas to protect and/or what level they should be protected to.

140 Some submitters have expressed concerns about the concept of mauri, including that it is not defined in the plan, it is a concept outside western science, and is too broad to be able to determine exactly what the objective is trying to achieve by protecting mauri.

141 The plan has no definition of mauri, instead it refers readers to the Kaitiakitanga chapter of the plan which discusses the Māori resource management system. Since the plan became operative, the second generation RPS was developed which contains a definition of mauri – "the essential life force, energy or principle that tangata whenua believe exists in all things in the natural world, including people. Tangata whenua believe it is the vital essence or life force by which all things cohere in nature".

142 Objective 17 of the RPS seeks that "the mauri of …air…is safeguarded…" and this objective has been carried through to AQ O1 to give effect to the RPS. Therefore when AQ O1 seeks to protect mauri of air, it is protecting the essential life force of air and people, and is consistent with, and gives effect to the RPS provisions.

143 Staff acknowledge submitter concerns with the concept of mauri not being based in western science. However the mauri of natural resources and Mātauranga (traditional environmental knowledge) is increasingly recognised and provided for at a national planning level (for example in the NPS-Freshwater Management).

144 Removing protection of the mauri of air from the plan change would remove reference to an important Māori environmental system value, and would not be consistent with the provisions of the RPS including Objective 17, Policy IW2B, Policy IW5B, as well as other sections of the Regional Natural Resources Plan. This includes the Kaitiakitanga chapter where the degradation the mauri of water, land and geothermal resources is identified as an issue. Although air is notably not included in this issue, this is due to the plan previously being limited to management of water and land. In the more recent RPS, air is included in Objective 17 *the mauri of water, land, air and geothermal resources is safeguarded and where it is degraded, where appropriate, it is enhanced over time.*

145 Most Iwi/hapu management plans include reference to mauri as part of the Maori world view and the relationship and connection of Maori with the environment and all it sustains.

146 One submitter (51-2) requests that human health is removed from the objective and only mauri included. The submission point states that the mauri of air quality should not be limited to its impact on human health or areas of human habitation, as emissions contribute to atmospheric changes. It should be noted that the plan change cannot manage discharges of greenhouse gas with regards to the effects on climate change (section 70A of the Act). Human health is a core aspect of air quality management and its removal is not recommended.

Enhancement of degraded air

147 There is some submitter concern with this objective and the requirement to enhance air quality where degraded. The key issue is that no definition or guidance is provided for what degraded means.

148 The requirement to enhance air quality where degraded is taken directly from Objective 17 of the RPS. No definition of degraded is provided in the RPS, the plan, or the RMA.

149 Two recently developed regional plans, the Auckland Unitary Plan and Environment Southland's Regional Air Plan also use the term degraded, but do not define what this term means. The dictionary meaning is *reduced in quality; inferior.*

150 Degraded ambient air quality can therefore be defined as where the ambient air does not meet the ambient air quality standards of the NESAQ and/or the AAQGs. Degraded local air quality is where one or more discharges have an adverse effect on the environment.

151 Objectives AQ O2 and AQ O3 seek to ensure air quality meets these goals. If air quality falls below these targets, that is, it becomes degraded, then the requirement to meet the objectives will ensure air quality is enhanced. Therefore, there is no need to specifically provide for the enhancement of degraded air quality in AQ O1 as it is built in to AQ O2 and AQ O3. Staff recommend that this section is removed from the objective.

Significant health effects

152 The final submitter issue is a concern that the objective protects human health from any and all adverse effects from discharges of contaminants to air. Concern is that the only way to achieve the proposed objective would be to have no discharges, and submitters say that is inconsistent with the purpose of the RMA.

153 Submitters request that this is resolved in some way, for example protecting against *significant* adverse effects, or from adverse effects that are *more than minor*. This has attracted further submissions in opposition that state it is unacceptable for any contaminants to be discharged at levels resulting in ill health and that allowing these submissions would further reduce the Regional Council's ability to manage harmful discharges.

154 Protecting against only the *significant* adverse effects to human health implies that there is a point up to which adverse effects on human health are acceptable. In order to 'prove' any effect on human health, robust scientific evidence is required. If the objective was reworded to provide for only 'significant adverse effects on human health' this would potentially exposes many more people to potential harm.

155 There is also the question of what significant means. Human health effects may occur from acute exposure (short-term) where health effects are most likely visible quickly. However chronic (long-term) exposure to lower levels may not show for many years, or decades.

156 The objective does not state that the level of protection is from "any" or "all" adverse effects of contaminants. This is in acknowledgment that some contaminants have no established minimum limit below which exposure is safe. For example, particulates, one of the Regional Council's stated air quality issues in the RPS, have no established safe threshold and are considered harmful at any concentration.

157 Due to this, the 2011 Users' Guide to the revised National Environmental Standards for Air Quality (the users' guide) deliberately states the "ambient standards are the minimum requirements that outdoor air quality should meet

in order to guarantee a set level of protection for human health and the environment".

158 To determine what "protect" or "protection" means, there are at least three published documents to provide guidance. The ambient air quality standards themselves, the users' guide, and the Ambient Air Quality Guidelines. These allow for a pragmatic approach to protection. There are also hazardous substance assessments and reassessments, and case law such as *Envirofume v Bay Plenty Regional Council*.

Council staff recommendation

159 In addition to changes discussed above, staff note that the objective starts with "Protect" which is a verb. This implies an action, rather than an end point. Although no submitter or further submitter has requested a change, staff recommend changing "protect" to "the protection of". This is a minor change which keeps the wording consistent with changes made to AQ O3 and does not change the overall intent.

160 Amend Objective AQ O1 as follows:

Protection of the mauri of air and human health from adverse effects of anthropogenic contaminant discharges to air., ~~and enhance air quality where degraded.~~

4.4.2 AQ O2 – Ambient air quality – Te pai o te hau

Submission Points:	17-2, FS21-15, 19-2, FS21-16, 26-2, FS21-17, 33-2, FS13-11, FS23-4, 36-3, 37-3, FS21-18, 45-2, FS21-19, 50-6, FS8-14, FS13-12, 58-9, FS18-9, 67-3, FS5-2, FS8-15, FS10-9, FS13-13, FS15-9, FS16-9, FS17-9, FS23-5, 68-2, FS22-3.

161 Submitters seek a number of changes to this objective including: removal of the reference to the National Environmental Standards for Air Quality (NESAQ) or the reference to the Ambient Air Quality Guidelines (AAQGs), or both. Submitters have also expressed concern that if the references remain, there should be provision for any updates made to these documents.

162 This objective is intended to be directive and provide a clear outcome for the plan. It sets an environmental bottom line, that relevant ambient air quality standards are met. It is specific, naming the National Environmental Standards for Air Quality and the Ambient Air Quality Standards.

163 The objective is derived from the requirement to meet the National Environmental Standards for Air Quality and Objective 1 of the RPS (to avoid, remedy or mitigate adverse effects of air contaminants). When the provisions of the plan change are assessed as a whole, this objective should still be interpreted as a bottom line that must be achieved.

Remove entire objective

164 Some submissions request that the entire objective is removed.

165 The purpose of the NESAQ is to "guarantee a set level of protection for human health and the environment." Staff consider that if this objective were to be

removed, objective AQ O1 would be sufficient – but would be phrased at a higher level with less useful specificity.

166 However the Regional Policy Statement has specifically identified "the effects of fine particulate matter on human health" as an issue. As the underlying issue is not included in the plan, the issue is reflected in this objective. Since the RPS was developed, other areas and contaminants have emerged with this same issue, therefore the objective is broadened to include those. It is therefore considered appropriate that the Objective is retained.

Remove references to both the NESAQ and the AAQGs

167 Removing all reference to both documents means replacing them with relevant text such as "maintain the region's ambient air quality and enhance where degraded." This opens up the question (from submissions on AQ O1) as to what "degraded" means.

168 To resolve this, a definition of "degraded" would be required. The definition would set out the criteria for when ambient air quality is considered to be of poor enough quality that adverse effects are occurring.

169 These criteria have already been provided in the ambient air quality standards for contaminants in the NESAQ, and in the health-based values of the AAQGs. They establish short term and long term limits for a range of air pollutants.

170 Attempting to provide a definition of 'degraded' as an alternative to the criteria already provided would be problematic. If the intention is to ensure the region's ambient air quality meets the ambient air standards in the NESAQ, then the plan change should state this.

Remove reference to the AAQGs

171 Some submission points request the removal of the AAQGs from the objective. Reasons include that the guidelines have not been through the same robust process of development through the Act, with costs and benefits considered. Therefore the AAQGs should not be elevated to the same status of the NESAQ.

172 The objective included the AAQGs to expand the list of ambient contaminants beyond the five currently managed by the NESAQ. The health-based values include a much longer list of many contaminants that could become an issue (for example, arsenic levels are increasing in many towns in New Zealand due to the burning of timber treated with CCA (copper, chromium, arsenic) in domestic burners.

173 Discussions with Ministry for the Environment staff indicate that prior to the development of the NESAQ, regional councils gave little weight to the AAQGs. Ambient air quality, particularly in some urban areas where many people live, continued to deteriorate. As a result, the NESAQ were developed.

174 However, staff acknowledge that the AAQGs are only guidelines, and therefore their inclusion in the objective as a threshold to be achieved, may not be appropriate. It is therefore recommended that they be removed from this particular objective.

175 Staff consider that there is little risk in removing explicit reference to the AAQGs, as if any contaminant should emerge as an issue for health or values,

objectives AQ O1 and AQ O3 provide sufficient coverage. The guidance will remain as source documents for staff undertaking air management functions.

Remove reference to the NESAQ

176 Submitters correctly identify that the NESAQ prevail over the plan change and councils must ensure air quality meets them. On that basis they say providing specific reference to them in the plan is unnecessary.

177 As discussed above, the RPS has specifically identified "the effects of fine particulate matter on human health" as an issue, therefore this is brought through from the RPS and expanded to include areas identified as possibly in breach since the RPS was developed.

Amendments and updates

178 Submitters are concerned that the objective does not allow for amendments or replacements of, in particular, the NESAQ. Staff share this concern and agree that text is added to remedy this. It follows that if the NESAQ was ever withdrawn then this Objective would have no practical effect.

Council staff recommendation

179 Amend AQ O2 as follows:

The region's ambient air meets the National Environmental Standards for Air Quality (2004) (or its amendment or replacement) ~~and the Ambient Air Quality Standards (2002).~~

4.4.3 AQ O3 – Local air quality - Te pai o te hau o te rohe

Submission Points:	7-2, FS8-16, FS13-14, FS20-3, FS21-29, 17-3, FS21-21, 19-3, FS8-17, FS13-15, FS23-6, 21-1, FS8-3, FS8-18, FS13-16, FS20-4, 26-3, FS21-22, 31-1, FS21-23, 33-3, FS5-3, FS8-19, FS12-8, 36-4, FS21-24, 37-4, FS21-25, 45-3, 50-7, FS21-26, 51-3, 58-3, FS8-20, 66-3, FS21-27, 67-4, 68-3, FS21-28, 76-2, FS8-21.

180 This objective sets out a clear environmental outcome however allows considerable room for movement to achieve the outcome. It was derived from Section 5 of the Act and allows for the full hierarchy of management options for adverse effects – avoid, remedy or mitigate.

181 Key submitter concerns with this objective are that the objective reads more like a policy, that it needs to take into account the receiving environment, and concerns with the inclusion of amenity values.

182 Objectives AQ O1 and AQ O2 seek to protect human health. While this is of primary importance, staff consider it is appropriate for the plan change to also seek to provide for local air quality and the other well-beings. Those matters are covered in objective AQ O3.

183 Submission point 7-2 is concerned that this objective reads more like a policy and suggests using the term "protect" instead of 'manage'. Some further submissions consider that 'protect' is too high a requirement, and that it could be interpreted as 'preclusive of use'.

184 Staff do not agree that the use of the term 'protect' would restrict use. The Court's decision in *Davidson* is that the appropriate process for consent authorities is to undertake a 'fair appraisal of the objectives and policies as a whole'. The Court also states "If it is clear that a plan has been prepared having regard to Part 2 and with a coherent set of policies designed to achieve clear environmental outcomes, the result of a genuine process that has regard to those policies in accordance with s104(1) should be to implement those policies in evaluating a resource consent application."

185 Staff intention with this objective was to establish a clear environmental outcome, but still allow for the full suite of management options under the Act – avoid, remedy or mitigate. Therefore the word 'manage' is appropriate for this objective and the decision sought by submission point 7-2 is not recommended.

186 However, submission point 7-2 is correct in noting that the objective is written more like a policy. The use of the verb "to manage" implies that this is an action, rather than an endpoint. Changing the word to the noun "management" would address this.

187 Submission point 19-3 request a modification of the term "environment" by placing "relevant receiving" in front of it, and there are some further submissions in support. The content of the submission indicates that the word environment is taken to mean zones, such as industrial zones, and that each zone requires a different response to managing discharges.

188 The definition of environment in the Act does not include zoning, therefore the decision sought is not appropriate. However the understanding of staff is that the underlying issue of this submission point is that local air quality differs according to the activities carried out within each area. The remedy sought is; an assessment of whether or not there is an effect, to be based on the existing environment. This includes a consideration of whether the effect is anticipated by those within the zone and considered acceptable for the area.

189 The decision sought seems to advocate for an approach that accepts poorer air quality in some areas of the region. It assumes that every person – be they a farmer, horticulturalist or commercial/industrial business operator - within a particular area has the same values for air quality. Staff note that this is not the case. For example, many of the businesses in the Ngāpuna area (Rotorua) were adversely affected by dust from some of the neighbouring activities, despite being in the same area or zone.

190 Effects on air quality are generally assessed according to property boundary, not area. This manages not only adverse effects beyond the boundary, but also the cumulative effects of all discharges in one area. This can lead to poor ambient air quality and health effects. The goal of this objective is to manage local air so this does not occur.

191 In recognition of the need for businesses to carry out their activities and that this may sometimes have an effect on values, there is no avoid or protect requirement included in this objective. The full suite of management options (avoid, remedy or mitigate) is provided for.

192 To make this clear, the word 'sustainable' can be added to the beginning of the objective. This leads to some repetition of the Act (which is generally not recommended) but condenses the statement to be relevant to air discharges and the values we specifically seek to consider, while providing for use and development of the resource.

193 Human health needs to be considered whether at the local, ambient or regional level, therefore, although it is included in AQ O1 and AQ O2, it is also included here.

194 One submitter was concerned with the inclusion of “amenity values”. Amenity values are included in the definition of “environment” and only restated in the plan change for clarity. Staff understand the reasons for the submission point are due to conflicting expectations of rural environments. However, this term is embedded in the Act. Assessment of amenity values will be according to whether they are offensive or objectionable using the FIDOL factors (frequency, intensity, duration, offensiveness, location), discussed further in section 4.40.5.

Council staff recommendation

195 Amend AQ O3 as follows:

Sustainable management of discharges of contaminants to air according to their adverse effects on human health, cultural values, amenity values and the environment.

4.4.4 New objective to enable discharges to air

Submission Points:	45-24, FS-1, FS11-1, FS13-1, FS18-1, FS22-6, FS23-64, FS30-1, 37-1, FS3-5, FS8-5, FS10-1, FS13-4, FS15-1, FS16-1, FS17-1, FS18-5, FS20-8, FS23-63, 37-18, FS8-6, FS13-5, FS18-6, FS21-4, FS30-2, 45-4, FS8-7, FS11-2, FS13-6, FS18-7, FS21-5, FS23-65, FS30-3, 58-12, FS8-8, FS18-8, FS20-9, FS21-6, FS23-66, FS30-4, 76-3, FS3-6, FS8-9, FS10-32, FS11-3, FS13-7, FS15-33, FS16-33, FS17-33, FS20-11, FS21-7, FS23-67, FS30-5

196 A number of submitters are concerned that there is too much emphasis on achieving acceptable air quality with no provision for operational requirements of the region’s industry, infrastructure and rural activities. They request an enabling objective that provides for these activities (on the condition that adverse effects are avoided, remedied and mitigated and there is no degradation of air quality).

197 The Purpose of the Regional Natural Resources Plan (RNRP) sets out a number of aims that the plan seeks to achieve. These aims essentially break down Part 2 of the Act and put it in the context of land, water and geothermal resources which the plan covers.

198 The RNRP was originally the Regional Water and Land Plan and its content was not designed to manage air quality as the Regional Air Plan is a stand alone document. Therefore the consequential changes to some text in the RNRP expanded the coverage of the purpose, (and by extension, the plan) to include air, and discharges of contaminants to air. There is one submission to this section (discussed in Section 4.39.3), that does not impact on this assessment.

199 Although the purpose is not a provision, it sets out a clear hierarchy of aims. Clauses (a) to (i) are standalone aims that are not conditional upon any other clause. That is, the goal is to achieve each aim, independent of any other aim.

200 Clauses (j) and (k) set out the aims to allow for the discharge of contaminants to air, and to enable people and communities to provide for their social, economic and cultural well-being. However, these aims are conditional upon being "consistent with (a) to (g)" or "while achieving (a) to (i)". That is, they are not aims to be achieved on their own, they are only achieved provided other aims are also achieved.

201 The plan change has followed this hierarchy of aims. The objectives state what needs to be achieved to resolve the regionally significant air quality issues (identified in the RPS), and meet the NESAQ. The policies and rules then set out how the objectives will be achieved. Each group of provisions was analysed through the section 32 assessment, which included an assessment of the four well-beings.

202 Staff disagree that there is no provision for air discharges. The plan change provides for appropriately managed air discharges from industry, infrastructure and rural activities through the proposed policies and rules. While a number of activities are discretionary or non-complying, there are no prohibited activities in the plan change. There is always an option to apply for a resource consent.

203 In some cases, the plan change takes the more permissive route. For example, open burning and agrichemical spraying results in numerous air complaints each year, yet the plan change retains these as permitted activities. These discharges are provided for as a part of the operation and maintenance of rural production land.

204 The inclusion of an objective to enable discharges to air would elevate this requirement too high in the hierarchy which is inconsistent with the RNRP's purpose. It may also create an internal tension within the plan change where for example the goal of providing for a discharge is at odds with meeting the NESAQ.

205 However, staff acknowledge submitters concerns and suggest a wording change to AQ P1 to better reflect that the policy provides for appropriately managed discharges to air.

Council staff recommendation

206 Staff recommend amending the wording of AQ P1:

Manage the discharge of contaminants to air 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.

207 Staff do not recommend including a separate objective to enable discharges. However, if the Hearing Panel decides to include such an objective, staff would recommend including a requirement within the objective to ensure it is conditional upon meeting objectives AQ O1-O3 – for example "Allow for discharges of contaminants to air to enable people to provide for their social, economic and cultural well-being while achieving AQ O1, AQ O2, and AQ O3.

4.4.5 New objectives to protect soil, water and ecosystems

Submission Points:	21-2, FS3-1,FS11-4, FS13-2, FS18-2, FS20-5, FS21-1, FS23-60, 21-3,FS3-2, FS8-2, FS11-5, FS13-3, FS18-3, FS20-6, FS21-2, FS23-61

208 Submission points 21-2 and 21-3 have requested the addition of two new objectives to protect soil, water and ecosystems from adverse effects of air discharges.

209 The wording of both objectives essentially repeats section 5 of the RMA and is therefore not considered necessary. However, staff recognise the underlying concerns with declining water and soil quality, and bioaccumulation that drive the decision sought by the submitter.

210 As stated in further submission point 3-1, there are already provisions in the plan that manage the adverse effects on the life supporting capacity of soil, water and ecosystems. Rules in the plan change also manage the discharge to water. Most rules have a condition where there can be no noxious or dangerous, offensive or objectionable discharge into water bodies.

211 Otherwise, regulations are based on established regulation and guidance from relevant authorities (further submission point 8-2). Future proofing our environment by including rules to manage discharges of contaminants that could be harmful is desirable and consistent with the precautionary approach. However, rules based on the precautionary approach must have some evidence to support them, and be balanced against the four well-beings. This is not the case, particularly for emerging organic contaminants where the pathways to air are undetermined.

212 Should evidence emerge that there are is declining water and soil quality and bioaccumulation caused by air discharges, AQ O1 with its general protection of human health from air discharges is sufficient.

Council staff recommendation

213 No addition of a new objective.

4.4.6 New objective to monitor emergent organic contaminants

Submission Points:	21-4, FS3-3, FS8-4, FS-11-6, FS18-4, FS20-7, FS21-3, FS23-62

214 Submission point 21-4 requests a new objective that seeks to ‘encourage and develop best international practice science for monitoring, detection and restriction of discharges into air, and resultant residues in water, soil and ecosystems of emerging organic contaminants.’

215 Emerging organic contaminants (EOCs) are natural or manufactured chemicals, many of which are found in common household and personal care products, pharmaceuticals and agrichemicals. EOCs are of concern as their effects are associated with long-term cumulative exposure, rather than immediate effects. In recent years, regulators, the food industry, Māori and wider community networks and the international science community have

become increasingly concerned about the risks EOCs can pose to human and ecosystem health.

216 Staff response is that it is currently uncertain what levels are currently present in our ecosystems and what proportion of these are from air discharges. The Ministry of Business, Innovation and Employment (MBIE) are funding a five year study, commencing this year, to identify which EOCs are predominant in New Zealand's aquatic ecosystems and to characterise the risks they pose to our unique taonga.

217 Until the results of this research start to become available, there are limited regulatory pathways to restrict the discharge using a regional plan. The introduction of strict rules to manage discharges requires an evidence base that currently does not exist. As research is being carried out at a national level, it would be an unnecessary cost to the Council to duplicate the research, particularly to the standard requested by the submitter.

218 Council is contributing to this MBIE project to discuss methodology of the research and how additional monitoring can be incorporated in our region. This work is already underway and supported by Long Term Plan 2018-2028 funding. No additional objective is necessary.

Council staff recommendation

219 No addition of a new objective.

4.5 AQ P1 Classification of activities – Te wehewehenga o ngā mahinga

Submission Points:	7-3, 19-4, 26-4, 30-2, FS1-2, FS13-20, FS21-31, FS23-7 36-5, FS1-5, FS21-30, FS23-8, 37-5, 41-1, 45-5, 50-8, 58-13, FS8-22, 66-4, 67-5, FS1-11, FS5-4, FS23-9, 68-4, 69-1, 76-6.

220 AQ P1 is a policy that sets out the hierarchy of rules within the plan. Where a discharge can be managed with general conditions to avoid remedy or mitigate adverse effects, it will be a permitted activity. Otherwise, the discharge will be classified accordingly as controlled, discretionary, or non-complying.

221 The policy does not provide detail on discharges that the Regional Council intends to discourage. This detail is included in policies specific to the activity or discharge in question, for example, AQ P5 which discourages urban burning.

222 The policy also does not state how the permitted activities will be avoided, remedied or mitigated. This detail is included in the accompanying policies and in the rule conditions.

223 During analysis of new objectives (see section 4.4.4) submitters expressed concern that there was no provision for operational requirements of the region's industry, infrastructure and rural activities. They requested an enabling objective that provides for these activities (on the condition that adverse effects are avoided, remedied and mitigated and there is no degradation of air quality)

224 As discussed, staff disagree with the statement that that there is no provision for air discharges. The plan change provides for appropriately managed air discharges from industry, infrastructure and rural activities through the proposed policies and rules. One of the policies that provides for these discharges is this policy AQ P1. To remedy submitter's concerns, staff recommended an amendment to the wording of AQ P1 to better reflect that the policy provides for appropriately managed discharges to air. This amendment is also shown in the Council staff recommendations in section 4.5.4 below.

225 Most submission points are in support of the policy and relief sought is to retain the policy as proposed. However, several submitters have concerns with a misalignment between the policy and the rule framework, no allowance for residual adverse effects that may be acceptable, and that the policy does not provide for restricted discretionary activities.

4.5.1 Policy misaligned with rule framework

226 A number of submission points are concerned with the wording of clause (a) of this policy, stating that it is misaligned with the rule framework. In most cases the cause of this misalignment is that all industrial and trade premises are assigned discretionary status by exclusion from AQ R1, regardless of the nature and scale of their effects.

227 Staff do not agree that this policy is misaligned with AQ R1. Emissions from industrial or trade premises are the cause of poor quality air in Ngāpuna and in Mount Maunganui. These are clear cases that the approach in the operative Regional Air Plan, to manage these activities with a general permitted activity rule, has not worked, particularly regarding cumulative effects. Therefore it is appropriate that discharges from these premises are classified as discretionary, to allow the Regional Council an opportunity to assess their impact. This is discussed in further detail in section 4.16.

228 No other examples of the rule framework being mismatched with the policy are given, therefore AQ R1(c) appears to be the sole point of misalignment for these submitters. Staff consider it unnecessary to rewrite the policy due to perceived misalignment with one rule. A number of submissions have been received concerning AQ R1(c) and it is most likely that if the issues with the rule were resolved, this issue would be remedied.

Council staff recommendation

229 No change to policy AQ P1(a) from these submission points.

4.5.2 Allowance for residual adverse effects

230 One submission point (30-2) suggests an amendment to the policy wording to ensure that where the adverse effects of a discharge cannot be fully avoided, remedied or mitigated, any residual adverse effects that are acceptable in terms of nature and scale are provided for.

231 The policy is intended to provide a statement on high level activity classification, not to provide any further direction on how discharges are to be managed nor to what extent. This detail is provided by other policies in the plan change, including AQ P3 and AQ P4.

232 Staff recognise that there are cases where the adverse effects of a discharge may not be able to be fully avoided, remedied or mitigated and that some residual effects may be acceptable in terms of nature and scale. This has been taken into account in the design of the conditions of each specific permitted activity rule.

233 Once again there is a reference in the submission point to rule AQ R1(c) suggesting that the origin of this issue is with the exclusion of industrial and trade premises from the general permitted rule. The general rule does not provide the same level of detail as the specific permitted activity rules, therefore the submitters are concerned that any residual effects that may otherwise be acceptable, are not taken into account.

234 This issue is explored in more detail in discussion of AQ R1 (section 4.16), however it is not appropriate to rewrite the policy to fit with one rule.

Council staff recommendation

235 No change to policy AQ P1(a) from these submission points.

4.5.3 Restricted discretionary activities

236 The policy lists the activity classifications of all rules as notified in the plan change. Restricted discretionary is not listed as at the time of notification there were no restricted discretionary activity rules.

237 Staff acknowledge that during the plan change process, restricted activity rules may be included in relation to responding to submissions, therefore this classification may need to be added to this policy.

Council staff recommendation

238 Amend clause (b) as follows if restricted discretionary activities are included:

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

4.5.4 Summary of Council staff recommendation for AQ P1

239 Amend AQ P1(a) as recommended from discussion in section 4.4.4 and AQ P3(b) if restricted discretionary activities are included in the plan change:

Manage the discharge of contaminants to air 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 all other discharges where (a) does not apply, as controlled, restricted discretionary, discretionary, or non-complying

4.6 AQ P2 – Hazardous substances – Ngā matū mōrearea

Submission Points:	19-5, FS21-35, 21-5, FS8-23, FS13-21, FS21-32, 22-1, FS21-36, 26-5, FS21-37, 30-3, FS8-24, FS12-7, FS13-22, FS23-10, 31-2, FS7-1, FS13-23, FS20-14, FS21-33, FS223-11, 33-5, FS21-38, 36-6, FS3-4, 37-6, FS8-25, FS10-2, FS15-2, FS16-2, FS17-2, 456, FS7-2, FS13-24, 48-1, 51-4, FS21-34, 58-14, FS8-26,67-6, FS7-3, FS8-27, FS10-10, FS13-25, FS15-10, FS16-10, FS17-10, FS23-12, 68-5, FS21-39, 76-7, FS8-28, FS10-33, FS15-34, FS16-34, FS17-34, FS20-27

240 AQ P2 sets out the policy approach for management of the discharge of hazardous substances. This policy was adapted from Policy 3 of the operative Regional Air Plan which manages the discharge of hazardous air pollutants.

241 This policy is specific and directive, setting out a clear environment bottom line that discharges from hazardous substances and hazardous air pollutants should be avoided. The term 'avoid' is modified – where avoidance is not possible, the discharge may be remedied or mitigated by the best practicable option. Where hazardous substances and hazardous air pollutants are discharged, this policy is intended to be interpreted as an environmental bottom line, not assessed as a whole on balance with other policies, although other policies will apply (AQ P3, AQP8, AQ P9).

242 Hazardous air pollutants were not defined, instead Schedule 3 included an extensive list of pollutants from the original Ambient Air Quality Guidelines (1994) and a list of confirmed or suspected carcinogens from the International Agency for Research on Cancer (1994). As discussed in the Section 32 report, these lists are out of date and rarely used. Therefore the schedule was not carried over to the plan change.

243 The wording of policy AQ P2 was deliberately chosen to refer to hazardous substances instead of hazardous air pollutants. Two contaminants used within the region that cause considerable concern (methyl bromide and hydrogen cyanamide) are both hazardous substances.

244 There is general support from submitters for the overall intent of the policy. Key issues include the inclusion of hazardous substances, exclusion of hazardous air pollutants, and the bottom line implied by the requirement to "avoid". There are some requests to remove this policy as it is replaced by AQ P3.

245 Staff acknowledge the point made by submitters (30-3, 36-6, FS3-4, 67-6) that there is some overlap between Policies AQ P2 and AQ P3. For the two contaminants currently of concern, more detailed policies are provided (AQ P8 and AQ P9) so there is little risk of a policy gap if this policy is removed. However, hazardous substances, and hazardous air pollutants are, due to their intrinsic natures, a class of contaminant on their own. Inclusion of this policy adds robustness to the policy framework by ensuring these contaminants are managed appropriately now, and into the future, through a separate policy. Therefore staff recommend that it is retained.

246 Many submission points (30-3, 36-6, FS3-4, 67-6) question the validity of managing hazardous substances instead of hazardous air pollutants. Submitters request that the terms are exchanged, and hazardous air pollutants are managed instead.

247 As explained in the Section 32 report, the Regional Council's ability to control land use in order to prevent or mitigate adverse effects from the use, transport, storage or disposal of hazardous substances, was removed from its s30 functions in April 2017. However, Council retains its function to control discharges of contaminants to air. Where the use of a hazardous substance leads to a discharge to air, the plan change has a regulatory gap to fill, and does so here.

248 "Hazardous substances" are defined in section 2 of Hazardous Substances and New Organisms Act 1996 (HSNO Act) and the RMA definition includes, but is not limited to, those substances listed in HSNO. The Environmental Protection Authority (EPA) assesses hazardous substances for use, and reassesses when appropriate for the HSNO list. This provides a sound process from which to base air quality controls.

249 Determining a 'hazardous air pollutant' is less clear. The original list of pollutants was developed by the United States Environmental Protection Agency (USEPA) and this was used as the basis for the Ministry for the Environment's list in the original Ambient Air Quality Guidelines (1994). In turn, this list was developed into Schedule 3 of the operative Regional Air Plan. However, in combination with the list of carcinogens the schedule became too large for practical use. Once embedded in the plan, changing this list became difficult. Therefore the inclusion of hazardous substances in the policy was more certain.

250 However, staff agree that the inclusion of hazardous air pollutants in the policy is appropriate, but do not recommend including them as a list within the plan change. This may introduce an element of uncertainty however there are three suitable and reputable locations where hazardous air pollutants are listed without the need to include the list in the plan change. The Ministry for the Environment contains a list of 13 hazardous air pollutants on their website, and these are also included in the most recent Ambient Air Quality Guidelines (2002). The USEPA list including 187 hazardous air pollutants is also easily accessible, therefore embedding the list in the plan change is considered unnecessary.

251 One submitter (21-5) has requested the addition of a requirement to ensure environmental exposure limits (EELs) are not breached in sensitive areas, and requires best practice technology to test for harmful concentrations. In response, a further submitter (13-21) has pointed out that the EPA sets controls which are a requirement regardless of regional councils and that the focus should be on managing discharges to air. Although EELs are not mentioned in either this policy or AQ P8 (the agrichemical spraying policy) they are part of avoiding, remedying or mitigating the adverse effects, as included in the policies.

252 The final issue is the requirement to avoid. Staff worded the policy with the intention that it required discharges of these substances to be avoided in the first instance, only moving to remedy or mitigate if avoidance was not possible. It was intended to be directive, with some flexibility, but not so much that all dischargers sidestepped avoidance and moved straight to remedy and mitigate.

253 However, many submitters are concerned that the policy sets a premise to avoid, which is a bottom line and all bottom lines must be achieved. A wording change is suggested to add "seek to" at the start of the policy to clarify that avoidance is preferable, but not the bottom line. Staff agree with this change.

Council staff recommendation

254 Amend AQ P2 as follows:

Seek to avoid discharges of hazardous substances and hazardous air pollutants to air and where avoidance is not possible, remedy or mitigate the discharges using the best practicable option.

4.7 AQ P3 – Management of discharges – Te whakahaere i ngā tukunga

255 The air quality objective in the RPS states 'the adverse effects of odours, chemical emissions and particulates are avoided, remedied or mitigated so as to protect people and the environment.' To give effect to this, the plan change provides objectives and policies to an appropriate level of detail required to manage the adverse effects of the many different contaminants when discharged to air.

256 This policy also gives effect to relevant aspects of the RPS outside the air quality chapter including Objective 10 and Objective 17.

257 The overall policy and clauses have been considered in light of the Supreme Court's decision in *King Salmon* and the recent Court of Appeal decision in *Davidson* (summarised in section 4.3 above) with further comment provided as necessary.

