

**IN THE MATTER**

of the Resource Management Act 1991

**AND**

**IN THE MATTER**

Plan Change 13 (Air Quality) to the Bay of Plenty  
Natural Resource Plan

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**STATEMENT OF EVIDENCE OF ROMAE ALICE CALLAND  
FOR LAWTER (N.Z.) LIMITED**

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## **1. QUALIFICATIONS AND EXPERIENCE**

- 1.1 My full name is Romae Alice Calland.
- 1.2 I am a Planner and Associate at Aurecon New Zealand Limited. My qualifications are a Masters' Degree with Honours in Geography at University of Canterbury. I am a full member of the New Zealand Planning Institute, the Bay of Plenty representative on the Institute's Policy Advisor Committee and an Accredited Planning Commissioner through the Making Good Decisions programme.
- 1.3 I have 22 years' experience working as a local authority and consultant planner in New Zealand, Australia and the Middle East. My experience includes a number of resource consent and plan change applications. I have presented evidence as an expert witness at council hearings and before the Environment Court.
- 1.4 I have been engaged by Lawter (N.Z.) Limited (Lawter) to provide advice in relation to Proposed Plan Change 13 to the Bay of Plenty Regional Natural Resource Plan (hereafter referred to as 'Proposed Plan Change 13').
- 1.5 In preparing this statement, I have reviewed the Bay of Plenty Regional Council section 32 Report, the section 42a Report, submissions and further submissions.
- 1.6 I confirm that I have read the Expert Witness Code of Conduct set out in the Environment Court's Practice Note 2014. I have complied with the Code of Conduct in preparing this evidence and I agree to comply with it while giving oral evidence before the Hearings Panel. Except where I state that I am relying on the evidence of another person, this written evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed in this evidence.

## **2. STRUCTURE OF EVIDENCE**

- 2.1 It is acknowledged that the Lawter submission and further submission are to be taken as 'read' by the Hearings panel.

- 2.2 This evidence will focus primarily on staff recommendations to Proposed Plan Change 13, contained within the S42A Report.
- 2.3 Except for the five points made below, Lawter do not have issue with the recommendations to Proposed Plan Change 13.
- 2.4 The remaining concerns relate to the following:
- (a) Objective AQ O1
  - (b) AQ P3 use of the term 'avoid'
  - (c) AQ R18 Boilers within Mount Maunganui Industrial Area
  - (d) AQ R22 Industrial and Trade Premises
  - (e) Reverse sensitivity.
- 3. OBJECTIVE AQ O1**
- 3.1 The recommendation within the S42A Report to remove the term 'degraded air quality' from AQ O1 is consistent with the recommendation made by Lawter and is therefore supported.
- 3.2 AQ O1 provides for the protection of mauri and human health from adverse effects. AQ O2 aims to ensure that the region's ambient air quality meets the National Environmental Standards for Air Quality (NES-AQ).
- 3.3 Objectives AQ O1 and AQ O2 appear to have different expectations as to what air quality is required to protect human health. Objective AQ O2 requires compliance with the NES-AQ ambient air quality standards only. Further, there is no direction within the objective that the purpose is to protect human health with all the descriptors discussing ambient air quality only. Therefore, it could be assumed that Objective AQ O1 provides a higher requirement for plan users to achieve with regards to human health.
- 3.4 As discussed earlier, the purpose of the NES-AQ is to provide a guaranteed minimum level of health. Paragraph 165 of the S42A Report reiterates this, stating that 'the purpose of the NES-AQ is to *“guarantee a set level of protection for human health and the environment.”*'

