BEFORE A HEARING: BAY OF PLENTY REGIONAL COUNCIL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of a submission by Western Bay of Plenty Council to Proposed Plan Change 13 – Air Quality, to the Bay of Plenty Regional Natural Resources Plan

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STATEMENT OF EVIDENCE OF MATTHEW LEIGHTON ON BEHALF OF WESTERN BAY OF PLENTY DISTRICT COUNCIL

17 October 2018

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1. INTRODUCTION

1.1 My full name is Matthew George Leighton. I am a Senior Policy Analyst with Western Bay of Plenty District Council (WBOPDC).

1.2 I am familiar with WBOPDC's submission and WBOPDC's Further Submission to Proposed Plan Change 13 – Air Quality to the Bay of Plenty Regional Natural Resources Plan.

1.3 I would firstly like to acknowledge the overall positive response to WBOPDC's submission and further submission in the staff report. The majority of WBOPDC's submission and further submission points have been accepted or accepted in part with suitable wording changes recommended and we thank BOPRC staff for their work.

1.4 There are however a few matters we still do not fully agree with and would like to see these reconsidered.

1.5 Where changes are recommended these are shown by blue text.

2. SUBMISSION POINTS

AQ P4(a)

2.1 Whilst supporting the removal of AQ P4(g) relating to new activities discharging contaminants into the air near established sensitive activities, we do not feel that its incorporation into AQ P4(a) is necessary. It is felt that the addition of the specific references to "new activities" and "established sensitive activities" do not add anything to the policy and instead add confusion. It should already be clear that a new activity would be subject to this policy and that a sensitive activity would automatically include an established sensitive activity. It is requested that AQ P4(a) is reworded as follows:

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

AQ R21 – Free-range farming

2.2 Whilst the intent appears to be to require discretionary resource consent for existing free-range farming operations where there is an increase in character, intensity or scale, this is not clearly provided for in the proposed wording. If this is the intent, it needs to be made clearer that an existing farm cannot increase the level of effects which existed at 27 February 2018. The rule would also benefit from referring specifically to free-range farming operations as opposed to just farms (which by their ordinary meaning would include any land which is being used for farming whether free-range farming or otherwise). AQ R21(j)(ii) requires editorial changes to aid clarity as follows.

2.3 The clause should be amended to read as follows:

(ii) Free-range farming where either a new free-range farming operation is being established, or where an existing free-range farming operation is increasing the character, intensity or scale of the effects ~~of the activity, after 27 February 2018~~ that existed as at 27 February 2018.

Definition – Intensive farming

2.4 The definition of intensive farming should be reconsidered. Whilst we agree with the changes in general, we feel that limiting it to poultry farms and piggeries may unintentionally miss some other activities.

2.5 We seek that the definition be expanded to cover 'all intensive livestock farming' as well as any other type of intensive farming activities that the Regional Council wish to control, or alternatively the Regional Council provide reasoning behind why some activities are included and others are excluded

2.6 As currently worded, intensive farming would not include intensive dairy or beef farming, where feedlots are used. Whilst uncommon in New Zealand, there are examples of these in operation in the country and abroad.

2.7 We note that the Draft National Planning Standards define intensive primary production as "primary production activities that involve the production of fungi, livestock or poultry that principally occur within buildings".

Open Burning

2.8 We are pleased to note that our submission points have been considered and the recommended changes promote a more effects based approach regarding open burning.

2.9 Whilst we recognize the concern raised by some through further submissions, the 100 metre setback distance is thought adequate to address the issue of poorly located open burning, wherever this may occur in the region.

2.10 The addition of a provision that enables a permitted activity status for open burning where written approval is provided from all owners and occupiers of any neighbouring dwelling within a 100 metre distance, may be beneficial. This would reduce the instances where resource consent is required for open burning on rural properties within 100 metres of a neighbouring dwelling and where there is agreement between parties.

2.11 We continue to seek the removal of the term 'urban property' and 'urban properties' from the Plan (AQ P5, AQ R6, AQ R9 and definitions section).

2.12 Urban properties are defined as being less than 2ha and connected to a municipal wastewater system.

2.13 This overlooks many other properties that could cause adverse effects from open burning and which should therefore need a resource consent e.g.

residential properties in communities which are on septic tanks and rural properties which adjoin residential zones.