4.7.1 Overall

Submission Points:	13-2, FS8-32, FS13-27, FS18-13, FS20-16, 21-41, 26-6, FS8-29, 31-3, FS21-50, 48-2, FS8-33, 69-2, 76-8, FS7-4, FS10-34, FS15-35, FS16-35, FS17-35, FS22-12

258 Submission point 13-2 requests that control of greenhouse gas emissions are included in this policy. The operation of s70A and s70B RMA are clear that the control of the discharge of greenhouse gases into air are to be set at a national, rather than regional level. As such, no amendments can be recommended to this policy.

259 One submission point (76-8) requests amendment of the introductory wording 'activities that discharge contaminants to air must be managed, including by…' and leaving only 'use of the best practicable option to…'. This amendment would broaden what this policy manages to the whole RNRP. It is not the intent that this policy applies to all matters in the plan, only what will be in the air quality chapter. This could be remedied by including the deleted words in each clause, but this would be unnecessary duplication and is not recommended.

260 Submission point 48-25 requests the addition of 'and' or 'or' at the end of each clause to provide clarity for decision makers as to whether all clauses must be met, or only some. Staff do not recommended this change as whether all clauses must be met, or only some is dependent on what type of activity is being carried out.

261 One submission point (26-6) requests that the Regional Council ensures that the methods of management must also safeguard human health and not incur untoward health effects. Staff understand that this submission point is referring to methods of management, ie rules, targeting solid fuel burners in Rotorua. The submitter is concerned that in an effort to safeguard air, other aspects of human health will be neglected leading to other health effects. This submission point is also raised, by the same submitter, on rules AQ R12-14, and is better addressed in section 4.34.

262 The remaining submission points are in support of retaining the policy as proposed.

4.7.2 Clause (a)

Submission Points:	8-11, FS21-42, 10-13, FS21-45, 17-4, FS7-5, FS21-47, 19-6, FS5-5, FS8-34, FS13-28, FS23-14, 30-4, FS8-35, FS13-29, FS22-4, FS23-15, FS30-7, 36-7, FS7-6, FS22-5, FS23-16, 37-7, FS8-36, FS10-3, FS15-3, FS16-3, FS17-3, FS21-53, FS23-17, 45-7, FS8-37, FS21-54, FS22-7, FS23-18, 50-9, FS8-38, FS22-11, FS23-19, 67-7, FS8-39, FS10-11, FS13-30, FS15-11, FS16-11, FS17-11, FS22-8, FS23-20, FS30-8, 76-42, FS8-40, FS10-39, FS15-40, FS16-40, FS17-40, FS22-10

263 This clause sets out a clear policy direction to achieve a stated environmental outcome. There is no flexibility provided regarding the life supporting capacity of air, or adverse effects on human health. However there is some flexibility for managing adverse effects on cultural values, amenity values and the environment. This policy clause is intended to be to be interpreted as an environmental bottom line.

264 As with AQ O3, submissions call for a widening of the consideration of effects on the environment, to consider the 'relevant receiving environment'. As explained in section 4.4.3, staff do not agree with this approach as it accepts that there will be poorer air quality in some areas, and assumes that everyone within those areas has the same values which is not the case. Staff do not recommend this amendment.

265 Submission point 30-4 requests that 'manage' is replaced with the terms 'avoid, remedy or mitigate' consistent with the hierarchy of sustainable management measures in the Act. Although this results in duplication of the Act, staff agree to this change as it makes the intent clearer.

266 As with AQ O1, submitters express concern with the term 'avoid' and request remedies such as 'where practicable', or 'significant'. As discussed in section 4.4.1, only avoiding significant adverse effects on human health implies that the there is a threshold below which human health effects are acceptable, until they become significant. Further, by only requiring effects to be avoided 'where practicable' allows considerable room for interpretation and it is unclear where avoiding adverse effects on human health is to occur.

267 Submission point 37-7 supports the plan change's position to protect people's health however, notes that for particulates, there is no safe threshold for exposure. In this case it is difficult to then avoid adverse effects on human health becomes difficult and the submitter requests an amendment to 'protect' human health, rather than to 'avoid adverse effects on' human health. The

submitter states that this reflects the language in the RPS (Policy AQ2A) and the outcome sought by the Ambient Air Quality Guidelines.

268 Staff agree with this request as 'protect' is also consistent with AQ O1 and the 2011 Users' Guide to the revised National Environmental Standards for Air Quality (the users' guide) which states the "ambient standards are the minimum requirements that outdoor air quality should meet in order to guarantee a set level of protection for human health and the environment'.

Council staff recommendation

269 Amend AQ P3(a) as follows:

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

(a) safeguard the life supporting capacity of the air, ~~avoid adverse effects on~~ protect human health, and ~~manage~~ avoid, remedy or mitigate adverse effects on cultural values, amenity values, and the environment

4.7.3 Clause (b)

Submission Points:	7-4, 10-1, FS8-41, FS20-13, FS20-15, 22-4, FS7-7, FS23-21, 30-15, FS22-15, FS23-22, 36-20, FS5-6, FS23-23, 37-13, FS10-5, FS13-31, FS15-5, FS16-5, FS17-5, FS22-9, 48-15, 50-22, FS23-24,58-15, FS8-42, 67-20, FS7-8, FS8-43, FS10-15, FS13-32, FS15-15, FS16-15, FS17-15, FS22-14, FS23-25

270 This clause sets out a clear policy direction to achieve a stated environmental outcome. There is no flexibility provided for any discharge that causes a breach or exceedance of the National Environmental Standards for Air Quality. This policy clause is intended to be to be interpreted as an environmental bottom line.

271 Submission point 10-1 requests that when assessing the effects on human health, consideration of a number of factors are considered including the number of people exposed, degree of harm to health from exposure and the ability of the population to take steps to avoid the exposure.

272 This policy is more like a method. As explained in Part 8 of the Section 32 report, non-regulatory methods are not included in the plan change unless they set out a non-regulatory approach where there is no regulatory response, or where the method has been determined by a community process. Neither case applies here. Consideration of human health is embedded in most provisions of the plan change and staff do not recommend this amendment.

273 Submission point 7-4 requests that the acronyms are replaced with the relevant document title in full to enable easier use of the plan. Acronyms have been included in the List of Abbreviations and Acronyms in the Reader Guidance section of the Regional Natural Resources Plan and are shown in the consequential changes. However, these terms are only used two to three times in the entire chapter, therefore staff agree and recommend this amendment.

274 Submission points 50-22, FS23-24 express concerns that the clause does not allow for amendments or replacements of the listed documents. Staff share this concern and agree that text is added to remedy this.

275 Submission point 48-15 is concerned that it is unclear how plan users consider discharges from multiple sources which cumulatively may exceed the standards or guidelines. The decision sought is for more clarity on how an exceedance or breach from more than one source is approached.

276 Staff agree that there is little guidance in the plan change or the NESAQ setting out an approach to multiple sources in an area where a breach may occur. Ongoing research will build to an evidence base regarding impacts and thresholds and will inform future Council actions. Previously the approach was to declare an airshed and develop an action plan to address the main source of the contaminant. This is what occurred for the majority of airsheds in the country where the main source of particulates was domestic burners. The Rotorua Airshed was approached using this method.

277 As the plan change is a regulatory document, only the policy and rules to manage domestic burners are included.

278 Monitoring, modelling and research into key contaminants in the Mount Maunganui area (of particular concern for this submitter) are in their early stages. The approach to how these contaminants will be addressed has not been determined at this stage, therefore no additional clarity can be provided in the plan change.

279 Submission points 37-13 and 58-15 request the removal of the AAQGs from this policy as they were not intended to be used to assess the environmental and health based impacts of individual discharges to air. Therefore the plan change should not be directing the AAQGs to be used in a manner for which they were not intended.

280 As discussed in section 4.4.2, submitters are also concerned that the AAQGs have not been developed through the robust process set out by the Act, with costs and benefits considered. Therefore the AAQGs should not be elevated to the same status of the NESAQ.

281 Staff's intention in including these AAQGs was to expand the list of contaminants beyond the five contaminants listed in the NESAQ. However, staff acknowledge that the AAQGs are only guidelines, and their inclusion in a policy intended to set a clear direction to achieve specific environmental outcomes is not appropriate. Staff recommend that the AAQGs are removed from this policy.

282 Several submission points express concern with the use of the term 'contribute to'. They state that the implications of this term is that activities with 'insignificant' contributions could be refused consent because they 'contribute to' a breach of the NESAQ. A number of other words are used such as 'negligible', 'minor', low contribution level', and 'baseline'.

283 Staff response is that in areas where an ambient standard is either already in breach, or is likely to be, there are no insignificant effects. Any activity that discharges the contaminant in question, is contributing to the cumulative effect. Where there are sufficient sources and/or where geographic and climatic conditions exacerbate the situation, this leads to breaches of the ambient standard.

284 For example, the main source of particulates in the Rotorua Airshed is domestic burners. Each burner considered on its own has an insignificant effect. However, in combination with the estimated 8,500 burners in the Rotorua area, each burner does have a cumulative effect, as does every other burner in the Rotorua Airshed.

285 This also occurs in other areas such as the Mount Maunganui industrial area. Contaminant discharges include larger scale activities that require consent, smaller discharges that are permitted, and fugitive emissions from yards or stockpiles and various other small sources. All sources of a particular contaminant contribute to the cumulative effect that may lead to a breach of the relevant ambient standard. While no regulatory response has yet been determined for the Mount Maunganui area, as with Rotorua, the approach will need to consider all contributing sources. Staff recommended no change to the policy.

286 The same submission point (37-13) also requests that the NESAQ are removed from this clause as regulations 17, 20 and 21 of the NESAQ already set out what is required when assessing resource consents for these contaminants.

287 Staff acknowledge this, however these regulations only apply when resource consents are required to discharge contaminants. No provision is made for existing discharges, or permitted activities, and as discussed above these also contribute to cumulative effects.

288 In addition, regulation 17 only targets larger scale particulate discharges. Domestic burners in Rotorua do not trigger this requirement. The plan change has introduced non-complying rules to manage these burners. This clause provides clear policy direction to achieve a specific environmental outcome to assist decision makers.

289 This submission also points out the difference in the air standard relating to carbon monoxide, oxides of nitrogen and volatile organic compounds, managed by regulation 20. This regulation only requires resources consents to be declined if the application is for a discharge that is likely to both cause a breach and be a principal source of the gas.

290 Staff response is that these contaminants are not currently of concern anywhere in the region. There is no reason to decline any consent under the NESAQ, or to expect that avoidance of any breach is necessary under the plan change. If these contaminants do increase to a point where they are of concern, an appropriate response will be developed and this policy will be revisited for its appropriateness. In the meantime, staff do not recommend any amendment to this clause.

Council staff recommendation

291 Amend AQ P3(b) as follows:

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

(b) avoid the discharge of **contaminants** at a rate or volume that may contribute to, or cause an exceedance or breach of the **ambient air** quality standards of the National Environmental Standards for Air Quality (or its replacement or amendment) ~~or exceed the health based values of the AAQGs.~~

4.7.4 Clause (c)

Submission Points:	8-12, FS21-43, 50-23, FS30-9

292 For this section, readers are reminded that ships have the definition included in the plan change, which includes powered and unpowered boats that may be used on rivers and lakes, rather than limited to use in the marine environment as the word implies.

293 This clause sets out a clear policy direction to achieve a stated environmental outcome. There is some flexibility provided in the clause. It does not call for any reduction in visibility to be avoided, only where it may cause adverse effects as stated. This policy clause is intended to be to be interpreted as an environmental bottom line.

294 This clause seeks to avoid adverse effects on vehicle, aircraft or ship safety caused by reduced visibility. The contaminant being managed in this case is not the nature of the discharge itself, but its opacity. If a discharge, usually smoke or steam, reduces any driver or pilot's ability to navigate safely it may cause an accident that leads to injury.

295 Submitters concerns were with the use of the term 'avoid' and request that the full hierarchy of effects managed is included by also allowing for 'remedy or mitigate'.

296 Staff's response is that any option to mitigate a reduction in visibility is essentially the same as avoiding it. For example, a horticulturalist with land adjoining a state highway may mitigate this effect simply wait until the wind is blowing in the opposite direction before burning shelter belt trimmings.

297 To allow an option to remedy, presumably after an accident has occurred, is not consistent with the overall requirement to protect human health.

Council staff recommendation

298 No change is recommended to AQ P3 clause (c).

4.7.5 Clause (d)

Submission Points:	8-13, FS21-44, 22-2, 30-16, FS13-33, 33-6, FS8-31, FS26-2, FS30-10, 36-21, FS7-9, FS30-11, 37-14, FS8-44, FS13-34, FS21-55, 45-19, FS8-45, FS23-26, 50-24, FS8-46, FS30-12, 58-46, FS8-47, FS30-13, 66-5, FS30-14, 67-21, FS7-10, FS30-15

299 This clause was included in the plan change at the request of Transpower during consultation on the draft plan. The concern was that some discharges can have a corrosive or otherwise damaging effect on their infrastructure, such as pylons. Staff expanded this to include regionally significant infrastructure (the RPS definition of which also includes nationally significant infrastructure) to ensure the adverse effects on all structures of this type are managed.

300 This clause sets out a clear policy direction to achieve a stated environmental outcome. Following analysis (see below) it is recommended that the requirement to 'avoid' is modified to also provide for remedy or mitigation. This

allows for flexibility when implementing this clause and the clause should be considered alongside other policies as a whole.

301 Most submission points are in support of this policy, however submitters are concerned that 'avoid' is too high a requirement and suggest the clause is amended to address this.

302 Staff agree that 'avoid' on its own is not appropriate for protecting what is essentially structures, no matter how regionally significant the structure is. It is unlikely that any air discharge will have a short term effect that will cause catastrophic failure of any infrastructure. Therefore allowing for remedying or mitigation of effects is appropriate and staff recommend making this amendment.

303 Submission point 22-2 has requested an explanation of benefits or favourable treatments when an application to discharge to air is made by infrastructures. Staff reassure readers that there is no special treatment of any applicant provided for in this clause. The clause seeks to manage the effects of discharges of contaminants to air on the infrastructures themselves, not the companies managing them.

304 Submission point 45-19 has requested the inclusion of 'regionally significant industry' into this clause. The content of the submission indicates that the intention of this change is to recognise the social and economic wellbeing provided by the submitter.

305 Staff response is that this is outside the scope of the clause. The clause does not seek to avoid adverse effects of discharges on the owners of the infrastructure, but on the structures themselves. This gives effect to RPS Policy EI 3B Protecting nationally and regionally significant infrastructure. There is no equivalent policy in the RPS for regionally significant industry.

Council staff recommendation

306 Amend AQ P3 as follows:

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

(d) avoid, remedy or mitigate the discharge of contaminants that may cause adverse effects on regionally significant infrastructure

4.7.6 Clause (e)

Submission Points:	8-1, FS13-35, FS21-56, FS23-31, 10-14, FS21-46, 17-12, FS21-48, 19-22, FS5-7, FS8-48, FS13-36, FS23-27, 21-6, FS13-37, FS18-14, FS20-17, FS21-57, FS23-28, 22-3, FS7-11, FS21-49, 30-17, 36-19, FS7-12, 51-5, FS8-49, FS13-38, FS18-15, FS20-19, FS21-58, FS23-29, 58-47, 63-1, FS10-17, FS15-17, FS16-19, FS17-17, 67-22, FS7-13, FS10-16, FS15-16, FS16-16, FS17-16, 68-6, FS8-50, FS13-39, FS18-16, FS20-20, FS21-59, FS23-30, 69-8, FS10-28, FS15-29, FS16-18, FS17-29, FS21-52

307 Three submission points (30-17, 36-19, 67-22) request that this clause is deleted as it superfluous and to some extent, conflicts with other clauses.

308 On reflection staff agree with this assessment. The intent of the overall policy is to set clear policy direction to achieve specific environmental outcomes. Although not all clauses will apply to all discharges or activities, where they do apply, they should be in accordance every clause of this policy that applies.

309 However, there is an internal inconsistency between clauses (a) to (d) which require the management of the adverse effects of discharges regardless of where the effects occur and clause (e) which introduces the property boundary as a line beyond where assessment of adverse effects begins. It implies that Council will use the property boundary to assess adverse effects in every case, in conflict with clause (a) where adverse effects are assessed regardless of location. Decision makers may then find it difficult to determine which of the requirements apply. To resolve this conflict, staff recommend that this clause is deleted in its entirety.

310 There are submission points in support of using property boundaries in this manner. Staff reassure these submitters that the recommendation is not to remove this approach entirely from the plan change. The recommendation is simply to remove it from this policy, where it is not consistent. Where appropriate, the property boundary is still used to assess adverse effects in many of the permitted activity rules.

311 Staff have recommended to remove this clause. However, in the event that the Hearing Panel decides to retain this clause, there are a number of other submission points discussed below.

312 Submission point 8-1 requests that the clause is amended to add 'or be completely unacceptable practice to the owners/occupiers of'. Staff agree with further submission points that this management requirement is not effects based, and no change is recommended.

313 Submission point 19-22 seeks an amendment to manage the effects according to the 'relevant receiving' environment, as requested for AQ O3 by point 19-3. The remedy sought is to assess an effect based on the existing environment. This includes a consideration of whether the effect is anticipated by those within the zone and considered acceptable for the area.

314 Staff's response to this submission point is the same as for 19-3 discussed in section 4.4.3. The decision sought seems to advocate for an approach that accepts poorer air quality in some areas of the region. It assumes that every person (be they a farmer, horticulturalist or commercial/industrial business operator) within a particular area has the same values for air quality. Staff note that this is not the case.

315 Effects on air quality are generally assessed according to boundary, not area. This manages not only adverse effects beyond the boundary but also the cumulative effects of all discharges in one area. This is not the policy's intent and no change is recommended.

316 Submission points 21-6, 68-6 and 51-5 request that management of discharges includes avoiding discharge of contaminants beyond the boundary. Staff agree with further submissions; that 'avoid' is too high a requirement when addressing adverse effects of discharges on cultural and amenity values. Avoiding all discharges beyond the boundary would mean many discharges could not occur. This is not consistent with sustainable management and the rules do not manage discharges to avoid all discharges.

317 Submission point 21-6 also requests that discharges do not exceed Environmental Exposure Limits (EELs). Staff agree with further submission point 13-37 that EELs would be inappropriate to use in this manner.

318 EELs are established under the HSNO Act 1996 to set limits on the concentrations of hazardous substances in different media (eg. soil, water, surface deposition). As discussed above, regarding the Ambient Air Quality Guidelines, using limits that have been established as environmental bottom lines, without consideration of the effects on economic, social, or cultural well-being is not supported by staff.

319 However, staff acknowledge that there is an airborne component to higher concentrations of hazardous substances in the environment. Where relevant, the permitted activity rules include a condition that a discharge must not be noxious or dangerous beyond the boundary. Where effects are suspected, EELs are one of the tools that can be used to determine if a discharge is noxious or dangerous. However, there is no need to establish this as a policy direction in this clause and staff do not recommend this.

320 Submission point 63-1 requests that the clause recognises notional boundaries, as odours do not constrain themselves to property boundaries and may dissipate at some notional boundary beyond the property boundary.

321 Staff agree that odours and other contaminants do not stop at the property boundary. However, the policy and rules do not require this, simply that the adverse effects are not noxious or dangerous, or offensive or objectionable, beyond the boundary. Recognising notional boundaries would introduce confusion to assessment of these effects. Except for discharges where the boundary is not relevant, any adverse effects of discharges should be avoided, remedied or mitigated before they reach the boundary.

Council staff recommendation

322 Delete AQ P3(e) in its entirety:

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

~~(e) minimise the discharge of **contaminants** into areas beyond the boundary of the subject property where it may cause adverse effects on human health, cultural values, amenity values, or the environment.~~

4.7.7 New clause – soil, water and ecosystems

Submission Points:	21-16, FS13-26, FS18-12, FS21-40, FS23-13

323 One submitter has requested the addition of a new clause to prevent the contaminant of marine water and freshwater from harm as a result of the discharge of contaminants to air.

324 The plan change is primarily focused on discharges of contaminants to air; ensuring they do not harm human health, and minimising their impact on the environment. Most rules contain a clause where there should be no adverse effect from a discharge into water. Management of discharges to land and

water where they will affect the matters outlined in the submission, are managed by existing provisions in the plan and no further clauses are recommended.

4.7.8 Definition of regionally significant infrastructure

325 Submission point 48-16 has requested a definition of 'regionally significant infrastructure' to provide clarity of use for those using the plan.

326 Response from both staff and further submission point 7-31 is that the Regional Policy Statement contains a definition of 'regionally significant infrastructure'. Staff do not recommended duplicating the definition in the plan change.

4.7.9 Definition of regionally significant industry

327 Submission point 45-18 has requested a new definition for 'regionally significant industry'. This accompanies submission point 45-19 which requests the addition of regionally significant industry into clause (d) of policy AQ P3. As staff have recommended that this change is not made, this term is not required for the plan change.

4.7.10 Summary of Council staff recommendation for AQ P3

328 Amend AQ P3 as follows:

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

(a) safeguard the life supporting capacity of the air, ~~avoid adverse effects on~~ protect human health, and ~~manage~~ 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 contribute to, or cause an exceedance or breach of the ambient air quality standards of the National Environmental Standards for Air Quality (or its replacement or amendment) ~~or exceed the health based values of the AAQGs.~~

(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

~~(e) minimise the discharge of contaminants into areas beyond the boundary of the subject property where it may cause adverse effects on human health, cultural values, amenity values, or the environment.~~

329 No additional definitions recommended.

4.8 AQ P4 – Matters to consider – Ngā take hei whiriwhiri

330 This policy is not directive and allows for considerable flexibility when implementing. Each clause is intended to be assessed on balance with all other clauses, and the entire policy itself should be assessed with other policies as a whole.

331 This policy is aimed at any person or organisation (currently worded as ‘plan users’) who needs to consider the acceptability of a discharge of contaminants to air. Some submitters have interpreted this to mean the listed matters are what a decision maker needs to consider when considering a resource consent application (s.104(c)). This is correct, but the intended audience goes beyond decision makers. The matters must also be considered by those carrying out permitted activities, and by Regulatory Compliance officers assessing complaints.

332 Although the policy is reasonably directive (using the term ‘must’) it is only to ‘have particular regard to’ the matters listed. Unlike policy AQ P3, this policy does not intend to set clear policy direction to achieve a specific environmental outcome. It provides more of a checklist of matters to consider, rather than an environmental bottom line.

333 The intention is for these matters to be had particular regard to and assessed alongside all other provisions in the plan as a whole. Some matters will have more relevance and weight than others, however, provided discharges are managed according to the more directive policies (AQ P2 and AQ P3) and meet the objectives, then each and every matter does not need to apply, with full weight, for every situation.

334 Where another policy in the plan change is more directive regarding a matter listed in this policy, the more directive policy would prevail.

4.8.1 Overall

Submission Points:	7-5, FS13-44, 10-15, FS8-63, FS26-3, FS30-22, 31-4, 37-8, 48-3, 68-7, 74-1FS8-64, FS26-4

335 A number of submission points suggest rewording the introductory sentence to remove the term ‘plan user’. One suggested replacement is ‘decision maker’ however these matters are not limited to resource consent applications. Staff agree that a change is necessary and recommend wording to remove reference to ‘plan users’ or otherwise, but retain the requirement of the policy.

336 Submission point 10-15 requests inclusion of further matters to consider, regarding human health. Staff agree with further submission points that consideration of human health is already included in many of the clauses. No change is recommended.

4.8.2 Clause (a)

Submission Points:	36-22, 54-1, FS8-65, 76-9

337 Submission point 54-1 requests a change to accommodate the need for some discharges to occur on areas defined as sensitive activities. Staff acknowledge the request, however due to the nature of the policy, there is no need for the requested change. The ‘proximity of sensitive activities’ can be given little to no weight in situations described by the submitter. In this case, clause (e) would be given more weight. No change is recommended.

338 Submission point 76-9 requests that the “nature of” sensitive activities is considered as acceptable discharges in one zone will be different for another. Staff response is that the nature of sensitive activities is implicit in the term itself, however the intention of the request is understood. As discussed in section 4.8.9 below, staff recommend the addition of new clauses to take into account the FIDOL factors and the locational constraints of some activities. This should resolve the concern and therefore no change is recommended to this clause.

339 Staff acknowledge the concern expressed in submission point 36-22 regarding the definition of ‘sensitive activities’ and this is discussed in section 4.40.8 of this report.

4.8.3 **Clause (b)**

Submission Points:	36-8, 50-25, 23-34, 58-16, 8-66, 76-43, FS13-45, FS26-5

340 Submitters express concerns that the clause does not allow for amendments or replacements of the listed documents. Staff share this concern and agree that text is added to remedy this.

341 Submission point 8-66 requests that the reference to the AAQGs is deleted as these are guidelines and not intended to be used as thresholds. Staff agree that the guidelines should not be used for this purpose, however the policy does not require that the values in the guidelines are met, simply that they are given particular regard. The guidelines are a useful tool to determine the appropriateness of discharges of contaminants to air. Staff recommend that they remain in this clause.

342 Submission point 36-8 requests a wording change to reflect that exceedances or breaches of the NESAQ may occur in any part of the region, not only in Gazetted airsheds. Staff agree with this change.

343 Submission point 76-43 requests the addition of consideration of the zones and appropriateness of the activity in the zone. Staff do not consider this request to be consistent with this matter as breaches of the NESAQ must be addressed regardless of the zone it occurs in. However, staff recommend the addition of new clauses (section 4.8.9) to take into account the FIDOL factors and the locational constraints of some activities. This resolves the concern and therefore no change is recommended to this clause.

4.8.4 **Clause (c)**

Submission Points:	36-23, 58-16

344 Submission point 58-16 expresses concern with this requirement as the plan change process has already considered these matters, therefore the matter should only apply to resource consent applications.

345 RPS issue 2.6.9 identifies that ‘a considerable number of iwi and hapū resource management plans have been formally lodged with and recognised by the Bay of Plenty Regional Council. Iwi and hapū have clear expectations that, where relevant, these resource management planning documents will be

considered in resource management decision-making processes.' The methods list resource consents and plan changes as these processes.

346 Staff agree that iwi and hapū resource management plans have been considered as part of the plan change development (according to the requirements of the RPS) and when drafting permitted activities. Therefore staff recommend that this clause is only applied to resource consent applications.

347 The submission point also requests that the matters to be considered for permitted activities are distinguished from those to be considered as part of resource consent applications. As most of the matters could apply to both processes, this is not recommended.

4.8.5 Clause (d)

348 Only one submission point (36-24) was received on this clause and it was in support.

4.8.6 Clause (e)

Submission Points:	19-7, FS13-46, FS23-35, 36-25, 45-8, FS22-17, FS23-36, FS30-23

349 Submission point 19-7 requests amendments to this clause in line with similar requested changes to AQ O1, that the relevant receiving environment is considered. As discussed below (section 4.8.9) staff recommend the addition of new clauses to take into account the FIDOL factors and the locational constraints of some activities. This resolves the concern and therefore no change is recommended to this clause.

350 Submission point 45-8 has requested the inclusion of 'regionally significant industry' into this clause, as also requested for policy AQ P3. Staff response is that this is outside the scope of the intention of this clause. However, as discussed below (section 4.8.9) staff recommend the addition of new clauses to take into account the operational and locational constraints of some activities, and the existing investment. It is likely that this resolves the concern and therefore no change is recommended to this clause.

4.8.7 Clause (f)

Submission Points:	17-5, 36-27, FS23-37, 66-17

351 One submission point requests that only significant cumulative effects are given particular regard. Staff agree with further submission point 23-37 that this would omit smaller industries who are contributing to cumulative effects. In areas where cumulative effects are of concern, all discharges regardless of scale, should be considered.

4.8.8 **Clause (g)**

Submission Points:	7-6, FS8-67, FS20-24, FS23-42, 33-7, FS8-68, FS13-47, FS18-22, FS23-38, FS30-24, 36-26, FS23-39, 50-10, FS4-6, FS23-40, 66-6, FS23-41

352 This policy clause was part of a policy framework drafted to address reverse sensitivity. However, most of this framework was found to be ineffective as the Regional Council has no role in zoning land and ensuring incompatible activities are located away from one another (see section 4.37).

353 This clause is similar to clause (a) however there are differences. Clause (a) requires regard given to proximity of sensitive activities for any discharge whether established or not. However, clause (g) is to have regard for new discharge activities near established sensitive activities.

354 Submission points 7-6, 66-6 and 36-26 note this similarity. Although as discussed, this is not duplication, staff acknowledge that confusion is likely and recommend that (g) is merged with (a) into one clause that retains both matters.

355 Submission point 33-7 requests that the clause includes consideration of new sensitive activities near established discharge activities. As discussed above and in the earlier section on reverse sensitivity, Regional Council is unable to implement this type of policy effectively, as this is effectively a zoning issue for territorial authorities to consider.

356 Submission point 50-10 requests that the existing investment in a discharge activity and whether it is established in an appropriate location should be considered here. Staff have recommended the inclusion of additional clauses (discussed below) that will resolve this issue.

4.8.9 **New clauses**

Submission Points:	21-7, FS8-51, FS13-40, FS18-17, FS20-18, FS23-32, 26-7, 34-1, FS8-52, FS14-1, FS14-4, 37-15, FS8-53, FS10-6, FS13-41, FS15-6, FS16-6, FS17-6, FS18-18, FS20-21, FS30-16, 37-16, FS8-54, FS10-7, FS15-7, FS16-7, FS17-7, FS20-22, 37-17, FS8-55, FS20-23, FS30-17, 45-20, FS8-56, FS30-18, 45-21, FS8-57, FS11-7, FS13-42, FS18-20, FS22-13, FS30-19, 45-22, FS8-58, FS11-8, 45-23, FS8-59, FS12-10, FS30-20, 58-4, FS8-60, FS23-33, 66-18, FS18-21, FS30-21, 66-19, FS8-61, FS18-19, 76-44, FS8-62, FS-13-43

357 A number of new clauses have been suggested for inclusion in the policy. These are discussed in this section.

358 Submission point 26-7 requests that the impact of the management method on human well-being is considered. This submission is specific to policies and rules targeting Rotorua burners and the unintended consequence of incurring fuel poverty through these provisions. Staff have considered this unintended consequence and the potential effects on human well-being in Topic 2 of the Section 32 report. There are a number of non-regulatory methods (outside the

plan change) already being implemented to remedy or mitigate this adverse effect. No change is recommended.

359 Submission point 21-7 requests adoption of advanced monitoring and detection technologies. Further submission points and staff response is that this request is outside the scope of this policy, which lists matters to consider. The submitter's request is for an operational non-regulatory method. As set out in Part 8 of the Section 32 report, these types of methods are not included in regional plans as they usually require resources which need to be considered alongside other council priorities as part of a Long Term Plan or Annual Plan process. No change is recommended.

360 Submission point 34-1 requests that the scale of an activity within the Rotorua Airshed may be increased provided there is no net increase in in particulate matter discharges, consistent with Regulation 17 of the NESAQ.

361 Staff acknowledge the significant reductions that this submitter has made to their emissions from the boiler stack. Staff also understand the difficulty of future business planning for industries located within polluted airsheds such as Rotorua.

362 Staff understanding of the requested policy is to give industry within the Rotorua Airshed some certainty to allow for future planning. The requested wording is outside the scope of this policy however staff suggest and recommend the addition of 'Whether a change in an industrial or commercial activity will cause a net increase of particulates into an airshed' as a matter to consider.

363 Two submission points (37-15, 66-19) request that the operational requirements and locational constraints are added to the list of matters to consider. Discharges to air may need to be located in a particular area for various reasons (zoning, proximity to related activities). For example, submitters note that there are few heavy industrial zones within the region. Heavy industrial activities are expected to be located in these areas which will mean a lower amenity value for that area. Staff agree that the acceptability of discharges of contaminants to air will differ depending on the location, and that some locations are of a nature where the amenity values will be lower. These matters should be considered along with all other matters listed. To a certain extent this also resolves the issue raised in submission 58-4 to take into account the receiving environment.

364 Submission point 37-16 suggests the inclusion of having particular regard to various other internationally recognised standards or guidelines that include additional substances wider than those provided in New Zealand. Staff agree that these should be considered along with the other matters listed.

365 Submission points 37-17, 45-23, and 76-44 request the addition of the FIDOL factors (frequency, intensity, duration, offensiveness and location) particularly to provide assessment of dust and odour. Staff agree that particular regard should be given to the FIDOL factors when assessing acceptability of dust and odour to air. This also resolves submission point 58-4 which requests consideration of the receiving environment.

366 Submission point 45-20 requests consideration of best practicable option. Staff agree with further submission point 8-56 that this has already been included in AQ P3, therefore no change is recommended.

367 Submission point 45-22 requests that consideration of the investment of existing industry into infrastructure that mitigates air discharges is added to the list of matters to consider. As the list is intended to be considered as a whole, staff agree that this is a matter that should be considered as part of the list. However, staff would like to make it clear that the inclusion of this clause does not mean that the long term existence of an industry guarantees its ongoing 'right' to discharge without any attempt at improvement. Staff consider there is sufficient directive towards environmental outcomes provided in policies AQ P2 and AQ P3 to allow the inclusion of this matter.

368 Submission points 45-21 and 66-18 request the inclusion of the extent that the discharge activity provides for social and economic well-being as a matter to have particular regard to. Staff response is that this matter has already considered as part of the Section 32 analysis. During consideration of resource consent applications, s.104(a) specifically requires the decision makers to have regard to any actual and potential effects on the environment of allowing the activity. Staff do not recommend re-listing it here.

