

IN THE ENVIRONMENT COURT
AT AUCKLAND

I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU

IN THE MATTER OF

BETWEEN

AND

AND

Decision [2023] NZEnvC 221

appeals under Clause 14 of the First
Schedule to the Resource Management
Act 1991 (RMA)

SWAP STOCKFOODS LIMITED

(ENV-2019-AKL-000065)

TIMBERLANDS LIMITED

(ENV-2019-AKL-000073)

Appellants

BAY OF PLENTY REGIONAL
COUNCIL

Respondent

TOI TE ORA PUBLIC HEALTH

PORT OF TAURANGA LIMITED

TE RUNANGA O NGAI TE RANGI
IWI TRUST

GLENCORE AGRICULTURE (NZ)
LIMITED, INTERNATIONAL
NUTRITIONALS LIMITED

TRADING AS AGRIFEEDS AND
ADM NEW ZEALAND LIMITED

TIMBERLANDS LIMITED

s 274 Parties



Court: Judge MJL Dickey
Commissioner JA Hodges
Commissioner AP Gysberts

Hearing: At Tauranga, 19-22 October 2020 (**2020 hearing**)
Reply submissions 18 December 2020
Reconvened by AVL at Tauranga and Auckland, 25 March 2021 (**2021 hearing**)
Reconvened by AVL at Tauranga and Auckland, 2-5 May 2022 (**2022 hearing**)

Last case event **24 August 2023**

Appearances: TS Richardson for Swap Stockfoods Limited
RC Zame for Bay of Plenty Regional Council
M Patterson for Toi Te Ora Public Health
VJ Hamm for Port of Tauranga Limited
JM Gear for Te Runanga o Ngai Te Rangi Iwi Trust
JC Brabant for Viterro New Zealand Limited,
International Nutritionals Limited trading as Agrifeeds and
ADM New Zealand Limited
GK Chappell for Timberlands

Date of Decision: **20 October 2023**

Date of Issue: **20 October 2023**

SECOND INTERIM DECISION OF THE ENVIRONMENT COURT

- A: The parties are to provide any final comments on the Plan Change annexed as Appendix A to this decision by **16 November 2023**.
- B: The Council is to commence a plan change in accordance with Appendix B following the timeline and process steps set out in Appendix C.

REASONS

Introduction

[1] This matter concerns appeals against the Bay of Plenty Regional Council (**Regional Council**) on Proposed Plan Change 13 (Air Quality) to the Operative Bay of Plenty Regional Natural Resources Plan (**PC13**).

[2] The case is primarily about the management of dust in the Mount Maunganui Airshed (MMA) to protect the human health and mauri of the air. PC13 contains provisions to address the management of dust.

The Court's Interim Decision

[3] On 10 January 2023 this Court issued its Interim Decision on PC13.¹ In that decision we noted that this case involved many complexities and uncertainties and that there were no precedents to guide the way forward.²

[433] ... unavoidably, some of the concepts embodied in the draft provisions fell outside traditional resource management practice in New Zealand. For that reason, we sought final submissions from parties on the following matters:

- (a) Are there any matters of fact, expert opinion or law of direct relevance to the issues that have not been referenced?
- (b) Are there any issues of drafting; relating to clarity, interpretation, enforceability and *vires* with respect to the policy and rule framework comprising:
 - (i) the proposed way forward
 - (ii) Policy AQ P11
 - (iii) Policy AQ P12
 - (iv) Rule AQ R 22A
 - (v) Rule AQ R22B
 - (vi) Rule AQ R22C.

[4] We also sought submissions on a number of points of clarification needed to enable us to make our final determination on the case.³ Of particular importance, we sought submissions to address the following:⁴

- (e) Are there compelling reasons why PM₁₀ emissions should not be the same or less than they were on the date the gazetting of the MMA as a polluted airshed took effect, or reasons why other dates than those included in this decision should be used instead?

¹ *Swap Stockfoods Limited v Bay of Plenty Regional Council* [2023] NZ EnvC 001 (**Interim Decision**).

² Interim Decision, at [433].

³ Interim Decision, at [434].

⁴ Interim Decision, at [434](e).

[5] We foreshadowed our intention to direct the Regional Council to prepare changes to PC13 in accordance with s 293 of the RMA. These changes included the control of emissions of particulate matter less than 10 microns in diameter (PM₁₀) from unsealed yards to contribute to integrated management of the MMA.

The parties' responses to the Interim Decision

[6] In response to our directions, we received a comprehensive joint memorandum from the parties dated 31 March 2023. In addition to the matters on which we sought submissions, an unanticipated matter was raised. This matter was the implications of recent severe weather events on the export of logs through the Port of Tauranga Limited (**POTL**). Timberlands outlined the effects of the recent severe cyclones and flooding events on forests and roading infrastructure in the eastern and central North Island and the implications for log management through the Port. Timberlands sought leave to adduce further evidence under s 276 of the RMA and contemporaneously filed affidavits relating to the proposed limits on log volumes in the Interim Permitted Activity Rule (**IPAR**).

[7] We provided initial responses to the matters raised by way of a Minute dated 3 May 2023 and a Judicial Conference was held on 6 June 2023, at which outstanding matters were addressed further in accordance with an agenda agreed between the parties. This included alternative wording for provisions and responses to other matters discussed in the Minute, some of which required further actions from the parties before we could issue our final decision. These issues were set out in a Minute dated 26 June 2023 and included:

- (a) the maximum allowable tonnages of bulk solid materials (**BSM**) to be included in the IPAR;
- (b) the increased product throughput of logs requested; and
- (c) a direction that the Regional Council provide a draft plan change incorporating proposed policy AQ P12 as applying to all discharges of PM₁₀ in the MMA and providing controls on unsealed yards as set out in the 26 June 2023 Minute.

[8] To enable us to fully consider the request to allow an increased product throughput of logs, further conferencing by air quality experts and subsequently by planners was required. The resulting Joint Witness Statements (JWS) from the air quality and planning experts were dated 10 July and 11 August 2023 respectively. On 18 July 2023, the Court received a joint memorandum responding to the 26 June 2023 Minute. By memorandum dated 11 August 2023, the Regional Council set out its proposed plan provisions relating to the s 293 process for unsealed yards and its proposed timeline for the process.

[9] For completeness, we record that Ms Paddison was in the United Kingdom on 6 June 2023 and was unable to connect to the conference due to wifi and data issues. By memorandum of the same date, she informed the Court of Toi Te Ora's position that the product volume caps and compliance date for BSM should remain as per the Court's Interim Decision and, in all other matters, Toi Te Ora adopts the same position as the Regional Council.

[10] A further matter of potential relevance to our final decision, drawn to the Court's attention after the issue of the Interim Decision, was the commissioning by Toi Te Ora in May 2023 of an air pollution health assessment for the Mount Maunganui Area and a review of Bay of Plenty Regional Council ambient air quality monitoring data from the Mount Maunganui Airshed for the years 2019 through 2022.

[11] In view of the significance of health effects evident through the hearing process, once we had become aware of the work being undertaken, albeit with a lack of initial clarity on what the scope of work was, we asked whether it was possible for a copy of that review to be supplied to the Court and the parties.⁵ We received an affidavit dated 10 August from Dr J M Miller, Medical Officer Health, on behalf of Toi Te Ora, setting out the findings.

[12] We address the outcome of the above process under the following headings below:

⁵ Minute, dated 3 May 2023 at [11].

- (a) Matters arising in the parties' joint submissions dated 31 March 2023;
- (b) Dates for measuring compliance with IPAR standards relating to product throughputs and product limit for BSM to be included in the IPAR;
- (c) Timberlands' request to increase the volume of log exports through the POTL following periods of severe weather;
- (d) Drafting issues and other matters arising and not addressed elsewhere;
- (e) Report entitled "Air Pollution: Health Risk Assessment Mount Maunganui", dated 1 June 2023; and
- (f) The s 293 process relating to unsealed yards.

Matters arising in the parties' joint submissions dated 31 March 2023

[13] We refer in this section only to submission points that require corrections to the Interim Decision. While other matters were raised by the parties, we addressed them in our Minute dated 3 May 2023 and they do not require any amendments to the Interim Decision.

Paragraphs [2] and [137] of the Interim Decision

[14] We agree with Toi Te Ora that it is Regulation 13(1) of the National Environmental Standard Air Quality (**NESAQ**) that requires the PM₁₀ Standard prescribed in Schedule 1 of the NESAQ not to be exceeded, as opposed to Schedule 1, as stated in paragraphs [2] and [137] of the Interim Decision. The paragraphs are amended to reflect this:

[2] Dust less than 10 micrometres or microns (**10 µ/m**) in diameter (**PM₁₀**) is a contaminant controlled under the Resource Management (National Environment Standards for Air Quality) Regulations 2004 (**NESAQ**). ~~Schedule 1~~ Regulation 13(1) of the NESAQ requires that a 24-hour average concentration of 50 µg/m³ of PM₁₀ must not be exceeded in the MMA more than once in a 12-month period (**PM₁₀ Standard**). The Council must enforce the observance of the PM₁₀ Standard to the extent to which its powers enable it to do so.

[137] Returning now to the NESAQ, the relevant PM₁₀ Standard in Schedule 4 Regulation 13(1) is that a 24-hour average concentration of 50 µg/m³ of PM₁₀ must not be exceeded more than once in a 12-month period.

Paragraph [4] of the Interim Decision

[15] We accept Toi Te Ora's advice that the Ministry for the Environment (MfE) Ambient Air Quality Guidelines 2002 were not based on the 2005 World Health Organisation (WHO) guidelines. Paragraph [4] of the Interim Decision is amended by deleting the last sentence:

[4] In addition to the requirements of the NESAQ, the Ministry for the Environment (MfE) Ambient Air Quality Guidelines 2002, (**Ambient Air Quality Guidelines**) provide health-based guideline values with the aim of protecting people's health and well-being. ~~For PM₁₀, the current guideline is an annual average concentration of 20 µg/m³. This was based on 2005 World Health Organisation (WHO) guidelines.~~

Paragraph [23] of the Interim Decision

[16] We stated at paragraph [23] of the Interim Decision that we received no evidence of people living at Tauranga Bridge Marina. In making that statement we were referring to planning evidence. Toi Te Ora drew our attention to Mx Wickham's evidence that there are people resident at the Marina and at the Sulphur Point site. In Appendix D of Mx Wickham's evidence, a memorandum to the Medical Officer of Health states in relation to the seven monitoring locations in the MMA, that:⁶

These monitoring locations vary from mixed residential, commercial and industrial locations (Rata Street, Sulphur Point, Bridge Marina, Whareroa Marae and De Havilland Way).

[17] We were not provided with a sufficient evidential basis to enable us to conclude there are people residing at the Marina, other than possibly for very limited periods on berthed vessels. As noted in our Minute,⁷ we were aware from another case that there are controls on residential activities at the Marina. It is also unclear to us why people are residing at Sulphur Point. We consider the extent to which residential activities are occurring at both locations should be checked by the Regional Council.

⁶ Mx Wickham, EIC at page 582 of the bundle.

⁷ Minute, dated 3 May 2023, at [16].

The outcome will not affect our decision but could affect future management of air quality in the MMA.