- 3.5 The NES-AQ currently bans seven activities, sets ambient air quality standards for five contaminants, provides a design standard for woodburners and includes requirements for greenhouse gas emission collection at large scale landfills.
- 3.6 There is the potential for further contaminants to be identified that warrant inclusion in the NES-AQ and even in its current state it covers more than "ambient air quality", the heading of Objective AQ O2.
- 3.7 It may therefore be useful to separate out the intentions of AQ O1 and AQ O2 such that Objective AQ O1 refers only to the mauri of air and Objective AQ O2 deals with human health and compliance with the NES-AQ.
- 3.8 The S42A Report states that Objective AQ O1 is based on Objective 17 of the Bay of Plenty Operative Regional Policy Statement (RPS). Objective 17 of the RPS provides for the 'safeguarding' of mauri, rather than the 'protection' of mauri. Proposed Plan Change 13 wording should be consistent with the wording of the RPS and the Resource Management Act 1991 (hereafter referred to as 'the Act').
- 3.9 The term 'safeguarding' implies active participation, caring and monitoring in keeping with the mātauranga Maori approach rather than term 'protection', which is more passive and hands off.
- 3.10 Lawter therefore recommend the following changes to Objective AQ O1 and AQ O2:

**AQ O1 Safeguarding of mauri ~~Protect air from adverse effects~~**

*Safeguarding ~~Protection of the mauri of air and human health from adverse effects of anthropogenic contaminant discharges to air.~~*

**AQ O2 Human health effects ~~Ambient air quality~~**

*~~The regions ambient air quality meets~~ Protection of human health from adverse effects of anthropogenic contaminant discharges to air through compliance with the National Environmental Standards for Air Quality (2004) (or its amendment or replacement).*

#### 4. AQ P3 USE OF THE TERM 'AVOID'

- 4.1 The S42A Report has provided commentary on the King Salmon Supreme Court decision as well as the recent decision made by the Court of Appeal on R J Davidson Family Trust v Marlborough District Council [2018] (hereafter referred to as the 'Davidson decision').
- 4.2 The commentary refers to several submission points made by multiple submitters that consider that the use of the term 'avoid' to mean to 'not allow' or to 'prevent the occurrence of', which goes against the enabling nature of the Act.
- 4.3 In the commentary, the Staff Report refers to the Davidson decision, noting the following points;
- (a) If the Supreme Court had intended to reject the 'overall broad judgement' approach for resource consent applications, it would have made that explicit in its findings.
  - (b) The appropriate process for consent authorities is to undertake a 'fair appraisal of the objectives and policies as a whole'.
- 4.4 Although I do not disagree with the points the Staff Report makes, it should be noted that caselaw is subject to challenge. Indeed, the King Salmon case has led to significant changes in thinking and application over the past five years. What may be set as precedent now, may not be so in the future. As such, the use of the 'overall broad judgement approach' could be challenged in the future, causing complications for directive policies within the Proposed Plan Change 13.
- 4.5 The Davidson decision provides the appropriate process for consent authorities to follow when making a decision on a resource consent. However, the 'appropriate' process may change through further case law decisions.
- 4.6 The term 'avoid' still means 'avoid'. Despite the process intended by the Court for decision makers to follow, weighting given to the term 'avoid' can cause an application for resource consent to be declined.

4.7 The Act provides for a suite of options when dealing with adverse effects, namely *avoid, remedy or mitigate*. Accordingly, Lawter request that provisions within Proposed Plan Change 13 using the term 'avoid' in isolation are amended to include the additional options to remedy or mitigate. This inclusion is considered appropriate under the overall broad consideration approach.

4.8 Lawter therefore recommend the following change to AQ P3 (b):

**AQ P3 Management of discharges**

...

(b) *Avoid new the discharges 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) and to avoid, remedy or mitigate existing authorised discharges 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).*

...

**5. AQ R18 BOILERS WITHIN MOUNT MAUNGANUI INDUSTRIAL AREA**

5.1 Proposed Plan Change 13 includes permitted activity provisions for new and existing boilers (AQ R18), however restricts the use of boilers within the Rotorua Airshed.

5.2 Lawter's submission directly addressed air quality within the Mount Maunganui Industrial Area and was written prior to the release of the sulphur dioxide (SO<sub>2</sub>) monitoring and modelling reports. The submission requested that the same restrictive provisions that are proposed within the Rotorua Airshed be adopted for the Mount Maunganui Industrial Area.