4.8.10 Definition of Gazetted airshed

369 No submissions were received regarding the definition of 'Gazetted airshed'. However, if the Hearing Panel accept staff recommendations to clause (b) of policy AQ P4 (see section 4.8.3), this would remove the only occurrence of the term 'Gazetted airshed'. Staff therefore recommend that this term is removed.

4.8.11 Council staff recommendation for AQ P4 and related definition

370 Amend AQ P4 as follows:

~~When considering the acceptability of any discharge of contaminants to air, regional plan users must~~ Have particular regard to the following matters when considering the acceptability of any discharge of contaminants to air:

(a) The proximity of sensitive ~~activities~~ areas to the discharge including the effect of new activities discharging contaminants into air near established sensitive ~~activities~~ areas.

(b) ~~The location of any Gazetted airsheds, or~~ Areas where the discharge may cause an exceedance or breach of the ambient air quality standards of the ~~NESAQ~~ National Environmental Standards for Air Quality or exceed the health-based values of the ~~AAQGs~~ 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) The effect of new activities discharging contaminants into air near established sensitive activities.~~

(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 NESAQ.

(h) The operational requirements and locational constraints relevant to the discharge and/or activity.

(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.

371 Assessment of this clause has led to several additions. These have been assessed and included based upon policy AQ P3 providing an environmental bottom line. If the Hearing Panel decide to change AQ P3 that weakens this intent, the additional matters in AQ P4 should be reconsidered.

372 Delete the definition of Gazetted airshed in its entirety.

4.9 AQ P5 – Open burning – Te tahutahu ahi

373 AQ P5 is analysed as part of the open burning topic area below (section 4.33).

4.10 AQ P6 – Solid fuel burners – Ngā pāka ahi

374 AQ P6 is a policy that targets all solid fuel burners in the region. Although burners in the Rotorua Airshed are specifically targeted with stringent rules, discharges from burners elsewhere can also cause adverse effects if burners are operated incorrectly.

375 The policy is to 'avoid significant effects on the environment'. The term 'significant' has been used deliberately as not all effects on the environment need be avoided. This policy is intended to set a clear direction to achieve a specific environmental outcome, however some flexibility is provided for.

376 Two submission points (26-9, 51-7) were received on this policy. One submitter was in support of the policy, while the second submitter had a minor issue with the wording of the policy.

377 However, the clause that the submitter refers to as being covered in AQ P7 is not covered. AQ P7 only targets solid fuel burners in the Rotorua Airshed while AQ P6 targets all solid fuel burners in the region and the policies are designed accordingly.

378 It is most likely that the submitter meant to refer to clause (a) as being covered in clause (b) rather than AQ P7 and staff have assessed as such.

379 The submitter is correct in saying that clause (a) is covered by clause (b) as an excessive discharge of particulates could be considered offensive or objectionable, or possibly noxious or dangerous. However, particulates are the main contaminant of concern from domestic burners even in urban areas not gazetted as polluted airsheds. Therefore, including a specific clause in the

policy that targets particulates is appropriate, even if there is some duplication with clause (b).

Council staff recommendation

380 No change to AQ P6

4.11 AQ P7 – Solid fuel burners in Rotorua Airshed – Ngā pāka ahi i te Takiwā Hau o Rotorua

381 AQ P7 is analysed as part of the Rotorua burners topic area below (section 4.34).

4.12 AQ P8 – Agrichemical spraying – Te tōrehu matū ahuwhenua

382 AQ P8 is analysed as part of the agrichemical topic area below (section 4.35).

4.13 AQ P9 – Fumigation for quarantine application or pre-shipment application – Auahina kit e paitini mō to tono taratahi, tono utanga-tōmua rānei

383 AQ P9 is analysed as part of the methyl bromide and fumigation topic area below (section 4.36).

4.14 AQ P10 – Offsets in Rotorua Airshed – Ngā whakatautika i te Takiwā Hau o Rotorua

Submission Points: 11-4, FS14-3, 26-13, 29-2

384 Under the National Environmental Standards for Air Quality (the NESAQ), a regional council is required to decline any application for a resource consent to discharge PM_{10} into a polluted airshed. This was deemed to be unfair as it penalised industry, when domestic burners were the main source of PM_{10} in most airsheds in the country.

385 The 2011 amendment to the NESAQ introduced Regulation 17 to address this unfairness. Although the word “offsets” is not used anywhere in the regulation, it allows for resource consents to be granted if the consent applicant can offset their discharge by reducing the discharge elsewhere in the polluted airshed.

386 Offsets are simple in concept, but difficult in implementation. The *2011 Users' Guide to the revised National Environmental Standards for Air Quality (users' guide)* provided little detail on how the offsets were to be implemented.

387 The Ministry for the Environment (MfE) would eventually update the users' guide in 2014 to include a section on implementation of Regulation 17. In the interim, the expectation was for regional councils to determine how to manage offsets in their airsheds.

388 Staff prepared the *Offsets Guidance for the Rotorua Airshed* (the guidance document) and this guidance was adopted by the Operations, Monitoring and Regulation Committee on 13 February 2013. When the updated users' guide was released, staff noted some inconsistencies between MfE's guide and the Regional Council's guidance document. The guidance document was updated to resolve these inconsistencies and adopted by the Regional Direction and Delivery Committee on 30 October 2014.

389 Although the guidance document provides detail on how to implement industrial offsets, it is not regulation and cannot be enforced as such. Therefore the key requirements of the guidance document were condensed into a policy and included in the draft new regional air plan. The draft policy was sent for comment to the two consent holders for discharges of PM_{10} operating in the Rotorua Airshed at the time (Tachikawa Forest Products Limited (NZ) and McAlpines Rotorua Limited). Red Stag Timber, was not contacted as, at the time, it was believed that the discharges from their location at the Waipa Mill would not contribute to the PM_{10} concentration in the Rotorua Airshed.

390 The policy, now AQ P10, is highly specific to offsets required by Regulation 17 of the NESAQ. That is, it only applies to discharges that require a resource consent, where the discharge exceeds a specified threshold – that is, it is likely to increase the offsite, daily concentration of PM_{10} by more than 2.5 micrograms per cubic metre ($\mu g/m^3$). It is aimed at medium to large scale discharges. It was not intended to target domestic burners as these are small scale discharges that do not exceed the threshold.

391 At a much later date, rule AQ R13 was introduced. Although the rule was based on the concept of offsets from Regulation 17, the rule is not related to AQ P10. However, as both address offsets within the Rotorua Airshed, it has caused some understandable confusion with submitters.

392 Key issues raised by submitters are that requiring offsets may lead to unintended consequences, and that Table AQ 1 does not include all types of burners and uses out of date emission factors.

4.14.1 Outdated emission factors

393 A submitter has pointed out that the emission factors used in Table AQ 1 are outdated and that more recent factors have been prepared.

394 As stated in the footnote of the plan change, these emission factors are based on information in the guidance document. Staff kept the table in the plan change essentially identical to prevent conflict or misunderstanding. Therefore the recommendation does not include changing the emission factors in Table AQ1

395 However, staff acknowledge that emission factors for domestic sources vary according to location, climate, and demographics. Also that each time emission factors are calculated for different areas a more appropriate emission factor may be available. Therefore the recommendation is to allow for alternative emission factors provided suitable evidence for the alternative figures.

Council staff recommendation

396 Amend AQ P10(j) as follows:

(j) use the emission factors set out in Table AQ1 for each solid fuel burner type, where domestic sources are selected to provided reductions of emissions unless alternative emission factors for domestic sources have been determined based on robust evidence consisting of, but not limited to, actual measurements based on a suitable methodology.

4.14.2 Unintended consequences

397 There is concern from a submitter that an unintended consequence of offsets will be targeting of lower socio-economic rental properties to allow new discharges. This concerns domestic offsets (discussed in AQ R13, section 4.22) but may also occur with industrial offsets.

398 The relief sought, to remove the requirement to offset if unintended consequences occur, is not within the power of the Regional Council. The requirement to offset has been set out by Central Government in the NESAQ. No change is recommended to the policy.

4.14.3 Inclusion of all burner types

399 A submitter is concerned that two burner types, low emission burners and ultra low emission burners are not listed in Table AQ 1.

400 These burner types are included in the classification of post 2005 burners, consistent with the terminology used in the plan change. The introduction of further terms and definitions is not deemed necessary in this case.

Council staff recommendation

401 No change to burner classifications of Table AQ 1.

4.15 New policies

402 A number of submission points request additional policies to manage reverse sensitivity. These are considered the Reverse sensitivity section of this report and are not discussed in this section.

403 Three additional specific policies have been requested by submitter 21. The policies relate to roadside and utility agrichemical applications, soil fumigation and environmental monitoring of Hazardous Substances and emerging organic contaminants.

404 The requested policies are highly detailed and specific to the discharge to air of certain hazardous substances and their eventual effect on soil and water and on ‘susceptible members of society’.

405 To a large extent the issues raised by the submitter and the matters included in the proposed policies are addressed in the plan change, albeit in less detail and in a less restrictive manner than sought.

406 The plan change is focussed on discharges to air but it does provide some direction relating to the effects that these discharges can have on the wider environment, including in Policies AQ P3, AQ P4 and AQ P8 (and see

Objective AQ O3). The potential effect of agrichemical spraying on waterbodies is specifically acknowledged with Policy AQ P8 which requires that spray drift into waterbodies is to be avoided where possible. Where relevant, rules in the plan change contain a condition that there is to be no noxious or dangerous, offensive or objectionable discharge to water.

407 The plan change includes a definition of "sensitive activities" which includes childcare centres and schools, hospitals, consulting rooms, public amenity areas, and household water supplies (as well as sensitive environmental areas like wetlands). Effects on these activities are to be specifically considered and managed (see Policies AQ P4, AQ P8 and AQ P9).

408 Hazardous substances are managed by AQ P2 (with an 'avoid first' approach) and specific policy direction to avoid adverse effects on human health is provided by AQ P3.

409 A policy to minimise roadside applications of agrichemicals is not considered necessary in light of the direction already given in the policies relevant to this activity. Likewise, there is not considered to be a need to prohibit soil fumigation near sensitive areas as in many cases the effects can be suitably managed and there are policies requiring this.

410 The third policy proposed by the submitter requires the Council to commit to continuous improvement in monitoring with a list of detailed requirements. The monitoring regime requested by the submitter would involve significant financial capital and operating expenditure. This needs to be considered against all other financial priorities for the Regional Council via the Long Term Plan or Annual Plan process. It is not considered to be warranted at this point. Currently using the most up to data monitoring as required by our various acts and we review when necessary (for example in response to the Mount Maunganui issue)

411 Submission point 27-2 requests a policy to enable a range of discharges to air from industrial and trade activities as permitted activities where their potential effects are known and mitigation can demonstrate that effects are managed to a specified acceptable level. Staff agree with further submitter 23-71 that although the effects from each activity may be managed to be no more than minor, they together may contribute to a cumulative effect that needs to be managed.

Council staff recommendation

412 No additional policies or changes to the proposed policies of the plan change are recommended in response to the above submissions.

4.16 AQ R1 – General activities – ngā mahinga noa

Submission Points:	5-1, 8-3, FS21-61, 10-3, 19-8, FS1-1, FS7-14, FS8-69, FS21-65, FS22-25, FS23-43, FS30-25, 26-26, FS21-62, FS26-8, 30-7, FS1-3, FS5-8, FS13-56, FS21-66, FS22-21, FS23-44, FS30-26, 31-6, FS13-57, 33-9, FS1-4, FS7-15, FS21-67, FS22-20, FS23-45, FS30-27, 36-9, FS1-6, FS7-16, FS21-68, FS22-19, FS23-46, FS25-3, FS30-28, 37-9, FS1-7, FS7-17, FS10-4, FS15-4, FS16-4, FS17-4, FS21-69, FS22-18, FS23-47, FS30-29, 45-10, FS21-63, 50-12, FS1-8, FS7-18, FS21-70, FS22-22, FS23-48, FS30-30, 51-9, FS21-64, 58-24, FS30-31, 63-3, FS10-19, FS15-19, FS16-21, FS17-19, 63-4, FS1-9, FS8-70, FS10-20, FS15-20, FS16-22, FS17-20, FS21-71, FS23-49, FS30-32, 66-7, 67-8, FS1-12, FS7-19, FS8-71, FS10-12, FS13-58, FS15-12, FS16-12, FS17-12, FS22-23, FS23-50, FS25-2, FS30-33, 68-11, FS8-72, FS12-14, FS13-59, FS21-72, 69-4, FS8-73, FS10-27, FS15-28, FS16-17, FS17-28, 75-1, FS1-13, FS10-29, FS15-30, FS16-30, FS17-30, FS22-24, FS23-51, 76-16, FS1-14, FS10-35, FS15-36, FS16-36, FS17-36, FS30-34, 77-1

413 Rule AQ R1 is a “catch-all” rule that captures all discharges of contaminants to air that are not otherwise captured by any other rule, but excluding discharges of dust to air associated with a plantation forestry activity, which are managed via the NES for Plantation Forestry. Rule AQ R1 provides a default whereby any discharge is permitted provided certain conditions in clause (a) – (c) are complied with.

414 There were a number of submissions on this rule. Generally submitters were in support of a catch all rule for general discharges. Some submission points discussed issues with clauses (a) and (b) however the majority of submission points were on clause (c), which excludes discharges from industrial or trade premises.

4.16.1 Overall

415 Submission points 8-3, 26-26, 45-10, 51-9, 58-24, and 76-16 support the rule as proposed, with the latter two being conditional on better clarification being provided of “offensive and objectionable” (eg via a definition). The definition issue is addressed at (section 4.40.5) and staff recommend an additional section to clarify how offensive and objectionable will be assessed.

416 Submission point 5-1 is concerned with smoke and noise from vehicle burnouts on private property. Specifically, an issue with local residents in an area of Tauranga having difficulty with noise and smoke pollution from burnouts on a neighbouring property. The submitter wants to ensure that the rule captures this type of activity on private property. All rules under the plan change apply to activities whether they are on public or private land. If the vehicle burnouts are resulting in offensive or objectionable discharges to air, they will not comply with condition (a) of Rule AQ R1. District and city councils are responsible under the RMA for managing the effects of noise, so this plan change (and other regional plans) does not deal with this. Warranted officers of the Regional Council have the ability to enter private property to carry out enforcement action under section 332 of the RMA and as such, no change is required to the plan change to address this submission point.

417 Submission point 68-11 requests an additional clause (d) requiring that “the discharge demonstrates adequate setbacks from sensitive receptors”.

Examples of sensitive receptors given in the submission include educational facilities, residential properties, sports facilities, and marae. The submitter refers to the Tauranga Moana Iwi Management Plan in support of the suggested amendment. Policy 24 of the Management Plan is to manage the effects of air discharges on the health and wellbeing of the Tauranga Moana people, and there are two actions identified under the policy. The second has been identified by the submitter, with the action requiring Tauranga Moana to work with Toi te Ora and the Regional Council to advocate for a review of air discharge rules, in particular buffer distances from marae, Papakāinga, kura kaupapa, kohunga reo or dwellings.

418 There are a number of provisions that require that potential effects on sensitive activities are specifically considered and addressed. Sensitive activities are defined to include marae specifically as well as dwellings (which would include Papakāinga) and educational facilities (including kura kaupapa and kohunga reo). However the plan change does not directly refer to setbacks or buffers. These kind of mechanisms may be used as a form of mitigation imposed on activities via consent processes. They are not always the most appropriate mitigation, so a case by case assessment will often be required. A number of provisions focus on limiting effects, particularly where they are offensive, objectionable, noxious or dangerous beyond the boundary of the property from which the discharge is occurring. This includes the permitted activity Rule AQ R1 and it is considered to be more restrictive than a buffer or setback approach. The proposed amendment is not considered certain enough for a permitted activity rule in that it requires a person assessing compliance to have to first determine whether a setback is "adequate". On the basis that condition (a) restricts effects beyond the boundary of the subject property, no amendment to require a setback is considered to be required, and in this case (ie a permitted activity rule) nor would it be appropriate for enforcement reasons.

419 Submission point 67-8 is concerned that 'water body' as referred to in the plan change may apply to water bodies within the property where the discharge is being undertaken, the effects on which should be managed under the RNRP. The submitter seeks that the words "or into any water body" be deleted so that the focus of the condition is on effects generally beyond the boundary. There is no reason to distinguish between waterbodies on or off the property, as both are to be managed under the RMA. The rule is intended to ensure that discharges of contaminants to air that enter into any waterbody are not permitted. This is not necessarily clearly regulated under the RNRP, which focusses on managing the discharge of contaminants directly to water or to land where it may enter water. No change is recommended to the plan change.

420 Submission point 63-3 seeks provision be made for notional boundaries on the basis that odours do not physically constrain themselves to property boundaries. Staff agree that odours and other contaminants do not stop at the property boundary. However, the policy and rules do not require this, simply that the adverse effects are not noxious or dangerous, or offensive or objectionable, beyond the boundary. Recognising notional boundaries would introduce confusion to assessment of these effects. Except for discharges where the boundary is not relevant, any adverse effects of discharges should be avoided, remedied or mitigated before they reach the boundary.

421 Point 77-1 seeks a listing of those areas otherwise exempt in the other rules on the basis that this would assist in clarity when reading those rules. Staff response is that this a full, catch all rule therefore this is unnecessary.

4.16.2 **Clause (c)**

422 The majority of submission points on rule AQ R1 were concerning clause (c) and the exclusion of industrial or trade premises (ITPs) from this permitted activity rule. This exclusion means that any ITP carrying out an activity that is not otherwise permitted, defaults to discretionary under AQ R2.

423 Due to the large number of submissions received on this clause, submission points are not addressed individually but as a whole.

424 The origin of this clause is with section 15 of the Act which (in summary) states that no person may discharge any contaminant from any industrial or trade premises into air unless the discharge is expressly allowed by a national environmental standard or other regulation, a rule in a regional plan or proposed regional plan, or a resource consent.

425 This clearly sets out that the presumption under the Act is for ITPs to either be specifically permitted by a regulation made under the Act, or default to requiring resource consent.

426 The operative Regional Air Plan included a general discharge Rule 17 which permitted activities that met a number of general discharge conditions. This rule reversed the presumption under the Act, where ITPs were permitted if they met the conditions of Rule 17.

427 For many discharges of contaminants to air, Rule 17 has been appropriate, allowing activities to be carried out without specific provision in the air plan and without the need to apply for a resource consent.

428 However, adverse effects are being caused by discharges from industrial and trade premises across the region, particularly in industrial areas, that do need to be better managed moving forward. When activities are not managed by any other rule in the plan and are causing adverse effects, the burden of proving such effects when enforcing the plan rules falls to the Regional Council. Where there are several sources of a contaminant of concern it can be difficult to determine the main cause, if any. Even when there is one single source causing adverse effects it can still be a difficult process. The Regional Council must then carry out monitoring and research at the community's expense.

429 This is not consistent with the principle of polluter pays. The presumption under the Act for ITPs restores this principle, and this is considered appropriate. ITPs discharging contaminants to air must apply for resource consent. As part of the process they must carry out an assessment of environmental effects and establish that their activities will not cause unacceptable adverse effects.

430 The proposed approach is consistent with a number of the iwi and hapū management plans. For example the Tapuika Environmental Management Plan, Tauranga Moana Iwi Management Plan, and Ngāti Rangiwewehi Iwi Environmental Management Plan all raise specific concerns with contaminant levels and impact on the health of air, health, wellbeing and quality of life from industrial or trade discharges to air.

431 Submission points cover a range of concerns including that it is unreasonable to require consent for any ITP irrespective of size, scale and effects, that the Act provides for cascading controls which are not reflected in the plan change,

that *de minimus* activities will be inadvertently captured, and that activities will be unreasonably prevented.

432 Staff understand that this rule represents a significant shift from the previous rule framework and that this has created considerable concern in the industrial and trade community.

433 Section 15 of the Act treats air discharges from ITPs more stringently than air discharges from any other source. This indicates that the Act anticipated a higher probability of adverse effects from these sites. Therefore it is reasonable for an air plan to also treat these sites with a more stringent framework.

434 Submitter concerns about activities being unreasonably prevented are misplaced. The default rule for activities not permitted by AQ R1, is AQ R2 which is discretionary. If the plan change were aiming to prevent an activity it would be prohibited or non-complying. This is not the case. There is simply a desire to ensure that the actual and potential effects of these activities are appropriately managed, which can best occur via a consent process where the particular characteristics of the premise and its effects can be considered.

435 Submission points concerned that is unreasonable to require consent for ITPs regardless of size and scale, do not take into account cumulative effects. Staff agree with a number of further submission points from submitter 23 that notes that although some premises may be discharging at 'no more than minor' levels, cumulative effects may be occurring as a result of several permitted activities.

436 Staff agree that there may be some *de minimus* activities inadvertently captured by this rule. However, staff preference is for the accidental capture of activities with few adverse effects, rather than a continuation of the current situation where sites that do have adverse effects are not being captured.

437 Staff accept submission points that the condition is too broad in that it captures discharges of all contaminants to air from ITPs and this is not the intention. Not all contaminant discharges to air are of concern therefore staff recommend a change to the rule to only capture discharges of odorous compounds, particulates, and hazardous air pollutants.

438 Staff also recommend that the amended clause is removed from this rule and included as an additional discretionary rule.

Council staff recommendation

439 Remove AQ R1 clause (c), amend and include new rule AQ R22:

AQ R22 Industrial and trade premises – Discretionary – (tba) – Ka whiriwhirihia

The discharge into air from industrial or trade premises that is not otherwise provided for any other rule of this Air Quality chapter include any of the following **contaminants**:

(a) particulates

(b) odorous compounds

(c) hazardous air pollutants

4.17 AQ R2 – General activities – ngā mahinga noa

Submission Points:	11-5, 19-9, 26-15, 34-2, 36-10, 37-10, 45-11, 50-13, 58-25, 63-5, FS1-10, FS10-21, FS15-21, FS16-23, FS17-21, FS23-52, 66-8, 76-17, FS5-9, FS23-53

440 Rule AQ R2 is the other "catch-all" rule which provides that any discharge of contaminants into air that cannot comply with any permitted activity rule or is not captured by other discretionary, controlled or non-complying activity in plan change, is discretionary.

441 There is general support from submitters for the 'catch-all' general discretionary rule. Submissions points 19-9, 26-15, 34-2, 36-10, 37-10, 45-11, 50-13 and 66-8 support retention of the rule.

442 Submission point 11-5 is in support of the rule but suggests that it would be clearer if "otherwise a controlled or noncomplying activity under any other rule" was deleted and replaced with "specifically addressed by any other rule…". Staff agree and recommend this change.

443 Submission points 76-17 and 63-5 suggest that a default discretionary status is too restrictive. Submitter 76 seeks the inclusion of new controlled or restricted discretionary rules with some matters of discretion proposed. Staff consider a discretionary status to be appropriate in light of the fact that the nature of the discharges that will need to be considered is unknown. No new rules are proposed in response to these submission points.

444 Submission point 58-25 seeks the inclusion of a reference to restricted discretionary activity rules as consequential to other relief sought to provide for restricted discretionary activities. As the recommendation is to remove the listed activity types, this change is not recommended.

Council staff recommendation

445 Amend AQ R2 as follows:

446 Any discharge of *contaminants* into air that cannot comply with any permitted activity rule, is not discretionary under any other rule, and is not specifically addressed by any other rule ~~otherwise a controlled or non-complying activity under any other rule~~ of this Air Quality chapter, is a discretionary activity.

4.18 AQ R3 – Miscellaneous discharges – Ngā tukunga matahuhua

Submission Points:	54-4, 74-3, 26-16, 45-12, 51-10, FS13-60, FS20-28, FS21-73, FS26-9, 69-5, 45-25, FS18-25, 45-16, 45-26, 45-27, FS13-61, 45-28, 76-18, 19-10, 63-6, FS10-22, FS15-22, FS16-24, FS17-22, 67-9, 41-4, 50-3, 58-26, 76-45, FS13-124, 19-23, 76-46, 19-24, 33-15, 50-1, 50-2, 58-27, 73-7, 76-38, FS20-33

4.18.1 **Overall**

447 Submission point 45-12 is concerned with the use of the term ‘noxious or dangerous’ in this rule as it is broad and many of the contaminants listed in the rule would be deemed to be noxious and dangerous. Staff consider that these issues may be resolved by the assessment of the definition of ‘noxious or dangerous’ carried out in section 4.40.4 of this report.

448 Submission point 51-10 requests that the activity status for all listed activities is changed to controlled. Staff response is similar to the further submission points. All but clause (2) are activities where the primary effect is on land and water, with a secondary effect on air. Provided the activities are carried out according to related rules relevant to water and land, and that the conditions of this rule are met, they are not expected to have a more than minor effect. Therefore a controlled status would be too stringent.

449 Submission point 45-27 requests a change to the wording of the condition so that the adverse effects of the discharge are assessed rather than the discharge itself. Staff agree with this change as in most cases throughout the plan change the discharge is the cause of the effect. However, in this case the wording of the rule describes the activity, which some members of the community may find offensive or objectionable on its own if it is discharged beyond the boundary of the subject property. The plan change only seeks to manage the effects of the discharge to air. However staff recommend that the effects are not limited to spray drift or odour but include all effects.

450 Submission point 45-28 requests that the condition for no discharges to any water body to be deleted as discharges to water and land are addressed by other provisions in the RNRP. Staff agree as the primary discharge of these activities is already to land or water therefore this condition does not apply.

4.18.2 **Clause (1) and definition of ‘liquid waste’**

451 Submission point 45-25 requests that truck spreading is included as a method of discharging liquid waste to land. Staff agree and recommend this change.

452 Submission point 45-26 requests either that the rule is changed to permit the discharge of milk waste and dairy factory waste to land or (submission point 45-16) that the definition of ‘liquid waste’ is amended to include these substances.

453 Discharges of the products listed by the submitter have the potential to generate odour beyond the boundary of the subject property and have been the subject of previous complaints to the Regional Council. As such, this activity is not considered appropriate for inclusion as a permitted activity. Staff do not recommend this amendment to either the rule or the definition of ‘liquid waste’.

4.18.3 **Clause (2)**

454 Submission point 63-1 requests that this clause recognises notional boundaries, as odours do not constrain themselves to property boundaries and may dissipate at some notional boundary beyond the property boundary.

455 Staff agree that odours and other contaminants do not stop at the property boundary. However, the policy and rules do not require this, simply that the adverse effects are not noxious or dangerous, or offensive or objectionable,

beyond the boundary. Recognising notional boundaries would introduce confusion to assessment of these effects. Except for discharges where the boundary is not relevant, any adverse effects of discharges should be avoided, remedied or mitigated before they reach the boundary.

4.18.4 Clause (3) and definition of 'fertiliser'

456 This clause permits the secondary discharge to air from the use and application of fertiliser. Previously this activity was not specified in any permitted rule, but due to confusion as whether it was an agrichemical, it has been specifically provided for in the plan change.

457 Submission point 50-3 requests the inclusion of lime, which is not included in the definition of fertiliser. Staff agree with this change.

458 There is some submitter concern with the definition of fertiliser. The definition in the operative Regional Air Plan was not brought forward into the plan change as there is an existing definition in the RNRP. Submitters are concerned that this is outdated and not appropriate, and request a change.

459 Staff acknowledge these concerns. However, the primary adverse effect of discharging fertiliser is to water and land. The rules in the RNRP were developed alongside the existing definition. If this definition were to be altered, this could have unintended consequences for the provisions that manage discharges to water and land, particularly in catchments of concern.

460 Therefore staff do not recommend that the definition of 'fertiliser' is amended. Any substances that are not included in the current definition in the RNRP can be assessed using AQ R1.

4.18.5 Clauses (4) and (5)

461 Submission points in support.

4.18.6 New clauses

462 Submission point 54-4 requests that existing crematoria established under the operative Regional Air Plan as either a permitted activity or granted a resource consent, become permitted activities under rule AQ R3.

463 Staff response is that under the operative Regional Air Plan it was uncertain whether crematoria were permitted or discretionary. Consideration of whether a consent was required was determined according to whether the activity met the conditions of general Rule 17. If the activity met the conditions, no consent was required. If the conditions were not met, the activity defaulted to discretionary under Rule 19(z).

464 The plan change did not seek to change the status of existing crematoria, therefore remained silent on this matter. Given the similarities between the key conditions of Rule 17 and AQ R1, any existing crematoria will most likely retain their current status provided the effects are the same or similar in character, intensity or scale to their existing activity.

465 The submitter is requesting a change to the status of those crematoria currently consented, to become permitted. Staff preference is that those crematoria that currently require consent, should continue to do so. The policy shift proposed in the plan change is to make it more stringent for crematoria,

not more lenient. Staff do not recommend the changes requested by this submission point. Existing crematoria can be sufficiently assessed using AQ R1, without a specific rule.

466 A rule targeting new crematoria and existing crematoria that increase their discharges is included in AQ R21(g) and is discussed in section 4.30.4 of this report.

467 Submission point 74-3 requests the inclusion of coffee roasters as a listed permitted activity as this would inadvertently be included as an industrial or trade process and would require a consent under AQ R2. Staff recommend that coffee roasting is included in the list of permitted activities.

4.18.7 Council staff recommendation for AQ R3 and definitions

468 Amend AQ R3 as follows:

AQ R3 Miscellaneous discharges – Permitted — Ngā tukunga matahuhua – E whakaaehia ana

The discharge of contaminants to air from:

(1) spray irrigation, soil injection, truck spreading, or land soakage of liquid waste

(2) the ventilation and displacement of liquids in storage tanks and tankers

(3) the use and application of fertiliser or lime

(4) the disturbance of land and soil carried out according to rules LM R1, LM R2, and LM R3 of this regional plan

(5) contaminated land remediation permitted by DW R24 of this regional plan

(6) roasting of coffee beans

are permitted activities provided the discharge does not cause any ~~is not~~ noxious or dangerous, offensive or objectionable effect beyond the boundary of the subject property ~~or into any *water body*~~.

Advice Note - Discharge of liquid waste, and the use and application of fertiliser or lime must also meet all other requirements of this regional plan (see DW Discharges to Water and Land and OSET On-site Effluent Treatment).

469 No change recommended to definition of ‘liquid waste’ or ‘fertiliser’.

4.19 AQ R4 – Vehicles and roads – Ngā waka me ngā huarahi

Submission Points:	26-17, FS7-20, 10-4, 13-1, 48-4, 67-23, 69-6, FS26-10, 77-2, 10-11, 30-8, 36-11, FS7-21, 63-7, FS10-23, FS15-23, FS16-25, FS17-23, FS26-11, 67-10, FS7-22

4.19.1 Clause (a)

470 Submission points on this clause request; clarification on reasons for excluding ships, controls on carbon dioxide emissions (climate change), and clarity regarding when the rule applies. There are also requests to consider rail vehicles and historic vehicles.

471 Staff acknowledge these requests. The rule was carried over from the operative Regional Air Plan and updated to reflect the emissions clause in the Land Transport Act. No controls on emissions in light of climate change were included due to section 70A of the Act which does not allow regional councils to take into consideration greenhouse gases when making rules to control discharges to air. However, as the Regional Council still has the role of controlling discharges of contaminants to air, this rule was updated and retained.

472 However, in light of these submissions, staff have reconsidered the usefulness of this rule. The most likely source of any contaminant that may have an adverse effect on air quality, is shipping emissions. Regulation 16 of the Resource Management (Marine Pollution) Regulations 1998 states that no rule may be included in any regional coastal plan, or proposed regional coastal plan, nor any resource consent granted relating to shipping discharges incidental to or derived from or generated by normal operations of a ship. Therefore the plan change cannot target these emissions.

473 Regarding vehicles, staff are not aware of Rule 7 of the operative Regional Air Plan ever having been enforced in the 13 years that the plan has been operative. It is unlikely that this rule, if retained will be enforced. In addition, emissions of smoke and vapour from motor vehicles are regulated by Rule 7.5 of the Land Transport (Road User) Rules 2004 and this is an infringement offence under the Land Transport (Offences and Penalties) Regulations 1999.

474 Therefore staff recommended that this clause is deleted. Any discharges from vehicles that need to be assessed, can be assessed under AQ R1. If traffic emissions become an issue they would be addressed as a whole, not vehicle by vehicle according to visible emissions according to this rule.

Council staff recommendation

475 Amend rule AQ R4 as follows:

AQ R4 Vehicles and Roads – Permitted — ~~Ngā waka me~~ Ngā huarahi – E whakaaehia ana

The discharge of **contaminants** to air from ~~:~~

~~(a) any internal combustion engine used to power vehicles and aircraft (but not *ships*) is a permitted activity provided there is no clearly visible smoke for a continuous period of 5 seconds or more when the engine is idling~~

vehicle movements on unsealed roads is a permitted activity

4.19.2 Clause (b)

476 Most submission points are in support of this clause. Submission point 10-11 requests clarification for situations where vehicle movement on unsealed roads may need to be managed for example, road upgrading, logging operations, or during dry periods.

477 Staff are aware that significant dust issues are being caused by logging trucks in Northland. However staff are unaware of the equivalent issue in the Bay of Plenty. During dry periods there are nuisance issues caused by dust from dry unsealed roads, but these issues are short lived and have not escalated to where they require action. Road upgrading is excluded from the definition of unsealed roads.

478 Submission point 63-7 requests that odour from stock trucks is included in this rule. Staff response is that this is outside the scope of this rule. The rule targets dust from unsealed roads, not discharges from the vehicles themselves. Odour from vehicle loads can be assessed under rule AQ R1.