Paragraph [25] of the Interim Decision

[18] At paragraph [25] of the Interim Decision we stated in relation to occupied dwellings within the MMA:

[25] ... However, while 48 dwellings at the northern end are in relatively close proximity to the Rata Street monitoring site, they are located outside the MMA boundary. ...

[19] The Council noted in the joint memorandum of 31 March 2023 that:⁸

... there are a number of residential dwellings, namely apartments which are located within the MMA boundary at the northern end, including an apartment block at the corner of Rata Street and Maunganui Road, and further apartments along the southern side of Maunganui Road towards Tawa Street.

[20] We accept the Council's submission and the above sentence is deleted from the Interim Decision. The correction has no effect on our findings. Paragraph [25] as amended is:

[25] The plan appears to show there were 159 occupied dwellings within the MMA at the time of the census, in the general locations shown. ~~However, while the 48 dwellings at the northern end are in relatively close proximity to the Rata Street monitoring site, they are located outside the MMA boundary.~~ The dwellings at the southern end of the area include those at Whareroa Marae. The plan was not tested in evidence, and it was not made clear to us if or why almost 30 dwellings would be located in an area zoned industrial. We consider this is an important matter the Council should investigate further as it has potentially significant consequences for future air quality management of the MMA.

Paragraphs [184]-[185] of the Interim Decision

[21] At paragraphs [184] and [185] of the Interim Decision, we referenced PM₁₀ monitoring for the year 2022 based on the Regional Council's website, to assist in understanding of trends. We acknowledged that it was not clear from the website if any of the exceedances were caused by exceptional circumstances, so it was not possible to draw conclusions on trends, particularly in view of the very limited period

⁸ Joint Memorandum, dated 31 March 2023, at [5].

of record.

[22] The Regional Council confirmed in the joint memorandum that while four exceedances of the PM₁₀ Standard were recorded in 2022, a number of exceedances were granted a dispensation by the MfE due to high levels of sea-salt laden air. Another breach was subsequently discovered to be an anomaly in the data and did not count as an exceedance. The Council submitted that there was therefore one exceedance in the 2022 calendar year (21 April) recorded at Harbour Bridge Marina.

[23] We accept the Regional Council's submission and consequently the Interim Decision is corrected by deleting and replacing paragraph [184] to read:

[184] ~~We were informed subsequently by the Council⁹ that there was one exceedance of the PM₁₀ Standard in the 2022 calendar year (21 April) recorded at Harbour Bridge Marina. To provide an understanding of 2022 results to date, we referred to the Council's web site, which recorded one exceedance each on the same day in April at Rata Street and Bridge Marina. In August, the most recent date for which results were provided, there were exceedances on the same two consecutive days at each of De Havilland Way, Bridge Marina, Rail Yard South and Rata Street, and one at Totara Street on the second of those days. The total for the year to date is 11.~~

[24] The following statement in paragraph [185] of the Interim decision remains correct, with the deletions made as shown:

[185] ~~It is not clear from the web site if any of the exceedances were caused by exceptional circumstances, so it is not possible to draw conclusions on trends, particularly in view of the very limited period of record. However, there is no certainty that recent improvements in mitigation measures are sufficient to ensure the PM₁₀ Standard will be met in the future.~~

Paragraph [253] of the Interim Decision

[25] The Court's proposed way forward was set out in paragraph [253] of the Interim Decision. The parties did not take issue with this but sought further clarification from the Court in relation to:

- (a) the s 293 procedure in relation to Policy AQ P12; and
- (b) when Rules AQ R22A, AQ R22B and AQ R22C will be deemed

⁹ Joint memorandum, dated 31 March 2023.

operative, given the s 293 procedure for unsealed yards. Toi Te Ora also raised an issue around application of s 20A in the context of Rules AQ R22A and AQ R22C.

[26] Paragraph [253] reads:

[253] We determined that the following were key components:

- (a) The objectives of PC13 are the starting point.
- (b) Establishing principles to be used to develop the plan provisions.
- (c) The extent to which Regulation 17 constrains or prevents the granting of resource consents to existing activities currently operating as permitted activities.
- (d) The duty to achieve integrated management of the natural and physical resources of the region.
- (e) Ensuring the provisions provide a pathway to compliance with the NESAQ to the extent the Council's powers enable them to do so.
- (f) Giving effect to the relevant provisions of the RPS.
- (g) Developing Interim Permitted Activity Rule AQ R22A.
- (h) Developing Rule AQ R22B, which will apply on expiry of the IPAR.
- (i) Developing new policy and consideration of other relevant planning issues.
- (j) Assessing the efficiency and effectiveness of the provisions in achieving the objectives¹⁷⁴ and completing a s 32AA Evaluation.
- (k) Ordering changes to PC13 in accordance with s 293 RMA in relation to PM₁₀ emissions from unsealed yards and new Policy AQ P12.
- (l) Overall evaluation and findings

Paragraph [302] of the Interim Decision

[27] At paragraph [302] of the Interim Decision we recorded in relation to the term of the IPAR that the term may be extended by operation of s 20A of the RMA if an application for a resource consent for the activity is made before the expiry of the IPAR.

[28] Toi Te Ora stated that s 20A of the RMA could be used to extend the term of the IPAR because our decision structures Rule AQ R22C as applying on the expiry of the IPAR.

[29] We note that s 20A would not operate to extend the term of the IPAR, as such; it would operate to enable an activity that relies on the rule to continue until the application for resource consent was determined.

Paragraph [318] of the Interim Decision

[30] We agree that paragraph [318] of the Interim Decision should be amended to read:

[318] ~~Rule AQ R22A will take effect on the date of our final decision. Rules AQ R22A, AQ R22B and AQ R22C will be deemed operative on the date of our final decision.~~

Paragraph [349] of the Interim Decision

[31] We accept the Regional Council's reference to "log handling activities" in Policy AQ P11 needs to be changed to "handling of logs" to be consistent with defined terms:

New Policy AQ P11 – Handling of bulk solid materials and logs as existing activities in the Mount Maunganui Airshed for an interim period

Provide for discharges of PM₁₀ and other particulates to air within the Mount Maunganui Airshed from bulk solid material handling and ~~log handling activities~~ handling of logs for an interim period, by requiring that the discharge of PM₁₀ from any **subject site** must be minimised to reduce adverse effects on air quality in the **Mount Maunganui Airshed** to the greatest extent reasonably practicable through application of an Interim Permitted Activity Rule defaulting to a discretionary activity, and to:

...

Paragraph [373] of the Interim Decision

[32] The Regional Council raised a concern about Policy AQ P12 introducing the concept of compliance with "annual average PM₁₀ concentrations as deemed appropriate by the Regional Council from time to time". The Regional Council's

view, with which the other parties agreed, is that any changes considered necessary in the future should be addressed in accordance with the usual Schedule 1 process.

[33] Our reason for including the provision was to signal to all involved that while compliance with current guideline values is the first requirement, further improvements in air quality may be required in the future. Nevertheless, we will amend the provision so as to change (d) to read:

(d) Safeguard the life supporting capacity of the air and protect human health within the Mount Maunganui Airshed;

Paragraph [382] of the Interim Decision

[34] We incorrectly stated in paragraph [382] of the Interim Decision that Timberlands did not state its position explicitly in relation to the use of the Certificate of Compliance (CoC) process under s 139 of the RMA in its submissions to the 2022 hearing. Accordingly, paragraph [382](c) is amended to read:¹⁰

(c) Timberlands supported the application for CoC as the most appropriate resource management outcome, having regard to the complexities of the situation. Timberlands did not state its position explicitly in its submissions to the 2022 hearing other than to restate its position that the reference in standard 1(c) to “noxious and dangerous” as included in the Council’s Revised Version of the IPAR presents an impediment to the granting of a CoC.²¹⁶ We take this as support for the adoption of a CoC approach.

Paragraph [393] of the Interim Decision

[35] We accept the recommendation that the definition of BSM is clarified to exclude any BSM that is not in bulk form, that is, which is contained in a bag, container or similar. We accept the Regional Council’s recommendation that salt storage be removed from the list of BSM, so that the definition will read:¹¹

Bulk solid material means materials consisting of, or including, fragments that could be discharged as dust or **particulates**. These materials include but are not limited to: gravel, quarried rock, **fertiliser**, coal, cement, flour, rock aggregate, grains, compost, palm kernel extract, tapioca, and woodchip (but do not include logs, salt or other materials not in bulk form such as materials

¹⁰ Opening legal submissions, dated 2 May 2022.

¹¹ Joint memorandum, dated 31 March 2023 at [52].

contained in a bag, container or similar).

Monthly product limits in the IPAR

[36] We accept the parties' concern about setting monthly product limits in the IPAR and agree that they should be deleted.

Trends in PM₁₀ concentrations in the MMA

[37] To assist our understanding of changes in PM₁₀ concentrations in the MMA over the period since it was designated as a polluted airshed, the Regional Council provided updated evidence on current PM₁₀ concentrations in the MMA and up-to-date trends since the airshed was gazetted.¹² The Regional Council was careful to point out the limited period of record and confounding factors that can affect PM₁₀ concentrations. The period of record analysed was less than four years compared to the 10-years ordinarily required for such analyses.

[38] Confounding factors identified included the effects of COVID-19, the introduction of Marpol VI regulations, which resulted in reduced sulphur dioxide and PM₁₀ emissions, the effects of La Niña climate patterns and general weather patterns. La Niña conditions applied for much of the period of record, which means north-easterly winds tended to be more common, bringing moist, rainy conditions to north-eastern areas of the North Island. The Regional Council also noted that during the recording period, this part of the region underwent a cycle through a very wet period at the beginning, followed by a record dry period, followed by another record wet period. The Regional Council advised that these extreme periods of wet and dry would have influenced PM₁₀ levels.

[39] The Regional Council stated that the above drivers are often difficult to tease out of air quality time series data sets. We interpreted from the way in which the difficulties of providing a reliable trend analysis with the available data were explained that considerable caution needs to be exercised when interpreting what the results mean in terms of long-term changes in PM₁₀ concentrations in the MMA. We

¹² Joint memorandum, dated 18 May 2023.

acknowledge the care with which the limitations were explained to us by the Regional Council.

[40] There was only one aspect of the analysis that stood out from the information we relied on for our evaluation in the Interim Decision. While recognising the limitations of the analysis, the downward trend in ambient air PM₁₀ concentrations recorded at Whareroa Marae indicates there has been a very significant reduction. Recorded concentrations have been below not only the MfE guideline value of 20 mg/l but also the WHO guideline value of 15 mg/l for more than two and a half years. While it will require several more years of data to confirm if these concentrations can be achieved in the longer-term, and there are still unacceptably high concentrations recorded at some other locations, the apparent improvements at Whareroa are encouraging.

New wind rules introduced by POTL

[41] We were provided with details of new wind rules introduced by POTL in January 2022 to assist to mitigate dust emissions. We note their introduction but observe that it will be some time before their effectiveness will be known.

Dates for measuring compliance with IPAR standards relating to product throughputs and product limit for BSM to be included in the IPAR

[42] By way of background, we stated in our Minute dated 16 February 2021, produced following our initial evaluation of the evidence presented at the 2020 hearing, that:¹³

In concept, any interim rule would apply only to existing emitters. It would enable no increase in existing emissions and would require a reduction in emissions to the extent practicable, which would accord with Policy AQ P3 in PC13. We also see this as ensuring any conflict with the NES is reduced or avoided sooner than any other option. Any interim rule would need to be of limited duration, pending finalisation of the appropriate rule framework to be included in PC13.