5.3 The S42A response to the submission outlined that there is insufficient information surrounding air quality in the Mount Maunganui Industrial Area to support such a rule framework, and that the decision to exclude the Rotorua Airshed from the permitted activity rule was based on a decade of monitoring and research.

- 5.4 Lawter accept this conclusion and note that air quality within the Mount Maunganui Industrial Area requires further attention through the ongoing monitoring and air quality modelling by Council.
- 5.5 Should the Council's investigations determine that ambient air quality standards in the NES-AQ are not being met, Lawter consider that boiler use within the Mount Maunganui Industrial Area should be revisited and boiler operators advised of their obligations under AQ O2 discussed above and AQ R22 discussed below.
- 5.6 This commentary does not result in suggested amendments to the Proposed Plan Change 13.

## **6. AQ R22 DISCHARGES FROM INDUSTRIAL AND TRADE PREMISES**

- 6.1 Lawter has submitted and made further submissions relating to the retention of AQ R1 as originally drafted. Clause (c) is the 'catch-all' clause relating to discharges from industrial and trade premises (ITP).
- 6.2 The S42A Report recommendation is to remove clause (c) from AQ R1. The intent of clause (c) is replaced by discretionary activity AQ R22. AQ R22 expands on clause (c) of AQ R1, requiring ITP's to seek resource consent, however only for those ITP's which are discharging particulates, odorous compounds, or hazardous air pollutants.
- 6.3 'Hazardous Air Pollutants' has not been defined within Proposed Plan Change 13, nor is it defined in any of Council's statutory documents.
- 6.4 Commentary is provided around why a definition of hazardous air pollutants was not included. Namely, paragraphs 249 and 250 of the S42A Report outlining the dynamic nature of hazardous air pollutants lists, and how including a list within Proposed Plan Change 13 would be difficult due to the regular updates required to keep the list current. Instead the Report references three external lists, which are found on the Ministry for Environment website, the United States Environmental Protection Agency website, and within the Ambient Air Quality Guidelines 2002.

- 6.5 Although comprehensive, none of the lists referenced above contain contaminants used to determine ambient air quality within the NES-AQ. These contaminants include sulphur dioxide, carbon monoxide, ozone and PM<sub>10</sub>.
- 6.6 The purpose of the NES-AQ is to provide a guaranteed minimum level of health to all New Zealanders.
- 6.7 Only clause (a), (particulates), of proposed AQ R22 will capture discharges of contaminants which could be contributing to the degradation of ambient air quality. Cumulatively, effects caused by permitted discharges of these contaminants could result in adverse effects on human health.
- 6.8 This wording seems to go against the outcome that the Proposed Plan Change 13 is trying to achieve by including clause (c) of AQ R1, or AQ R22. Paragraph 436 of the S42A Report states that 'staff preference is 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.'
- 6.9 However, staff's recommendation could result in collective discharges of contaminants breaching the standards set out in Schedule 1 of the NES-AQ, resulting in adverse effects on human health.
- 6.10 The Mount Maunganui Industrial Area provides an example where permitted discharges could be contributing to the degradation of ambient air quality. Council's air quality modelling of the Mount Maunganui Industrial Area has underpredicted SO<sub>2</sub> concentrations in the area and identified that fugitive emissions from industries could be a contributor.
- 6.11 Lawter recommend that an additional clause is included within AQ R22, which captures discharges that may contribute to the degradation of ambient air quality.



6.12 A recommended amendment would read as follows:

**AQ R22 – Industrial and Trade Activities**

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

- (a) *particulates*
- (b) *odorous compounds*
- (c) *hazardous air pollutants*
- (d) *contaminants listed within Schedule 1 of the National Environmental Standards for Air Quality (2004) (or its amendment or replacement).*

**7. REVERSE SENSITIVITY**

7.1 Several submissions to Proposed Plan Change 13 have requested further provisions around the inclusion of reverse sensitivity.