Council staff recommendation

479 No change recommended to clause (b).

4.20 AQ R5 – Venting of geothermal gas and steam – Te tuku kapuni ngāwha me te koromamao

Submission Points:	26-18, 36-12, 76-23, FS8-74, FS10-36, FS13-62, FS15-37, FS16-37, FS17-37

480 Submission point 36-12 is in general support of the permitted threshold for geothermal energy, however is concerned that the criteria in the conditions is not an effects based approach. They request that condition (d) is deleted.

481 Staff agree. Adverse effects can be assessed using condition (e) therefore condition (d) can be deleted.

482 Submitter 76-23 discusses issues with the definition of offensive or objectionable which is discussed in section 4.40.5 of this report.

Council staff recommendation

483 Amend AQ R5 by deleting clause (d):

~~(d) All vents must have sufficient height to ensure that the plume is unaffected by downdraft and must rise a minimum of 6 metres above ground level including 3 metres above the highest ridge line of any roof within 30 metres.~~

484 Staff also recommend correcting the numbering in this rule.

4.21 AQ R6-10 – Open burning – Te tahutahu ahi noa

485 AQ R6- AQ R10 are analysed as part of the Open burning topic area below (section 4.33).

4.22 AQ R11 – Solid fuel burners outside the Rotorua Airshed – Ngā paka ahi i waho o te Takiwā Hau o Rotorua

486 One submission point (26-20) was received on this rule requesting that the Regional Council ban coal due to its impact on climate change.

487 Under section 70A of the Act, the Regional Council cannot make a rule controlling a discharge of a greenhouse gas having regard to climate change. Where coal burning is targeted it is due to its high particulate discharges, not due to climate change. In these cases, it can only target the appliance design, it cannot prevent the sale of coal.

Council staff recommendation

488 No change recommended other than one minor change recommended to change NESAQ to National Environmental Standards for Air Quality.

4.23 AQ R12-14 – Solid fuel burners in the Rotorua Airshed – Ngā pāka ahi i roto i te Takiwā Hau o Rotorua

489 AQ R12- AQ R14 are analysed as part of the Rotorua burners topic area below (section 4.34).

4.24 AQ R15 – Agrichemical spraying – Tōrehu matūahuwhenua

490 AQ R15 is analysed as part of the Agrichemical spraying topic area below (section 4.35).

4.25 AQ R16 – Spraypainting – Peita tōrehu

Submission Points:	19-11, FS8-75, 30-11, FS76, 36-13, FS7-23, 42-1, 43-1, 44-1, 54-7, FS-77, FS26-15, 67-11, FS8-78

491 A number of submission points request that the scope of the permitted activity is expanded to include spraypainting outside of booths or enclosures where a structure is too large (including large infrastructure components). Submissions request an approach that allows for the best practicable option such as is provided for abrasive blasting (AQ R17) and have provided conditions for inclusion in the rule.

492 Staff agree with this approach and recommend amending the rule to allow for the best practicable option but including conditions to ensure that sensitive activities are not affected.

493 Submission point 54-7 notes that almost all paints contain an organic plasticiser. Staff acknowledge this and recommend the removal of this from the rule. It is not the intention to manage all painting operations under the conditions of this rule.

494 Submission points 42-1, 43-1, and 44-1 request that forced air drying of spraypainted products is also controlled by this rule, due to adverse odour effects. Staff response is that regardless of whether all other conditions of the rule are met, the discharge cannot be offensive or objectionable beyond the boundary. Likewise if the spraypainting is not managed by this rule it falls to the catch all rule AQ R1 which has an identical condition. Therefore this potential adverse effect can be managed without amending the rule.

Council staff recommendation

495 Amend rule AQ R16 as follows:

AQ R16 Spraypainting – Permitted — Peita tōrehu – E whakaaehia ana

The discharge of contaminants to air from the spray application of surface coatings containing di-isocyanates, ~~organic plasticisers,~~ or spray on anti-fouling paint (excluding the application of protective coatings to transmission line support structures) is a permitted activity if: ~~provided the following conditions are complied with:~~

(a) The spraying is carried out in a spray booth, room, or enclosure fitted with an air extraction system that discharges all contaminants and exhaust air to an emission stack and the discharge from the emission stack ~~must be~~ is an unimpeded vertical discharge from the emission stack at least 3 metres above the ridge height of the building and 3 metres above the highest ridgeline of any roof within 30 metres.

(b) Where (a) is not practicable the discharge must be controlled using the best practicable option such as screening and paint technologies; and

(i) The owner owner/occupier/agent must notify the occupier of any property within 50 metres of the spray application site at least 24 hours prior to commencing the work.

(ii) An exclusion zone must prevent any public access within 15 metres of the spray application site.

(c) The discharge must not be noxious or dangerous, offensive or objectionable beyond the boundary of the subject property.

496 Staff also recommend minor changes to some wording and structure to the rule (as shown) to provide for the additional content.

4.26 AQ R17 – Abrasive blasting – te whakapahū pākaha

Submission Points:	11-14, FS12-2, 11-15, 19-12, FS7-24, 30-12, 33-12, FS7-25, 36-14, FS7-26, 67-12, FS7-27, 69-7, FS7-28

497 Submission point 11-14 recommends that the requirement in condition (b) for no more than 5% free silica is lowered to 1% as this is more consistent with international practice. Staff response is that the main concern of this rule is that there is no noxious or dangerous discharge beyond the boundary (condition (e)). Condition (b) provides only one means of ensuring this. A change to 1% would further ensure condition (e) is met, however staff believe that this change is not necessary.

498 Submission point 11-15 requests an additional clause requiring that any blasting material is removed from site and disposed of appropriately. Staff response is that while this is good practice, it is not required to manage discharges of contaminants to air, and provided condition (c) is met, this is sufficient.

Council staff recommendation

499 No change to rule AQ R17.

4.27 AQ R18 – Fuel burning equipment – Ngā taonga ngingiha kora

Submission Points:	11-20, 22-6, 22-8, 26-24, 29-7, FS14-12, 29-8, FS14-13, 34-4, 34-5, 42-2, 43-2, 44-2, 48-6, 48-17, 58-31, 63-9, FS10-25, FS15-25, FS16-27, FS17-25, 66-10, FS24-2, 67-13, 77-11, 78-3

500 For ease of reading, fuel burning equipment is referred to as boilers.

501 This rule was based on rules 3 and 4 of the operative Regional Air Plan. The intention was not to change the permitted activity status of any boilers already installed, therefore the rule is divided into three sections. The first section contains general conditions for all boilers. Sections 2 and 3 target existing boilers and new boilers (respectively).

502 Existing boilers, those installed before 27 February 2018, are permitted under Section (2) of this rule. These conditions are the same as those in the current rules 3 and 4 and this approach is supported by submissions. As the intention was not to change any requirements for existing boilers, any changes to this section requested by submission points are not recommended by staff. One exception to this is made for submission point 34-5 requesting that the stack height is amended to 14.9 metres to accommodate an existing boiler located in an area with a maximum stack height of 15 metres. Staff recommend this change as no increase in adverse effects from this amendment is expected.

503 Submission points 11-20 and 22-6 request consideration of waste/used oil as a fuel for permitted boilers, alongside coal. Submission point 22-6 cites studies that show that emissions from used oil are similar to coal therefore used oil should be included in this rule.

504 Staff acknowledge this point regarding emission of used oil and coal. However this submitter, located in Mount Maunganui, is currently applying for a resource consent to discharge sulphur dioxide from burning of used oil. Breaches of sulphur dioxide have occurred in the Mount Maunganui area therefore any discharge of sulphur dioxide is closely assessed. Further monitoring and analysis is required on an airshed basis to establish appropriate limits for inclusion in a rule framework. Such an analysis could theoretically indicate that no boilers burning any type of fuel should be permitted in this area. Without this analysis complete, it is premature to design rules permitting used oil. Therefore no change is recommended.

505 Submission point 22-8 requests the addition of landfill gas flares into this rule. Staff response is that landfill gas flares are managed under regulations 25-27 of the NESAQ. Where these standards do not apply, they are managed under AQ R1 of the plan change. No change to this rule is recommended.

506 Submission point 26-24 opposes the exclusion of new boilers in the Rotorua Airshed as a permitted activity as there is no corresponding move to improve the type of fuel used by existing boilers.

507 Staff response is that discharges from existing consented boilers are capped by their consent discharge limit. There has been a significant decrease in boiler emissions in the Rotorua Airshed due to both shutdowns and substantial capital investment to reduce emissions.

508 Submission point 48-6 requests that the same requirement preventing new permitted boilers in the Rotorua Airshed is extended to the Mount Maunganui area. Staff response is that the exclusion for Rotorua Airshed has only been included following over a decade of monitoring and research. As discussed in reply to submission point 22-6 above, sufficient information is not yet available for the Mount Maunganui area to develop a rule framework on an airshed basis.

509 Submission point 48-17 requests clarification that the rule restricts the replacement of existing fuel burning equipment to the requirements post-February 2018. Staff response is that section 3 refers to 'equipment installed after 27 February 2018'. There is no reference to what purpose the equipment is installed for therefore this section applies regardless of whether it is replacement equipment.

510 Submission point 63-9 requests an amendment to section (2) to clarify if boilers with emission stacks constructed prior to December 2003 are permitted. Staff agree that the wording in 2(b), 2(c)(i) and 2(d)(i) is unclear and recommend minor changes to clarify this.

511 Submission point 66-10 requests an amendment to this rule to include flaring of natural gas if the submitter's first option is not adopted. As discussed in section 4.31.3, this first option has been recommended therefore no further analysis is required here.

512 Submission point 78-3 requests that the wording of the rule is made consistent with other regional air rules. Staff agree that the wording and structure differs, however this is due to its adaptation from an existing rule and the tiered structure to distinguish between existing and new equipment. Provided the meaning is clear and the rule can be interpreted and implemented effectively, staff recommend retaining the wording as proposed.

513 Submission point 78-3 also expresses concern that boilers not permitted under this rule are not provided for as discretionary activities. Staff response is that any activity not otherwise permitted in the plan change is discretionary under AQ R2.

4.27.1 Definitions – clean oil, fuel burning equipment, untreated wood

Oil

514 Submission point 11-16 expresses concern that the definition of oil is broad and that combustion of many of these products may result in adverse effects and recommends a definition of clean oil is provided. Staff response is that this definition of oil and the requirement burn clean oil in boilers is identical to the operative Regional Air Plan and no significant issues have arisen with the current definition.

Fuel burning equipment

515 Submission point 77-11 requests an exclusion for historic boilers such as boilers on rail vehicles and boilers used exclusively for educational purposes. Staff do not recommend making an exception for boilers used for educational purposes as it is unclear how long these boilers will be operated and under what conditions. However, it is reasonable to make an exception for boilers on historic vehicles including rail vehicles and staff recommend a change to the definition. The submitter should note that these discharges will still be assessed under AQ R1.

516 Submission points also request the exclusion of diesel fuelled generators to allow for use of these devices. Staff agree as this rule was not intended to capture these types of devices.

Unimpeded vertical discharge

517 Submission point 77-10 has requested that this definition is amended to take into account any particle removal devices. Staff response is that this definition applies to the final stack discharge, after any cyclones, scrubbers or other mitigation measures. No change necessary.

Untreated wood

518 Submission point 34-8 has requested a definition of untreated wood to clarify which types of wood can be burned in boilers. This is a counterpart to the definition of treated timber and will help to clarify the plan change. Staff recommend including this definition.

Council staff recommendation

519 Amend relevant sections of AQ R18 as follows.

520 Section (2)(b)

(b) For **fuel burning equipment** generating a gross heat energy output within the combustion chamber:

A. between 40kW up to 500kW, from the combustion of clean **oil**, coal or untreated wood

OR

B. between 40kW up to 1MW from the combustion of natural or liquefied petroleum gas

the discharge is a permitted activity provided conditions (a) to (e) are met and ~~all~~ any emission stacks constructed after December 2003 rise at least 6 metres above the ground and 3 metres above the highest ridgeline on the roof of any building less than 20 metres from the emission stack.

521 Section (2)(c)

(c) For **fuel burning equipment** generating a gross heat energy output within the combustion chamber:

A. greater than 500kW up to 2MW from the combustion of clean *oil*, coal or untreated wood

OR

B. greater than 1MW up to 4MW from the combustion of natural or liquefied petroleum gas

the discharge is a permitted activity provided:

(i) conditions (a) to (e) are met and any ~~all~~ emission stacks constructed after December 2003 rise at least 12 metres above ground level and at least 3 metres above the highest ridgeline on the roof of any building less than 20 metres from the emission stack

522 Section (2)(d)

(d) For **fuel burning equipment** generating a gross heat energy output within the combustion chamber:

A. greater than 2MW up to 5MW from the combustion of clean **oil**, coal or untreated wood

OR

B. greater than 4MW up to 10MW from the combustion of natural or liquefied petroleum gas

the discharge is a permitted activity provided:

(i) conditions (a) to (e) are met and any ~~all~~ emission stacks constructed after December 2003 rise at least 14.9 ~~15~~ metres above ground level and at least 3 metres above the highest ridge line on the roof or any building within 20 metres.

523 Amend definition of 'fuel burning equipment':

Fuel burning equipment often referred to as a "boiler" means a device used for the combustion of fuel within an enclosed combustion chamber in which heat is transferred from the products of combustion directly for the production of useful heat or power. For clarity this excludes vehicles, rail vehicles, *ships*, aircraft, **solid fuel burners**, diesel fuelled generators, and **enclosed incineration**.

524 Include definition of 'untreated wood':

Untreated wood means any wood material or product, including sawdust, which is not treated with copper chromium arsenic (CCA), or with any organochlorine preservative and can include timber treated only with anti-sapstain compounds

4.28 AQ R19 – Intensive farming – Ngā mahi ahuwhenua

Submission Points: 31-8, 33-13, 45-13, 51-11, 76-35

525 This rule is Rule 18 carried over from the operative Regional Air Plan, which also provided for intensive farming as a controlled activity. It has been retained to maintain the three existing intensive farms that have been in place since before January 2001. Submission 33-13 has queried why the date 1 January 2001 has been adopted. As noted, this has been rolled over from Rule 18 in the operative Regional Air Plan.

526 Submissions are generally in support of retaining this rule. Submission point 33-13 requests a change to the rule to allow for farms that comply with AQ R1. Staff response is that intensive farming, under the plan change, is now listed as discretionary therefore any farm that does not qualify as controlled under this rule, is discretionary. This is not the intention therefore staff do not recommend making the requested change.

527 Submitter 31-8 has expressed concern that the rights of intensive farming operations are elevated about all others. Staff understand these concerns, however there are only three of these operations with no complaints regarding their operations. Regional Council retains the right to include consent

conditions regarding key contaminants from intensive farming such as odour. Staff do not recommend changing this rule.

Council staff recommendation

528 No change to AQ R19.

4.29 AQ R20 – Fumigation for quarantine application or pre-shipment application – Auahina kit e paitini mō to tono taratahi, tono utanga- tōmua rānei

529 AQ R20 is analysed as part of the methyl bromide and fumigation topic area below (section 4.36).

4.30 AQ R21 – Specific activities – ngā mahinga tauwhāiti

4.30.1 Overall

Submission Points:	19-14, FS4-9, 30-13, FS30-35, 45-14, 48-7, 67-15, FS10-13, FS15-13, FS16-13, FS17-13

530 There is overall support for this rule with some concern from submitters regarding industrial or trade premises which are addressed in AQ R1. Further submitters have also requested changes to AQ R21(y) and this is discussed in the relevant section below.

4.30.2 Clause (a)

Submission Points:	31-10, 76-36, FS10-37, FS15-38, FS16-38, FS17-38

531 Submission point 31-10 requests that agrichemical discharge is added to this clause. Staff response is that agrichemical discharge to air is addressed by AQ R15 so does not need to be added here.

532 Submission point 76-36 has requested that this clause (and any other new activities not previously included in Rule 19 of the operative Regional Air Plan) is removed as activities should not be arbitrarily named without any basis for their inclusion. The submission states that these activities were previously permitted under Rule 17 of the operative Regional Air Plan and should not be included without any appropriate cost/benefit analysis from making these activities discretionary. Staff response is that there are no known agrichemical manufacturers in the region, however such activities have the potential to generate odour that is best assessed through an appropriate consenting process.

533 This list of discretionary activities is intended to provide a comprehensive list of all activities that are known to discharge contaminants to air with effects tat are potentially more than minor. The inclusion of activities that are not currently operating in the region ensures that there is no confusion regarding their activity status should an operator decide to set up. It is consistent with the approach recommended under AQ R1 for those that are potentially

causing adverse effects to provide evidence that this is not the case, rather than the Council needing to prove that the effects are more than minor and that AQ R1 does not apply.

534 Further submissions to this submission point have requested changes to AQ R21(y) which are discussed in the relevant section below.

Council staff recommendation

535 No change recommended.

4.30.3 Clause (f)

Submission Points:	6-1, 74-9, 76-47

536 Submission point 6-1 has stated that this change will affect their income, with no explanation as to how or why that will occur.

537 Submission point 76-47 has requested that this clause is removed as there is no basis for its inclusion. As noted above, this submitter has raised a general concern regarding inclusion of further activities within this rule that were not previously provided for under Rule 19 of the operative Regional Air Plan. The submitter also notes that because the activity is not properly defined it may capture unintended activities, such as hobby gardener's compost. Staff response is that there are composting operations that can cause considerable odour issues and therefore these activities should be properly assessed through the resource consent process. However staff acknowledge that the rule was not intended to target domestic composting, therefore staff submission point 74-9 recommends an amendment to reflect this.

538 This list of discretionary activities is intended to provide a comprehensive list of all activities that are known to discharge contaminants to air with effects that are potentially more than minor. The inclusion of activities that are not currently operating in the region ensures that there is no confusion regarding their activity status should an operator decide to set up. It is consistent with the approach recommended under AQ R1 for those that are potentially causing adverse effects to provide evidence that this is not the case, rather than the Council needing to prove that the effects are more than minor and AQ R1 does not apply.

Council staff recommendation

539 Amend clause (f) as follows:

(f) Composting (including mushroom based processes) where the compost is for wholesale or retail sale

4.30.4 Clause (g)

Submission Points:	10-7, 11-17, FS2-1, FS22-26, 47-1, 54-9, FS2-2, 74-10, FS2-3, FS22-27

540 Submission points on this matter are mixed with some in support of new crematoria requiring resource consent. However some submitters request that

the requirement is extended to existing crematoria. As discussed in section 4.18.6 there are also submitters requesting that existing crematoria are all made permitted activities. Staff response is that the plan change did not seek to change the status of existing crematoria and continue to recommend this as the approach in the plan change.

541 However this approach was recommended under the assumption that existing crematoria did not increase their emissions. Where existing crematoria have resource consents any adverse effects can be managed through the consent process. However where an existing crematorium is permitted under AQ R1 (previously Rule 17) any increase in emissions may have adverse effects that exceed the limits of the general rule. Council prefer to assess these situations using the resource consent process, especially in areas where particulates are an issue. Therefore staff recommend the changes set out in submission point 74-10.

Council staff recommendation

542 Amend clause (g) as follows:

(g) Crematoria where either:

(i) a new facility with a new discharge to air is being established ~~installed~~ after 27 February 2018, or

(ii) an existing facility is increasing the character, intensity or scale of the effects of the discharge to air after 27 February 2018.

543 Staff also recommend a footnote to clarify that Existing crematoria operating before 27 February 2018 with no increase to the character, intensity or scale of the discharge, are a permitted activity under AQ R1.

4.30.5 Clause (j)

Submission Points: 61-1, 62-1, 76-48

544 Submission points on this clause express concern that all free range farms, including those already established with known environmental effects and considerable infrastructure and investment will now be uncertain due to a change to discretionary status.

545 Staff acknowledge this concern and recommend a change to the proposed rule to allow for existing activities where there is no increase in the scale or intensity of the effects of the established activity.

Council staff recommendation

546 Amend clause (j) as follows:

(j) Farming activities as follows:

(i) **Intensive farming** not controlled by AQ R19, or

(ii) **Free-range farming** where either a new farm is being established or where an existing farm is increasing the character, intensity or scale of the effects of the activity, after 27 February 2018.

4.30.6 Definition free range farming

547 Submission point 7-17 requests that pigs and chickens kept as pets are excluded from this rule. Staff agree and recommend this change.

Council staff recommendation

548 Amend definition of free range farming as follows:

Free range farming means farms where poultry or pigs (other than those kept as pets) have free access to the outdoors.

4.30.7 Definition intensive farming

Submission Points:	7-18, FS13-107, 33-16,50-16, FS20-34, 58-35, 58-36, 76-39

549 Submission points express concern that the definition of intensive farming is contradictory and targets normal farming activities, not only those considered intensive. Staff acknowledge these points and recommend amending the definition to ensure submitters concerns are relieved and the rule targets the correct activity.

Council staff recommendation

550 Amend definition of intensive farming as follows:

Intensive farming means ~~agricultural production~~ poultry farms, piggeries, and mushroom production carried out within buildings, structures, pens or yards where the stocking density limits, or prevents, dependence on natural soil ~~quality~~ on the site, and/or where food is required to be brought to the site. ~~Includes poultry farms, piggeries, and mushroom production but~~ Excludes **free-range farming**, and greenhouses.

4.30.8 Clause (k)

551 Submission point 76-49 is concerned with the addition of glass making to this list. The reasons are explained under clause (a) above as this submitter has raised a general concern about the listing of further activities which were not previously part of Rule 19 of the operative Air Plan.

552 This activity was included in the current Regional Air Plan as a discretionary activity therefore it is not a new addition to the activities listed as discretionary in the plan change. Glass making uses furnaces and processes that produce a number of contaminants, mainly particulates, nitrogen oxides and sulphur oxides. Depending on the scale of the operation, these discharges most likely require mitigation through various methods such as scrubbers or baghouses. Such activities, with their potential to generate discharges that may be more than minor are best assessed through an appropriate consenting process.

Council staff recommendation

553 No change recommended.

4.30.9 Clause (m)

554 Submission point 37-12 is in support of this clause with no requested changes.

4.30.10 Clause (s)

Submission Points:	63-10, FS15-26, FS16-28, FS17-26

555 Submission point 63-10 expresses concern that meat processing operations are captured by this rule and modern meat processing should be excluded. Staff response is that Council has previously received complaints regarding meat processing plants and therefore it is still appropriate to include this as a discretionary activity. Although modern meat processing plants are more likely to have better management of odours, the activity does generate the potential for adverse effects and Council would prefer to assess this through a resource consent process.

Council staff recommendation

556 No change recommended.

4.30.11 Clause (u)

557 Submission point 37-19 is in support of this clause that requires consents for pulp and paper manufacturing.

558 Submission point 40-1 expresses concern with the smell from the Norske Skog plant. Staff response is that this activity has a current resource consent. Any remedy will need to occur as part of the consent process. This plan change maintains the requirement for these operations to obtain resource consents, however issues with a current consent cannot be addressed through the plan change process.

Council staff recommendation

559 No change recommended.

4.30.12 Clause (v)

560 Submission point 11-18 recommends adding torrefaction to the activities listed in this clause. Staff agree with this advice and recommend the amendment.

Council staff recommendation

561 Amend clause (v) as follows:

(v) Pyrolysis, torrefaction, or gasification of carbonaceous material.

4.30.13 Clause (x)

562 Submission point 22-10 requests that resource recovery, recycling centres and baling stations are excluded from this clause as they have minimal impact on neighbours, especially when zoned appropriately.

563 Staff acknowledge that some waste processing facilities have more potential to cause adverse effects than others. However it is Council's experience that regardless of what a waste processing facility is called, it may cause adverse effects. Staff are also concerned that those operating waste processing facilities will use semantics to avoid the need to apply for a consent, even if their operation has a high potential to cause adverse effects. Therefore no change is recommended to the types of operations covered by this rule.

564 Submission point 54-10 requests that odour beds located near pipe infrastructure is excluded from this rule. Staff agree to this change as it would be unreasonable to expect resource consents for these activities.

Council staff recommendation

565 Amend clause (x) as follows:

(w) *Waste* processing activities as follows:

(i) municipal sewage treatment plants (excluding pump stations and associated odour beds)

(ii) *waste* facilities including refuse transfer stations, resource recovery, recycling centres, baling stations

(iii) landfills (excluding untreated wood *waste* and **cleanfill**).

4.30.14 Definition waste facilities

566 Submission point 56-11 requests definitions of each type of waste facility as different activities could be included.

567 Staff response is that the wording of the rule is that waste processing facilities are discretionary, therefore all waste processing facilities require consent. The terms listed in the rule are examples of types of waste processing facilities and do not need further definition to clarify whether they need a consent or not, as this is already required by the wording of the rule.

Council staff recommendation

568 No change recommended.

4.30.15 New clause (y)

569 Further submitters 10 and 17 request a new clause that lists the 'transfer, storage, and transport of bulk material in excess of 30,000 tonnes per year as a discretionary activity'. The reason for this request is to address discharges from one operation on Aerodrome Road in Mount Maunganui.

570 Staff acknowledge the concerns held by these submitters. However this rule would target all such activities throughout the region, not only those in the area of concern to the submitter. It would be inappropriate to include this rule and require every such operation to apply for a resource consent. Staff have recommended addition of AQ R22 which includes operations such as those in Mount Maunganui. Therefore the recommendation is to not include a new clause (y).

Council staff recommendation

571 No new clause (y) added to AQ R21.

4.30.16 Remaining clauses

572 The remaining clauses of rule AQ R21 have received no submission or further submissions therefore they are left as proposed.

4.31 New permitted activity rules

4.31.1 Cement handling and storage

573 Submission point 27-1 has requested a new permitted activity for cement handling and storage at the Port of Tauranga. The submitter has also provided a set of draft permitted activity conditions.

574 Staff agree with further submission point 23-74 that although some activities may not have adverse effects that are more than minor, this does not take into consideration cumulative effects. Discharges of particulates to air in the Mount Maunganui area is currently of concern and being investigated. Therefore it would be inappropriate to introduce a permitted activity rule for these discharges and staff do not recommend this rule.

Council staff recommendation

575 No new rule for cement handling and storage.

4.31.2 Diesel generators

576 Submission point 67-14 has requested a permitted activity for emergency diesel generators at the Port of Tauranga and have provided a draft rule with conditions to cover this activity.

577 Staff response is that discharges from these sources will be infrequent and are not contaminants of concern in this area. Amendments to AQ R1 have most likely removed the need to include this rule, however staff agree that this additional rule provides clarity, and some further conditions to manage adverse effects from this activity, beyond general rule AQ R1. Staff recommend including this rule, however recommend expanding it to the whole region.

Council staff recommendation

578 Include new rule AQ R23 as follows:

> **AQ R23 – Emergency diesel generators – Permitted – (tba) – E whakaaehia ana**
>
> The discharge of contaminants to air from the internal combustion of diesel in any emergency generator with a maximum load of 600 kilovolt-amperes is a permitted activity provided the following conditions are met:
>
> (a) the discharge must not occur for more than 48 house within 50 metres of a sensitive area, and
>
> (b) fuel used in the emergency generator must comply with the Engine Fuel Specifications Regulations 2011, and
>
> (c) the discharge must not be noxious or dangerous, offensive or objectionable beyond the boundary of the subject property.

4.31.3 Natural gas flaring

579 Submission point 66-9 (and further submission point 24-1) requests a new permitted activity for flaring of natural gas and have provided a draft rule with conditions.

580 Staff have considered this activity and the conditions. While this activity will most likely be permitted under the amended AQ R1, however staff agree that this additional rule provides clarity, and some further conditions to manage adverse effects from this activity, beyond general rule AQ R1. Staff recommend including this rule.

581 Submission point 66-16 requests a new definition of 'flaring' to clarify the rule. Staff response is that flaring is sufficiently understood without the need to define the term.

Council staff recommendation

582 Include new rule AQ R24 as follows:

AQ R24 Flaring of natural gas – Permitted – (tba) - E whakaaehia ana

The discharge of contaminants to air from the combustion of natural gas by temporary flaring is a permitted activity provided the following conditions are met:

(a) the equipment is designed specifically for flaring of natural gas

(b) the discharge must be an unimpeded vertical discharge from the emission stack

(c) the equipment must be maintained in accordance with the manufacturer's specifications at least once per year by a person competent in the maintenance of that equipment

(d) the discharge must not be noxious or dangerous, offensive or objectionable beyond the boundary of the subject property.

4.32 Methods

583 There are no non-regulatory methods proposed in the plan change.

584 Two submission points request the addition of specific methods – points 58-37 and 76-15.

585 Although the two methods sought by the submitters are different, both address the same issue – disposal options for single use horticultural and agricultural plastics (such as baleage wrap).

586 Submission point 58-37 requests a method titled "Promotion of recycling methods" that states that "*Council will support and promote recycling schemes to minimise the material burnt. Such schemes include AgRecovery for recycling of agricultural and horticultural plastics*.

587 Submission point 76-15 requests a similar method that requires the Regional Council "*to adopt a collaborative approach with primary industry stakeholders, district councils and farmers to develop alternatives to open burning of plastic especially agriculture wrapping in rural areas. The approach will include*

research of alternatives, development of alternatives with territorial authorities and agriculture stakeholders and education of farmers".

588 These suggested methods are operational methods and as set out in Part 8 of the Section 32 report, these methods are no longer encouraged for regional plans. The reason for this is that to be included in a regional plan, a method needs to be established as most effective and efficient way to achieve the objectives. There is no consideration of costs, resources required or its priority against all other regional council projects. This process is carried out in the Long Term Plans and Annual Plan processes.

589 Staff discuss issues relating to alternative options to burning (including recycling) during analysis of Rule AQ R10 under section 4.33 of this report. The Regional Council's role in managing waste is outlined in the Waste and Resource Efficiency Strategy. Collaboration with other key agencies and stakeholders already occurs and so it would be unnecessary to include the type of methods being proposed.

590 No change is recommended in response to these submission points.

591 The content of the submission point discusses the potential use of specialised high temperature incinerators. The draft plan listed burning of plastics as prohibited. Following discussions with the submitter during consultation on the draft, the activity was changed to non-complying. Although burning of plastics is still discouraged, the option is now there to apply for a resource consent if alternative disposal options involving burning are developed.

4.33 Topic area – Open burning

592 Open burning is managed in the plan change by one specific policy and five rules. These, and the submissions that relate to them, are all assessed in this section. Where submissions have been received on definitions used only in this section, they are also analysed here.

4.33.1 Policy AQ P5 – Open burning – Te tahutahu ahi

Submission Points:	7-7, FS13-48, 12-1, FS26-6, 26-8, 30-5, 51-6, 58-17, 68-8, 76-10

593 This policy is intended to provide a clear policy direction regarding open burning to distinguish between areas and situations where open burning is acceptable, and those where it is not.

594 The policy is highly specific and detailed, and is intended to be directive. When open burning is considered, this policy is intended to be interpreted as an environmental bottom line, not assessed as a whole on balance with other policies.

595 Although there is a component of health and safety related to open burning (particulates, toxic gases, visibility) the primary concern is the adverse effect on amenity values, particularly of offensive and objectionable odour.

596 The policy uses the term 'avoid' regarding urban open burning. In all other cases in the plan change, the reason for use of this term is due to potential harm to human health. In this case, although there is a component of health

and safety related to open burning (particulates, toxic gases, visibility) the primary concern is the adverse effect on amenity values.

597 This is appropriate as there is no effective method to remedy or mitigate discharges from open burning in urban areas. Avoid is the only method available. No submissions have been received in opposition to using the term 'avoid' in this policy.

598 Submission points are generally supportive of this policy with some amendments requested.

599 Submission points 7-7 and 58-17 raise concerns that the policy is not clear. Staff agree with these comments and recommend restructuring the policy for ease of use, while retaining wording and intent.

600 Submission point 7-7 requests that the reference to 'urban property' is removed from the policy and that a more effects based approach is used such as limiting burning within a certain proximity of residential dwellings. Staff agree that a more effects based approach is appropriate and recommend the amendment is made for a setback distance of 100 metres, in accordance with the submitter's request. This will result in some rural properties being captured by this rule (as set out in further submission point 13-48). However the purpose of the policy and corresponding rule is to manage open burning according to its effects. Non-recreational/cultural open burning (ie, of green waste or rubbish) carried out within a certain distance of any dwelling house has the same adverse effects regardless of where this occurs and whether it is in an urban area or not.

601 For clarity, staff recommend retaining the reference to urban properties. The definition provides certainty for urban areas connected to municipal wastewater, and a clear distinction for potential enforcement actions.

602 Submission point 76-10 requests a definition of 'offensive and objectionable' in the plan change and a wording change to this policy to remedy this. Staff have assessed several submissions requiring a definition of the term offensive and objectionable and this is discussed in full in section 4.40.5. Staff have recommended that explanatory text for the term is provided that outlines how this term will be applied. This remedies the submitters issues on this policy therefore staff do not recommend the amendment to this policy as requested by the submitter.

603 Submission point 12-1 requests that clause (c) is expanded to include emergency response. Staff response is that the rule specified under this clause of the policy (AQ R8) is designed specifically for firefighter training, not for an emergency response. The conditions of the rule require advance preparation and notification that will most likely not be met in an emergency response situation. Therefore it would be inappropriate to include open burning for an emergency response in this rule.

604 In the absence of any specific rule, the activity would default to AQ R1 which contains general conditions. If the activity does not meet the conditions of AQ R1 then a consent must be sought under AQ R2. Section 330B of the Act provides for emergency works during a state of emergency declared under the Civil Defence Emergency Management Act 2002, and or resource consent applications. This is an appropriate approach for these types of discharges therefore no specific provision is recommended in the plan change.