[43] This remained the consistent foundation of the IPAR ever since and is

¹³ Minute, dated 16 February 2021, at [15].

fundamental to providing a pragmatic way forward. We stated in the Interim Decision that:

[147] Under the provisions of PC13 in accordance with this decision, the amount and rate of PM₁₀ discharges authorised will be managed:

- (a) to be the same or less than the current discharges; and
- (b) to ensure the degraded airshed improves and does not get any worse, resulting in improved health outcomes; and
- (c) so that the terms of the IPAR and any future resource consents are no less stringent than and/or do not conflict with the NESAQ.

[44] In our Interim Decision, we proposed that the 12-month period prior to 28 November 2019 (the date of gazettal of the MMA as a polluted airshed) be the baseline against which compliance with each standard is to be measured, unless an alternative date was specified. The parties considered that the dates for log and BSM handling activities may need to be different “due to the highest activity years falling in different periods.” They suggested the 12 months ending 31 July 2019 for logs and the 12 months ending 28 February 2022 for BSM.

[45] We accepted the proposed date for logs, subject to no party opposing it. In relation to BSM, we stated in our 3 May 2023 Minute that:¹⁴

We continue to have difficulty accepting greater BSM discharges than those being discharged in the 12 months ending 28 November 2019, the gazetted date of the MMA, or some nearby date. While we are aware of the mitigation measures implemented by the Port, we do not know if, or to what extent, they have reduced PM₁₀ emissions from BSM activities. At a very basic level, if the emissions were greater in February 2022 than they were in November 2019, clearly they had not been mitigated;

[46] The issue was addressed further at the June judicial conference, in some detail in our 26 June 2023 Minute issued following the conference and in the joint memorandum of counsel dated 18 July 2023. That memorandum includes the following statements relating to the BSM cap:

[14] Various 2019 dates have been canvassed. POTL accepts that a 2019 cap date for BSM could be aligned with the relevant cap date for logs, being 31 July 2019.

¹⁴ Minute, dated 3 May 2023, at [26](f).

[15] POTL instructs that the relevant tonnage of BSM for the y/e 31 July 2019 (salt excluded) is 2,573,234 tonnes.

[16] The parties agree/disagree with the above for the following reasons:

- (a) The Regional Council has no reason to disagree with POTL's confirmation of the above figures. The Regional Council confirms that the above tonnage of BSM and proposed alignment date of 31 July 2019 is acceptable to Council. Toi Te Ora confirms this date is also acceptable
- (b) Timberlands has no comment in relation to the BSM numbers or BSM cap date for logs but records its support for a year end date for logs as 31 July 2019.
- (c) VAA and SSL confirm that the BSM tonnage for the y/e 31 July 2019 is acceptable.

[47] No views were expressed by Ngāi Te Rangi.

[48] When making our determination of the issue, we included consideration of the following:

- (a) Any PM₁₀ emissions from activities operating in accordance with the IPAR must be the same or less that they were on 28 November 2019, the date the MMA was gazetted as a polluted airshed. There is no alternative date that can be substituted that would allow greater emissions without being more lenient than the NESAQ.
- (b) The IPAR applies only to activities existing and emitting PM₁₀ on 28 November 2019, meaning gypsum is not covered by the IPAR and does not fall with the cap for BSM product volume.¹⁵
- (c) It applies only to activities being undertaken at the same site as they were on 28 November 2019, meaning new or relocated activities are not covered by the IPAR.

[49] Activities operating in accordance with the IPAR and which subsequently obtain a CoC from the Regional Council can apply for a restricted discretionary activity consent under Rule AQ R22B. The rule applies only to activities previously

¹⁵ A matter of concern raised by Mr Brabant at the judicial conference.

operating under the IPAR and the Regional Council's proposal to delete "... on expiry of Rule AQ R22A" from the header for the rule is not accepted and the header must remain as per the Interim Decision.

[50] Any new activities not covered by the IPAR must apply for a discretionary activity consent under Rule AQ R2.

[51] We are satisfied that a BSM throughput of 2,573,234 tonnes for year ending 31 July 2019 is an appropriate limit to be included in the IPAR for the following reasons:

- (a) The date is broadly consistent with the date on which the MMA was gazetted as a polluted airshed and compliance with that limit, and with other provisions of the IPAR, will be consistent with the requirements of the NESAQ that discharge of PM₁₀ must be the same or similar in character and the same or less in scale and intensity than that occurring on the date gazetted occurred;
- (b) It is the same date adopted for log handling activities;
- (c) There was no disagreement about the appropriateness of the date by any party, based on the joint memorandum of counsel dated 18 July 2023.

Gypsum

[52] We accept that our intentions in relation to gypsum in the Interim Decision were unclear. At paragraph [290] of the decision we stated:

Accordingly, we consider product limits must be imposed for the term of the IPAR. However, we included in the IPAR very limited exceptions to this requirement in relation to gypsum and in the following section H7.

[53] We went on to say:

[293] ... We received advice that the unloading of gypsum is a low-risk activity as the product has the consistency of wet beach sand which, in turn, does not cause visual dust generation.

[294] ... We consider this is a matter that will need to be addressed in the Port's dust management plan, with a requirement to demonstrate that its unloading will not result in non-compliance with Regulation 17.

[54] We did not make a specific exception for gypsum in the IPAR or in Section H7. However, we confirmed by Minute dated 3 May 2023 that our intention was, as stated above, that gypsum would need to be addressed in the Port's dust management plan.

[55] To provide greater clarity as to our intentions, we were provided with minimal details of what is proposed with regard to gypsum at the hearing, which was limited to the above description referred to in paragraph [293] of our Interim Decision. Emissions from gypsum were not an existing discharge on or around the time the MMA was gazetted as a polluted airshed, so are not covered by the IPAR. It will be necessary to demonstrate that emissions from gypsum comply with Regulation 17 of the NESAQ as a new discharge if they are to be included in the Port management plan. We do not see any alternative.

[56] Any gypsum imported in compliance with Regulation 17 will be in addition to the product throughput cap for BSM handling activities.

Effectiveness of mitigation measures

[57] Some parties raised issues with the wording of IPAR standard 1(f) which refers to the 'effectiveness' of mitigation measures 'operating efficiently'. Concerns were expressed as to whether 'trial' measures, or measures that are still requiring further development to make permanent solutions, such as misting hoppers, might be required to stay in place when they are not considered, or yet to be considered, effective in all operational senses. Concerns were also raised about whether the standard could be complied with in order to obtain a CoC and whether it contains the requisite level of certainty required from a permitted activity rule.

[58] By way of a preliminary response in our Minute dated 3 May 2023, we stated:¹⁶

- (h) ...If a mitigation measure is effective in reducing PM₁₀ emissions, it should be retained. If a measure is being trialled, a decision should be made on whether the measure should be retained once the trial has been completed;
- (i) While we understand the reasons for the concerns, unless alternative wording will deliver the same or better outcomes, this may need to be one

¹⁶ Minute, dated 3 May 2023, at [26].

area where pragmatism cannot be avoided. The same applies to the issuing of a CoC. ...

[59] Having heard from the parties we agree that the standard could be amended so as to clarify that it excludes 'trial measures'.

Timberlands' request to increase the volume of log exports through the POTL following periods of severe weather

[60] In the joint memorandum dated 31 March 2023, Timberlands outlined the effects of the then recent severe cyclones and flooding events on forests and roading infrastructure in the eastern and central North Island and their implications for log management through the Port. It sought leave to adduce further evidence under s 276 of the RMA and contemporaneously filed affidavits relating to the proposed limits on log volumes in the IPAR. Affidavits were filed by:

- (a) John Hura – New Zealand Forest Managers, detailing the effects of cyclone Gabrielle on the Lake Taupo and Lake Rotoaira Forests, the extent of forest loss and associated forest recovery implications.
- (b) John Gardner – Pacific Forest Products Limited, providing an overview of the complexities of forecasting log volumes and the implications of recent weather events on forecasting.
- (c) Dean Witehira – Timberlands Limited, referring to the logistical, employment and monetary consequences of volume limits relating to the challenges posed by the recent weather events.
- (d) Josh Lee – Summit Forests, referring to the increased volumes to be directed to the POTL as a result of the cyclones.

[61] Timberlands suggested amendments to the IPAR to enable the annual product volume of logs through the Port to exceed, in the 12 months ending November 2019, the volume set in the Interim Decision in exceptional circumstances. The increase could only occur if the increased quantity is trailer mounted and not bunk-loaded, the annual volume of bunk-loaded logs was reduced by four times the trailer-loaded

volume, and the total annual volume of logs does not exceed 7.5 million tonnes.¹⁷

[62] The Regional Council proposed that the exception should only apply to the circumstances resulting from Cyclone Gabrielle. Timberlands proposed that the exception should apply in the event of any exceptional circumstances defined as:¹⁸

Exceptional circumstances means an event or series of events outside the control of the POTL that:

- (1) significantly affects POTL cargo throughput, as a result of damage to infrastructure required to transport logs to port; and / or
- (2) causes significant damage to plantation trees necessitating their unanticipated export;
- (3) applies for a period of two years from the final date of the event or events.

[63] POTL preferred the wording proposed by Timberlands and Viterra New Zealand Limited (VAA) and Ngai Te Rangi preferred the wording proposed by the Regional Council. Toi Te Ora did not consider the circumstances outlined by Timberlands justified any increase.

[64] We acknowledged the challenges the events presented to the forestry industry in our Minute dated 3 May 2023 but noted that there would be a number of significant legal and other constraints to allowing increased volumes of logs to pass through the Port as follows:¹⁹

- (a) The requirement to comply with the NESAQ before any increase in existing PM₁₀ discharges from the MMA can be authorised;
- (b) Based on the evidence, log handling is a major if not the major contributor of PM₁₀ at the Port boundary;
- (c) There is no certainty that existing activities discharging PM₁₀ to air in the MMA are operating lawfully at present; and
- (d) It would be necessary to demonstrate that there would be no increase in PM₁₀ emissions reaching Whareroa Marae or other sensitive area.

¹⁷ Joint memorandum, dated 19 May 2023 at [7].

¹⁸ Joint memorandum, dated 18 July 2023 at [7].

¹⁹ Minute, dated 3 May 2023, at [14].

[65] We also noted that:²⁰

[15] It is unclear to us if a legal mechanism exists by which the Court could accede to the request and we will want to hear the views of all parties before making any determination. The request can be discussed at the proposed AVL conference as suggested. Timberlands is directed to suggest what amendment to the currently proposed IPAR is proposed (including the timeframe over which the increased volume would be required), together with proposals for mitigation. Evidence on current PM₁₀ concentrations in the MMA and up-to-date trends since the airshed was gazetted will also be required. We anticipate that the Regional Council will be best placed to provide this evidence.

[66] At the June 2023 judicial conference, the parties proposed that further expert conferencing be undertaken to support the request. We directed that air quality experts confer to address matters considered appropriate by the parties and matters of particular concern listed by the Court.²¹

[67] In our Minute of 26 June 2023, we directed the parties to liaise and propose a provision that defines “exceptional circumstances” for the purposes of the log handling cap extension and the standards that would need to be met. We also directed that the planning experts confer and provide a draft s 32 analysis to assist the Court in determining how best to address the extent of trailering of logs.