7.2 Paragraph 926 and 930 of S42A Report states that the ability for Proposed Plan Change 13 to control reverse sensitivity effects is 'outside of the responsibility of the Regional Council' as the responsibility of controlling the location of sensitive areas falls to territorial authorities.

7.3 Lawter recognise the role that councils play with regards to reverse sensitivity, however we consider that further policy framework can be provided within the plan change to provide for these roles.

7.4 The intention of Lawter's submission was not to address reverse sensitivity through rezoning and controlling the location of sensitive areas. As the S42A Report has correctly pointed out, the plan can only control discharges of contaminants to air.

7.5 Although recommended changes to Policy AQ P4(a) provide for reverse sensitivity, these changes do not provide for already established industries near new sensitive areas.

- 7.6 Sensitive areas have been known to establish within, or near an established industrial zone or activities. In instances where a resource consent is being sought by an existing industrial activity, priority should be afforded to the industrial activity and the investment in the site rather than the newly established sensitive activity. Further support for this stance is included in S104 (2A) of the Act *When considering an application affected by section 124 or 165ZH(1)(c), the consent authority must have regard to the value of the investment of the existing consent holder.*
- 7.7 A policy framework included within Proposed Plan Change 13 should prioritise the re-consenting of established activities over nearby newly established sensitive activities.
- 7.8 Council also have a role to advocate against reverse sensitivity in district plans.
- 7.9 Policy AQ 1A of the RPS advocates against reverse sensitivity and this policy should be further emphasised with its own objective or policy within Proposed Plan Change 13.
- 7.10 Lawter recommends that a provision is included in Proposed Plan Change 13, which prioritises already established industrial activities from reverse sensitivity effects.
- 7.11 The following inclusion to AQ P4 is proposed:
- AQ P4 – Matters to consider***
- ...
- (l) regard to the investment of an existing consent holder***
- 7.12 The following new provision is proposed:
- AQ PX – Preventing reverse sensitivity***

*Actively discourage:*

(a) Locating new sensitive activities near activities that discharge offensive and objectionable odours, chemical emissions or particulates; and

(b) Locating new activities that discharge offensive and objectionable odours, chemical emissions or particulates near sensitive activities.

**8. CONCLUSION**

8.1 At Appendix One, I repeat Lawter's preferred wording for the provisions discussed in my evidence for ease of reference for the Committee.

8.2 I would be happy to answer any questions the Committee may have.



**Romae Calland**

**16<sup>th</sup> October 2018**

## Appendix One Lawter preferred wording

### **AQ O1 Safeguarding of mauri ~~Protect air from adverse effects~~**

~~Safeguarding Protection of the mauri of air and human health from adverse effects of anthropogenic contaminant discharges to air~~

### **AQ O2 Human health effects ~~Ambient air quality~~**

~~The regions ambient air quality meets Protection of human health from adverse effects of anthropogenic contaminant discharges to air through compliance with the National Environmental Standards for Air Quality (2004) (or its amendment or replacement).~~

### **AQ P3 Management of discharges**

...

- (b) ~~Avoid new the discharges 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) and to avoid, remedy or mitigate existing authorised discharges of contaminants 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)~~

...

### **AQ P4 – Matters to consider**

...

- (l) ~~regard to the investment of an existing consent holder~~

### **AQ PX – Preventing reverse sensitivity**

Actively discourage:

- (a) Locating new sensitive activities near activities that discharge offensive and objectionable odours, chemical emissions or particulates; and
- (b) Locating new activities that discharge offensive and objectionable odours, chemical emissions or particulates near sensitive activities.

## **AQ R22 – Industrial and Trade Activities**

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

- (a) *particulates*
- (b) *odorous compounds*
- (c) *hazardous air pollutants*
- (d) *contaminants listed within Schedule 1 of the National Environmental Standards for Air Quality (2004) (or its amendment or replacement).*