605 Submission point 30-5 requests an additional clause that provides for burning "relating to the operation and maintenance of hydroelectric power schemes" in order to cover the need for burning of waste removed from intake screens and log booms within their scheme. No amendments are considered necessary given power schemes are generally located outside urban areas and so would not be subject to the 'avoid' direction. It is appropriate that the burning of waste associated with these schemes not cause noxious or dangerous, offensive or objectionable discharges. Council staff do not agree that there is a disconnect between the policy and Rule AQ R6, given the policy, like the Rule, is also generally enabling towards activities provided they do not take place on urban properties or (with the recommended amendment) within 100 metres of a dwelling house.

606 Submission points 26-8, 51-6, and 68-8 support the policy as proposed, particularly the exclusion for recreational and cultural activities. The recommended amendments to the policy below do not change the intent or substance of the policy in that regard.

Council staff recommendation

607 Amend AQ P5 as follows:

Manage open burning by:

(a) Avoiding the discharge of contaminants to air from open burning on urban properties or within 100 metres of any dwelling house, except where carried out as part of a recreational/cultural activity ~~while permitting open burning carried out as part of a recreational/cultural activity, and/or outside urban areas,~~ 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.

4.33.2 Rule AQ R6 – Open burning – Te tahutahu ahi noa

Submission Points:	4-1, 7-8, FS13-63, FS18-26, 7-22, 26-27, 30-9, 54-5, 58-28, 71-1, 76-19, 77-4

608 Rule AQ R6 permits the discharge of contaminants from open burning where the fire is not located on an urban property and the conditions in the rule are complied with.

609 Submission points are generally in support of this rule, subject to their concerns with definitions being addressed (submission points 54-5 and 76-19).

610 Submission point 76-19 is concerned with the term ‘offensive and objectionable’ and this submission point refers to points 76-23 and 76-38. Submission point 76-23 is more relevant to the term ‘offensive and objectionable’ being used regarding agrichemical and fertiliser. This is not relevant to this rule however this submitter has also requested a definition of ‘offensive and objectionable’ (submission point 76-10) which is relevant here. As discussed in the assessment of AQ P5 above, and in section 4.40.5, staff recommend adding text in the plan change to explain how the term ‘offensive and objectionable’ will be applied. Staff consider that this remedies the submitter’s concerns regarding this matter.

611 This submitter is also concerned with the term ‘beyond the boundary’ and the concern is explained further in submission point 76-23. Concern is that there is likely to be some discharge of contaminants beyond the boundary and this instantly raises the question of whether this is a permitted activity or not. This is closely related to the assessment of offensive and objectionable and is addressed through the inclusion of text to clarify how this term will be assessed and interpreted.

612 Submission point 7-8 requests that the reference to ‘urban property’ is removed from the policy and that a more effects based approach is used such as ‘located 100 metres or more from the nearest neighbouring dwelling house’. Staff agree that a more effects based approach is appropriate and recommend the amendment is made for a setback distance of 100 metres, in accordance with the submitter’s request. This will result in some rural properties being captured by this rule (as set out in further submission points 13-63 and 18-26). However the purpose of the policy and corresponding rule is to manage open burning according to its effects. Non-recreational/cultural open burning (ie, of green waste or rubbish) carried out within a certain distance of any dwelling house has the same adverse effects regardless of where this occurs and whether it is in an urban area or not.

613 For clarity, staff recommend retaining the reference to urban properties. The definition provides certainty for urban areas connected to municipal wastewater, and a clear distinction for any potential enforcement actions.

614 Submission points 4-1 and 71-1 request that the Fire and Emergency New Zealand Act 2017 replaces reference to the now repealed Forests and Rural Fires Act 1977. Staff agree with this amendment.

615 Submission points 58-28 and 7-8 request changes to focus on the adverse effects of the activity. Staff do not agree with the amendments proposed in submission point 7-8 for the same reasons they do not support the similar change sought by the submitter to Policy AQ P5 (lack of certainty and practical difficulties). Staff are also of the view that the words “noxious or dangerous, offensive or objectionable” already describe an adverse effect that is well understood within the context of the RMA and so consider that no amendment is required in response to submission point 58-28.

616 The bolding of the text “offensive or objectionable” is in error and will be removed as the term is not defined in the plan (submission point 7-22).

617 Submission point 77-4 requests an exemption to allow open burning for cooking when a Civil Emergency is declared. Staff response is that any open burning for the purposes of cooking is included in the definition of recreational/cultural. Policy AQ P5 makes it clear that this is to be permitted at all times provided it complies with Rule AQ R1 (and it is also clearly excluded

from Rule AQ R9) as it is included in the definition of “recreational/cultural”. Therefore no exemption for emergencies is required.

Council staff recommendation

618 Amend AQ R6 as follows:

Except where AQ R7 and AQ R8 apply, the discharge of *contaminants* to air from open burning is a permitted activity provided the fire is not located on an urban property or within 100 metres of any dwelling house and the following conditions are complied with….

619 Amend the advice note of AQ R6 as follows:

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 ~~Forest and Rural Fires Act 1977~~ Fire and Emergency New Zealand Act 2017.

4.33.3 Rule AQ R7 – Open burning for emergency disposal of diseased carcasses and vegetation – Te tahutahu ahi noa mō te whakawātea ohatata

Submission Points:	26-28, 58-29, 63-8FS10-24, FS15-24, FS16-26, FS17-24, 76-20, FS13-64

620 Rule 8 of the operative Regional Air Plan permits the discharge of contaminants to air from the emergency burning of dead diseased marine mammals and livestock and this has been carried over into the plan change. The addition of diseased vegetation is to take into account the actions required due to the *Pseudomonas syringae* pv*. actinidiae* (PSA) infection.

621 The disposal must be carried out under the instruction of the responsible authority. Council has devolved some responsibility to the relevant authority, as it considers that the relevant responsible authority is best placed to determine the need to undertake the activity, and that it will not allow the use of open burning in the event that it will cause harm to human health. On this basis no clause related to the discharge being noxious is considered necessary. The Regional Council expects that open burning under this rule will be offensive or objectionable, therefore there is no clause to manage these effects. However, condition (b) is included so that the Regional Council is aware of the situation and can monitor the activity and keep the public informed.

622 The Regional Council expects that open burning under this rule may well be offensive or objectionable but only in the short term. It is also only to be relied on when emergency disposal is directed by responsible agencies. Accordingly, there is no clause to manage these nuisance effects. The other potential risks that may arise due to the discharge are managed under condition (c), being that the discharge of smoke must not adversely affect the safety of any vehicle, aircraft, or ship. This condition is new (ie. is not in Rule 8 of the operative Regional Air Plan).

623 Submission point 58-29 suggests that the rule be amended so that it is not limited to diseased vegetation (ie. vegetation with an actual disease) but also

includes vegetation infected by unwanted organisms under the Biosecurity Act 2005. Staff agree and recommend a change to the wording so that it applies to "infected" and "diseased" vegetation. Again, the requirement that it be emergency disposal carried out under the instruction of the responsible authority should provide an appropriate limit as to what can be burned under this rule and no further clarification or definition of what constitutes 'infected' need be included.

624 Both submission points 76-20 and 58-59 raise issues with condition (b), being the need to notify the Regional Council one hour before burning occurs. For submitter 76 the concern is that when emergency disposal is required (per this rule), a requirement to notify the Council an hour in advance of doing so may impeded the purpose of the rule. Delaying burning in order to comply with this may lead to adverse effects such as the spread of a disease. The submitter has suggested that the condition be worded to require notification as soon as reasonably practicable before and if not practicable as soon as reasonably practicable during or after the burning. Submitter 58 opposes the condition for the reason that it does not consider advice to the Council should be required if the burning meets the thresholds in Rule AQ R6 and seek that this be included in the condition.

625 Staff agree that there may be practical issues complying with a requirement to notify the Council given the rule is to be relied on when there is a need for emergency disposal. The intent of the condition is to allow Regional Council to undertake actions to inform the public where necessary, manage complaints, and monitor the situation.

626 In normal cases where a condition of a permitted activity rule cannot be met, the activity would need to be considered under a different permitted activity rule (such as AQ R6 or AQ R1). As the discharge is most likely to be offensive and objectionable, these rules would not apply and the activity would be discretionary. It is not the intention of the rule to require a resource consent for open burning associated with emergency disposal in a situation where Council is not able to be notified an hour in advance of the activity occurring. This is not considered appropriate given the nature of the activity. Therefore staff recommend that condition (b) is removed and instead included in an advice note, with an amendment to the effect that notice be given before or during the burning.

627 No changes to refer to Rule AQ R6 are considered necessary as a result (submission point 58-29).

628 Further submission point 13-64 (to submission point 76-20) requests an amendment to ensure that the rule applies even if it is not an 'emergency' situation, as declared by the Biosecurity Act. Staff understand the reasoning behind this request however the word 'emergency' is used to describe the activity, it is not a condition of the rule. The key consideration determining whether the burning is permitted or not relies on the decision of the responsible authority and as discussed above, they are best placed to determine the need to undertake the activity.

629 Submission point 63-8 requests that open burning of any food processed or packaged that is also quarantined is included in this rule. This rule is not intended to permit the burning of packaging, particularly where it is plastic and could produce harmful chemicals that could lead to human health effects. Food that has been processed and packaged is unlikely to need to be disposed of immediately (ie. with the same sense of urgency) in order to

prevent further adverse effects or the spread of disease. Due to the lack of immediacy and the lack of clarity around the nature of the material that could be burned when disposing of processed and/or packaged food, it is considered appropriate that such an activity be subject to the requirement that it not be noxious or dangerous, offensive or objectionable beyond the boundary in order to be permitted (per Rule AQ R1). If it cannot meet this standard it is considered appropriate that a consent be obtained so conditions can be imposed to manage effects. No change is recommended to Rule AQ R7 as a result of this submission point.

Council staff recommendation

630 Amend rule AQ R7 as follows:

The discharge of contaminants to air from the emergency open burning ~~in the open~~ of dead diseased marine mammals, dead diseased livestock, or infected or diseased vegetation is a permitted activity provided the following conditions are complied with:

(a) Disposal must be carried out under the instruction of the responsible authority.

~~(b) Regional Council's Pollution Hotline (or its equivalent) must be notified a minimum of one hour before burning begins.~~

(c) The discharge of smoke must not adversely affect the safety of any vehicle, aircraft, or *ship.*

Advice Note: Appropriate government departments at the time of notification are the Ministry for Primary Industries (livestock and vegetation) or the Department of Conservation (marine mammals). Regional Council's Pollution Hotline (or its equivalent) should be notified before burning begins, or as soon as practicable after burning commences.

631 Staff have also made a minor change to the wording from 'burning in the open' to 'open burning'.

4.33.4 Rule AQ R8 – Open burning for firefighter training – Te tahutahu ahi noa mō te whakangungu tinei ahi

Submission Points:	12-3, 26-29, 41-5, 71-2

632 Rule AQ R8 permits the discharge of contaminants to air from the burning of materials for the purpose of firefighting research or training firefighters provided the permitted activity standards listed in the rule are complied with.

633 This rule is supported as proposed by two submitters (submission points 26-29 and 41-5). Amendments are sought by two other submitters.

634 Submission point 12-3 seeks the deletion of the word 'firefighter' in order to encompass training activities that may not involve designated firefighters, and also the inclusion of reference to the New Zealand Defence Force in condition (a) so that there is no question as to their authority to undertake firefighting research or training under the rule. The submitter also seeks that the rule covers open burning for the purpose of emergency response.

635 Submission point 71-2 also seeks that this part of the rule be amended, but in their case to also permit the discharge of contaminants from open burning for training where it is under the direct control of a "forest management company or other organisation which holds a services agreement with Fire and Emergency New Zealand to manage rural fire".

636 Staff agree that there are other organisations that are responsible for fire fighting that need to undertake research and training activities and that this should be enabled under this rule.

637 Staff propose to amend the rule to require the fire to be under the control of a "Defence Fire Brigade" or "Industry Brigade", with the relevant definitions from the Fire and Emergency New Zealand Act 2017 included in the plan change.

638 If the owner or occupier of any forestry land were to organise and maintain a group of persons in an industry brigade for the purpose of protecting industrial premises in an emergency it would be included as an "industry brigade". This may address the concerns raised by submitter 71, and if not, staff recommend that the submitter provide further details at the hearing.

Council staff recommendation

639 Amend clause (a) of AQ R8 as follows:

(a) The fire must be under direct control of Fire and Emergency New Zealand, a **defence fire brigade**, or **industry brigade** ~~or other nationally recognised body authorised to undertake firefighting research or training activities.~~

640 Insert new definitions to Definitions of Terms as follows:

Defence fire brigade means a unit or any other part of the Armed Forces established and trained under the authority of the Chief of Defence Force under the Defence Act 1990 for the prevention, suppression, and extinguishment of fires

Industry brigade means a group of persons organised as an industry brigade in accordance with Section 69 of the Fire and Emergency New Zealand Act 2017

4.33.5 Rule AQ R9 – Open burning in urban areas – Te tahutahu noa i ngā wāhi tāone

Submission Points:	3-1, 7-9, FS13-65, 10-12, 26-30, 76-21, 77-3

641 Rule AQ R9 classifies the discharge of contaminants to air from open burning on an urban property as a non-complying activity unless the fire is for recreational/cultural purposes.

642 Submissions on this rule are generally in support.

643 Submission point 3-1 seeks the banning of all recreational open fires and/or rubbish fires in urban areas. The concerns in the submission are largely focussed on the effects on the submitter associated with a neighbour burning rubbish outdoors. The submitter has not directly addressed issues associated with effects from the type of activities included in the definition of

cultural/recreation burning. Staff do not consider that barbeques and hangi etc should be banned based on this submission point.

644 Submission point 7-9 discusses an issue with the definition of 'urban property' and requests a change to the wording of the policy to remedy the issues with the definition. The requested change would remove the term 'urban property' and replace it with 'where the fire is less than 100 metres from the nearest neighbouring dwelling house'. Further submission point 13-65 is concerned that this 100 metre setback would capture rural properties where open burning could not be carried out within 100 metres of a dwelling house.

645 Staff agree that a more effects based approach is appropriate and recommend the amendment is made for a setback distance of 100 metres, in accordance with the submitter's request. This will result in some rural properties being captured by this rule (as set out in further submission points 13-65). However the purpose of the policy and corresponding rule is to manage open burning according to its effects. Non-recreational/cultural open burning (ie, of green waste or rubbish) carried out within a certain distance of any dwelling house has the same adverse effects regardless of where this occurs and whether it is in an urban area or not.

646 For clarity, staff recommend retaining the reference to urban properties. The definition provides certainty for urban areas connected to municipal wastewater, and a clear distinction for potential enforcement actions.

647 Submission point 77-3 requests an exemption for opening burning when a Civil Emergency is declared, with the reason being to allow open burning for cooking and heating. Any open burning for the purposes of cooking is included in the definition of recreational/cultural, which is already clearly excluded from Rule AQ R9. It is not considered necessary or appropriate to provide separately in a rule for open burning for heating purposes in urban areas, even in an emergency. No further changes are required to address this submission point.

Council staff recommendation

648 Amend AQ R9 as follows:

Except where AQ R7 and AQ R8 apply, the discharge of *contaminants* to air from open burning on an urban property or within 100 metres of any dwelling house is a non-complying activity, unless the fire is for recreational/cultural purposes only.

4.33.6 Rule AQ R10 – Burning of specified material – Te tahutahu i ngā papanga kua tautuhia

Submission Points:	7-10, 7-23, 7-24, 25-1, 26-19, 34-3, 34-7, 37-11, 48-5, 58-30, 76-22, FS22-28, 78-2, 78-4

649 Rule AQ 10 makes it a non-complying activity to discharge contaminants to air from the combustion of any of the materials listed in (a) to (h) except as provided in Rule AQ R8 (firefighter training) and AQ R1(i) (discharges from enclosed incinerators – discretionary activity.

650 Submission point 7-10 requests that the ambiguous term ‘user’, used in the advice note, is removed and also highlight a minor error in the reference to Rule AQ R21(i). Staff agree and recommend changes to the advice note and reference to remedy these. The submitter otherwise supported the list of specified material and reference to the NESAQ regulations (submission point 7-23).

651 Submission point 25-1 requests that banning burning of plastics should apply to rural areas as well as urban. Rule AQ R10 applies to both urban and rural areas, meaning a non-complying consent would be required in order to lawfully discharge contaminants to air from the burning of plastic in rural areas.

652 Submission point 26-19 suggests listing the materials appropriate for burning rather than listing those that are not appropriate on the basis that there is potential that the list omits some materials not appropriate for burning and may need to be amended in the future. If there is evidence about effects from materials that have been omitted now we recommend that the submitter provide this at the hearing so consideration can be given to including this material to the list. No evidence is provided as to materials that should be considered appropriate for burning. Aerosol cans (and similar items such as glass bottles) do not need to be included on the list as the danger they represent is not from a discharge of contaminants to air.

653 Without further evidence or detail it is not considered appropriate to make any changes to the rule in response to this submission. The listing of materials that cannot be burned unless a non-complying consent is obtained is considered to be more certain for those using the plan and for the Council enforcing it. If additional materials need to be added to the list in the future they can be via a discrete plan change. In the meantime, if the burning of any other materials that are not listed in the rule would result in a noxious or dangerous, offensive or objectionable discharge it will not be permitted under Rule AQ R1 and will require a consent, thus ensuring that the effects can be managed.

654 This rule has been broadened from the current Rule 20 in the operative Regional Air Plan (which targets open burning of certain materials), to any burning of these materials. However, as submitters 34 and 37 have identified, this has inadvertently captured materials associated with fuel combustion.

655 Submission points 34-3 and 34-7 request an amendment to this rule to exclude the burning of anti-sapstain treated wood, coal and wood used as fuel. The former change is sought on the basis that anti-sapstain wood can be safely burnt to make beneficial use of wood waste that would otherwise need to be disposed of via another means and at significant cost. The latter change is based on Rule AQ R10 capturing fuel combustion, which is at odds with the provision for the activity as a permitted or discretionary activity in other rules.

656 Staff recommend a change to clause (a) and (g) of the rule to exclude treated timber that is used in fuel burning equipment or pellets used in pellet burners from (a) and solid fuels used in fuel burning equipment form (g). This will ensure these activities are not included in this rule, as they are, as the submitter identifies, managed via other rules with appropriate conditions that manage the potential adverse effects from these activities (ie. stacks). The submitter has requested an additional definition of treated timber, discussed below (4.33.9) which also resolves this issue by excluding timber treated only with anti-sapstain compounds from the definition.

657 Submission point 37-11 also raises issues relating to the inadvertent capture of fuel burning in Rule AQ R10. They suggest that clause (h) (staff assume this is meant to be a reference to (g) in light of relief sought and reasons) and potentially (c) would make most fuel burning a noncomplying activity because trace elements of some listed materials are present in many fuels combusted to generate energy. They seek that Rule AQ R10 be amended to either only apply to outdoor burning and solid fuel burners; or to not apply to activities covered by Rule AQ R21; or that clauses (c) and (g) be deleted.

658 Staff consider that the issues regarding fuel burning equipment are resolved through addressing issues from submission points 34-3 and 34-7 as discussed above. However, staff consider this submitters request to exclude activities already listed in AQ R21 to also be appropriate. AQ R21 is a list of discretionary activities where the burning of any of these materials can be considered during resource consent applications.

659 Submission point 58-30 supports this rule subject to the inclusion of a method to develop and promote recycling schemes to reduce the need for open burning. It is not clear from the submission why this rule would not be supported in the absence of such a method being included. There are no non-regulatory methods proposed in the plan change and the addition of one in response to this submission point is not recommended. The Regional Council's role in managing waste is outlined in its Waste and Resource Efficiency Strategy.

660 Submission point 78-2 requests a correction to reference the production standard for wood pellets rather than the testing standard. Staff have recommended that this text is removed to resolve submission points 34-3 and 34-7 therefore no further changes are required in response to this submission point.

661 Submission point 76-22 raises concerns with the application of this rule to rural areas. The submitter is of the view that the rule is too strict and some burning in rural areas should be allowed.

662 Staff note that Rule AQ R10 does not prohibit the burning of non-organic materials. The draft plan change included a rule classifying the discharge of contaminants to air from the burning of these materials as a prohibited activity. As a result of feedback on the draft rules, staff amended the proposed activity status to non-complying to allow for consideration and granting of applications in appropriate circumstances.

663 The submitter has presented three options for consideration.

664 Option 1, the submitter's favoured alternative, is to amend the rule to exclude the burning of plastic and treated or painted timber in rural areas so that it continues to be a permitted activity.

665 The Hearing Panel should note that the burning of plastic and treated timber is listed as a prohibited activity in Rule 20 of the operative Regional Air Plan.

666 Options 2 and 3 (respectively) are to restrict the volume of material permitted to be burned in the rural zone, or to permit the burning of the material if there are no recycling options – specifically where no large scale collection of the material by territorial authorities exists. Staff response is that it would be difficult to enforce a rule that contained a volume limit for material that is to be burned as, once burnt, it would be extremely difficult if not impossible to determine whether the activity was compliant. The application of the rule

would also be too uncertain if it required staff to determine whether there was a “large scale collection” by territorial authorities in the relevant area.

667 Staff acknowledge that the use, disposal and recycling of single use plastics is not only a regional or national issue, but a global issue. Staff also note that this submission point was not received in isolation, but accompanied a request for a method to investigate alternatives to burning waste. A long term solution to this issue is sought.

668 Staff accept that farming will produce discharges such as smoke from burning greenwaste and general dust and odour. These are assessed from a well-being perspective and up to a certain level, are acceptable in these areas. However, the materials listed in this rule produce discharges known to harm human health when burned, such as dioxins from plastic.

669 The submission point has also requested that treated or painted timber is excluded from this rule. These materials release harmful toxins such as lead, chromium and arsenic and should not be burned in the open due to the adverse effects from these contaminants.

670 The rationale provided in the submission for allowing burning of these materials is that it is the most cost effective option. Staff response is that private economic benefit should not outweigh a cost to public health. This is not consistent with the objectives and policies of the plan change. Staff do not support the recommend the requested amendments to this rule.

Council staff recommendation

671 Amend the introductory wording of AQ R10 as follows:

> Except as provided for in AQ R8 and AQ R21~~(i)~~ the discharge of **contaminants** to air from the combustion of any of the following materials is a non-complying activity

672 Amend clause (a), (g) and the advice note of AQ R10 as follows:

> (a) treated timber or painted timber (except where timber is used in fuel burning equipment or pellets used in ~~for approved fuel for~~ pellet burners ~~as specified in AS/NZS 4014.6:2007 Domestic solid fuel burning appliances – Test fuels – Wood pellets, or the functional equivalent)~~
>
> (g) material that may contain heavy metals including but not limited to lead, zinc, arsenic, chromium, cadmium, copper, mercury, thorium, (except solid fuels used in fuel burning equipment)
>
> Advice Note: In addition to the materials… except where the regulations provide otherwise. For full understanding of these restrictions, ~~Regional plan users should~~ check the regulations of the ~~NESAQ~~ National Environmental Standards for Air Quality as well as the provisions of this regional plan.

4.33.7 New rule – Burning of unwanted material

673 Submission point 12-4 requests an additional permitted activity rule to allow the New Zealand Defence Force to undertake open burning associated with deflagration or burning of unwanted ammunitions, munitions or pyrotechnics.

674 Many of the items would include materials listed in AQ R10 that produce harmful chemicals when burned. Given the potential effects associated with the activity staff consider it to be appropriate that application for consent be made, and if granted, managed via conditions. Staff do not recommend an additional permitted activity rule.

Council staff recommendation

675 No additional permitted activity rule to allow the New Zealand Defence Force to burn unwanted ammunitions, munitions or pyrotechnics.

4.33.8 Definition open burning

676 The definition of 'open burning' excludes fireworks. Submission point 54-22 notes that as a result it appears to be a permitted activity. However the submitter explains that it will be difficult for fireworks to comply with the requirement under Rule AQ R1 that they not be offensive beyond the boundary. This uncertainty may mean that a consent is required for fireworks.

677 Staff response is that there is no specific permitted activity rule for open burning for recreational purposes on urban properties. This activity simply becomes permitted under AQ R1. Therefore whether fireworks are excluded from the definition of open burning or not, the assessment remains the same.

678 Like open burning for recreational/cultural purposes, the discharge of contaminants to air associated with fireworks is intended to be permitted only where it does not result in a discharge that is noxious or dangerous, offensive or objectionable (per Rule AQ R1).

679 This is not intended to capture small scale fireworks displays that are standard for Guy Fawkes or New Year's celebrations. However, larger scale fireworks displays have caused significant discharges that breach the National Environmental Standards for Air Quality. While this was an exceptional event, the Regional Council would prefer to retain the ability to assess larger events according to whether they may be noxious or dangerous, offensive or objectionable.

680 Submission point 66-12 seeks to specifically exclude the flaring of natural gas from the definition of open burning. Staff agree that flaring of natural gas is via purpose built equipment designed to control the combustion process, and therefore is not open burning. It should be excluded from this definition.

Council staff recommendation

681 Amend definition of 'open burning' as follows:

Open burning means the combustion of any material in the open air, other than in purpose built equipment designed to control the combustion process. Includes bonfires, **incinerators** and **recreational/cultural** outdoor burning but excludes, **enclosed incinerators**, **solid fuel burners**, ~~and~~ **fuel burning equipment**, flaring of natural gas, smokers, fireworks, candles, lamps, and outdoor patio gas heaters.

4.33.9 New definitions for treated timber

682 Submission point 34-6 requests the inclusion of a definition of treated timber in order to provide clarity. The submitter wishes to retain the ability in the future to burn untreated wood shavings which may contain anti-sapstain compounds

without triggering the non-complying rule AQ R10. This point (and any such definition) is also relevant to Rule AQ R18 (discussed in section 4.27). Staff agree that a definition would be useful in order to clarify the materials covered by AQ R10 and the definition proposed by the submitter is considered appropriate.

Council staff recommendation

683 Add a definition of 'treated timber' as follows:

Treated timber means timber treated with preservatives, including boron compounds (except 2-thiocyanomethylthiobenzothiazole (TCMTB) compounds), copper chromium arsenic (CCA), or creosote, but does not include timber treated only with anti-sapstain compounds.

4.33.10 Definition recreational/cultural

684 The term recreational/cultural is intended to be interpreted as one single term, rather than as 'recreational and/or cultural'. However, this has created confusion and submission points 10-5 and 54-24 have requested further clarification. Submission point 10-5 suggests that what constitutes a cultural purpose be clarified, perhaps by including examples in the definition. Both this submission point and point 54-24 query whether Guy Fawkes celebrations would be considered a recognised cultural practice.

685 Staff accept that there may be some confusion over whether Guy Fawkes celebrations, as the primary example of note, would be included. Staff propose an amendment to include this as an explicit example to avoid any such confusion.

Council staff recommendation

686 Amend definition of 'recreational/cultural' as follows:

Recreational/cultural in relation to open burning means any open burning for the purposes of cooking or amenity or recognised recreational/cultural practices (including. hangi, umu, barbeque, braziers, pizza ovens, Guy Fawkes celebrations), but excluding incinerators.

4.33.11 Definition urban property

Submission Points:	7-20, 13-120, 10-9, 54-26, 58-18, FS18-33,

687 As the plan change is targeting open burning on 'urban properties' a definition of 'urban property' is required. The plan change has defined this as a property less than 2 hectares and connected to municipal sewerage.

688 Submission points 7-20 request that the definition of 'urban property' is removed from the policy and that a more effects based approach is used such as 'located 100 metres or more from the nearest neighbouring dwelling house'. Staff agree that a more effects based approach is appropriate and have recommended changes to the rules (AQ R6, AQ R9) to remedy this. This will result in some rural properties being captured by this rule as discussed in sections 4.33.2 and 4.33.5 above.

689 For clarity, staff recommend retaining the reference to urban properties. The definition provides certainty for urban areas connected to municipal wastewater, and a clear distinction for potential enforcement actions.

690 Submission points 10-9 and 54-26 (as well as submission point 7-20 above) raises issues with the inclusion in the definition of reference to municipal sewerage connection. Submitter 54 identifies approximately 1,800 properties in their district that are not connected to municipal sewerage, despite being less than 2 hectares in size. This has been remedied through an amendment to the rule that restricts open burning within 100 metres of a dwelling house. This captures the types of properties highlighted by the submitters where adverse effects may still occur due to open burning in close proximity.

691 As this has been remedied through changes to the rules, no change is recommended to the definition.

692 Submission point 58-18 requests that the definition is amended to refer to property zoned residential in district plans. Using district plan definitions require reference to each district plan every time an assessment is carried out under this rule and this is not recommended.

Council staff recommendation

693 No change is recommended to this definition.

4.34 Topic area – Rotorua burners

Submission Points:	15-1, 26-14, FS27-1, 38-1, FS14-7, 38-2, 38-3, 38-4, FS14-8, 38-5, 38-6, 38-7, 38-8, 38-9, FS14-9, 38-10, 38-11, 39-1, FS14-10, 39-4, 39-5, 39-6, 39-7, FS14-11, 39-8, 39-9, 49-1, 49-2, FS14-14, 49-3, 49-4, 49-5, 49-6, 49-7, FS14-15, 60-1 FS14-16, 10-6, 26-21, FS9-1, 29-3, 29-4, 60-3, FS14-17, 60-4, 60-5, FS14-16, 60-6, FS14-19, 70-1, 74-4, FS14-20, 74-7, FS14-21, 77-5, 77-8, 77-9, 26-22, 29-9, 39-3, 74-5, FS14-22, 74-8, FS14-23, 77-6, 11-3, 26-23, FS27-2, 28-1, 29-6, 39-2, 59-1, 60-2, FS14-24, 72-2, 77-7

694 For ease of use, solid fuel burners are referred to as burners in this section. Where a specific type of burner is discussed, it is referred to in full (eg woodburner, indoor open fire).

695 The background of the Rotorua Airshed, the Rotorua Air Quality Action Plan and the various actions implemented since 2008 is set out in the Section 32 report. The full explanation of incentives, public awareness campaigns and the Rotorua Air Quality Control Bylaw is not replicated here but referred to only as part of consideration of submissions.

696 The rules are designed as a package, with all three rules acting together to reduce emissions from burners to ensure the Airshed meets the National Environmental Standards for Air Quality (NESAQ). Using this approach, some burners are permitted in any circumstances (pellet burners) while others must meet certain criteria (indoor open fires). The rules make allowance for new low emission woodburners, provided they are replacing an existing burner and there is no net increase of discharges to the Airshed. All of these allowances rely on coal burners, multifuel burners and old woodburners (pre-2005) being phased out by 2019.

697 The Hearing Panel should note that the Ministry for the Environment (MfE) is currently researching and investigating an amendment to the NESAQ. No information related to the content of the potential amendment has been officially released.

4.34.1 AQ P7 – Solid fuel burners in Rotorua Airshed — Ngā pāka ahi i te Takiwā Hau o Rotorua

698 Submission point 29-1 requests that the policy is changed to allow replacement low emission woodburners and Ultra Low Emissions Burners (ULEBs). Staff response is that replacement low emission wood burners are already provided for as an 'exemption' in paragraph (a) of the Policy. ULEBs are woodburners, and therefore the same requirements that apply to woodburners, apply to ULEBs.

699 Submission point 72-1 requests that the plan change accommodates the particular circumstances of the submitter's activities (i.e. to provide for fireplace features which contribute to the amenity of particular premises). This request, along with changes requested to the rule (submission point 72-2), are discussed further in section 4.34.2 below.

700 Submission 74-2 (BOPRC submission) sought consequential amendments to Policy 7 to accommodate rule AQ R13 to allow for new woodburners to be offset but restore the intent of the original policy (while accommodating the additional rule). The submission also sought removal of reference to burners in dwelling houses and buildings because solid fuel burners may be located in other locations.

701 Submission point 72-1 requests that the plan change accommodates the particular circumstances of the submitter's activities. This request along with changes requested to the rule (submission point 72-2) are discussed further in the section below.

702 Staff have considered submission points 72-1 and 72-2 (below), and 74-2 and consider that the requirement to 'avoid a new increase' is too high, particularly in light of the recent decision of the Court of Appeal in *Davidson* (as discussed in Section 4.3). Providing such a directive policy could mean that applications for non-complying activities under AQ R14 have difficulty passing either of the gateway tests under section 104D of the Act. While the intention is certainly to discourage the types of burners listed in the policy, it was not to prohibit them in every instance. Therefore staff recommend that the policy be amended so that it refers to the need to avoid these burners, except where exceptional circumstances apply.

703 As noted above, staff submission point 74-2 requests a change to the wording of the policy to ensure it maintains its original intent, which was to avoid the discharge of particulates to the Rotorua Airshed from certain burners, while retaining the allowance for offsets where appropriate; and to remove of dwelling houses and buildings as the policy is intended to target all solid fuel burners in the Airshed. Staff recommend this change.

704 Further submission point 14-2 requests the policy take into account that burners can be retrofitted with a secondary emission devices to reduce emissions. This is discussed further in section 4.34.2 below.

Council staff recommendation

705 Amend AQ P7 as follows:

Avoid a ~~net increase in~~ discharges of particulates to air from certain solid fuel burners ~~installed in dwelling houses or buildings~~ in the Rotorua Airshed, in particular discharges from:

(a) new solid fuel burners, except pellet burners, ~~and~~ replacement low emissions woodburners, and new woodburners where an offset is provided

(b) indoor open fires, coal burners, multifuel burners, and woodburners installed before September 2005

(c) solid fuel burners that have been refurbished since their installation

(d) solid fuel burners used or designed for use other than as a space heater

except where exceptional circumstances apply.