Outcome of the further air quality expert conferencing²²

[68] The experts used an emissions assessment approach (i.e., using emission factors) to assess the changes that would result from the Timberlands proposal. Based on stated assumptions, they agreed that the Timberlands proposal would likely reduce the drop-based PM₁₀ emission component by around 9% for the processing of 7.5 Mt/yr logs compared to a volume of 6.93Mt/yr logs. They agreed that the impact on overall emissions would be a 3% reduction (not taking into account any potential changes in the area-based emission). This is because the drop-based PM₁₀ emissions only comprise 26% of total PM₁₀ emissions (the remainder being area-based).

[69] They were unable to advise what the impact of the increase in log volume on

²⁰ Minute, dated 3 May 2023.

²¹ Minute, dated 26 June 2023 at [17].

²² JWS Air Quality, dated 17 July 2023.

the area-based emission would be because the available emission factor is a multiplier of exposed ground (area), which would be the same with or without the increased log volume. They noted that an increase in the number of logs being handled/stored will increase the amount of log debris generated. This has the potential to impact on both area-based and drop-based PM₁₀ emissions.

*Outcome of further planning expert conferencing*²³

[70] Before discussing the outcomes, we note the statement made in paragraph [56] of the JWS that:²⁴

The Court has already ruled that upon a strict reading of the NESAQ, the IPAR (both with and without standard (ka)) is more lenient and therefore would not comply. However, as an example of perverse outcomes, the IPAR is only necessary due to the NESAQ itself.

[71] We did not make a decision on those lines, but said the following at [291] of the Interim Decision:

[291] To provide certainty that the standards in the IPAR are not more lenient than the NESAQ, the future product throughput would need to be the same or less than the throughput prior to 28 November 2019, the date the gazettal of the MMA as a polluted airshed took effect. We understand there is agreement this date is appropriate for log handling, as the volume or tonnages handled in the previous 12 months were the maximum handled in the last 10 years.

[72] The planning experts undertook a further evaluation of the IPAR without standard (ka) and the IPAR as included in the joint memorandum with both versions of standard (ka) in accordance with s 32AA of the RMA.

[73] In terms of the effectiveness of the provisions in achieving the objectives of PC13, the experts agreed that the two options for standard (ka) would be an improvement on the Interim Decision version of the rule as either option would result in a reduction of up to 3% of overall PM₁₀ emissions (not taking into account any potential changes in the area-based emission) which contributes to achieving all three objectives.

²³ JWS Planning, dated 11 August 2023.

²⁴ JWS Planning, dated 11 August 2023.

[74] The experts considered both options to be feasible, with the provisions being within the Regional Council's powers, responsibilities and resources and ability to implement, monitor and enforce. They considered the acceptability of the proposal in terms of whether the provisions would have a fair distribution of impacts and level of political and community acceptance and agreed it would result in a reduction of PM₁₀ from log handling activities until at least July 2024 (in the case of the Regional Council version). They noted:²⁵

[31] ... This is as a direct result of Timberlands' committing to an alternative loading method and likely to be accepted by the community. Ngāi te Rangi, representatives of a discrete local community directly affected by discharges at the Port, have agreed to the Regional Council's option.

[75] In terms of efficiency, they considered there would likely to be an environmental benefit from the implementation of either option by a reduction of up to 3% in overall PM₁₀ emissions from this source, not taking into account any potential changes in area-based emissions. They considered that both options would provide economic benefits by allowing an increased volume of logs to be exported through the Port and would result in a more effective and efficient use of natural resources. They considered that the Timberlands option would extend the scope and tenure of economic benefits.

[76] In terms of social benefits, the planning experts agreed that an increased volume of logs exported through the Port following an exceptional event as Cyclone Gabrielle would provide for ongoing and new employment opportunities not only at the Port but at all upstream parts of the supply chain. They considered that trailer-loading is safer than bunk-loading and would have benefits to safety and well-being of workers. In terms of cultural effects, they considered that neither of the options would affect the specific provisions for Whareroa Marae incorporated in the Interim Decision version of the IPAR and therefore there would be no impact on benefits.

[77] The experts noted there could be a cost to the operators of the trailer-loading option and costs in terms of environmental, social and cultural effects if all the assumptions relied on in the assessment were not met. However, the experts recorded

²⁵ JWS Planning, dated 11 August 2023.

that they were unable to comment on any specific cultural costs, as that is beyond their area of expertise.

[78] They considered that sufficient information is available to make an assessment of the risks of acting or not acting.

[79] In their assessment of appropriateness, the planning experts stated:²⁶

[52] Both the BOPRC and Timberlands options will be more effective at achieving the objectives than a rule without standard (ka). Both options for the standard reduces PM₁₀ emissions to the airshed which contributes to all three objectives.

[53] There is a good balance of costs and benefits. The standard, if managed well, will potentially result in a 3% reduction in overall PM₁₀ emissions from this source (not taking into account any area-based emissions), while providing for economic benefit and sustainable management of natural and physical resources.

[80] Overall, the standard is considered to be appropriate.

Findings

[81] We confirm first that general standard 1(a) as included in the Interim Decision is to be amended as follows, for reasons set out below, except as provided in standard (ka), also as set out below:

The discharge of PM₁₀ must be the same or similar in character and the same or less in scale and intensity than that occurring on 31 July 2019, as measured in accordance with the following standards; ...

[82] We accept the evidence of the air quality experts that the use of trailer-loading is likely to reduce PM₁₀ emissions from log handling activities and the consequent outcomes of the planning expert conference summarised above. In doing so, we recognise that there is some uncertainty associated with the expert evidence and a precautionary approach is necessary.

[83] As a result, we have determined that the Regional Council version should be adopted for the purposes of PC13. We also consider that in view of the adverse

²⁶ JWS Planning, dated 11 August 2023.

effects of PM₁₀ emissions on human health, a move to all trailer-loading of logs should be seriously considered at the time any applications for resource consents are made on expiry of the IPAR. That consideration can be made with the benefit of three years of additional monitoring data and provide time for operators to plan for any additional costs involved as part of a best practicable option evaluation.

[84] We received insufficient evidence to support Timberlands' proposal that standard (ka) should apply to any future exceptional circumstances. In particular, that evidence would need to have demonstrated that the proposal was the most appropriate to achieve the objectives of PC13 and other requirements of s 32 of the RMA, taking into account other forest management options available and the potential for trailer-loading to become the preferred method for all logs handled at the Port in the future, independent of the standard.

[85] Standard (ka) is to be the Regional Council version as stated in Appendix 1 of the JWS Planning dated 11 August 2023, namely:

- A. The annual product volume of logs that is trailer-loaded must be greater than that occurring in the 12 months ending on 31 July 2019;
- B. Notwithstanding Standard (1)(e), for the 12 months ending 31 July 2023 and 12 months ending 31 July 2024, the annual product volume of logs may exceed that occurring in the 12 months ending 31 July 2019 only on the following basis:
 - (i) the increase in annual product volume of logs above that occurring in the 12 months ending on 31 July 2019 must have resulted from 'exceptional circumstances' relating to Cyclone Gabrielle; and
 - (ii) any increase in annual product volume of logs must only be trailer-loaded; and
 - (iii) the annual volume of bunk-loaded logs must be reduced by four times the trailer-loaded volume in (ii); and
 - (iv) the annual product volume of logs does not exceed 7.5 million tonnes.

For the purpose of this clause:

Exceptional circumstances means a significant increase in wind-throw within forests directly affected by Cyclone Gabrielle.

Trailer-loaded means a trailer system is used to transport the logs from the log stacks to the berth and to load the vessel from the trailer directly

Bunk-loaded means logs are loaded into a bunk at the berth and from there loaded onto the vessel

Drafting issues and other matters arising not addressed elsewhere

Proposed provisions

[86] The Regional Council helpfully provided a further amended version of the proposed provisions following the judicial conference. The amended provisions are accepted, subject to the following:

- (a) In new policy AQ P12, the sentence “The iterative management process may include, but not necessarily be limited to:” is to be amended to read “The iterative management process will or may include, but not necessarily be limited to:” Subclause (h) is to be amended to read “setting resource consent conditions based on (f) and (g) that can be expected to ensure compliance as soon as reasonably practicable;”
- (b) Add in the need to ensure that “the annual guideline value in the Health-based Guideline Values of the Ambient Air Quality Guidelines 2002 (or its amendment or replacement) is met” to the end of sub-paragraph (i) in New Policy AQP12 and New Method AQM1.
- (c) In the IPAR:
 - (i) general standard (e) is to be amended so that the volume of both logs and BSM must be the same or less than in the 12 months ending on 31 July 2019;
 - (ii) Delete the words “Except for” at the beginning of general standard (f);
 - (iii) Add to the end of general standard (f) “In the event of any trial mitigation subsequently being shown to form part of the best practicable option to reduce emissions of PM₁₀ to air in the Mount Maunganui Airshed, it must be included as an amendment to the Dust Management Plan”;

- (iv) the compliance date for BSM handling activities is to be changed from 28 February 2022 to 31 July 2019 in all cases. For the avoidance of doubt, the dates in general standard 1(b) and(c) are to remain as 28 November 2019, being the date of gazetting of the MMA as a polluted airshed.
- (v) In general standard (2) “by” is to be included between “demonstrated” and “robust”.
- (vi) Various uses of the word “shall” should be changed to “must”.
- (d) In (3) – Dust Management Plan (f)(i) change “or other compliance date” to “unless a different compliance date is”.
- (e) Rule AQ R22B (1) is to be amended to read “Dust management plan must be developed and implemented as soon as practicable after consent is granted for all discharges ...”
- (f) New method AQ M1 is to be amended by adding the following at the end “... and may initiate reviews of existing consents where necessary to ensure compliance as soon as reasonably practicable and that the annual guideline value in the Health-based Guideline Values of the Ambient Air Quality Guidelines 2002 (or is amendment or replacement) is met”.
- (g) Under matters of discretion under Rule AQ R22B, the deleted matters “the history of complaints, etc,” “The lapse period, term of consent, and review of consent conditions” and “The collection, recording and provision of information etc” are to be reinstated.
- (h) A definition for the Port of Tauranga Operational Area and Port Industry Area is to be included by reference to the map provided by POTL.

[87] The tracked amended provisions are attached as Appendix A.

The consequences of compliance caps under the IPAR being in force for long periods

[88] POTL submitted that there could be an issue arising from the consequences of compliance caps in the IPAR being in force for long periods where resource consent applications take a long period of time to be processed. The concern arises because while the IPAR will only be in place for three years, the timeframe for which the caps could be in place could be much longer, depending on the time it takes to process the prospective resource consent application once a CoC is obtained.

[89] POTL noted that the issue is relevant to both BSM and log handling. It went on to say that if the Court was minded to address the capacity issue identified by Timberlands, it had given consideration to how a more flexible cargo cap could be introduced to deal with this situation whilst still providing for air quality improvements. In our Minute of 3 May 2023, we stated that:

[18] ... We would welcome suggestions as part of discussions at the AVL conference in accordance with paragraph [15]. As a general comment relating to the duration of caps, the purpose of the IPAR and subsequent resource consents is to ensure compliance with the NESAQ as soon as reasonably practicable. Any proposal that puts this at risk is unlikely to be accepted.