2.14 In the opposite way, this definition could also lead to a requirement to obtain a resource consent when there are no adverse effects e.g. in residential or industrial zones which are newly zoned and serviced but still rural in nature with no dwellings nearby.

2.15 The inclusion of urban property or properties in the above-mentioned rules is superfluous as the 100 metre setback distance from dwellings which has now been introduced is sufficient to manage the effects of open burning.

2.16 Whilst we acknowledge the intent behind the use of the term 'urban property' to provide an additional level of clarity and certainty, we feel that the result is in effect confusing.

2.17 We have concern that the definition is misleading, and have particular concern where, as stated in the section 42A report, it may be used as "a clear distinction for potential enforcement actions".

Agrichemical spraying

2.18 We are very supportive of the majority of the recommended changes to AQ R15, as set out in the section 42A report. There are some issues we wish to see resolved further.

2.19 We note that the recommended changes to AQ R15(1)(c) increase the permitted drone height for spraying from 5 metres to ten metres.

2.20 Whilst we accept that there is need to consider the safe and efficient use of drones, we wish to seek assurance that doubling the height permitted would not significantly increase spray drift.

2.21 We seek a further amendment to AQ R15(3)(a) to aid clarity.

2.22 Whilst we agree with the rationale and reasoning included in paragraph 822 of the report, which states that signage is required "only for the particular area being sprayed, not the whole amenity area", we feel that the rule is not clear in this regard and is open for interpretation.

2.23 We therefore seek inclusion of the word "particular" to the rule to provide this clarity. AQ R15(3)(a) should read:

(a) Where **agrichemicals** are sprayed on **public amenity areas** signs must be displayed at every entrance where the public usually have entry to the particular area where the **agrichemical** is being…

2.24 We also seek an amendment to AQ R15(4)(e), to provide clarity when setting out the specific notification requirements necessary, prior to spraying on public amenity areas.

2.25 The recommended change states this should be carried out "according to section 2AB(a) of the Act". From the body of the report this assumed to be an error and refers to 'section 2AB(1)(a)'.

2.26 This nonetheless is confusing, as section 2AB(1)(a) explicitly requires compliance with section 2AB(1)(b), and thereby the notice is to be published in a newspaper. For reference this is highlighted below.

2AB Meaning of public notice

(1) If this Act requires a person to give public notice of something, the person must—

(a) publish on an Internet site to which the public has free access a notice that—

(i) includes all the information that is required to be publicly notified; and

(ii) is in the prescribed form (if any); and

(b) publish a short summary of the notice, along with details of the Internet site where the notice can be accessed, in 1 or more newspapers circulating in the entire area likely to be affected by the matter to which the notice relates.

(2) The notice and the short summary of the notice must be worded in a way that is clear and concise.

2.27 It is felt that the intent of the recommended change could better be captured through explicitly stating the manner of public notification in the rule itself. A suggested amendment would be:

AQ R15(4)(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~~ through publishing a notice on an Internet site to which the public has free access) the **agrichemical** spraying no earlier than 10 days and no later than 24 hours before the agrichemical spraying. Notification must include the following information…

Definition - Sensitive Area

2.28 We generally support the recommended changes to the definition of sensitive area, however feel that further minor adjustment is required to aid clarity. We seek that the definition be reconsidered and offer the following as a potential solution:

> **Sensitive area** means land which ~~an activity that~~ is particularly sensitive to adverse *effects* associated with air contaminant discharges either due to the vulnerability of the ~~population~~ people in the area or specific natural environment ~~area~~ exposed to the contaminant, or due to the potential for prolonged exposure and may include:

2.29 We strongly support the inclusion of "may" in the definition as it clearly indicates that the following list are examples only and judgement is required. Whilst we acknowledge that some further submitters wish this list to be more definitive and exact, it is felt that this would become a somewhat exhaustive process of limited use.

3. CONCLUSION

3.1 Again we acknowledge that many of our submission points have been implemented and thank BOPRC staff for their work and commend the Section 42A report and its recommendations.

3.2 We however seek the additional amendments and changes as set out in this statement of evidence.

Matthew Leighton

17 October 2018