4.34.2 AQ R12-R14 – Solid fuel burners in the Rotorua Airshed – Ngā pāka ahi i roto i te Takiwā Hau o Rotorua

706 A large number of submission points have been received on these rules. Most submissions refer to the rules as a whole, not necessarily according to a specific provision. Due to this, submission points are assessed according to issue. These issues may apply to one part of a rule, or to all rules collectively.

707 Some of the issues raised in submissions are considered by staff to be out of the scope of the plan change. Where this is considered to be the case, it is highlighted in this report.

Validity of monitoring and data

708 Some submission points have raised issues regarding the validity of the air quality monitoring and the contribution of particulates from burners to air quality issues (as opposed to other sources). These concerns are addressed below. However, some submissions raise issues which are technically outside the scope of the plan change (for example requests for changes to the location of monitoring stations). Where that is the case, this is noted below, but staff have still provided a brief response for the submitter.

709 Submission point 39-1 requests a breakdown of all sources of particulates. Staff response is that the Rotorua Air Emissions Inventory, published in 2005, sets out the main sources of particulates and establishes that domestic sources are responsible for 60% of winter time emissions. This document is referenced in the Section 32 report.

710 Submission point 38-8 is concerned that air quality monitoring is carried out in a low area that does not represent the whole of the area. This submission point is not considered to be within the scope of the plan change. However, staff response is that the monitor has been placed in a low area because Regulation 15 of the NES-AQ requires air monitoring to be carried out in the part of an airshed where the standard is most likely to be breached by the greatest margin or most frequently. Therefore the monitor is in the correct place.

711 Submission point 49-4 requests that Council consider other sources such as pine pollen, sulphur and vehicle emissions. Staff response is that pine pollen

is a large particulate, far greater in size than 10 microns. Therefore it does not make up any proportion of the particulates monitored in the Rotorua Airshed. The sulphur in Rotorua is hydrogen sulphide gas from natural sources, and is not part of the air quality issue being addressed by the plan change. Although vehicle emissions do discharge particulates, these are a small proportion of the total wintertime emissions – only 12% (according to the Rotorua Air Emissions Inventory 2005). Central Government is mandated to reduce emissions from vehicles.

712 No changes recommended.

Firewood and woodburners

713 Some submissions have raised issues such as community access to free wood, that firewood merchants should be regulated instead, and that fires are the most economical method of heating houses. These submission points are not considered to be within the scope of the plan change but are addressed briefly below.

714 Submission points claim that as Rotorua is near a forestry area the community has easy access to a free source of firewood. Staff response is that the Home Heating Survey carried out by the Regional Council in 2004 showed that two thirds of people bought their wood with only one third self collecting. Since then, the forests have been closed to the public, further limiting sources of free firewood. While there will be many who still have access to free wood, self collecting is not as widespread as generally believed. Anecdotal evidence from Council staff visiting low-income homes in Rotorua is that a large proportion of these households buy their wood.

715 Submitters state that woodburners are the most efficient and affordable form of heating. Staff response is that each year Consumer magazine carries out an assessment of heating types, and for four years, heat pumps have proven to be the most cost effective way to heat homes unless the homeowner has access to free firewood. As discussed above, this is not as common as believed.

716 Submission points also claim that the problem is caused by wet wood and if the firewood merchants were regulated to ensure they sell only dry wood, there would be no issue. Staff response is that regulating commercial activities of this nature is outside the scope of the plan change, which is to regulate discharges to air. Firewood merchants may sell wet wood intended for storage and seasoning by the consumer. It is the homeowner's responsibility to ensure they operate their burner appropriately to minimise discharges, and this includes burning seasoned firewood. Rule AQ R12(e) contains a condition that requires this.

717 No changes recommended.

Ultra low emissions burners (ULEBs)

718 Ultra low emissions burners were developed to meet the testing requirements of a test method introduced by Environment Canterbury, known as Canterbury Method 1. This method tests the burner using fuel and a burn cycle more like real-life conditions.

719 Submitters request that ULEBs are permitted in the Rotorua Airshed in the same manner as pellet burners, even when there is no existing fire. Staff response is that ULEBs are still largely untested in real-life.

720 Council carried out real-life testing of ten ULEBs during Winter 2017. The results were encouraging, indicating an average discharge of 1.0 g/kg (low emissions woodburners discharge 4.5g/kg in real-life). However, the tests were carried out on only one model of ULEB. Staff are not yet confident that all ULEB models will perform in a similar manner. Environment Canterbury is carrying out real-life tests and staff prefer to wait until these results are available before calculating whether ULEBs can be introduced into the Rotorua Airshed as a permitted activity.

721 No changes recommended.

Secondary emission devices

722 Submitter 39 (also further submitter 14) requests that instead of introducing rules targeting burner design, that the Council require the installation and use of a secondary emission device fitted to the chimney that removes the particulates before they are discharged. These devices, introduced to New Zealand by this submitter, are known as OekoTubes. The submitter provided evidence to support the performance of these devices with the original submission.

723 The OekoTube is an electrostatic precipitator manufactured by OekoSolve of Switzerland to reduce particulate emissions from small scale burning devices up to 40 kW heat output, such as domestic solid fuel burners.

724 The OekoTube removes particles using a high voltage electrode which releases electrons into the chimney space containing the particles. The particulates become polarised and move towards the chimney wall and accumulate into coarser material on the chimney wall. It is intended that the resulting particulate matter be removed from the chimney wall by a chimney sweep.

725 In evaluating their effectiveness it is important to note that electrostatic precipitators such as the OekoTube use an electronic charge to remove particulates emitted from the fire that is in particulate form in the chimney. They do not remove the volatiles that are in gaseous forms when passing the electrostatic precipitator that will condense out to form particulates at lower temperatures. The effectiveness of the OekoTube in reducing PM_{10} from domestic heating will therefore depend on the amount of volatiles in the air stream and the temperature of the flue at the point where the ESP is functioning. Wood burning includes many low molecular weight organic compounds that are volatile at higher temperatures but condense at ambient temperatures. That is, a substantial proportion of PM_{10} does not condense until it is released into the outdoor air, where it can no longer be captured by the device.

726 Test data from overseas (as provided by the submitter) indicates the OekoTube has a very high level of efficiency in reducing particles (greater than 85%). However, overseas testing methods do not require the measurement of condensable particulates as is required in New Zealand. Some testing of the OekoTube with wood as a fuel has been carried out in New Zealand. This showed particle reduction efficiencies ranging from 45% at start up, 40% at high burn and 17% at low burn. Results suggested that the OekoTube is less effective with wood on low burn owing to the greater production of VOCs which later condense into particulates.[1]

[1] Pers comm Dr Emily Wilton 28 September 2018

727 One limitation in the test set up was that the flue in the laboratory was insulated and in an indoor setting. It is therefore likely to retain its temperature relative to an outdoor setting where an uninsulated flue will result in lower flue temperatures which will enable the capture of a greater proportion of the VOCs by the ESP. Further testing of the OekoTube on a medium sized appliance, with the collection of a greater number of samples and an uninsulated flue would allow for a more robust assessment of its likely impact in reducing particulate from wood burners.

728 In summary, there is not enough certainty that these devices will reduce the particulates discharged from any burner to the extent necessary for the Rotorua Airshed to meet the NESAQ.

729 The submitter requests that discharges from burners are permitted provided they are fitted with secondary emission devices such as the OekoTube.

730 For those households that have already replaced their older burners with modern appliances, this adds retrofitting to the costs already incurred. Given the uncertainty of the reductions possible with these devices, this is not an approach supported by staff.

731 Testing was carried out on a modern burner where the particle reduction efficiency was measured at 17% on a low burn. This efficiency would further reduce for older burners due to their ability to be dampened down even further, leading to more emissions. Therefore the cost of retrofitting would not outweigh the few reductions that may be achieved through installation of an OekoTube.

732 This regulatory pathway is not recommended.

Unintended consequences

733 A number of submission points have raised the concern of unintended consequences of these rules, primarily houses being left with no heating or ‘fuel poverty’.

734 This concern is shared by staff. Avoiding a scenario where health effects from poor air quality are replaced with health effects from cold, damp homes, has been a principle of the Rotorua Air Quality programme since its inception in 2008.

735 Council provides free Home Performance Advisor assessments to individual property owners considering their options for replacement heating and insulation. This is independent advice to find the most appropriate form of heating for the occupants. The Council does not promote one heating appliance over another. The Home Performance Advisor considers occupants mobility, health issues, how they access their firewood (buy or self-source), and whether the existing type of heating meets their needs.

736 Council provides two heating/insulation incentive schemes that support the rules and make it affordable to replace existing non-compliant heating. The Low-Income Heating Grant Scheme provides free replacement heating and insulation to eligible property owners. Council also administers a voluntary targeted rate scheme (Hot Swap) for general income property owners. Hot Swap is used by landlords, owner-occupiers and purchasers of new properties when fires are removed under the Rotorua Bylaw Point of Sale rule. A Hot Swap loan can be paid back over ten years. Council’s voluntary targeted rate

scheme provides landlords with an affordable way of meeting Central Government rental regulations.

737 Staff have worked with an extensive number of community and government organisations to maximise funding and education for insulation and heating. Council's work continues to align with Central Governments Warmer Kiwi Homes programme which is designed to target properties within high deprivation areas of Rotorua, Community Service Cardholders, and those with recognised health issues.

738 Despite best efforts there will always be members of the community that behave poorly. Examples given in submission points are houses having burners removed under the Bylaw's point of sale rule leaving no heating and landlords removing a burner from a rental property to offset a new woodburner in their own home. This behaviour isn't localised, instead it's a national issue being addressed by the Minister of Housing and Urban Development through introducing minimum standards for warmer and drier rental homes through the Healthy Homes Guarantee Act 2017.

739 Submission points are concerned that where burners have been removed or where no new burner is permitted, the home is left with no heating or that it is impossible to install. Staff response is that this is not the case. There is always an option to install zero emission heating (such as a heat pump) or a pellet burner. This may not be their preferred method of heating, but it is still home heating. Where a woodburner is preferred but not permitted, the rule framework allows for resource consents either with an offset or in exceptional circumstances.

740 No changes recommended.

Community awareness and consultation

741 Many submitters are concerned that the community has not been given enough information on the air quality issue and that there has been little or late consultation on the plan change.

742 Staff response is that the first campaign run by Council to raise public awareness was Winter 2009. Since then a campaign to raise awareness of various aspects of Rotorua air quality has been run every year. These campaigns have included dry wood, draft Bylaw, Hot Swap loans, and the low income free fire swap.

743 In winter 2016 every homeowner in Rotorua was sent a letter explaining the draft rules and the implications. During consultation on the draft plan, a workshop and drop-in evening was held in Rotorua. A full consultation record is included in the Section 32 report.

744 Notification of the plan change followed standard process, however due to the significance of the issue in Rotorua, a series of radio ads were also run within Rotorua.

745 No changes recommended.

Phase out of old burners

746 There are submissions both in opposition and in support of phasing out of old (pre-2005) burners.

747 Staff response is that the Bylaw, awareness campaigns and incentives have all played their part in reducing the concentrations of particulates in Rotorua. However, substantial reductions are still required. As established in the Rotorua Air Emissions Inventory 2005 , the biggest proportion of emissions comes from old, inefficient burners. The Council has little choice but to phase these burners out to meet the NESAQ by the 2020 timeframe.

748 Submission point 49-3 requests that Council waits to measure the effect of the Rotorua Air Quality Bylaw 2017 ("2017 Bylaw") before making further changes. Staff response is that the 2017 Bylaw effectively 'holds the line' in relation to the installation of solid fuel, multi-fuel and coal burners, and only targets replacement or removal of old burners in houses being sold (the 'point of sale' rule). While the point of sale rule has steadily reduced the number of old burners in the Airshed, the change is not sufficient to ensure the Airshed meets the NESAQ. This is considered as part of the status quo (Option 1) in the Section 32 report on this topic.

749 No changes recommended.

Woodburner design

750 The emission rate for new and replacement burners is 0.6g/kg. This is the emission rate that was adopted for the 2017 Bylaw therefore this value was also included in the plan change.

751 Submission point (60-4) expresses concern that imposing a lower emission rate will lead to higher emissions as appliances between 0.6 and 1.0g/kg are typically lower powered, leading to higher emissions due burning more to produce similar heat output. This submitter also requests (60-5) that sufficient choices of 0.6g/kg woodburners are available.

752 During development of the 2017 Bylaw, staff investigated the power outputs and wetback options of lower emissions appliances to ensure an appropriate range of size and wetback options were available. The table below is a summary of woodburners on the Ministry for the Environment's Authorised Woodburner list[2], of the size required by the plan change. This shows that 0.6g/kg woodburners are typically entered on the list as higher powered, but that there are a number of suitable options available in all sizes.

Emission rate	**Less than 10kW heat output**		**Greater than 10kW heat output**	
0.6g/kg	19	11 wetback option	30	16 wetback option

753 The staff submission (74-7) requests that the emission rate is expressed to two decimal places. Currently the rate of 0.6g/kg could mean that woodburners with emission rates up to 0.64 could be included. This would not lead to a significant change in the outcome, however the intention is to clearly set an emission rate for woodburners, and 0.60g/kg is more precise and clear than 0.6g/kg. Staff recommend this change.

754 The staff submission (74-7) also requests that an additional requirement is added to the permitted woodburner rules to allow only authorised woodburners into the Airshed. The authorisation process is an additional test

[2] http://www.mfe.govt.nz/woodburners

carried out by Environment Canterbury or Nelson City Council to verify the stated design and performance of each woodburner. Staff recommend this change.

Indoor open fires

755 Submission point 26-21 supports the indoor open fire rule however staff further submission point (FS9-1) requests that this is rejected in part. During implementation of the 2017 Bylaw and of this proposed rule, it was noted that this rule allows for the installation and use of new indoor open fires. This was not the intention and therefore the staff submission request that the wording of the rule is amended to make this clear. Staff recommend this change.

Historic buildings and emergencies

756 Submitter 77 requests that exceptions are made for Civil Defence Emergencies and for periods of disruption of power or gas. Staff acknowledge the intent of these submission points however it would essentially mean the retention of appliances that are otherwise illegal, and only using them in rare situations. This unlikely to be the case, more likely the appliance will continue to be used as usual. This makes enforcement difficult and therefore is not recommended.

757 The submitter also requests an exception for historic buildings not currently listed by Heritage NZ. Staff acknowledge the reasons for this request however this option is not enforceable. It is much easier to enforce using an established list of Historic buildings, as proposed in the rule.

Exceptional circumstances

758 Submission point 77-8 requests an exemption for specialist hardening treatments for bending and shaping of steel. Staff response is that this type of unique situation is better addressed with a resource consent application, rather than a blanket requirement in the plan change.

759 In a similar situation, submission point 72-2 requests an amendment to the plan change to allow for the particular circumstances that apply to the submitter's situation.

760 The Rotorua Air Quality Bylaw first introduced in 2010, included rules that phased out the use of indoor open fires and prevented the installation of new indoor open fires. The rule provided a carve out for indoor open fires used for the cooking or smoking of food for wholesale or retail sale. The updated 2017 Bylaw provides this identical carve out. There is no provision for fires with amenity value, and the rules only apply to fires in dwelling houses or buildings. The Bylaw was never intended to cover all burners within the Rotorua Airshed. The intention was always to introduce more stringent rules to cover all burners in the Airshed, through the plan change.

761 In 2016, the submitter installed an open fire on the premises for amenity value. As the fire was not installed in a building or dwelling house, this activity was not covered by the carve-out in the 2010 Bylaw.

762 The plan change has now introduced the more stringent rules targeting all burners in the Rotorua Airshed to ensure the NESAQ are met. This includes the fire installed at the submitter's property.

763 The request by the submitter is to broaden the rule to take into account this particular situation. However, the fire is installed in this instance is to provide amenity value, not as a space heater. To allow this fire as a permitted activity would be against the policy direction contained in AQ P7, which is to avoid discharges from burners used other than as a space heater. For this reason, any indoor open fire that does not comply with the permitted activity rule is non-complying. Staff do not recommend the requested change.

Refurbished burners

764 Submission point 11-3 recommends that in order to meet the policy objective in AQ P7 regarding avoiding discharges from refurbished burners, that rule AQ R14 is expanded to include all refurbished burners, not just those installed before 2005. Staff agree to this change.

4.34.3 Council staff recommendation

765 Amend Rotorua burner rules as follows (only sections where changes recommended are shown):

AQ R12 Clause (a)

(a) the discharge is from an existing indoor open fire provided the indoor open fire is…:

AQ R12 Clause (d)

(d) the discharge is from a woodburner that:

(i) replaced an existing woodburner, coal burner, or multifuel burner that was used primarily as a space heater in the same dwelling house or building, and

(ii) has an emission rate less than or equal to 0.60, and

(iii) has a *thermal efficiency* of no less than 65%, and

(iv) is an Authorised solid fuel burner

AQ R13

(a) was offset by replacing or removing an existing woodburner, coal burner or multifuel burner with an emission rate of 0.60 or greater, in a dwelling house or building within the Rotorua Airshed, and

(b) has an emission rate less than or equal to 0.60, and

(c) has a *thermal efficiency* of no less than 65%, and

(d) is an Authorised solid fuel burner

AQ R14 Clause (a)

(a) The discharge of contaminants to air from any woodburner that was installed in any dwelling house or building before 1 September 2005, or from any refurbished solid fuel burner, ~~(including refurbished woodburners)~~ is a non-complying activity from 1 February 2020.

4.34.4 Definition 'authorised solid fuel burner'

766 The staff submission (74-4) introduced the term 'authorised solid fuel burner' and submission point 74-6 recommends adding a definition of this term for clarity. Staff recommend adding this definition and also recommend allowing

for the amendment or replacement of the Ministry for the Environment Authorisation Manual referenced in the definition.

Council staff recommendation

767 Add definition as follows:

Authorised solid fuel burner means a **solid fuel burner** that is either:

(a) on the Ministry for the Environment's Authorised Wood Burner list or

(b) has been authorised under the New Zealand Domestic Solid Fuel Burner Authorisation Manual 2011 (or its amendment or replacement).

4.34.5 Definition 'buildings'

768 Submission point 58-20 seeks clarification of the term 'buildings'.

769 Staff note that 'building' is not defined in the RMA or in the Natural Resources Plan but the meaning of the term is generally understood. Staff have considered the definition of the term in the Building Act 2004 and note that it is defined extremely broadly in the Building Act 2004 and would not be suitable for the current purposes. In any event, staff do not consider that there is such uncertainty with this term that would warrant its own definition specifically (and solely) for the purposes of the air quality section of the NRP.

770 No change necessary.

4.34.6 Definition 'coal burner'

771 The staff submission point 74-11 requests an amendment to the definition of coal burner to clarify this term and staff recommend this change.

Council staff recommendation

772 Amend the definition of coal burner as follows:

Coal burner means a **solid fuel burner** designed to burn coal, which has one or more of the following design features:

(a) fuel combustion air supplies with separate controls

(b) grate in the base of the firebox

(c) ash pan under the grate.

4.34.7 Definition 'emission rate'

773 Staff submission point 74-12 requests an amendment to this definition to ensure it applies only to solid fuel burners, not to fuel burning equipment, supported by further submission point 23-58. Staff recommend that this change is made.

Council staff recommendation

774 Amend the definition of emission rate as follows:

Emission rate when used in relation to solid fuel burners means the amount of particles (in grams) discharged from a **solid fuel burner** for each kilogram of dry wood burnt. The discharge must be measured in accordance with:

(a) the method specified in Australian/New Zealand Standard AS/NZS 4013:2014, Domestic solid fuel burning appliances – Method for determination of flue gas emission, or

(b) for a woodburner excluded from that method, another method that is functionally equivalent

4.34.8 Definition 'existing'

775 Submission points 26-25, 70-2, FS14-26, and 74-13 request the definition of 'existing' is amended to ensure that burners that were installed prior to requiring consents or permits are recognised as existing in the plan change. Staff recommend this change.

Council staff recommendation

776 Amend the definition of existing as follows:

Existing in relation to **solid fuel burners** means a **solid fuel burner** which:

(a) is in situ and has a building permit issued under the Local Government Act 2002, or

(b) is in situ and has a building consent issued under the Building Act 2004, or

(c) is the subject of a building consent or building permit application that has been accepted in writing by the Rotorua District Council on or before the date of notification of this regional plan, provided the consent or permit includes the **solid fuel burner** as a part of the consent or permit and the consent or permit is not declined, or

(d) has been verified by a delegate of the Rotorua District Council or Regional Council as lawfully installed

4.34.9 Definition 'multifuel burners'

777 The staff submission point 74-11 requests an amendment to the definition of multifuel burner to clarify this term and staff recommend this change.

Council staff recommendation

778 Amend the definition of multifuel burner as follows:

Multifuel burner means a **solid fuel burner** designed to burn wood and/or coal, which has one or more of the following design features:

(a) fuel combustion air supplies with separate controls

(b) grate in the base of the firebox

(c) ash pan under the grate.

4.34.10 Definition 'solid fuel burner'

779 Staff submission point 74-19 requests an amendment to the definition of solid fuel burner so that the term applied to any burner of this design, not just those used for domestic purposes. Staff recommend this change.

Council staff recommendation

780 Amend the definition of solid fuel burner as follows:

> **Solid fuel burner** means a ~~domestic~~ solid fuel burning appliance where combustion of the **solid fuel** occurs within a firebox, and where there may be a regulated supply of air to the fire. It includes (but is not limited to), **indoor open fires**, freestanding or built in **woodburners**, **pellet burners**, potbelly stoves, coal ranges, **coal burners**, chip heaters, water heaters or central heating units, **multifuel burners**, and similar appliances. It excludes small-scale domestic devices for smoking food, any portable unflued heaters fuelled by gas, alcohol or other liquid fuels, gas hobs or gas ranges used for cooking, any fuel burning appliance installed in a boat, caravan or motor home, and **fuel burning equipment** as defined by this regional plan.

4.35 Topic Area – Agrichemical spraying

4.35.1 AQ P8 – Te tōrehu matū ahuwhenua

Submission Points:	8-2, FS13-49, 14-1, 21-8, FS13-50, FS18-23, 26-11, FS30-6, FS26-7, 31-5, FS13-51, FS18-24, 33-8, 41-2, 50-11, 51-8, FS13-52, 54-2, 58-21, 65-1, FS13-53, 68-9, 69-3, FS21-51, 76-11, FS13-54

781 Submission points on this policy are divided. A number of submission points support the policy as proposed, other submission points call for full avoidance of all spray drift, while a third group of submitters are concerned that even the requirement to 'avoid where possible' is too stringent.

782 Staff acknowledge the concern that some submitters have with the ongoing agrichemical spraying going beyond the boundary, but agree with further submissions that complete avoidance places an extremely onerous requirement on the sprayer and would mean that spraying would only be able to occur in limited circumstances where sprayers are absolutely certain that no spray drift would occur. Staff do not recommend this approach.

783 However, nor staff do recommend removing the requirement to 'avoid where possible', or using the word 'mitigating' as requested by some submitters. The policy is aimed directly at agrichemical spray users and the word avoid was deliberately used to ensure that it was clear that avoiding spray drift is the preference. Avoidance is achieved not by notifying, or putting up signs or preparing a spray risk management plan. It is achieved through actions and decisions made on the day of spraying by the agrichemical sprayer.

784 In acknowledgement that avoidance is not always possible, it has been modified to be 'avoid where possible.' Clause (b) then requires mitigation, particularly of effects on sensitive activities, which for spraying activities with a higher risk will involve additional actions. The rule sets out these methods of mitigation.

785 Submission point 30-6 requests an amendment for the avoidance of spray drift to only apply to non-target water bodies to exclude any water body that is itself the target of spraying. Staff agree that this amendment is appropriate.

786 A similar request is included in submission point 54-2. The decision sought is to exclude the mitigation requirement of the policy on sensitive activities where the application is directly to a sensitive activity for maintenance purposes. Staff acknowledge the reasoning of this request however do not recommend the amendment. Mitigation is still possible even when agrichemicals are being applied to a sensitive activity, for example, public notification, and these are a requirement of the rule.

787 Submissions also call for requirement for best practice to be used in all agrichemical applications. Staff response is that best practice for agrichemical applications is a part of hazardous substance use, and should be carried out by all users automatically. The plan change is only concerned with discharges of contaminants to air and the policies and rules are designed with this purpose, not for the general use of agrichemicals. Staff do not recommend this change.

788 Submission point 76-11 requests a change to the term 'possible' to 'reasonably practicable.' Staff agree that this amendment captures the intent of the term and recommend that it is changed. However staff do not recommend changing 'mitigating' to 'minimising' as also requested in this submission point as the former was deliberately kept consistent with the Part 2 wording of the Act.

Definition 'risk management'

789 Submission point 54-3 has requested a definition of 'risk management'. This term is used in policy AQ P8 so is assessed here.

790 Staff response is that a definition of this term is not necessary as the risk management approach is essentially what is contained in the rule. However staff acknowledge that this term can be interpreted in several ways therefore recommend a change to the wording of the policy to clarify the intent.

Council staff recommendation

791 Amend AQ P8 as follows:

AQ P8 – Agrichemical spraying — Te tōrehu matū ahuwhenua

Agrichemical sprayers will manage adverse effects on human health and the environment by:

(a) avoiding spray drift beyond the boundary of the subject property and into non target water bodies where possible

(b) mitigating effects particularly on sensitive areas where avoidance of spray drift is not possible

(c) ~~using a risk management approach for~~ managing agrichemical spraying activities according to the ~~with a higher~~ risk of spray drift becoming noxious or dangerous, offensive or objectionable.

4.35.2 **Overall**

Submission Points:	13-3, FS18-29, 30-10, 31-7, 32-2, FS6-6, FS13-70, FS26-12, 54-6, FS13-71, FS26-13, 71-3

792 Submission point 13-3 requests a tax on greenhouse gas emissions. Staff reply is that this is not a role for Regional Council, but a Central Government role.

793 Submission 32-2 requests that the rule is removed and replaced with reference to HSNO Act, label instructions and the agrichemical standards. Staff response is that these requirements are too broad. The agrichemical standards were designed to meet the requirement of the HSNO Act, while the plan change is designed to manage spray drift under the Resource Management Act. The rules need to provide sufficient detail to manage and enforce control of spray drift in order to meet the objectives of the plan change, give effect to the RPS and achieve the purpose of the Act. Staff do not recommend this change.

794 Submission point 54-6 supports the intent of the rules but suggests restructuring them to reduce the need to cross reference conditions. Ease of plan use is a better outcome than avoiding repetition.

795 Staff agree that the rule is long. The structure of the rule was sent to stakeholders during the consultation process and it was generally approved. Restructuring the rule according the submitter's request would reintroduce repetition and further increase the size of the rule. This would not necessarily ease plan use and staff do not recommend this change.

796 Submission point 54-30 and further submission point 13-105 request a definition of 'applicator', in terms of the person carrying out spraying activities. However, submission points 58-34 and 58-33 point out that this term is also used in the definitions of hand-held applicators, to mean the part of the spraying apparatus used to apply the spray. Staff recommend amending the term 'applicator' in this rule, wherever it refers to a person carrying out the spraying to 'person carrying out the spraying'.

797 Submission point 54-31 requests that wherever aerial applications are referred to, the rule should specifically exclude drone application from aerial application. Staff recommend that this change is made for all instances in the rule.

Council staff recommendation

798 Amend the word 'applicator' wherever it refers to a person carrying out the spraying to 'person carrying out the spraying' as follows:

Amend AQ R15(3)(a)(iv)

(iv) the name and phone number of the ~~applicator~~ person carrying out the spraying

Amend AQ R15(4)(a)(i) as follows:

- name and phone number of ~~applicator~~ person carrying out the spraying.

799 Wherever aerial application is referred to, ensure drone application that complies with condition 1(c) is excluded, as follows:

Amend AQ R15(3)(b)

(b) Where agrichemicals are sprayed within 50 metres of any public amenity area (ground-based application or drone application complying with condition 1(c)) or 200 metres (aerial application excluding drone application complying with condition 1(c)), signs must be prominently displayed on the boundary of the public amenity area and must clearly state “caution – spraying in progress” or similar wording.

Amend AQ R15(4)(a)

(a) The owner/occupier or agent must notify the occupier of any properties within 50 metres (ground-based application or drone application complying with condition 1(c)) and 200 metres (aerial application excluding drone application complying with condition 1(c)) of where the agrichemical is being sprayed:

4.35.3 Section (1)

Submission Points:	8-9, 9-1, 9-2, 11-6, 14-4, FS13-73, 14-7, 21-12, FS13-74, FS18-30, FS19-6, 41-6, 52-2, FS13-75, 54-31, 58-42, FS6-7, FS19-7, 65-5, FS 13-72, 73-1, FS6-8, 76-30, FS13-76, FS13-78, 80-1

Clause (a)

800 Submission point 65-5 requests a change to clause (a) to make it consistent with requirements under the HSNO Act. Staff response is that the clause has been designed to meet the requirements under the Resource Management Act to control spray drift and is consistent with equivalent conditions in other rules of the plan change. No change is recommended.

801 Submission point 14-4 request that the status quo from the operative Regional Air Plan is retained to replace clause (a), requiring that the discharge does not result in any harmful concentration beyond the boundary. This is due to the concern that ‘avoid’ and ‘protect’ is too high a requirement. Staff response is that the clause does not require avoid or protect. The term ‘harmful concentration’ has been replaced in the plan change with the terms ‘noxious or dangerous, offensive or objectionable’. These are the same terms as in the Act. No change recommended.

Clause (b)

802 Submission point 76-30 expresses concern that clause (b) has too many qualifiers that could lead to difficultly carrying out emergency pest management and requests a change to the wording to address this. Staff agree with this change as this was not the intention of the condition.

Clause (c)

803 Submission point 14-7 requests that drone height clearance is increased from 5 metres to 10 metres, due to safety concerns. Staff understand the reasoning for this request, however the height has been determined to manage spray drift, not safety. However, a ten metre clearance will provide the requested safety buffer while not significantly increasing the risk of spray drift therefore staff recommend this change.

804 Submission point 41-6 expresses concern with a contradiction between condition 1(c) and 2(c) and the definition of aerial application. Staff response is that there is no conflict, however they understand how a conflict may be perceived.

805 Drone application is a subset of aerial application. To provide for the reduced likelihood of spray drift when agrichemicals are applied using drones, different conditions in the rule apply to drone application. However, if a drone cannot be operated in accordance with condition 1(c) it must meet the conditions for aerial application. The wording in condition 1(c) makes this explicit to prevent confusion. Staff acknowledge that the reference to drone application in 2(c) is redundant and can be removed, and this is discussed in the next section.

General

806 Submission point 9-2 requests clarification regarding the aerial release of hazardous substances in solid form. Staff response is that solid substances are not a discharge to air, regardless of the delivery method. The plan change manages discharges of solid particulates to air, where they are small enough to remain suspended, travel some distance and potentially be inhaled. No change recommended.

807 Submission point 11-6 requests a change to allow for military or police operations to carry out spraying without notification. Staff response is that the NZ Defence Force is a submitter to this plan change, and has not requested an amendment of this nature. Staff are unaware of any issues regarding spraying operations carried out by NZ Police. No change recommended.

808 Submission point 21-12 requests an additional clause in this section to ensure environment exposure levels are not exceeded and consideration of sensitive activities. Staff response is that ensuring environment exposure limits are not exceeded is already included with the requirement that the discharge must not be noxious or dangerous. Sensitive activities are considered through the rule.

809 Submission points 58-42 and 73-1 request the addition of conditions requiring competency of agrichemical users and the inclusion of the agrichemicals standards in this condition. This is discussed further below in the sections on Advice note and New conditions.

Council staff recommendation

810 Amend AQ R15(1)(b) as follows:

(b) Where the use of the **agrichemical** is for the prevention, eradication or management of unwanted organisms or pests, ~~a declared biosecurity emergency under the Biosecurity Act 1993,~~ the **agrichemical** must be used under the direction of the responsible authority under the Biosecurity Act 1993

811 Amend AQ R15(1)(c) as follows:

(c) Where the **agrichemical** is sprayed using **drone application**, the **drone** must not operate more than ~~5~~10 metres above the target while **agrichemicals** are being distributed from the **drone**. If this condition cannot be complied with, the spray method is **aerial application**, and conditions relevant to **aerial application** must be complied with.

4.35.4 Section (2)

Submission Points:	7-11, FS6-9, 8-10, 52-3, 68-12, FS13-77, 73-2, 76-31

812 Submission points are divided. Some support the approach and the conditions and the more permissive requirements for hand-held, non-motorised applications. Others request more stringent requirements, while others request less stringency.

Clause (a)

813 As discussed above, submission point 41-6 is concerned that there is a conflict between various terms related to aerial and drone application. The key submission point has been addressed above, however through analysis on this submission point staff note that there is a reference to drone application in clause (c) which is redundant and causing confusion, therefore recommend its deletion.

814 One submission point (68-12) requests more stringent requirements for hand-held, motorised application and application with a low pressure boom. Staff consider the requirements for requiring full notification, signage, and the preparation of a spray management plan for use of these low risk methods is too onerous and do not recommend this change.

815 Submission point 76-31 requests that the requirement in 4(d) to notify properties within 10 metres of spraying with hand-held motorised and low pressure boom applications is removed. Staff consider that this is appropriate due to the low risk of spray drift from using these application methods and recommend the change.

816 This submission point also requests the removal of the requirement for signage on any vehicle. This change is not recommended as this submission point will be addressed in discussion of section (3).

817 The Hearing Panel should note that there is an error in 2(c) with reference to clause 5(e). This should refer to 5(d).

818 Changes recommended below also reflect consequential changes from discussion of submission points on sections (3) and (4).