[90] After further consideration of this matter, any increase in caps authorised prior to new consent conditions being in place could be more lenient than the NESAQ based on currently available information. Accordingly, this concern is best addressed by proceeding with appropriately comprehensive resource consent applications as soon as practicable.

Provision for an independent review if disagreement on compliance with standards of the IPAR?

[91] In our Interim Decision, we sought submissions on whether there is a need to provide for an independent review process in the event of disagreement between emitters and the Regional Council in relation to determination of the BPO and compliance with the standards in the IPAR? The parties agreed that such a process is unnecessary²⁷ and set out their reasons, which we accept.

²⁷ Joint memorandum, dated 31 March 2023 at [75].

Log handling inside and outside the Port Industry Area

[92] POTL and the Regional Council confirmed there is no longer a need to distinguish between the two areas.²⁸

Report entitled “Air Pollution: Health Risk Assessment Mount Maunganui”, dated 1 June 2023

[93] Once the Court became aware this report was being prepared, we requested a copy because of the concerns raised in PC13 relating to health effects arising from PM₁₀ emissions in the MMA.

[94] We were provided with a copy on 10 August 2023 and reviewed its contents relating to PM₁₀. The report relied on the same monitoring data used by the Court when making its determinations in the Interim Decision dated 10 January 2023. Accordingly, there is nothing in the report that necessitated reopening the hearing for further evidence.

Outcomes

PC13 provisions

[95] The parties are to provide any final comments on the Plan Change annexed as Appendix A to this decision by **16 November 2023**.

[96] The Council is to commence a plan change in accordance with Appendix B following the timeline and process steps set out in Appendix C.

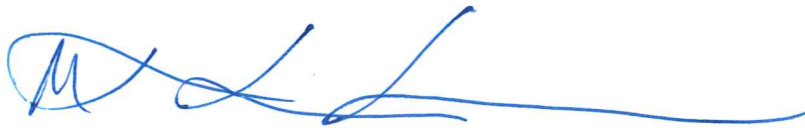
Section 293 process relating to unsealed yards

[97] By memorandum of counsel dated 11 August 2023, the Regional Council provided draft plan provisions, including the Regional Council’s recommended version of Policy AQ P12, and the proposed controls on unsealed yards. It also provided a proposed timeline for the s 293 process.

²⁸ Joint memoranda, dated 31 March 2023 at [76] and 18 July 2023 at [26].

[98] We accept the proposals as submitted save for the changes we have tracked into the draft in **Appendix B** and direct the Regional Council to prepare changes to PC13 and proceed as set out in the memorandum by issuing a draft for internal consultation prior to notification, in accordance with the Regional Council's usual practice and preferred option. We accept the Regional Council's recommendation for parties to be notified as set out in paragraph [11] of the memorandum and grant the request to revert to the Court for amended service directions in the event that service difficulties arise.

For the Court:



MJL Dickey
Environment Judge



Appendix A – Amended provisions
(Tracked from the version provided by the Regional Council by email on 16 June 2023)

Policies and Method

New Policy AQ P11 – Handling of bulk solid materials and logs as existing activities in the Mount Maunganui Airshed for an interim period

Provide for discharges of **PM₁₀** and other **particulates** to air within the **Mount Maunganui Airshed** from **bulk solid material handling** and **handling of logs** for an interim period, by requiring that the discharge of **PM₁₀** from any **subject site** must be minimised to reduce adverse *effects* on air quality in the **Mount Maunganui Airshed** to the greatest extent reasonably practicable through application of an Interim Permitted Activity Rule (AQ R22A) defaulting to a discretionary activity, and to:

- (a) reduce **PM₁₀** and other **particulate**-discharges from the activities in a way that contributes to achieving Objectives AQ O1, AQ O2 and AQ O3 and Policies AQ P3(b) and AQ P4(b); and
- (b) generally ensure that the **PM₁₀** mitigation measures in place on the **subject site** must be no less effective than the mitigation measures in place and operating efficiently (and not on a trial basis) at any date prior to or on [the date of issue of the Environment Court decision].

New Policy AQ P12 – Iterative management

New Policy AQP12 – Iterative management of air quality within the Mount Maunganui Airshed

Activities which discharge **PM₁₀** and other **particulates** to air within the **Mount Maunganui Airshed**, other than those in compliance with Interim Permitted Activity Rule AQ R22A, must be managed by implementing an iterative management approach to:

- (a) recognise that the **Mount Maunganui Airshed** is a Polluted Airshed as defined in Regulation 17(4)(a) of the National Environmental Standards for Air Quality (Polluted Airshed); and
- (b) improve air quality and ensure the **Mount Maunganui Airshed** stops being a Polluted Airshed as soon as reasonably practicable, including by managing cumulative *effects*; and
- (c) ensure that once the **Mount Maunganui Airshed** stops being a Polluted Airshed, the discharge of contaminants at a rate or volume that may cause an exceedance or breach of the ambient air quality standards of the National Environmental Standards for Air Quality is avoided; and
- (d) safeguard the life supporting capacity of the air and protect human health within the **Mount Maunganui Airshed**, and
- (e) avoid, remedy or mitigate adverse *effects* on cultural values, amenity values, and the *environment*.

The iterative management process will or may include, but not necessarily be limited to:

- (f) requiring each **subject site** within **the Mount Maunganui Airshed** to minimise discharges of **PM₁₀** to air to the greatest extent reasonably practicable and at the time of resource consent applications to take account of the effectiveness of mitigation measures and operating procedures implemented in accordance with the Interim Permitted Activity Rule AQ R22A; and
- (g) assessing changes in **Mount Maunganui Airshed**-wide air quality based on monitoring results to 31 December 2025, to determine the extent to which compliance with the National Environmental Standards for Air Quality and the annual guideline value in the Health-based Guideline Values of the Ambient Air Quality Guidelines 2002 (or its amendment or replacement) is

likely to be achieved based on the **Mount Maunganui Airshed**-wide mitigation measures implemented to that time; and

- (h) setting resource consent conditions based on (f) and (g) that can be expected to ensure compliance as soon as reasonably practicable; and
- (i) making provision for the reviewing of consent conditions as necessary to ensure compliance with the National Environmental Standards for Air Quality is achieved as soon as reasonably practicable and the annual guideline value in the Health-based Guideline Values of the Ambient Air Quality Guidelines 2002 (or is amendment or replacement) is met.

New Method AQ M1 – Assessment of monitoring results

New Method AQM1 – Assessment of Mount Maunganui Airshed monitoring results

Regional Council will assess the **Mount Maunganui Airshed**-wide air quality based on monitoring results at no greater than two-yearly intervals until compliance with the ambient air quality standard for PM₁₀ is achieved. It may initiate reviews of existing consents where necessary to ensure compliance as soon as reasonably practicable and that the annual guideline value in the Health-based Guideline Values of the Ambient Air Quality Guidelines 2002 (or is amendment or replacement) is met.

Interim Permitted Activity Rule (IPAR) for Existing Activities in the MMA

AQ R22A Handling of bulk solid materials and logs within the Mount Maunganui Airshed until [date 3 years from Environment Court decision] – Permitted

Within the **Mount Maunganui Airshed**, unless otherwise permitted by AIR-R2, AIR-R15(6), or AIR-R10, or managed by AIR-FUME-R20, the discharge of *contaminants* to air from:

(A) the **handling of logs** on or within a **subject site** where:

(a) the area used for the **handling of logs** exceeds 1 hectare;

OR

(B) the **handling of bulk solid materials** on or within a **subject site** where:

(a) The rate of **bulk solid materials handling** exceeds 20 tonnes in any hour and the discharge occurs less than 100 metres from any **sensitive area**, or

(b) The rate of **bulk solid materials handling** exceeds 50 tonnes in any hour,

is a permitted activity until:

(C) [date 3 years from Environment Court decision]; or

(D) Where a resource consent application for the discharge proposed under Rule AIR-R16 or AQ R22B has been accepted by the Regional Council under s 88 of the Resource Management Act 1991 (or its replacement) prior to [date 3 years from Environment Court decision], then the relevant date shall be:

a. The date the resource consent commences under s116 of the Resource Management Act 1991 (or its replacement); or

b. the date all appeals are determined, if the resource consent is declined.

Provided that the following standards are complied with:

(1) **General standards applying to all discharges of PM₁₀**

- (a) The discharge of **PM₁₀** must be the same or similar in character and the same or less in scale and intensity than that occurring in the 12 months ending on 28 November 2019, as estimated in accordance with all standards of this rule; and
- (b) The discharge of **PM₁₀** from the **handling of logs** or **handling of bulk solid materials** must be on the same **subject site** as the existing discharge as at 1 October 2020 and must have been occurring in the 12 months ending on 28 November 2019; and
- (c) The discharge must not have been discontinued for a continuous period of more than 6 months since 28 November 2019; and
- (d) The discharge does not cause any offensive or objectionable *effect* beyond the boundary of the **subject site**; and
- (e) Subject to standard (1)(ka) and standard (2) (where relevant), the annual product volumes or tonnages of logs and **bulk solid materials** handled must be the same or less than in the 12 months ending on 31 July 2019 ~~for logs; and 28 February 2022 for **bulk solid materials**~~; and
- (f) ~~Except for m~~ Mitigation measures required by standards (g) to (x) the **PM₁₀** mitigation measures in place on the **subject site** must be no less effective than the mitigation measures in place and operating efficiently (and not on a trial basis) at any date prior to or on [the date of issue of the Environment Court decision]. In the event of any trial mitigation subsequently being shown to form part of the best practicable option to reduce emissions of **PM₁₀** to air in the Mount Maunganui Airshed, it must be included as an amendment to the Dust Management Plan; and

In addition to standards (1)(a) to (f), the following standards apply to PM₁₀ emissions from log handling activities within the MMA, both inside and outside the Port Industry Area

- (g) The locations in which logs are stored and handled must be the same as they were in the 12 months ending on 31 July 2019 and the area must be the same or less than the area in which they were stored and handled in the 12 months ending on 31 July 2019; and
 - (h) The average volume/ tonnage or average percentage of logs (whichever is higher) loaded via trailers at the point of vessel loading in any 12-month period must be the same or greater than the corresponding average volume or tonnage and average percentage in the 12 months ending on 31 July 2019; and
 - (i) The average volume/tonnage or average percentage (whichever is higher) of fully debarked logs delivered to site and at the point of loading onto vessels must be the same or greater than the corresponding average volume or tonnage and average percentage in the 12 months ending on 31 July 2019; and
 - (j) Measures to control dust, including PM₁₀, and to control the movement of vehicles contributing to the resuspension of dust must be the same or better than the measures in place in the 12 months ending on 31 July 2019; and
 - (k) There must be no change in the number and location of berths used for loading logs onto vessels compared to the 12-months ending on 31 July 2019.
- (ka)
- A. The annual product volume of logs that is trailer-loaded must be greater than that occurring in the 12 months

ending on 31 July 2019;

B. Notwithstanding Standard (1)(e), for the 12 months ending 31 July 2023 and 12 months ending 31 July 2024, the annual product volume of logs may exceed that occurring in the 12 months ending 31 July 2019 only on the following basis:

- (i) the increase in annual product volume of logs above that occurring in the 12 months ending on 31 July 2019 must have resulted from 'exceptional circumstances' relating to Cyclone Gabrielle; and
- (ii) any increase in annual product volume of logs must only be trailer-loaded; and
- (iii) the annual volume of bunk-loaded logs must be reduced by four times the trailer-loaded volume in (ii); and
- (iv) the annual product volume of logs does not exceed 7.5 million tonnes.

For the purpose of this clause:

Exceptional circumstances means a significant increase in wind-throw within forests directly affected by Cyclone Gabrielle.

Trailer-loaded means a trailer system is used to transport the logs from the log stacks to the berth and to load the vessel from the trailer directly

Bunk-loaded means logs are loaded into a bunk at the berth

and from there loaded onto the vessel

A. ~~The annual product volume of logs that is trailer-loaded must be greater than that occurring in the 12 months ending on 31 July 2019;~~

B. ~~Due to exceptional circumstances relating to Cyclone Gabrielle, for the period [31 July 2023 to 31 July 2025], period the annual product volume of logs must be the same or less than that occurring in the 12 months ending on 31 July 2019 unless:~~

~~(i) any increase in annual product volume of logs must only be trailer-loaded; and~~

~~(ii) the annual volume of bunk-loaded logs is reduced by four times the trailer-loaded volume in (i); and~~

~~(iii) the annual product volume of logs does not exceed 7.5 million tonnes.~~

In addition to standards 1(a) to (f), the following standards apply to PM₁₀ emissions from the unloading of bulk solid materials and handling at the Port

(l) The annual volume or tonnage of **bulk solid materials** unloaded and handled from vessels must be the same or less than the maximum annual volume or tonnage unloaded for the 12 months ending on ~~28 February 2022~~ 31 July 2019; and

(m) The nature and character of **bulk solid materials** handled must be the same or similar to those handled in the 12-months ending on ~~28 February 2022~~ 31 July 2019, taking into account density, free moisture content, hygroscopic nature and particle size distribution which could result in increased emissions of PM₁₀; and

- (n) The number of hoppers used for unloading **bulk solid materials** from vessels must be the same or less than those used in the 12-month period ending on ~~28 February 2022~~, 31 July 2019; and
- (o) Dust (including PM₁₀) control measures incorporated in the hoppers used for unloading **bulk solid materials** from vessels must be the same or greater than those incorporated in the 12-months ending on ~~28 February 2022~~ 31 July 2019; and
- (p) Only slow-release grabs must be used for unloading **bulk solid materials** from ships after 3 March 2022; and
- (q) All trucks used for transporting **bulk solid materials** ~~must shall~~ be always covered, except when being loaded or unloaded, to avoid the escape of dust during transport as far as reasonably practicable; and
- (r) There must be no change in the number and location of berths used for unloading **bulk solid materials** from vessels compared to the 12-months ending on ~~28 February 2022~~ 31 July 2019.

In addition to standards 1(a) to (f), the following standards apply to PM₁₀ emissions from bulk solid materials handling or storage facilities outside the Port Operational Area, except as provided in (2)

- (s) The annual volume or tonnage of **bulk solid materials** handled or stored on the **subject site** must be the same or less than the maximum annual volume or tonnage handled or stored in the 12 months ending on ~~28 February 2022~~ 31 July 2019; and
- (t) The annual volume or tonnage of **bulk solid materials** handled or stored outside any building enclosure on the **subject site** must be the same or less than the maximum annual volume or tonnage

handled or stored in the 12 months ending on ~~28 February 2022~~ 31 July 2019; and

- (u) The nature and character of **bulk solid materials** handled or stored must be the same or similar to those handled or stored in the 12-months ending on ~~28 February 2022~~ 31 July 2019, taking into account density, free moisture content, hygroscopic nature and particle size distribution which could result in increased emissions of PM₁₀; and
 - (v) The combined maximum daily truck numbers arriving at and departing from the site must be the same or less than the maximum daily number in the 12-months ending on to ~~28 February 2022~~ 31 July 2019; and
 - (w) All trucks used for transporting **bulk solid materials** ~~must~~ shall be always covered, except when being loaded or unloaded, to avoid the escape of dust during transport as far as reasonably practicable; and
 - (x) The maximum processing capacity on the **subject site** must be the same or less than the maximum capacity available in the 12-months ending on ~~28 February 2022~~ 31 July 2019; and
 - (y) Dust containment measures in place on the **subject site** must be the same or better than those in place in the 12-months ending on ~~28 February 2022~~ 31 July 2019, including the extent to which sealing building openings and the installation of dust extraction and filtering equipment are incorporated, as examples.
- (2) **Circumstances in which standards (s), (t), (v) and (x) may not apply to bulk solid materials handling activities outside the Port Operational Area**

Standards (s), (t), (v) and (x) may not apply if it can be demonstrated by robust, peer-reviewed methodology carried out by a SQEP that dust containment measures on the **subject site** are sufficient to avoid any adverse effects of **PM₁₀** emissions from the site on **sensitive areas**.

(3) Dust management plan

- (a) For discharges associated with activities located outside the **Port Industry Area**, the owner or occupier of the **subject site** where the activity is carried out must engage a **SQEP** who has visited the subject site to prepare a dust management plan in accordance with the requirements of AIRSCHED2.
- (b) For discharges associated with activities located within the **Port Industry Area**
 - (i) the port company must engage a **SQEP** who has visited the **Port Industry Area** to prepare a dust management plan in accordance with the requirements of AIRSCHED2.
 - (ii) The discharge is identified and managed by the dust management plan; and
 - (iii) The dust management plan must specify procedures that must be followed and specify who must carry out those procedures, when **handling bulk solid materials** or **handling** logs within the **Port Industry Area**.
- (c) The dust management plan required by (3)(a) or 3(b) must be:
 - (i) peer reviewed by another **SQEP** prior to submission to the Regional Council; and

- (ii) revised to address the peer review comments prior to submission to Regional Council, or where the comments are not addressed to the satisfaction of the peer reviewer, the reasons must be stated; and
 - (iii) provided to the Regional Council within three months of this rule becoming operative, together with the peer review required by (3)(c) (i); or for the **Port Industry Area**, provided to the Regional Council and Ngāi te Rangi within six months of this rule becoming operative, together with the peer review required by (3)(c)(i); and
 - (iv) reviewed by a **SQEP** at least once every calendar year and any updated version of the dust management plan provided to the Regional Council and to Ngāi te Rangi for the **Port Industry Area**, within one month of its review.
- (d) The dust management plan required by (3)(a) or 3(b) ~~must shall~~ always remain on site, capital works required to minimise PM₁₀ emissions must be completed as soon as practicable and the dust management plan must be complied with at all times by all persons undertaking the **bulk solid materials** or log **handling** activity as soon as practicable following the dust management plan being finalised under (3)(c)(ii),(3)(c)(iv) or (3)(e).
- (e) In the event of an exceedance of the trigger level in Part A Clause (7)of AIRSCHED2 and following an investigation as required by Part B Clause (11) of AIRSCHED2, the dust management plan must be amended by a **SQEP** to include actions to avoid or minimise future exceedances of the trigger level and resubmitted to Regional Council, and to Ngāi te Rangi for the **Port Industry Area**, within one month of its amendment.
- (f) To demonstrate compliance with standards, the DMP must:

- (i) Set out the baseline in the 12-months ending on 28 November 2019 unless a different or other compliance date is set out above against which compliance with each standard is to be measured; and
 - (ii) Demonstrate how each standard is or will be met; and
 - (iii) Describe any additional measures that will be implemented during the term of the IPAR to reduce PM₁₀ emissions from the subject site to the greatest extent reasonably practicable until objective AIR-O2 of PC13 is met and the annual guideline value in the Health-based Guideline Values of the Ambient Air Quality Guidelines 2002 (or is amendment or replacement) is met; and
 - (iv) Demonstrate that the proposal will minimise PM₁₀ emissions to the greatest extent reasonably practicable until Objective AIR-O2 of PC13 is met and the annual guideline value in the Health-based Guideline Values of the Ambient Air Quality Guidelines 2002 (or is amendment or replacement) is met within the term of the IPAR, or within a defined period thereafter, after describing and evaluating all reasonably practical options that have been implemented or could be implemented to reduce PM₁₀ emissions from the **subject site**, together with their estimated costs and the estimated likely and range of PM₁₀ reductions they would achieve.
- (g) The DMP must require that records are kept of:
- (i) The number and significance of complaints received; and.
 - (ii) Any exceedances of the PM₁₀ Standard attributable to the **subject site**, abatement notices and enforcement action taken from [the date of the Environment Court decision].

Advice note – If an activity does not comply with the standards of Rule AQ R22A the discharge is a discretionary activity under AIR-R16.

AIRSCHEd2 – Dust Management Plans for the Mount Maunganui Airshed

These requirements apply to dust management plans prepared under Rule AQ R22A and can be used as a guide for dust management plans prepared under Rule AQ R22B.

Part A: Contents

A dust management plan must be prepared for each **subject site** and contain:

- (1) Title
- (2) A purpose to ensure that the discharge of **PM₁₀** into the **Mount Maunganui Airshed** is minimised to the greatest extent reasonably practicable to contribute to meeting the objectives of PC13 without undue delay, to meet the general standards of Rule AQ R22A standards (1)(a) to (1)(f) and to be consistent with Policy AQ P3 to achieve improvements in air quality.
- (3) A map that includes a scale, a north point, the location of the **subject site**, distance to all **sensitive areas**, including any isolated dwellings within the industrial area and predominant wind directions at the **subject site**.
- (4) Process description and method of operation including:
 - (a) A detailed description of the subject site, activity, and discharges to air;
 - (b) A description of the potential sources of dust emissions;
 - (c) Any locational or operating constraints relevant to the management of **handling of bulk solid materials** and/or **logs**; and
 - (d) the type(s), volume(s) and frequency of handling of **bulk solid materials** or logs at the **subject site**.