General

819 Submission point 7-11 has identified a minor amendment which staff have noted.

Council staff recommendation

820 Amend AQ R15 (2) as follows:

(2) Method of application of agrichemicals

(a) The discharge of contaminants into air from agrichemical spraying using: hand-held non-motorised application methods is a permitted activity provided conditions 3(a)~~, 3(c), 3(d),~~ and 4(e) are complied with.

(b) Hand-held motorised application methods or application methods using a low pressure boom is a permitted activity provided conditions 3(a), ~~3(c), 3(d),~~ 3(e), 4(c), ~~4(d),~~ 4(e) are complied with.

(c) Any other application method ~~(including drone application complying with condition 1(c))~~ is a permitted activity provided conditions 3(a), 3(b), 4(a), 4(b), 4(c), 5(a), 5(b), 5(c) and 5(d~~e~~) are complied with.

4.35.5 Section (3)

Submission Points:	4-2, FS13-79, 7-12, 7-13, FS13-80, 8-4, FS13-81, 11-7, 11-8, FS13-82, 21-13, FS6-10, FS13-83, FS18-31, FS19-8, 25-3, 41-9, FS13-84, 52-4, 54-29, FS13-85, 58-43, FS6-11, FS19-9, 68-14, 73-3, FS6-12, FS13-86, FS19-10, 76-32, FS6-13, FS13-87, FS19-11

Clause (a)

821 Submission point 8-4 requests that the term 'public space' is also included alongside the term 'public amenity area' in clauses (a) to (c) as people should have the same protection when they are in any public space. Staff do not recommend this change as the term 'public spaces' is too broad and undefined. The defined term 'public amenity area' captures those spaces where people are likely to congregate for an extended period of time.

822 Submission point 54-9 expresses concern that there are a wide range of public amenity areas that may be sprayed and that amending the rule to include signage 'where practicable' recognises that in some cases it may not be possible to place signage at all entrance points to a public amenity area. Staff do not agree with including this wording. The wording of the rule requires '…signs to be displayed at every entrance where the public usually have entry to the area *where the agrichemical is being sprayed*…' (italics added). Therefore signage is only required for the particular area being sprayed, not the whole amenity area. Where the area being sprayed doesn't have an entrance, Council would expect sprayers to use good judgement and place the signs where it is reasonably expected that a member of the public will see it if entering the area being sprayed.

823 Submission point 11-7 suggests more extensive signage for public amenity areas especially along extended boundary lengths, and suggest signs required every 300 metres. Staff do not recommend this change. The rules require signs at every entrance where the public usually have access to the area and this is considered sufficient.

824 Submission point 21-13 seeks signage based on legislation in the United States of America that reflect not only the danger during application but danger due to residual active ingredients in the environment. Staff response is

that the suggested requirements are designed to manage effects beyond spray drift. The plan change focusses on the air discharge component of agrichemical use and the signage required by the rule reflects this.

825 Submission point 25-3 also requests stricter signage requirements for spraying in public amenity areas. Staff consider the signage requirements to be sufficiently stringent.

Clause (b)

826 Submission point 7-12 expresses concern that the requirement in clause (b) for signs at the boundary of public amenity areas when spraying private property will be onerous in cases such as walkways where there are several private properties with direct access to the walkway. Staff response is that the wording 'where public usually have entry to the area' was intended to provide for this scenario, however it would be clarified through the change suggested by the submitter and staff recommend this change.

827 This submission point 11-8 also requests deletion of signage on the boundary of public amenity areas as this may give the perception that spraying occurs on these areas frequently. Staff agree with the deletion of clause (c) as discussed below, but not with the deletion of (b). Clause (b) outlines the signage requirements for higher risk of spray drift application methods such as aerial application. These methods are unlikely to be used in urban areas therefore it is unlikely that city parks and other such areas will be inundated with signage.

828 Submission point 76-33 requests that the distances in clause (b) are reduced to 30 metres (ground and drone application) and 100 metres for aerial application. Staff response is that the radius for notification of potentially affected private property owners is set at 50 metres and 200 metres, therefore it is appropriate that the signage requirements for public amenity areas is the same distance. These distances have been developed based on feedback on the draft plan and on distances in the operative Regional Air Plan.

Clause (c)

829 Submission point 7-13 expresses concern that clause (c) is unnecessary and too broad as it captures anyone living adjacent to a park carrying out spraying. Staff agree and recommend deleting the requirement to comply with 3(c) from sections 2(a) and 2(b). As these sections make the only reference to this clause, the entire clause 3(c) can be deleted. Removal of the need for signage also removes the need to comply with condition 3(d). This results in a consequential change to section 2(a) to section (2)(b) and to clause (d).

830 Submission point 11-8 and further submission point 13-82 recommend deleting clause (c) as it duplicates clause (b). Staff response is that these conditions are mutually exclusive, applying to different application methods, and would not apply to the same activity at the same time. Clause (b) is required for spraying using 'any other application method' in condition (2)(c), while clause (c) applies to spraying using methods outlined in conditions (a) and (b). However, as the recommendation above is to delete clause (c), these submission points are resolved.

831 Submission point 76-33 requests that the distances in clauses (c) are reduced to 30 metres (ground and drone application) and 100 metres for aerial application. Staff response is that clause (c) is recommended for deletion and

signage will only be required for the higher risk application methods therefore this provides a remedy to the submitter's concerns.

Clause (d)

832 One consequential change required due to the removal of clause (c).

Clause (e)

833 Submission point 4-2 requests the removal of clause (e) as the requirement for all vehicles associated with spraying to have signage front and back would mean a large additional cost. Staff acknowledge that this will be the case. However, the intention was for the vehicle (or vehicles) directly involved with spraying to display signage. As the rule is written, any vehicle associated with spraying requires signage. Staff recommend a wording change to clarify this.

834 In a related matter, submissions 41-9, 73-3 and 58-43 request that signage in clause (e) should only apply to vehicles used in spraying activities on public amenity areas. Staff agree and recommend this change.

New clause

835 Submission points 58-43 and 73-3 request a new clause that requires signage at the entrances of private property so that those entering the property are aware that spraying is taking place. Submission point 76-33 however, disagrees with this requirement. Staff response is that this clause should be included but that it should only apply to the higher risk application methods of condition 2(c). This provides suitable mitigation for higher risk methods, but allows lower risk application methods to take place without unnecessary signage.

Council staff recommendations

836 Amend AQ R13(3)(a) as follows:

Where agrichemicals are sprayed on public amenity areas signs must be displayed at every entrance where the public usually have entry to the area where the agrichemical is being sprayed (except where the entrance is from private property). Where agrichemicals are sprayed on other areas, signs must be displayed at the main entrance to the property. Signs required by this condition ~~and~~ must clearly state…

837 Delete AQ R13(3)(c):

(c) ~~Where agrichemicals are sprayed within 10 metres of any public amenity area, signs must be prominently displayed on the boundary of the public amenity area and must clearly state "caution – spraying in progress" or similar wording~~.

838 Make consequential change to AQ R13(3)(d):

(d) Signs required by 3(a) or 3(b) ~~or 3(c)~~ should remain in place until all airborne spray has settled and the agrichemical has dried on its target surface.

839 Amend AQ R13(3)(e) as follows:

(e) Any vehicles ~~associated~~ being used to apply ~~with~~ agrichemical spray~~ing~~ on public amenity areas must display prominent signs front and back that clearly state “CAUTION – SPRAYING IN PROGRESS” or similar wording.

4.35.6 Section (4)

Submission Points:	1-1, 4-3, FS13-88, FS19-12, 7-14, 7-15, 7-16, 8-5, FS13-89, 11-9, 11-10, FS13-90, 11-11, 14-2, 14-3, FS13-91, 14-5, 14-6, 16-1, 18-3, 20-1, 21-14, FS13-92, FS18-32, FS19-13, 23-1, 24-1, 25-4, FS13-93, 35-1, FS13-94, 41-10, 50-14, FS13-95, 52-5, 54-33, 58-41, FS6-14, FS19-14, 68-15, 71-4, 73-4, 76-33, FS13-97, 79-1, FS13-98, 80-2

840 This clause sets out the notification requirements. The key point of contention is the notification window – that is, the time from the maximum timeframe that notification should occur, down to the minimum timeframe. This is to be expected as failure to comply with notification requirements is one of the key complaints to the Regional Council regarding agrichemical spraying.

Clause (a)

841 Submission point 1-1 requests a reduction in the notification window. The submitter is given up to a 10 day window when spraying could occur which leads to months of uncertainty and caution. Staff response is that the plan change has considerably reduced this window which should provide more certainty.

842 However submission point 14-2 is concerned that the notification window is now too short and during several days of inclement weather will lead to several days of nuisance notification to neighbours and requests an extension from 3 days to 8 days. Staff agree that weather can be inclement and it can be difficult to determine when to spray therefore when to notify. However an extension to 8 days will lead to neighbours being on constant alert for spraying, as discussed above. Weather forecasts can predict probability of rain up to three days in advance therefore it should be reasonably possible to determine when spraying can be carried out. Staff do not recommend a change in notification window.

843 Submission 14-5 requests that notification agreements in clause (a)(ii) should only be updated upon request as it is impractical for businesses to carry out annual meetings. Staff response is that situations can change each year and notification requirements may change for some households. Clause (a)(ii) is an option for sprayers to implement if appropriate. It is not a requirement for sprayers to negotiate agreements for any or all neighbours. If sprayers do not choose to use notification agreements, they must comply with the full notification requirements in (a)(i).

844 Submission point 14-6 requests a change to notification requirements in (a) to remove the requirement to notify the name and type of agrichemical to be used as most of the general public will not find this helpful and it could cause susceptible people to become paranoid. Staff do not recommend this change. It is not the general public who are being informed, it is neighbours who could potentially be sprayed and they have right to be fully informed.

845 By contrast, submission point 21-14 has requested further information is provided with notification. However these requirements are beyond information necessary for mitigation of spray drift and are not recommended.

846 A number of submission points (16-1, 20-1, 23-1, 35-1, 58-41, 73-4) request that the minimum notification period is reduced to 12 hours. This is the current requirement of the operative Regional Air Plan. There is substantial repetition in these submission points. Submission point 24-1 in particular makes a case in support of reducing the timeframe back to 12 hours as this system is working.

847 However there are two submission points (79-1 and 80-2) against this, requesting the 24 hour period to remain as proposed to allow preparation for spray drift during sunlight hours. Staff understand this request, however although it will cause inconvenience to some, if the current system is working for most, then retaining the 12 hour notification window is the best way forward. Staff recommend changing the minimum 24 hour notification window to 12 hours.

848 Given this recommendation, staff remind the Hearing Panel, submitters and all others involved with agrichemical spraying that policy AQ P8 clearly states that spray drift should be avoided in the first instance. Even when mitigation measures, in the form of notification, are carried out according to the conditions, any spray drift must still comply with condition (1)(a). Where this cannot be achieved, staff highly recommend that parties enter into a notification agreement to determine what is the best form, timing and format for notification to occur to allow for sufficient preparation.

849 Submission points 4-3, 41-10, 52-5, and 71-4 (plantation forestry and Department of Conservation) all request longer notification windows. Reasons for this request are due to the large areas of land managed by these submitters, with hundreds of neighbours within the notification radius. Staff consider that it would be appropriate to extend the notification window for these operations to allow sufficient time for notification. Spraying is carried out infrequently, therefore it would not lead to the constant uncertainty, and sufficient notification is provided.

Clause (d)

850 Submission point 76-31 requests that the requirement in 4(d) to notify properties within 10 metres of spraying with hand-held motorised and low pressure boom applications is removed. Staff consider that this is appropriate due to the low risk of spray drift from using these application methods and recommend the change. As this is the only reference to clause 4(d), staff recommend that the entire clause is removed. This also remedies submission point 7-15 which was concerned with the increase in administration required to meet the requirements of this condition. This change results in a consequential change to section (2) of this rule.

851 Submission point 11-9 requests removal of clause (d) due to duplication with clause (a). Clause (d) is recommended for deletion (discussed above) therefore this submission point is remedied.

Clause (e)

852 Submission point 18-3 requests clarification on what is public notification via an ‘appropriate method.’ Staff consider that notice through an internet site is sufficient as the principal method for notification of spraying in a public

amenity area is signage. Therefore staff recommend requiring public notice according to section 2AB(1)(a) of the Act.

853 Submission point 7-16 expresses concern regarding the notification requirements for spraying of public amenity areas. Public notification will most likely take longer than the notification window provided by clause (e). Submission point 21-14 also requests a longer timeframe for this notification. As the principal method of mitigating adverse effects in public amenity areas is signage, staff consider it appropriate to provide a longer notification window for this clause, as requested by the submitter, however staff do not recommend allowing four weeks. As the recommended notification requirements do not include print media, staff recommend the timeframe is reduced to 10 days.

854 Submission point 8-5 requests that the term 'public space' is also included alongside the term 'public amenity area' in clause (e) as people should have the same protection when they are in any public space. Staff do not recommend this change as the term 'public spaces' is too broad and undefined. The defined term 'public amenity area' captures those spaces where people are likely to congregate for an extended period of time

855 Submission point 11-11 requests that the wording in clause (e) is made consistent with clause (a). Staff agree and recommend this change.

856 Submission point 54-33 requests that the general notification of spraying in public amenity areas (clause (e)) is replaced with similar conditions to what is required for spraying on private land, where only those properties within a particular radius are notified. Staff response is that this assumes only those people within close proximity to any public amenity area are likely to visit it. Sprayers cannot anticipate who will be present in a public amenity area at any time. The submitter requests changes that would increase their notification requirements, with no guarantee that the correct audience is receiving the message. Staff do not recommend this change.

General

857 Submission point 14-3 requests a condition where the occupiers of properties being notified are required to provide contact information to the sprayers. Staff do not recommend this change. Permitted rule conditions can manage the activity discharging contaminants to air, but they cannot place obligations on those the activities may adversely affect.

858 Submission point 25-4 is concerned with growing cities and public exposure to sprays and the adverse effects and requests stricter notification requirements, monitoring of rules, and notification agreements with neighbours. Staff response is that these rules are more stringent than the previous rules and will address the submitter's concerns.

859 Submission point 50-14 expresses concern that conditions are more stringent than those required by the agrichemical standards and request that this section is deleted and replaced with the relevant sections of the agrichemical standard. Staff response is mostly in agreement with further submission point 13-95 that HSNO Act requirements must be met regardless of the plan change. Staff have also designed rules experienced through implementation of the operative Regional Air Plan to address concerns regarding spray drift. These rules are intended to be as self-contained as possible, without excessive reference to another document which contains many other practices not relevant to management of spray drift.

860 Submission point 76-33 requests that notification requirement is dependent on the type of agrichemical used, type of property and the location. Staff response is that there is a wide range of agrichemical types, application methods, locations, operations and many other variables involved in the agrichemical spraying activities carried out in the region each day. It would be impractical to write or enforce a permitted activity with conditions that cover all of these situations.

861 The requested changes are more like what would be considered in a consent application. Staff, on the request of submitters, have recommended a controlled activity rule for when agrichemical spraying that cannot meet the requirements of rule AQ R15 (see section below). This provides a pathway for other matters to be considered and conditions provided that are more appropriate to the specific situation.

Council staff recommendation

862 Amend AQ R15(4)(a)(i)

(i) by notification, required no earlier than 72 hours, or 10 days for spraying carried out on plantation forestry or in a conservation area, and no later than ~~24~~ 12hours before the agrichemical spraying. Notification must include the following...

863 Delete AQ R15(d)

(d) ~~The owner/occupier or agent must notify the occupier of any properties within 10 metres of agrichemical spraying according to 4(a)(i) or 4(a)(ii), 4(b) and 4(c), except where agrichemicals are sprayed on land under management by the Regional Council for maintenance of rivers and drainage schemes, land used for road or rail purposes, or land designated as an esplanade strip or esplanade reserve~~.

864 Amend AQ R15(4)(e) as follows:

(e) Where agrichemicals are sprayed on public amenity areas, the owner/occupier or agent must publicly notify (according to section 2AB(a) of the Act) the agrichemical ~~spraying using an appropriate method from~~ no earlier than 10 days and no later than ~~at least~~ 24 hours ~~prior, up to one week prior~~ before the ~~to the~~ agrichemical ~~use~~spraying. Notification must include the following information:

4.35.7 Section (5)

Submission Points:	8-6, FS13-99, 11-13, FS6-15, FS13-100, FS19-15, 25-2, 50-15, FS13-101, 52-6, 54-32, FS13-102, FS26-14, 65-2, 65-4, FS13-103, FS19-16, 68-16, 76-34, FS13-104, 80-3

865 Submission point 25-2 supports the requirement for sprayers to have spray risk management plans.

866 Submission point 50-14 expresses concern that conditions are more stringent than those required by the agrichemical standards and request that this section is deleted and replaced with the relevant sections of the agrichemical

standard. Staff response is mostly in agreement with further submission point 13-95 that HSNO Act requirements must be met regardless of the plan change. Staff have also designed rules experienced through implementation of the operative Regional Air Plan to address concerns regarding spray drift. These rules are intended to be as self-contained as possible, without excessive reference to another document which contains many other practices not relevant to management of spray drift.

867 Submission point 8-6 requests an additional condition to include buffer zones or shelter belts. Submission point 11-13 suggests spray diaries are included in the conditions. Staff response is that these actions form part of the strategies to avoid and mitigate spray drift, but do not need to be included as a requirement of the spray risk management plan as these actions may not be suitable for all activities.

868 Submission point 54-32 suggests using a term other than 'potentially affected parties' as this could cause confusion with this term used in the Act. The submitter suggests removing the statement about who the plan must be provided to as this is not relevant. Staff recommend this solution as the suggestion in further submission point 26-14 of 'any other party' is too broad. The recommendation is consistent with the requirement in the agrichemicals standard which does not specify who the plan is to be provided to.

869 Submission point 65-4 requests the condition is replaced with reference to the relevant section of the agrichemical standards. Staff do not recommend this as the rules are intended to be as self-contained as possible, without excessive reference to another document.

870 Submission point 76-34 requests a change to the distance to sensitive activities needing to be identified. Staff response is that these distances are the same as those required in the other conditions of the rule. If the Hearing Panel recommend amending the distances, these distances will also be amended through a consequential change.

Council staff recommendation

871 Amend AQ R15(5)(d) as follows:

(d) The spray risk management plan must be made available ~~to the Regional Council and to potentially affected parties~~ upon request within 20 working days of such a request being made.

4.35.8 Advice note

Submission Points:	52-1, FS6-1, FS13-66, FS19-1, 73-5, FS6-2

872 Several submitters request that the New Zealand Standard Management of Agrichemicals 8409:2004 (for the purposes of this section referred to as 'the standard') should be elevated as part of the rule requirements rather than in the advice note.

873 Staff response is that requiring compliance with the standard is not necessary to meet the objectives of the plan change and is impractical to enforce. The standard contains a number of requirements to comply with the requirements of the HSNO Act and only some sections apply to spray drift. It would be

unreasonable for regulatory compliance officers to need to refer to the entire standard to ensure compliance with the rule. The conditions have been designed based on the standard, with the purpose of managing spray drift. No change is recommended.

Council staff recommendation

874 No change to the advice note of rule AQ R15.

4.35.9 New conditions and controlled activity rule

Submission Points:	11-12, FS6-3, FS13-67, FS19-2, 25-5, FS6-4, FS13-68, 58-44, FS6-5, FS18-27, FS19-3, 58-45, FS19-4, 65-3, FS13-69, FS18-28, FS19-5

875 Several submission points have requested an additional condition to require appropriate certification for agrichemical sprayers. Submitters consider that there is a regulatory gap in terms of agrichemical competency and training and that this is best filled through the regional plan.

876 Staff response is that previously one of the Regional's functions under section 30(1)(c)(v) of the Act was the control of the use of land for the purpose of the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances. However, that section was repealed by the Resource Legislation Amendment Act 2017, to address the overlap with the HSNO Act 1996 and clarify that Regional Councils no longer carry out this role.

877 However, the Regional Council retains its function under s30(1)(f) RMA to control the discharge of contaminants to air, therefore the rule is designed to manage the air discharge component of this activity – spray drift.

878 All users of agrichemicals, particularly large-scale and/or commercial use, should already be complying with HSNO and WorkSafe requirements and should have any appropriate qualifications. It is not the Regional Council's responsibility to require or monitor this. The Council's principal concern, in this plan change, is to control spray drift, and the rule is designed for this purpose. It does not rely on training, provided by a third party, to manage spray drift.

879 Staff consider that if the conditions of the rule are met, the effects of spray drift are mitigated. A condition requiring training and qualifications will add no further value and staff do not recommend this addition.

880 Submission point 58-45 requests a restricted discretionary activity for agrichemical discharges if the permitted activity conditions cannot be met. This is an alternative to the proposed approach which is that any activity not permitted is discretionary. A restricted discretionary activity would provide greater clarity for users.

881 Staff agree that an alternative pathway for consents for agrichemical spray is appropriate and suggest a controlled activity. This allows the Regional Council to consider effects through a consent process and for tailored consent conditions, but also gives certainty to the applicant. Staff have amended the matters of discretion provided by the submitter to matters of control. The matters of control have also been amended to control only those matters within the Council's role, and to be consistent with the rule AQ R15.

Council staff recommendation

882 Include new controlled activity rule AQ R25 as follows:

AQ R25 Agrichemical spraying – Controlled – Torehu matuahuwhenua - E whakahaerehia ana

The discharge of contaminants to air from the use of agrichemicals not otherwise permitted by AQ R15 is a controlled activity.

The Regional Council reserves control over the following matters:

(a) the location where spraying will take place, frequency of spraying, application method, and proximity of spraying to sensitive areas

(b) measures to manage spray drift including setting conditions to ensure the discharge is not noxious or dangerous, offensive or objectionable beyond the boundary of the subject property

(c) measures to notify neighbouring properties spraying will take place (including notification and signage)

(d) notification agreements with neighbours

(e) the preparation of and contents of a spray risk management plan

(f) duration of consent and consent condition review including the timing and purpose of the review

4.35.10 Definition 'aerial application'

883 Submission point 54-12 supports the definition of aerial application with no changes requested.

4.35.11 Definition 'applicator'

884 Submission point 54-30 and further submission point 13-105 request a definition of 'applicator', in terms of the person carrying out spraying activities. However, submission points 58-34 and 58-33 point out that this term is also used in the definitions of hand-held applicators, to mean the part of the spraying apparatus used to apply the spray. Staff recommend amending the term 'applicator' in the rule, where it refers to a person carrying out the spraying to 'person carrying out the spraying'. No definition is required if this change is made.

4.35.12 Definition 'drone application'

885 Submitter 54 supports definitions of 'drone application' and 'ground-based application' with no changes sought.

4.35.13 Definition 'ground-based application'

886 Submission point 54-17 supports the definition of 'ground-based application' with no changes sought.

4.35.14 Definition 'hand-held motorised application'

887 Submission point 54-19 supports this definition with no changes sought. Submission point 58-34 was resolved through changes made to the rule.

4.35.15 Definition 'hand-held non-motorised application

888 Submission point 54-18 supports this definition with no changes sought. Submission point 58-33 was resolved through changes made to the rule.

4.35.16 Definition 'low pressure boom'

889 Submission point 32-1 requests a review of this definition as many contractors would not have equipment that complies with this and would need to operate under the requirements of aerial application. Staff response is that this definition is intended to provide clear design and operational requirements for a low pressure boom that will not produce significant spray drift. The conditions for use of booms that meet this requirement are significantly more lenient than higher risk methods. If the equipment cannot meet the design in the definition, then it has a higher risk of producing spray drift and must meet stricter conditions but only for ground-based application methods, not aerial application. Submission points 50-17 and 54-20 support the definition as proposed.

4.36 Topic area – Methyl bromide and fumigation

890 A summary of the background relating to methyl bromide is set out in the s32 report. By way of short summary here, in 2010, the Environmental Risk Management Authority (now the Environmental Protection Authority ("EPA")) reassessed the use of methyl bromide. The reassessment committee referred to the dilemma that methyl bromide presents. Fumigation is required both to protect New Zealand from the invasion of pest species and to meet export requirements of our trading partners. On the other hand, methyl bromide is a highly toxic substance with known health effects if not used and managed properly.

891 The assessment committee approved the continued use of methyl bromide, but imposed further controls, including a requirement that '10 years from the date of this decision, all methyl bromide fumigations are to be subject to recapture.' The due date for this requirement is October 2020.

892 Submissions received by the Regional Council on the policy and rule demonstrate the polarising nature of methyl bromide use.

893 It is noted that in July 2017 Lucebni zavody Draslovka a.s. Kolin (a company based in the Czech Republic) applied to the EPA to import and use an alternative fumigant (Etanedinitrile or EDN). The application was supported by the Stakeholders in Methyl Bromide Reduction (STIMBR). Again, a discussion around EDN is provided in the s32 Report. The Hearing Panel should note that these two parties (Draslovka – Submitter 46; and STIMBR – Submitter 57) are both submitters to the plan change. The submission period for the application closed on 19th April 2018, and the EPA has recently held hearings in relation to this matter in Wellington (21st August) and Rotorua (28th-29th August). No decision has yet been released by the EPA.

894 Since notification of this plan change, STIMBR applied to the EPA for consideration of whether grounds exist for a reassessment of methyl bromide. On 5 April 2018 the EPA concluded that grounds do exist for the reassessment. It appears however that although the grounds for reassessment have been established, no party has yet lodged an application with the EPA to reassess methyl bromide.

895 The further controls required by the EPA in their reassessment of methyl bromide in 2010 were used as the basis for the approach in the plan change. The plan change however, was adapted to include alternative fumigants and that recapture of methyl bromide may not necessarily be the best practicable option.

4.36.1 AQ P9 – Fumigation for quarantine application or pre-shipment application – Auahina ki te paitini mō te tono taratahi, tono utanga-tōmua rānei

Submission Points:	10-2, 17-6, FS13-55, FS21-60, FS28-1, 26-12, FS12-6, 41-3, 58-22, 68-10

896 The policy is highly specific and detailed, and is intended to be directive. It is intended to provide a clear policy direction regarding fumigation for quarantine or pre-shipment application. Where this activity is carried out, this policy should be interpreted as a bottom line, not assessed as a whole on balance with other policies, however other policies will also apply.

897 Submissions on this policy are generally in support. One submission point (Tauranga Moana Fumigant Action Group (TMFAG) – Submission 17-6) has requested more stringent wording. This wording would remove the allowance for best practicable option and only provide for recapture. Staff agree with further submission point 21-60 that removing best practicable option restricts other options for management of discharges that may be more effective and efficient than recapture technology.

898 The submission point from TMFAG also requests that the wording of (b) is changed from ‘ensuring’ to ‘enforcing.’ Staff understand why this request is made, however the term ‘enforcing’ restricts this to only one method, whereas there may be other ways, outside of enforcement, that will ensure compliance with the levels. Staff do not recommend this change.

899 Finally the submitter requests additional wording to (c) to ensure health of persons both within and beyond the subject site is protected. Staff response is that the policy already provides for protection of health of people everywhere, regardless of boundaries, including the subject site.

900 Submission 41-3 supported the intent of the Policy, but considers that the policy can only be practically achieved with a workable definition of “recapture”. This matter is dealt with in Section 4.36.3 below.

Council staff recommendation

901 No change to AQ P9.

4.36.2 Rule AQ R20 - Fumigation for quarantine application or pre-shipment application – Auahina ki te paitini mō te tono taratahi, tono utanga-tōmua rānei –

Submission Points:	17-7, FS12-3, FS28-2, FS29-1, 19-13, FS28-4, FS29-3, 31-9, FS28-5, FS29-4, 41-7, FS28-6, FS29-5, 46-1, FS28-8, FS29-7, 46-2, FS28-9, FS29-8, 46-3, FS28-10, FS29-9, 51-12, 53-1, FS28-18, FS29-10, 53-2, FS12-11, FS28-19, FS29-11, 53-3, FS28-20, FS29-12, 53-4, FS12-12, FS28-21, FS29-13, 53-5, FS28-22, FS29-14, 53-7, FS28-23, FS29-15, 54-8, FS28-25, FS29-16, 55-1FS28-11, 55-2, FS28-12, FS28-12, 55-3, FS28-13, 55-4, FS28-14, 55-5, FS28-15, 55-7, FS28-16, 55-9, FS28-17, 57-1, FS29-17, 57-2, FS29-18, 87-3, FS29-19, 57-4, FS29-20, 57-5, FS29-21, 57-6, FS29-22, 57-8, FS29-23, 57-10, FS29-24, 58-32, FS28-26, FS29-25, 64-1, FS28-24, FS29-26, 64-2, 64-3, 64-4, 68-13, 71-5, FS28-28, 29-28, FS28-3, FS29-2 FS28-7, FS29-6

902 A significant number of submissions and further submissions were received on Rule AQ R20. There is also significant duplication in submission points due to the pro forma nature of several submissions. Due to this, submission points are not assessed individually but are grouped together according to issue.

903 Decisions requested on this rule are polarised, with a number of submitters on one side seeking more stringent control, and a number of submitters on the other seeking a more lenient rule framework.

Submissions in support of the relevant rule

904 A number of submissions were received in support of the relevant rule without further modification (Submissions 19-13; 31-19; 51-12; 54-8; 58-32; 68-13). This included submissions from Tauranga Moana – Te Arawa ki Takutai Partnership Forum, Nga Potiki Resource Management Unit and Ngati Ranginui Iwi Society Incorporated. Submissions raised issues including:

(i) The need to protect the health of humans and the environment;

(ii) The need for strict monitoring and conditions including onsite data collection and reporting;

(iii) The need to make provision for quarantine application or pre-shipment application as it is essential for export trade and biosecurity; and

(iv) Support for a consenting process as discretionary or non-complying to demonstrate how it meets the objectives and policies of the plan in managing effects.

905 A number of further submissions were then received opposing those submissions, which raised issues including:

(i) The significant contribution of the forestry industry to the regional and national economies and rural communities;

(ii) The requirements of importing countries such as China and India which require the use of phytosanitary treatment including fumigation with methyl bromide;

(iii) That the EPA is mandated to assess and set controls for hazardous substances; that a reassessment was undertaken in 2010 which determined that recapture technologies from October 2020; and that the EPA has determined there are grounds for reassessment;

(iv) That decisions must be informed by robust science. That EDN is not yet available for use in New Zealand and there are currently no other practicable options for the fumigation of logs;

(v) That there is no justifiable need to duplicate the regulatory requirements determined by the EPA in the regional plan; and

(vi) That methyl bromide is also used for treating imported cargo and is used for pest incursions by MPI.

Submissions opposed to the rule on the basis that more stringent controls be imposed

906 One submission (17-7) opposed the drafted rule on the basis that more stringent controls be imposed. This included requests that the rule is amended to classify all fumigants where recapture is required as discretionary, and any use of fumigants without recapture as a prohibited activity.

907 A number of further submissions were received in response. One submission (FS12-3) supported the submission for a different activity status as long as there was a requirement to use recapture technology. Other submissions (FS28-2; FS29-1) opposed the submission and raised similar issues to those described at paragraph 905 above.

908 Staff response is that the plan change is consistent with the 2010 EPA reassessment and requirements for methyl bromide. These EPA requirements only apply to methyl bromide, not to any other fumigants. Therefore, the plan change sets out a corresponding rule framework for methyl bromide, and classifies any other fumigant as discretionary, with no recapture necessarily required.

909 With the effectiveness of current recapture technology uncertain, a prohibited activity status would prevent any resource consent application for methyl bromide being submitted. This is not considered appropriate at this point in time due to the uncertainty around recapture technology and because it doesn't take into account the economic impact of prohibiting the discharge. However, a non-complying activity indicates that the use of methyl bromide without recapture is discouraged, but still allows for resource consent applications. The supporting policy AQ P9 (discussed above) provides for best practicable options, acknowledging that recapture may not be the only or even the most effective and efficient mitigation method for methyl bromide.

910 One submission (31-19) seeks the phasing out of methyl bromide. Staff response is that the determination of whether a hazardous substance can be imported and used in New Zealand is the mandate of the EPA and not of Regional Council. Therefore the plan change cannot phase out methyl bromide.

Submissions which are neutral or in opposition to the rule on the basis that a more lenient framework should be imposed

911 A number of submissions described as ‘neutral’ or against the rule raise the issues outlined in paragraph 905 above and seek the following amendments to the Rule:

(i) amendments to the definition of ‘recapture’ (this is discussed in Section 4.36.3 below;

(ii) that where methyl bromide recapture technology is used, that it is classified as a controlled, non-notified activity;

(iii) that where the EPA considers that recapture destruction technologies are not required (ie. the science does not support the need) that BOPRC will not impose rules requiring the use of recapture;

(iv) That buffer distances should be no greater than those sought by the EPA.

912 Staff understand the reasoning behind this request for a controlled non-notified activity where methyl bromide is recaptured, is on the basis that submitters consider that the discharge will be minimal.

913 However, the effectiveness of recapture technology is not sufficiently understood to justify a controlled, non-notified activity. It is staff’s understanding that the current consent holder is still testing a range of technologies to recapture methyl bromide. The Regional Council has received no documentation or information of any kind detailing the results of this testing, including the efficiency or effectiveness of these recapture technologies. Without this information, staff cannot determine whether this technology provides sufficient mitigation for a controlled, non-notified activity.

914 The claim that the EPA should be the governing body is incorrect. Staff response is that the Regional Council has a clear role set out in section 30 of the Act to control the discharge of contaminants to air. Section 65 then allows Regional Councils to prepare regional plans where necessary to carry out these roles, and provides a rule framework ranging from permitted activity to prohibited activity.