- (5) Methods of mitigation and standard operating procedures for the **subject site** which must include details of dust emission reduction processes and practices including:
- (a) for all activities:
 - (i) Product movement paths, storage, and processing areas including conveyance systems, and whether these are indoors or outdoors;
 - (ii) Use of dust suppression (e.g. sprinkler/fog/misting) systems;
 - (iii) Use of wind speed limits relating to the subject site when operations must cease;
 - (iv) Vehicle speed limits and vehicle unloading procedures to minimise dust;
 - (v) Site sweeping/vacuuming and containment protocols including hours of operation and sweeping frequency;
 - (vi) Inventory of mitigation measures in place on or about 28 November 2019;
 - (vii) Inventory of current mitigation measures, including equipment, materials and procedures;
 - (viii) Proposed further mitigation measures, including equipment, materials and procedures;
 - (ix) Frequency of equipment maintenance programmes; and
 - (x) Contingency procedures.
 - (b) for **bulk solid materials** only:

- (i) Exclusion or buffer areas within the subject site where no outdoor storage is permitted;
 - (ii) Use of covers or containment systems for outdoor storage areas;
 - (iii) For enclosed operations, emission pathways and general containment provisions, the extent of air extraction and treatment systems installed and their performance specifications; and
 - (iv) Materials spill management response protocols.
- (6) A monitoring programme which must shall:
- (a) Be designed by a **SQEP** to monitor ambient PM₁₀ concentrations in accordance with relevant good practice;
 - (b) Include a description of types and locations of devices for PM₁₀ and meteorological conditions monitoring;
 - (c) Provide data that allows for a technically robust comparison with the trigger values in Part A clause (7);
 - (d) Be continuous monitoring with a minimum of ten-minute resolution;
 - (e) Be telemetered with alarms;
 - (f) Be installed, commissioned, operated, serviced, and maintained in accordance with the manufacturer's instructions and any appropriate standards;
 - (g) Have as a minimum one monitor funded by the owner or occupier of the subject site;

- (h) Produce validated data in accordance with the Good Practice Guide for Air Quality Monitoring and Data Management, including the valid data requirements of 75% for averaging and 95% for data capture;
 - (i) Specify monitors compliant with either NESAQ Schedule 2 or equivalency as demonstrated through AS 3580.9.17-2018 or EN 12341:2014;
 - (j) Require that all monitoring data collected must be provided to the Regional Council as follows:
 - (i) Raw monthly data to be provided via electronic access to the Regional Council by the 5th day of the following month;
 - (ii) Validated quarterly data to be provided via electronic access to the Regional Council on 1 February, 1 May, 1 August, and 1 November of every year; and
 - (iii) Any exceedance of the trigger values set out in Part A clause(7) must be notified to the Regional Council in writing within 5 working days of the exceedance.
 - (k) Require records to be kept, including documentation of maintenance and control parameters.
- (7) The following PM₁₀ trigger values for use in Part B and IPAR standard(3)(e):
- (a) 150 micrograms per cubic metre (calculated as a rolling 1-hour average concentration under Schedule 1 NESAQ) recorded by the monitoring devices in the monitoring programme set out in clause 6;

OR

- (b) 65 micrograms per cubic metre (calculated as a rolling 12-hour average) recorded by the monitoring devices in the monitoring programme set out in clause 6.
- (8) Complaints procedures must include:
- (a) The name of the contact person and contact details for complaints from the community;
 - (b) Complaints procedures for staff;
 - (c) Maintenance of a complaints/incidents register that includes any actions undertaken to respond to the complaint, including further dust control measures;
 - (d) A complaint response protocol, including methods for recording of any on-site activity, including type and approximate volume of material being handled, dust mitigation measures in place at the time, and wind conditions at the time of complaint; and procedures for investigating and remedying the cause of complaint and providing response to complainant;
 - (e) A protocol for determining further mitigation measures that may be required on site;
 - (f) Timeframes for communication to the Regional Council and complainant; and
 - (g) Reporting requirements that include the complaints/incidents register which must be submitted to the Regional Council at least once per calendar year.
- (9) Staff training procedures must include:

- (a) Components of the dust management plan that staff are to be trained in;
 - (b) Methods used to train staff;
 - (c) Frequency of staff training; and
 - (d) How and where staff training records are to be kept.
- (10) System review and reporting procedures must include:
- (a) The process for reviewing the overall dust management system performance;
 - (b) Types and frequency of reports not otherwise provided to the Regional Council such as site/process/equipment upgrades; and
 - (c) External audits and ISO certification (optional).

Part B: Investigation and Reporting

- (a) In the event that either of the trigger values set out in Part A Clause (7) are exceeded, then an investigation ~~must shall~~ be undertaken as soon as reasonably practicable by, or under the direction of, a **SQEP** to:
 - (i) Determine the cause of and reasons for the trigger value being exceeded;
 - (ii) Identify corrective actions required to minimise the potential for the trigger value being exceeded in the future; and
 - (iii) Set out the timeframes for implementation of the identified corrective actions;
- (b) The investigation results and findings ~~must shall~~ be documented by the **SQEP** in an Investigation Report;

- (c) The Investigation Report in (b) ~~must shall~~ be provided to the Regional Council within two months of the trigger value being exceeded;
- (d) The owner of the **subject site** and/or the parties responsible for the activity/operation that caused the exceedance of the trigger values must implement the corrective actions within the timeframes identified by the **SQEP** in the Investigation Report and ~~must shall~~ provide written confirmation to the Regional Council within 5 working days of completion of the actions.
- (e) An annual report prepared by a **SQEP** must be provided to the Regional Council and to Ngāi te Rangi for the **Port Industry Area**, on 30 June of every year containing the following:
 - (i) A summary of the year's monitoring data;
 - (ii) Details of investigations into all exceedances of the trigger value;
 - (iii) Steps taken to implement corrective actions;
 - (iv) Ongoing actions to reduce discharges of contaminants from the site; and
 - (v) Changes/modifications to the air quality monitoring programme; and
- (f) For the **Port Industry Area**, the port company must hold and ~~must shall~~ invite Ngāi te Rangi and operators identified within the dust management plan to an annual meeting with Ngāi te Rangi to share the results of the annual report required by (e).

Explanatory note 1

For the purposes of Part A (4)(d) as it applies to the type(s), volume(s) and frequency of handling of logs:

- Types refers to barked or debarked; and
- Volume and frequency refers to annual export throughput.

Explanatory note 2

Examples of process improvements include: targets for debarking logs; and targets for improvement in technology (e.g. improved hopper design) and methodology (e.g. trailer-style loading in preference to bunk loading).

Explanatory note 3

- For Standard Operating Procedures, not all elements apply to log handling.

Rule AQ R22B**AQ R22B: Handling of bulk solid materials and handling of logs on expiry of Rule AQ R22A – Restricted Discretionary**

Within the **Mount Maunganui Airshed**, unless otherwise permitted by AIR-R2, AIR-R15(6), or AIR-R10, or managed by AIR-FUME-R20, the discharge of contaminants to air from:

(A) Handling of logs where:

- (a) the area used for the **handling of logs** exceeds 1 hectare

OR

(B) Handling of bulk solid materials on a **subject site** where:

- (a) the rate of **bulk solid materials handling** exceeds 20 tonnes in any hour, and the discharge occurs less than 100 metres from any **sensitive area**, or
- (b) the rate of **bulk solid materials handling** exceeds 50 tonnes in any hour,

is a restricted discretionary activity subject to the following standards:

- (1) Dust management plans must be developed and implemented as soon as practicable after consent is granted for all discharges of **PM₁₀** to air, both inside and outside the **Port Industry Area**;
- (2) For discharges associated with activities within the **Port Industry Area**:
 - (a) At least one of the consent applicants is a **port company**;

- (b) There is a dust management plan to manage the discharges of contaminants collectively within the **Port Industry Area subject site**; and
- (c) The dust management plan specifies procedures that must be followed and by whom for the **handling of logs** or **handling of bulk solid materials** within the **Port Industry Area**; and

Where standards (1) or (2) are not met, the discharge is a discretionary activity under AIR-R16.

The Regional Council restricts its discretion to the following matters:

- (a) consideration of *effects* on human health, including by considering the proximity of the **subject site** to **sensitive areas**, including any areas where people are likely to be present 24-hours a day;
- (b) consideration of cultural *effects*, taking into account the extent to which consultation with representatives of Whareroa Marae has occurred and been taken into account, including:
 - (i) *effects* on the health of whanau at Whareroa Marae;
 - (ii) recognising and providing for the relationship, culture, traditions and taonga of Ngāi Te Rangi within the **Mount Maunganui Airshed**;
 - (iii) the extent to which the exercise of kaitiakitanga by Ngāi Te Rangi is provided for; and
 - (iv) adverse *effects* on air quality values identified in the relevant iwi and hapū resource management plans;
- (c) consideration of:

- a. air quality *effects* including but not limited to, cumulative *effects*, reduced visibility, and amenity *effects*;
 - b. The *effect* of the prevailing weather conditions, including rainfall, wind speed and wind direction
 - c. methods to reduce PM₁₀ discharges to minimise adverse effects on human health and the mauri of air to the greatest extent reasonably practicable until Objective AIR-O2 is met;
 - d. subsequently, if necessary to ensure compliance with the **PM₁₀** Standard in the National Environmental Standards for Air Quality and any applicable ambient annual average air quality guidelines to reduce the discharge of **PM₁₀** to air in accordance with the iterative management approach outlined in Policy AQ P12;
- (d) the contents of the dust management plan including:
- (i) the extent to which best practice technology and operating procedures and **PM₁₀** discharge mitigation options are incorporated in the dust management plan;
 - (ii) other methods available to further reduce **PM₁₀** emissions and the reasons why they are not included in the dust management plan;
- (e) the extent by which any increase in **PM₁₀** emissions that could result from an increase in volume of product throughput or change in product character has been compensated for by improved mitigation measures compared to those in place before the increase occurs;
- (f) the extent of any exceedances of trigger levels included in AIRSHED2 of Rule AQ R22A;

- (g) the extent to which the amount and rate of **PM₁₀** discharge is the same or less than those occurring under the standards of Rule AQ R22A;
- (h) The operational requirements and locational constraints relevant to the discharge and/or activity.
- (i) The history of complaints, abatement notices and enforcement orders at the subject site and methods of dealing with them .
- (j) The lapse period, term of consent, and review of consent conditions.
- (k) The collection, recording, monitoring and provision of information related to the exercise of the resource consent.

For the avoidance of doubt

- 1 For activities within the Port Industry Area, where a discharge is not identified and managed by the dust management plan, that individual discharge will be non-compliant with standard (1) and will require resource consent under general discretionary rule AQ R2. For the further avoidance of doubt, this does not mean that all discharges within the Port Industry Area require resource consent under general discretionary rule AQ R2.
- 2 Any discharge authorised by a certificate of compliance must cease on the grant of a resource consent for the same discharge to air under this Rule.

Rule AQ R22C: Notification

Any application for resource consent to discharge *contaminants* into the **Mount Maunganui Airshed** under Rule AQ R22B or AIR-R16 will be subject to the normal tests for notification under the relevant sections of the Resource Management Act 1991. When deciding who is an affected person in relation to any activity for the purposes of s95E of the Resource Management Act 1991 the Council will give specific consideration to the people of Whareroa Marae and Ngāi Te Rangi.

Definitions of Terms

In addition to all other agreed definitions of terms

Bulk solid material means materials consisting of, or including, fragments that could be discharged as dust or **particulates**. These materials include but are not limited to: gravel, quarried rock, **fertiliser**, coal, cement, flour, rock aggregate, grains, compost, palm kernel extract, tapioca, and woodchip (but do not include logs, salt, or other materials not in bulk form, such as materials contained in a bag, container or similar)

Trailer-loaded means a trailer system is used to transport the logs from the log stacks to the berth and to load the vessel from the trailer directly.

Bunk-loaded means logs are loaded to the berth into a bunk and from there loaded onto the vessel

Port of Tauranga Operational Area is the area shown in the Plan attached as Appendix D

Port Industry Area is the area shown in the Plan attached as Appendix D

Appendix B

Draft provisions for Policy AQ P12 and unsealed yards in accordance with s 293 of the RMA (Reproduced from Appendix A of memorandum of counsel dated 11 August 2023)

New Policy AQP12 – Iterative management of air quality within the Mount Maunganui Airshed

Activities which discharge **PM₁₀** and other **particulates** to air within the **Mount Maunganui Airshed**, other than those in compliance with Interim Permitted Activity Rules AQ R22A, and AQ R23A, must be managed by implementing an iterative management approach to:

- (a) recognise that the **Mount Maunganui Airshed** is a Polluted Airshed as defined in Regulation 17(4)(a) of the National Environmental Standards for Air Quality (Polluted Airshed); and
- (b) improve air quality and ensure the **Mount Maunganui Airshed** stops being a Polluted Airshed as soon as reasonably practicable, including by managing cumulative *effects*; and
- (c) ensure that once the **Mount Maunganui Airshed** stops being a Polluted Airshed, the discharge of contaminants at a rate or volume that may cause an exceedance or breach of the ambient air quality standards of the National Environmental Standards for Air Quality is avoided; and
- (d) safeguard the life supporting capacity of the air and protect human health within the **Mount Maunganui Airshed**, and
- (e) avoid, remedy or mitigate adverse *effects* on cultural values, amenity values, and the *environment*.

The iterative management process may include, but not necessarily be limited to:
[Court comment: This change is made to be consistent with the change made to the original policy.]

- (a) requiring each **subject site** within the **Mount Maunganui Airshed** to minimise discharges of **PM₁₀** to air to the greatest extent reasonably practicable and at the time of resource consent applications to take account of the effectiveness of mitigation measures and operating procedures implemented in accordance with the Interim Permitted Activity Rules AQ R22A and AQ R23A; and
- (b) assessing changes in **Mount Maunganui Airshed**-wide air quality based on monitoring results to 31 December 2025, to determine the extent to which compliance with the National Environmental Standards for Air Quality and the annual guideline value in the Health-based Guideline Values of the Ambient Air Quality Guidelines 2002 (or its amendment or replacement) is likely to be achieved based on the **Mount Maunganui Airshed**-wide mitigation measures implemented to that time; and
- (c) setting resource consent conditions based on (f) and (g) that can be expected to ensure compliance; and
- (d) making provision for the reviewing of consent conditions as necessary to ensure compliance with the National Environmental Standards for Air Quality is achieved as soon as reasonably practicable.

New Policy AQ P13 –Discharges to Air from Unsealed yards as existing activities in the Mount Maunganui Airshed for an interim period

Provide for discharges of **PM₁₀** to air within the **Mount Maunganui Airshed** from the surface of **unsealed yards** for an interim period, by requiring that the discharge of **PM₁₀** must be minimised to reduce adverse *effects* on air quality in the **Mount Maunganui Airshed** to the greatest extent reasonably practicable through application of an Interim Permitted Activity Rule AQ R23A defaulting to a discretionary activity; and to reduce **PM₁₀** and other **particulate** discharges from the activities in a way that contributes to achieving Objectives AQ O1, AQ O2 and AQ O3 and Policies AQ P3(b) and AQ P4(b).

New Rule – (AQ R23A) Discharges to Air from Unsealed Yards within the Mount Maunganui Airshed until [date 3 years from Environment Court decision for the s 293 process] – Permitted

Within the **Mount Maunganui Airshed**, unless otherwise permitted by AIR-R2(4) and (5), the discharge of *contaminants* to air from the surface of an **unsealed yard** is a permitted activity until

- (A) [date 3 years from Environment Court decision for the s 293 process]; or
- (B) Where a resource consent application for the discharge proposed under Rule AIR-R16 or AIR-R RD has been accepted by the Regional Council under s 88 of the Resource Management Act 1991 (or its replacement) then the relevant date shall be the date the resource consent commences under s 116 of the Resource Management Act (or its replacement)

Provided that the following standards are complied with:

- (1) General standards applying to all discharges of **PM₁₀**
 - (a) The discharge does not cause any ~~noxious, dangerous,~~ offensive or objectionable *effect* beyond the boundary of the subject site; and

- (b) The activity must be managed using the best practicable option to achieve an improvement in air quality in the **Mount Maunganui Airshed**; and [Court comment: the words “noxious” and “dangerous” have been removed to be consistent with the main IPAR and the original A Rule in the Operative Regional Plan.]
- (c) The mitigation measures in place on the subject site must be no less effective than the most effective mitigation measures in place and operating efficiently at any date prior to or on [the date of issue of the s 293 Environment Court decision];

(2) Dust management plan

- (a) For discharges from the surface of an unsealed yard, the owner or occupier of the subject site where the activity is carried out must engage a SQEP who has visited the subject site to prepare a dust management plan in accordance with the requirements of AIRSCHED 3.
- (b) The dust management plan must be provided to the Regional Council within three months of this rule becoming operative.
- (c) Capital works required to minimise **PM₁₀** emissions must be documented in a timeline and completed as soon as practicable. Once finalised, the dust management plan must ~~shall~~ always remain on site and must be complied with at all times by all persons undertaking the activity onsite. [Court comment: “Shall” has been replaced with “must” for consistency.]
- (d) the dust management plan must describe any additional measures that will be implemented during the term of the IPAR to reduce **PM₁₀** emissions from the subject site to the greatest extent reasonably practicable until the objective of AIR-O2 of PC13 is met.
- (e) The dust management plan must require that records are kept of:

- a. The number and significance of complaints received; and
- b. Any exceedances of the **PM₁₀** Standard attributable to the subject site, abatement notices and enforcement action taken from [the date of the Environment Court decision for the s 293 process].

The costs for certification and monitoring of the dust management plan shall be recoverable by the Regional Council.

New Rule AQ R Y: Discharges to Air from Unsealed Yards within the Mount Maunganui Airshed on expiry of Rule AQ X (IPAR Rule) – Restricted Discretionary

Within the **Mount Maunganui Airshed**, unless otherwise permitted by AIR-R2 (4) and (5), the discharge of contaminants to air from the surface of an unsealed yard where the unsealed area of the subject site exceeds 400 m², is a restricted discretionary activity subject to the following standard:

- (1) Dust management plans must be developed and implemented for all discharges of **PM₁₀** to air to:
 - (a) reduce **PM₁₀** discharges to minimise adverse effects on human health and the mauri of air to the greatest extent reasonably practicable until the objectives of PC13 are met; and
 - (b) subsequently, if necessary to ensure compliance with the **PM₁₀** Standard in the National Environmental Standards for Air Quality and any applicable ambient annual average air quality guidelines to reduce the discharge of **PM₁₀** to air in accordance with the iterative management approach outlined in Policy AQ P12.

All dust management plans must be approved by the Regional Council so that they meet the objectives and policies of the Regional Natural Resources Plan and are in

accordance with best practice and the Ministry for the Environment Good Practice Guide for Assessing and Managing Dust.

The Regional Council restricts its discretion to the following matters:

- (a) consideration of effects on human health, including by considering the proximity of the subject site to sensitive areas, including any areas where people are likely to be present 24-hours a day,
- (b) consideration of reverse sensitivity associated with discharges of particulates to air from unsealed yards;
- (c) consideration of cultural effects;
- (d) consideration of cumulative and amenity effects;
- (e) the extent to which best practice and operating procedures are incorporated in the dust management plan;
- (f) other methods available to further reduce **PM₁₀** discharges and the reasons why they are not included in the dust management plan;
- (h) The extent of any exceedances of trigger levels included in AIRSCHED 3 of the IPAR;
- (i) The history of complaints, abatement notices and enforcement orders at the subject site and methods of dealing with them.
- (j) The lapse period, term of consent, and review of consent conditions;
- (k) The collection, recording, monitoring and provision of information related to the exercise of the resource consent.

AIRSCHED 3 - Dust Management Plans for Unsealed Yards within the Mount Maunganui Airshed

These requirements apply to dust management plans prepared under AIR-R X (IPAR); and can be used as a guide for dust management plans prepared under AIR-R Y (RDA).

Part A: Contents

A Dust Management Plan must be prepared for each **subject site** and contain (but not be limited to):

- 1 Title
- 2 An objective to adopt best practicable option as it relates to the emission of particulate matter from unsealed yards into the **Mount Maunganui Airshed** to contribute to meeting AIR O2 and be consistent with AIR P3 and AIR P15 and AIR P16.
- 3 A map that includes a scale, the location of the **subject site**, areas on the **subject site** which are unsealed, and distance to all **sensitive areas** and predominant wind directions at the **subject site**.
- 4 A detailed description of the **subject site**, activities, and emissions to air.
- 5 Methods of mitigation and standard operating procedures for the **subject site** which must include detail on **PM₁₀** discharge reduction processes and practices including:
 - (i) Use of dust suppression (e.g., sprinkler/misting) systems; and
 - (ii) Vehicle speed limits or other operational measures to be employed; and
 - (iii) Site sweeping/vacuuming and containment protocols including hours of operation and sweeping frequency; and
 - (iv) Inventory of mitigation equipment and materials; and

- (v) Contingency procedures.

The measures ~~must~~^{shall} ensure that the discharge does not cause any noxious or dangerous, offensive or objectionable effect beyond the boundary of the subject property.

6 A complaints procedures which must include:

- (a) Contact person and contact details for complaints from the community
- (b) Complaint procedure for staff
- (c) Maintain a complaints/incidents register that includes any actions undertaken to respond to the complaint, including further dust control measures
- (d) Complaint response protocol, including methods for recording of any on-site activity, dust mitigation measures in place at the time, and wind conditions at the time of complaint; and procedures for investigating and remedying cause of complaint and providing response to the complainant.
- (e) A timeframe for the implementation of remedial corrective actions.

Definition: For the purpose of the AQ chapter of this regional plan only (and no other chapter)

Unsealed yard means:

An area on a site in the **Mount Maunganui Airshed** that does not have a permanent all-weather surface including, but not limited to cobblestones, tarmac, concrete, and asphalt, or permeable paving. It excludes land used for agricultural purposes, planted gardens and grassed areas (including roadside berms). The gardens

and grassed areas must be well-maintained, incidental to the site's usage, and unable to be used for vehicle access or parking (whether temporary or permanent).

It does not include the Blake Park Additional Carpark, Sulphur Point, the Tauranga Airport, Whareroa Marae or the outdoor living area of a Dwelling House in a building not used exclusively for residential purposes within the **Mount Maunganui Airshed**

Appendix C

Timeline for s 293 process

Provide Court with draft Plan Change and associated information.	October
Await Court s293 direction.	October
In the interim, advance the provisions, s32 report, communications planning and other required information for plan change package, including draft public notice and draft notice of service on affected parties.	November
Issue draft plan change package for informal consultation.	November
Collect informal feedback and update provisions and associated documents accordingly.	January 2024
Publicly notify the s293 plan change by end of November and serve notice on affected parties.	
Provision for consultation meetings on two topics: <ul style="list-style-type: none"> - Policy AQ P12; and - Unsealed yards provisions 	
Formal submissions open through to end of April.	February
	March
	April
Update provisions and associated documents accordingly based on the formal submissions.	May
Lodge post-consultation version of PC13 with the Court and supporting documents as required by end of May.	End of May
Affected parties to advise Court of wish to be heard in relation to the proposed changes	15 working days
Provision for Court hearing on s293 provisions	From end of June onwards

Appendix D

Port of Tauranga Operational Areas provided by POTL in the evidence of Reuben Hassan

Port of Tauranga Operational Area (shown by the black polygon) and Port Industry Area (shown by the red polygon).