915 The submitters are correct that the Opus report recommended a controlled, non-notified activity status for methyl bromide with recapture. However, this preceded the Tauranga Moana IMP which states a preference that methyl bromide use is prohibited. Therefore, as well as the uncertainty of the effectiveness of recapture technologies discussed in paragraph 913 above, a controlled activity status would also be inconsistent with this IMP and general community concerns.

916 Although staff agree that a prohibited status for methyl bromide is too stringent (as discussed in paragraph 906) the recommendation is for methyl bromide use without recapture to be non-complying and the policy provides for best practicable options. The use of methyl bromide with recapture or use of any other fumigant is discretionary. This is not a significant shift from the discretionary activity status under the operative Regional Air Plan.

917 Submissions request that buffer distances and total exposure limits (TEL) should be no greater than those set by the EPA. The plan change does not include buffer distances nor TELs for methyl bromide use.

Council staff recommendation

918 No change to AQ R20.

4.36.3 Definition of recapture

919 Submission point 17-8 requests that the definition of recapture is expanded to include recapture of any fumigant in addition to methyl bromide. The submission point is supported by further submission FS12-4.

920 Staff agree as although the rule refers to methyl bromide, other fumigants may be recaptured in future.

921 Submission point 41-8 requests that the term 'eliminate' is replaced with an alternative as elimination cannot be achieved at this time. The submission suggests that it is replaced with a requirement to recapture to the current best practice and in accordance with EPA approvals. The submission is supported by further submission FS13-115.

922 Staff agree that the term 'eliminate' should be replaced for the reasons stated in the submission. However, staff recommend that 'eliminate' be replaced with 'mitigate', in order to provide consistency with the EPA reassessment report.

Council staff recommendation

923 Amend definition as follows:

Recapture in relation to fumigation means a process that ~~eliminates~~ mitigates ~~methyl bromide fumigant~~ emissions from fumigation enclosures such as buildings, shipping containers or gas proof sheets used to cover target product, by:

(a) capturing ~~methyl bromide~~ any fumigant (not absorbed by the target product) on activated carbon or other medium so that it is not released into the atmosphere when the fumigation enclosure is ventilated or any time after, or

(b) destroying the ~~methyl bromide~~ fumigant (not absorbed by the target product) before a fumigation enclosure is ventilated

4.36.4 Definition of 'quarantine application' and 'pre-shipment application'

924 Submission points 17-10 and 17-11 are in support and no changes are requested.

4.37 Topic area – Reverse sensitivity

925 Reverse sensitivity occurs when sensitive activities such as residential homes are established near existing activities that already discharge contaminants to air. This leads to complaints regarding discharges to air.

926 As the Regional Council has the "air quality" role under the Act, it becomes Council's responsibility to address the air discharges. However, the problem of residential encroachment into industrial and rural production land is caused by district planning processes such as zoning and land use changes and is therefore the responsibility of city and district councils. Introducing provisions

into the air plan to control reverse sensitivity is outside of the responsibility of the Regional Council.

927 During development of the second generation Regional Policy Statement (RPS) air quality staff recommended that provisions to manage reverse sensitivity were included in the new RPS. The RPS contains policy AQ 1A that says *discouraging reverse sensitivity associated with odours, chemicals and particulates.* Method 3 – *that Policy AQ 1A shall be given effect to when preparing, changing, varying or reviewing a regional plan or a district plan, and had regard to when considering a resource consent or notice of requirement*, is the principal method to implement Policy AQ 1A. In the air quality chapter of the RPS, city and district councils are identified as being responsible for implementation of this method.

4.37.1 Inclusion of provisions to manage reverse sensitivity

Submission Points:	19-21, FS-11, FS8-93, FS11-27, FS20-37, FS23-73, FS30-51, 22-5, FS12-5, FS20-25, FS23-70, FS30-52, 33-4, FS4-12, FS8-94, FS11-28, FS12-9, FS20-10, FS23-68, FS30-53, 45-9, FS4-13, FS11-29, FS13-122, FS23-72, FS30-55, 48-14, FS30-56, 58-6, FS4-14, FS11-30, FS20-26, FS30-58,58-38, FS4-15, FS11-31, FS20-39, FS30-59, 63-2, FS10-18, FS15-18, FS16-20, FS17-18, FS30-60, 76-4, FS20-12, 76-5, FS30-63, 76-12, FS20-40, FS30-64, 76-13, FS20-41, FS30-65, 76-14, FS20-42

928 A substantial number of submitters have requested a policy framework in the plan change to manage reverse sensitivity. The submitters are mostly industries and commercial operations already being affected, or at risk of being affected by reverse sensitivity.

929 Submitters have raised a number of points. These include the need to recognise the investment and contribution of existing well established industries located within their industrial zones, and the trend to move to the countryside for a lifestyle change without understanding the reality of a working rural environment. There are concerns that there is only one policy in the RPS to address reverse sensitivity.

930 Staff acknowledge these issues. However, a regional plan is prepared to help regional councils carry out their role to achieve the purpose of the RMA. Council's role, as stated above, is to control the discharge of contaminants to air. Therefore, we can only manage the discharges to air. This addresses sensitivity but not reverse sensitivity. As noted above, reverse sensitivity issues are predominantly addressed through zoning, which is the responsibility of the territorial authorities (not the Regional Council).

931 Staff consider that any objective to address reverse sensitivity would be unlikely to pass the feasibility test of the Section 32 analysis. Feasibility is the extent to which the objective can realistically be achieved with Council's powers.

932 In recognition of this issue the draft plan change did include a policy to give effect to Policy AQ 1A of the RPS, within the role of the Regional Council. The policy stated that the Regional Council will recognise reverse sensitivity when considering complaints, resource consent applications, and comments on territorial authority resource consent applications where new activities are proposed in areas where they may compromise, constrain or conflict in the

future with existing lawfully established activities. This policy was removed from the notified version for the reasons stated above.

933 Submitters have requested that this policy is reinstated. However this sends the message that the Regional Council is responsible for managing reverse sensitivity and that the plan change to manage air quality is the correct place to do so. This is not the case. As noted above reverse sensitivity is essentially an issue that can only be resolved by territorial authorities through appropriate zoning and land use rules.

934 The inclusion of a policy framework to address reverse sensitivity would resolve submitters' concerns but would not resolve the issue. The policies and methods in the operative Regional Air Plan were not effective in terms of being implemented as the role sits elsewhere with city and district councils. The RPS provides the appropriate regulatory direction on this issue. Staff do not recommend the inclusion of these provisions.

Council staff recommendation

935 Do not include provisions to manage reverse sensitivity in the plan change.

4.37.2 Definition of reverse sensitivity

Submission Points:	19-18, FS4-8, FS8-92, FS11-25, FS20-36, FS23-55, FS30-50, 33-19, FS4-10, FS11-23, FS30-54, 48-12, 50-19, FS30-57, 63-11, FS10-26, FS15-27, FS16-29, FS17-27, FS30-61, 74-16, FS13-123

936 Two submitters (including the staff submission) request that the term reverse sensitivity is removed from the definitions of terms as the term is not used in the plan change. Further submitters have pointed out that there are submissions calling for the inclusion of reverse sensitivity provisions in the plan.

937 There are also submission points in support of the definition, and some submission points seek an amendment to the definition.

938 The definition of reverse sensitivity has been copied directly from the Regional Policy Statement (RPS). To prevent inconsistency with the RPS, the definition was left unchanged in the plan change. Therefore, if the Hearing Panel were to include reverse sensitivity provisions, the definition in the RPS would apply. There is no need to retain a duplicate definition in the plan change.

939 Although submission points request changes that would fine tune the definition of reverse sensitivity, staff do not recommend these changes. This would cause an inconsistency with the RPS which would complicate implementation of the provisions.

Council staff recommendation

940 Remove definition of "reverse sensitivity".

4.38 General topics

4.38.1 Local versus localised

941 A submitter (submission point 58-7) has requested that the use of the word “local” in the Introduction is replaced with “localised”.

942 As the intended meaning is the same staff recommend using the shorter, more commonly used term ‘local’.

943 The same submitter has also requested a definition of localised (or local) air quality. Staff response is that the term is not used in any objective, policy or rule therefore it is unnecessary to provide a definition.

Council staff recommendation

944 As both “local” and “localised have the same meaning, the preference is to use the simplest form. The recommendation is to retain the use of the word "local" and do not include a definition of either term.

4.38.2 Plan structure

945 One submission point (12-2) has suggested that the plan would be easier to follow if all permitted activities are listed together.

946 The Operative Regional Air Plan follows the format recommended by the submitter, with all permitted activities listed together, followed by the controlled and discretionary rules. This was an appropriate format as all but two of the rules are for permitted activities.

947 This is not the case for the plan change. While many of the rules are stand alone, there are sub-topics that have several related rules. For example, solid fuel burners in the Rotorua Airshed are covered by three rules – one permitted, one discretionary, one non-complying. Both the discretionary rule and the non-complying rule have references to the permitted activity rule and it is easier to use the plan if all three rules are located together.

948 The plan change will eventually become the Air Quality chapter of the Regional Natural Resources Plan and the structure of the plan change has been designed to fit with this structure by having all rules relevant to each sub-topic grouped together.

949 The change specifically requested by the submitter is to move AQ R2 to before AQ R9 so that it becomes AQ R8. This would bury what is the general discretionary “catch-all” rule amongst other non-related rules, and move it away from the general permitted “catch-all” rule. It would also be located away from all other discretionary rules, which are located throughout the plan according to sub-topic. This would not make the plan easier to use.

Council staff recommendation

950 Retain current plan change structure.

4.38.3 Tauranga residential air

951 Submission points 56-1 and 56-2 express concern with the declining residential air quality in Tauranga and request monitoring and the introduction of rules to manage solid fuel burners as in the Rotorua Airshed.

952 The Regional Council has been monitoring air quality in Otumoetai Road in Tauranga for several years and air quality is acceptable with no sign that any action is needed to address residential air quality. However, we acknowledge that Tauranga is a high growth area and that this may not always be the case.

953 Work is currently underway to assess the extent of domestic emissions in the Tauranga area. This information was not available when developing the draft plan change.

954 However, the introduction of rules to target solid fuel burners in Rotorua was a decision that was not taken lightly, even with more than ten years of monitoring data. These rules are controversial and were only introduced when all other options were explored and exhausted (see Section 4.34). We do not have any evidence that similar rules are necessary in Tauranga at this stage. If the monitoring presently taking place identifies that domestic emissions are starting to present an issue in Tauranga, an appropriate regulatory approach will be considered and, if necessary, amendments proposed to the plan.

Council staff recommendation

955 No change to plan change provisions.

4.38.4 Greenhouse gases

956 Submission points 13-1, 13-2, and 13-3 request controls on the discharge of greenhouse gases due to their effect on climate change.

957 Section 70A limits a regional council's rule making function in respect of discharges to air of greenhouse gases to where they are associated with renewable energy production. The negative effects of greenhouse gases causing climate change is to be addressed not on a local but on a national basis. This is summarised in the introduction of the plan change.

Council staff recommendation

958 No change to plan change provisions.

4.38.5 Consistency between RPS and RNRP

959 Submission points 58-1 and 58-2 have requested that the RPS is given effect to by the plan change, and that there is consistency between the RNRP and the plan change.

960 These submission points also relate to the definition of "fertiliser" and reverse sensitivity, discussed in sections 4.18.4 and 4.37 respectively. Those matters are not considered again in this section.

961 The provisions of the plan change were designed to give effect to the relevant provisions of the RPS. Appendix 5 of the Section 32 report contains further details.

962 The plan change was checked against the RNRP for consistency and amended where necessary prior to notification. In the absence of a submitter providing details of where there are inconsistencies, staff's view is that the plan change is consistent.

Council staff recommendation

963 No change to plan change provisions.

4.38.6 Air Quality

964 Submission points 10-10 and 51-1 have commented on air quality in general, that air is a taonga and clean air a basic requirement for human health and wellbeing. They state that environments should improve not harm health and urge the Regional Council to retain provisions that make a positive contribution towards air quality and take a sincere stand against air pollution.

965 No change is requested however the Regional Council notes these comments.

Council staff recommendation

966 No change to plan change provisions.

4.38.7 Whole Plan

Submission Points:	7-1, 30-1, 36-1, 50-4, 54-28, 66-1, 67-1, FS8-95

967 A number of submitters support the overall intent of the plan change to provide for the use and development of the air resource while ensuring that air is safeguarded.

968 Note that these comments are not provided in isolation and are subject to resolution of a number of submission points on particular provisions

969 No change is requested however the Regional Council notes these comments.

Council staff recommendation

970 No change to plan change provisions.

4.39 Consequential changes

971 Consequential changes have been made where amendments are required to the original content of the operative plan due to the inclusion of provisions to manage air quality in this plan change.

972 Submission points are generally in support of the consequential changes, with some minor issues raised.

4.39.1 **Definition of agrichemical**

Submission Points:	33-14, 33-20, 50-21, 54-13, 58-40, 76-41, FS13-121

973 The plan currently includes a definition of agrichemicals that differs from the definition in the New Zealand Standard Management of Agrichemicals 8409:2004 (for the purposes of this section, this will be referred to as the Standard.

974 The plan change includes a consequential amendment to this definition. The definition has always excluded fertiliser, but now also excludes vertebrate pest control products and oral nutrition compounds. Submitters support this amendment.

975 The current definition only includes agrichemicals that are used to eradicate, modify or control *undesirable* flora and fauna (italics added). This was inconsistent with the definition of agrichemical in the operative Regional Air Plan, which did not include the word undesirable. The amendment has removed the word “undesirable” and there is some concern with this raised by submitter 76 (point 76-41).

976 The amended definition is consistent with the definition in the Standard. The standard was prepared by a number of organisations with considerable expertise in agrichemicals, therefore, unless there is good reason to depart from it, staff are of the view that the definition should be kept consistent with the Standard.

977 Agrichemicals are not only used to manage undesirable plants. One notable example is hydrogen cyanamide (known as HiCane). HiCane is sprayed onto kiwifruit vines to promote budburst. The plan change is intended to manage HiCane under the agrichemical spray rule, therefore its inclusion in the definition of agrichemical is required.

978 There is also concern raised by the same submitter that the term “agricultural compounds” is confusing. Staff note that the operative Regional Air Plan contains a short definition of “agricultural compound” but the definition directs users to the Agricultural Compounds and Veterinary Medicines Act 1997. This Act contains an extensive definition of “agricultural compounds”.

979 The definition of terms in the plan and the plan change, contain several definitions from other acts or standards, shown in italics. This is done for commonly used terms and where it eases understanding for plan users. However it is not staff’s preference to replicate large numbers of definitions of terms that can be found in other Acts, particularly where they are lengthy. It is common practice (even within the RMA itself) to refer to definitions from other Acts for this very reason and to ensure consistency across different pieces of legislation where that is appropriate.

980 There is also a shortened, more concise version of the definition of “agricultural compounds” in the Standard. As this would be the first port of call for resolving confusion with terms in agrichemical use, staff do not recommend including the full definition from another Act.

Council staff recommendation

981 No change to the definition of agrichemicals.

4.39.2 Management of Air Resources under the Act

982 The operative plan contains three paragraphs that explain the management of land and water resources under the RMA. With the introduction of an air quality chapter through the plan change, a corresponding section has been included to outline the management of air resources under the Act.

983 Submission point 58-39 is in support of the consequential changes inserting a new section "Management of Air Resources under the Act" into the Introduction of the plan.

Council staff recommendation

984 Retain proposed wording.

4.39.3 Purpose of Plan

985 The operative plan contains a purpose statement which sets out the plans aims for the sustainable management of land, water and geothermal resources. With the introduction of an air quality chapter through the plan change, the sustainable management of air has been added to this section.

986 Submission point 31-11 seeks an amendment to the purpose of the plan to provide for human health and give effect to section 5(2) of the Act.

987 The submitter is correct that human health is not explicitly provided for in the aims. There are clauses that allude to human health, such as (a) promote sustainable management, (e) protect sensitive receiving environments (the RMA definition of environment includes people) and (f) sustain the life-supporting capacity of air.

988 Many of the provisions in the plan change are designed explicitly to protect human health, therefore it is appropriate to list its protection as an aim in the purpose of the plan.

Council staff recommendation

989 Amend Purpose of the Plan (e) as follows:

(e) Protect sensitive receiving environments, including human health.

4.39.4 Definition of Contaminant

990 The definition of contaminant in the operative plan, copied directly from the Act, did not include the term odorous compounds. This was later included in the Resource Management Amendment Act 2003.

991 Although the definition in the Act prevails over its duplicate in the plan, it assists plan users with interpretation, particularly for a term used as frequently as contaminants.

992 Odorous compounds are a key air discharge contaminant therefore the consequential changes amend the definition to be consistent with the Act and to assist interpretation of the plan change.

993 Submission points 19-20 and 54-15 are in support of this consequential change.

Council staff recommendation

994 Retain definition of “contaminant” as proposed.

4.40 Definitions of Terms (not otherwise discussed)

4.40.1 Airshed

995 Submission point 48-8 is concerned that the definition does not provide for the identification of an airshed that is not gazetted, therefore it is unclear how the Council approaches areas that are degraded but do not require gazetting under the NESAQ.

996 Staff response is that this definition has been included in the plan change exactly as defined in the NESAQ. Under this definition there are two airsheds in the region – the Rotorua Airshed (gazetted) and the ‘rest of region’ airshed’ (not gazetted).

997 An airshed does not need to be gazetted for the regulations of the NESAQ to apply. Likewise, if an area is in is breach of the regulations, there is no requirement to gazette a separate airshed. The regulations refer to ‘breaches in an airshed’ and this breach may occur in any part of an airshed, such as the Mount Maunaganui part of the ‘rest of region’ airshed. Therefore if an area, that is not gazetted breaches any ambient air quality standard in any area of the region, this is addressed under the regulations of the NESAQ and any relevant plan change provisions.

998 No change recommended to this definition.

4.40.2 Ambient air

999 Submission points 19-15, 45-15, FS11-9 are in support of this definition However submission point 54-14 requests that ‘air in the workplace’ is deleted to eliminate confusion.

1000 Staff agree that there is potential confusion caused by this definition as ‘air in the workplace’ could also include air outside buildings and structures. Ambient air is any air outside of buildings and structures, and should apply regardless of whether it is a workplace or not. Therefore staff recommend the change suggested by the submitter.

Council staff recommendation

1001 Amend definition of ambient air as follows:

Ambient air means the air outside buildings and structures. This does not include indoor air ~~air in the workplace~~ or contaminated air discharged from a source

4.40.3 **Best practicable option**

1002 Submission point 19-16 requests a definition of best practicable option. Staff response is that this definition has been carried over from the Act and is already included in the Regional Natural Resources Plan.

4.40.4 **Noxious or dangerous**

Submission Points:	8-7, FS13-109, FS20-35, 11-19, FS13-110, 19-17, FS30-36, 21-15, 33-17, FS30-37, 36-15, FS11-12, FS30-38, 45-17, FS11-13, FS30-39, 48-9, FS30-40, 50-18, FS13-111, FS30-41, 54-21, FS8-81, FS30-42, 66-11, FS30-43, 67-17, FS30-44, 74-15, FS8-82, FS13-112, FS30-45

1003 Submission points to this definition are mixed, with some requesting changes to the details of what the term mean, while others discuss whether the term is needed in the plan change at all.

1004 Some submission points are in support of the plan change containing a definition of noxious or dangerous. Other submission points are in opposition to this for similar reasons to why staff recommended (in the Section 32) why there should be no definition of offensive or objectionable. Reasons for not including this term is that it is used in the RMA and case law considers this based on a normal English language definition. Including a definition could result in a conflict between further Court interpretation.

1005 Staff acknowledge these concerns and agree that the definition of noxious and dangerous should be removed from the plan change for the reasons listed above. However, staff recommend retaining text to clarify how this term will be interpreted by the rules in the plan change.

1006 Staff recommend basing this text on the proposed definition taking into account submission points.

1007 Submission point 8-7 requests that the requirements of the definition are set to allow no discharges of any effect. Staff agree with further submitters that these requested thresholds are too high. The definition is to provide thresholds where human health is at risk, rather than the offensiveness or objectionability of discharges. No change recommended.

1008 Submission 11-19 requests clarity around damage to crops and that the assessment of market value being reduced implies that the crop is grown commercially. The submission requests that it is broadened to include domestic gardens. Further submission point 13-110 supports this in part but is concerned that damage to household crops is too broad.

1009 Staff agree with these points and recommend removing the reference to market value. This implies that the definition only applies to commercial crops when the intention was only to include the effect where human consumption of the crops or plants was unsafe. Damage to crops where the market value was reduced is more offensive or objectionable.

1010 Submission point 33-17 expresses concern that the primary definition does not include effects on people, but is only included in the examples. Staff agree with this concern and recommend amending the wording of the primary definition as suggested by the submitter.

1011 Submission point 45-17 requests the removal of the term noxious or dangerous from the entire plan change. Staff do not recommend this as an assessment of noxious or dangerous is required as part of the section 17 obligations under the Act. Removing this term from all parts of the plan change would remove the management of discharges according to their effect on human health. This is not consistent with the objectives or policies of the plan change, with the RPS, or with the Act.

1012 Submitter 50-18 requests deletion of clauses c and e as these are matters for land and farm management, not relevant to management of discharges of contaminants to air. Staff opinion is that it is unlikely that any discharge to air will be of such a serious nature to cause these effects (except for damage to crops that affect market value), However, as unlikely as they may be, they could still occur and the plan change should anticipate this, particularly where human health is of concern.

1013 Submission point 21-15 requests the addition of further human health effects. However submission point 54-21 points out that it could be difficult to ascertain the cause of a human health effect and recommends deleting all but 'human health effect' from clause (a).

1014 Staff acknowledge this point however 'human health effects' is broad and could include any number of ailments. However, as this term is recommended to sit outside the definitions of terms, a broad approach is appropriate. This would relieve the request in submission point 21-25 as the broad 'human health' term includes all the matters requested by this submitter. Staff recommend limiting the wording of clause (a) to 'human health effects.'

1015 This also relieves the request in submission point 74-15 to remove the term 'allergic reactions.'

Council staff recommendation

1016 Staff recommend amending the definition of noxious or dangerous, providing additional explanatory text (based on wording in the operative Regional Plan and MfE's good practice guides for assessing and managing odour and dust) and moving the section to the end of the chapter as follows:

Noxious or dangerous, offensive or objectionable

Several rules in the Air Quality chapter use the terms 'noxious or dangerous' or 'offensive or objectionable' as included in section 17 of the Act. These terms are not defined in the Definitions of Terms as they need to take account of case law precedents as they develop. However, some guidance is provided to give some certainty as to how the Council will interpret and implement these terms to determine whether an activity complies with permitted conditions or a resource consent condition.

In assessing whether an activity is noxious, dangerous, offensive or objectionable the decision maker acts as representative of the community at large, weighs all competing considerations and ultimately makes a value judgement on behalf of the community as a whole. The decision maker must consider whether an "ordinary and reasonable person" would consider the action offensive and objectionable.

Noxious or dangerous

The dictionary definition of 'Noxious' means harmful, unwholesome. 'Dangerous' means involving or causing exposure to harm.

Noxious or dangerous ~~means~~ in the context of the Air Quality chapter is an activity or discharge of **contaminants** to air that is harmful to people, property, or the environment. ~~causes, or is likely to cause, an adverse effect on property and/or the environment.~~ This may include, but is not limited to, the following:

(a) Human health effects ~~from acute exposure or chronic exposure. These include allergic reactions, toxic poisoning or exposure to carcinogens.~~

(b) Contamination of potable water supplies where the concentration of **contaminant** in the water supply is at a level that exceeds the safe level for human consumption.

(c) Exceedance of a maximum residue limit for an **agrichemical** on, or in, food or stock feed at harvest or slaughter.

(d) Adverse effects on ecosystems including water bodies. This includes exotic and indigenous flora and fauna.

(e) Damage to crops or plants where **contaminants** have affected the growth or quality of the crop such that levels exceed safe levels for human consumption ~~and/or the market value of the crop is reduced.~~

(f) A discharge of **fertiliser** or **agrichemical** spray that compromises the organic status of another property.

(g) Damage to paintwork, windows or surfaces from deposition of airborne **contaminants**.

(h) Reduced visibility that endangers the passage of any vehicle, aircraft, or *ship.*

4.40.5 Offensive or objectionable

Submission Points:	11-1, FS8-79, FS11-14, FS12-1, FS20-29, FS30-46, 33-18, FS8-80, FS11-15, FS20-30, FS30-47, 58-5, FS8-83, FS11-16, FS12-13, FS20-32, FS30-48, 75-3, FS8-84, FS10-30, FS11-17, FS15-31, FS16-31, FS17-31, 76-37, FS8-85, FS10-38, FS11-18, FS13-113, FS15-39, FS16-39, FS17-39, FS20-31, FS30-49

1017 A reasonably high number of submissions and further submissions have been received regarding the term ‘offensive or objectionable’. This is understandable as this term is used throughout the plan change.

1018 Some submission points request the inclusion of a definition of this term or guidance and advice on the term. The key reason for this request is that it provides some certainty as to how the term will be interpreted and applied.

1019 Submission points against state that the Court has already ruled on the meaning of offensive or objectionable and the inclusion of a definition would create conflict between future Court decisions. Further interpretation is also included in the Ministry for the Environment’s Good Practice Guides.

1020 Staff’s original position was that no definition was required as the interpretation of this term needs to take into account case law precedents as they develop. Decision makers such as the Regional Council or the Court make a value judgement based on whether an ordinary and reasonable person would consider the action offensive and objectionable.

1021 However, staff agree that some clarity around how the term will be applied during implementation of the plan change would be helpful. Staff recommend that brief advice text is provided, but that the terms not be specifically defined in order to ensure consistency with current and future case law.

Council staff recommendation

1022 Staff recommend including explanatory text on the term offensive or objectionable based on wording in the operative Regional Plan and MfE's good practice guides for assessing and managing odour and dust). This text is included in a new section "Noxious or dangerous, offensive or objectionable".

Offensive or objectionable

The dictionary definition of 'offensive' is giving or meant to give offence, disgusting, foul-smelling, nauseous, repulsive. 'Offensive' is defined as 'open to objection, unpleasant, offensive.

To determine if a discharge is offensive or objectionable, the Regional Council will make an overall judgment that considers the FIDOL factors as follows:

Frequency – how often an individual is exposed

Intensity – the strength or concentration

Duration – the length of exposure

Offensiveness/character – the hedonic tone (pleasant, neutral, unpleasant) or type

Location – the type of land use and nature of human activities in the vicinity of the source

When assessing discharges (odour, smoke, dust and particulates) the Regional Council will use the following approach:

(a) An experienced, warranted Council Officer will make an assessment of the situation taking into account the FIDOL factors.

(b) If the discharge is deemed to be offensive or objectionable by the warranted Council Officer, the discharger may be asked to take whatever action is necessary to avoid, remedy or mitigate the effects of the discharge on the environment.

(c) If the discharger disputes the warranted Council Officer's assessment or the problem is ongoing, then further evaluation may be required. This evaluation could include:

(i) An assessment by another experienced, warranted Council Officer.

(ii) For odour, monitoring using olfactometry or other appropriate technology.

(iii) For particulate matter, monitoring of particulate matter beyond the boundary will be compared with the NESAQ for particulate matter if people may be exposed.

4.40.6 Particulates

1023 Submission point 48-11 is in support of this definition – no change requested.

4.40.7 **Public amenity area**

Submission Points:	8-8, FS8-86, FS13-114, FS21-74, 18-1, 18-2, FS26-16, 36-16, FS11-19, 54-23, FS13-96, 67-18, FS10-14, FS15-14, FS16-14, FS17-14, 71-6, FS26-17, 76-40

1024 Submission point 8-8 requests the addition of the words ‘public space’ to this definition. Staff response is in line with the further submission points that is that this term is too general and would unnecessarily capture areas that are not intended to be included in the definition.

1025 Submission point 18-1 expresses concern that under this definition the spraying of the road reserve will require extensive signage under rule AQ R15(3). This is unreasonable as public are not likely to be congregating at the side of a road, therefore the risk of exposure is low. Staff agree, but consider that this matter has most likely been resolved through discussion on AQ R15 and the removal of signage requirements for low risk spray application methods. Provided the submitter uses hand held applicators or low pressure booms, there is no requirement for signage except for signage required on any vehicle used in spray application.

1026 Most remaining submission points request the removal of a number of items from the list as they do not all represent areas where the public are likely to congregate for extended periods of time. Submission point 76-40 points out that the qualifier in this definition is ‘where members of the public are likely to congregate for extended periods of time’. Staff agree that this is the key part of the definition that states what is meant. However, the definition then goes on to state ‘including but not limited to’ which implies that everything on the list is a public amenity area. Staff recommend that the wording is changed to ‘may include’, to separate the definition from the examples. This will relieve the concerns in the submission points.

1027 Submission point 71-6 expresses concern that the definition includes public amenity areas such as walking tracks and cycling tracks provided by this submitter on private land. The submitter is already heavily regulated with several requirements under the Health and Safety at Work Act (2015).

1028 Staff response is that it is not the intention of the plan change to impose extensive additional regulations on this submitter. However it is still the Regional Council’s role to manage discharges of contaminants to air, regardless of where they occur. If the definition were to be amended to exclude private land, then, as pointed out in further submission point 26-17, it would inadvertently exclude areas where the requirements should apply.

1029 The recommended amendment to the definition should remedy this concern as areas where public are likely to congregate for extended periods of time would likely not apply to the tracks on site. Amendments to AQ R15 that have less stringent signage and notification requirements for hand held or low pressure boom application methods of agrichemicals will also have remedied some of this submitter’s concern.

Council staff recommendation

1030 Amend definition of 'public amenity area' as follows:

> **Public amenity area** means a public area where members of the public are likely to congregate for extended periods of time. This may includeing (but is not limited to): backcountry huts, barbeques, changing facilities, cycleways, outdoor sports facilities, parks and reserves, playgrounds and playground equipment, public toilets, seating and picnic tables, shelters, squares, and walkways

4.40.8 Sensitive activity

Submission Points:	7-19, FS8-88, FS23-57, 10-817-9, 19-19, FS8-91, FS13-116, 36-17, FS4-2, FS11-21, 48-13, 50-20, FS4-3, FS8-89, FS11-2254-25, 66-14, 67-19, FS4-4, FS11-23, FS13-117, 74-17, FS-4-5, FS8-90, FS11-24, FS13-118, FS28-27, FS29-27, 80-4

1031 While there is some support for this definition, many submitters request deletion or amendment of items on the list, and have concerns that the definition is too broad and includes a number of activities that are not sensitive.

1032 Staff acknowledge these concerns. The staff submission point 74-17 recommends that the opening sentence, the core of the definition, is expanded to describe a sensitive activity. Staff recommend the wording in this submission point and this is generally supported by some further submission points.

1033 In a similar manner to the issues with the definition of 'public amenity area', many of the submission points request amendments to the list of activities in this definition of sensitive activities. Staff recommend the same amendment to this definition as suggested for public amenity areas – that following the definition itself, the wording is changed from 'this includes' to 'this may include' to separate the definition from the examples. Staff do not then recommend amending the list itself, as it is no longer a key part of the definition, but a list of examples to provide guidance. This will relieve many of the concerns in the submission points.

1034 Submission point 19-19 is concerned that the list includes a number of areas, rather than activities and requests an amendment to focus on activities. Staff response is that the recommended change includes both activities and areas, therefore the mix of these in the list is appropriate.

1035 Submission point 50-20 requests that the definition is replaced with the definition of sensitive activity already provided in the RPS. While further submission point 8-89 states that the definition in the RPS must be given effect to in the plan change and that the focus is narrower than the RPS, staff are concerned that there may be conflict.

1036 Therefore staff recommend that the term 'sensitive activity' is replaced with 'sensitive area' in the plan change. This removes any conflict between the terms in the RPS and the plan change. This also results in an amendment throughout the plan change.

Council staff recommendation

1037 Amend the definition of ‘sensitive activity’ as follows:

> **Sensitive ~~activity~~ area** means an activity that is particularly sensitive to adverse effects associated with air contaminant discharges either due to the vulnerability of the population or area exposed to the contaminant, or due to the potential for prolonged exposure ~~may be adversely affected by contaminants~~ and may include~~s~~…

4.40.9 Subject property

1038 Submission points 7-21 and 74-18 request a new definition for the term subject property to clarify if this term refers to the property where the discharge originates or the property where the effects may be experienced. Staff agree to this amendment.

Council staff recommendation

1039 Include definition of subject property as follows:

> **Subject property** means the property where the discharge of contaminants to air originates

Part 5: Recommendation

That the Hearing Committee:

1 Receives the report: *Section 42A Report: Proposed Plan Change 13 (Air Quality)* and its attachments:

   a. Strikethrough version of Proposed Plan Change 13 (Air Quality) Version 6.0 to the Regional Natural Resources Plan (Attachment 1).

   b. Consequential changes resulting from Proposed Plan Change 13 (Air Quality) to the Operative Bay of Plenty Regional Natural Resources Plan (Attachment 2)

   c. Summary of staff recommendations on submissions and further submissions (Attachment 3).

2 Hears submitters and makes decisions in accordance with Schedule 1 to the Resource Management Act 1991 on all submissions and further submissions received to Proposed Plan Change 13 (Air Quality) to the Regional Natural Resources Plan and the Consequential changes resulting from Proposed Plan Change 13 (Air Quality) to the Operative Bay of Plenty Regional Natural Resources Plan.

3 Recommends its decisions in (2) above to the Regional Direction and Delivery Committee of the Bay of Plenty Regional Council for approval.