

IN THE ENVIRONMENT COURT
AT AUCKLAND

I TE KŌTI TAIAO O AOTEAROA
KI TAMAKI MAKAUROA

Decision No. [2024] NZEnvC 011

IN THE MATTER OF

an appeal under clause 14 of the First
Schedule of the Resource Management
Act 1991

BETWEEN

SWAP STOCKFOODS LIMITED

(ENV-2019-AKL-000065)

TIMBERLANDS LIMITED

(ENV-2019-AKL-000073)

Appellants

AND

BAY OF PLENTY REGIONAL
COUNCIL

Respondent

Court: Judge MJL Dickey
Commissioner JA Hodges
Commissioner AP Gysberts

Hearing: On the papers
Last case event: 20 December 2023

Date of Decision: 12 February 2024

Date of Issue: 12 February 2024

THIRD INTERIM DECISION OF THE ENVIRONMENT COURT

A: The Plan Change 13 provisions as set out in **Appendix A** are approved.

B: The s 293 process continues in accordance with the timeline previously approved.

Swap Stockfoods Limited v Bay of Plenty Regional Council



C: Costs are reserved.

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 Decisions

[3] On 10 January 2023 this Court issued its First Interim Decision.¹ It sought submissions on a number of points. It also foreshadowed its intention to direct the Regional Council to prepare changes to PC13 in accordance with s 293 of the RMA. These changes included the controls of emissions of particulate matter less than 10 microns in diameter (PM₁₀) from unsealed yards to contribute to integrated management of the MMA.

[4] On 20 October 2023 a Second Interim Decision was issued.² The parties were directed to provide final comments on the Plan Change. The Regional Council had provided draft plan provisions relating to the s 293 process for unsealed yards and its proposed timeline for the process. The Council was directed to commence a plan change and follow the timeline and process steps set out for the s 293 process.

Memorandum of parties dated 16 November 2023

[5] By memorandum dated 16 November 2023, the parties advised they had some minor amendments to the Plan Change. The memorandum attached a consolidated version of the provisions.

¹ *Swap Stockfoods Limited v Bay of Plenty Regional Council* [2023] NZEnvC 001.

² *Swap Stockfoods Limited v Bay of Plenty Regional Council* [2023] NZEnvC 221.

[6] At the time of finalising the memorandum feedback had not been received from Swap Stockfoods Limited (**SSL**), although it had previously filed a memorandum dated 2 November 2022 identifying a typographical error. The Court took this to be its remaining feedback on the plan change.³

Reference to Rule AIR-R15(6) in the chapeau

[7] The Regional Council noted that the wording of the chapeau in Rule AQ R22A and AQ R22B refers specifically to activities permitted by Rule AIR-R15(6) (composting), but not other activities within Rule AIR-R15 which may, as part of their operations, be handling bulk solid materials over the thresholds contained within Rule AQ R22A.

[8] Rule AIR-R15 is the discretionary activity rule that lists a number of industries, including asphalt manufacture, synthetic fertiliser manufacture etc. which may, as part of the wider operations, be handling bulk solid materials. It was not the Regional Council's intention that such activities would be required to obtain consent under both Rule AIR-R15 and Rule AQ R22A or B (either now or on re consenting). Rather, all their discharge activities should be considered holistically under just Rule AIR-R15.

[9] The Regional Council considered that the chapeau should be amended to refer to "Rule AIR-R15".

[10] The Court accepted the amendment of the chapeau in Rules AQ R22A and AQ R22B to read Rule AIR-R15.⁴

New Method AQ M1

[11] The Regional Council noted that the Court had provided additional wording to new Method AQ M1 in its Second Interim Decision:⁵

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

³ Minute of the Environment Court, dated 12 December 2023, at [2].

⁴ Minute of the Environment Court, dated 12 December 2023, at [4(a)].

⁵ *Swap Stockfoods Limited v Bay of Plenty Regional Council* [2023] NZEnvC 221, at [86(f)].

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 its amendment or replacement) is met”.

[12] The Court had previously provided a strong recommendation to the Council in relation to the review of existing resource consents in its First Interim Decision:⁶

We strongly recommend that the Regional Council:

- 1 Implements other non-statutory methods and undertakes a review of existing resource consents relating to the discharge of PM₁₀ to air to ensure the Mount Maunganui Airshed is managed on a fully integrated basis as soon as reasonably practicable;
- 2 ...

[13] The Regional Council had concerns about the Court’s wording added in its Second Interim Decision, and asked that it be deleted for the following reasons:

- (a) the Court had already provided a strong direction to the Regional Council in relation to existing discharge consents within the MMA in the First Interim Decision;
- (b) the Regional Council is constrained by both the wording of s 128 RMA and any review consent conditions on a particular consent, when exercising its discretion to determine whether a review of consent conditions is required; and
- (c) the Regional Council was concerned that the additional wording to the Method, which relates more specifically to assessments of MMA monitoring results, suggests that existing consent holders are currently non-compliant (by virtue of the wording “where necessary to ensure compliance as soon as reasonably practicable”), is potentially confusing, and may go beyond the ambit of s 128 RMA and the consent conditions.

[14] The Court accepts that the additional wording to new Method AQ M1 referred to in the Second Interim Decision should not be included in the plan change.⁷

⁶ *Swap Stockfoods Limited v Bay of Plenty Regional Council* [2023] NZEnvC 001, at Direction C1.

⁷ Minute of the Environment Court, dated 12 December 2023, at [4(c)].

When Rules AQ R22A, R22B and R22C are deemed operative

[15] The parties sought clarification from the Court on when Rules AQ R22A, R22B and R22C are deemed operative. The parties assumed that, given the Court's s 293 directions, the intention is that the Court will issue a third interim decision following the receipt of any comments by the parties; but that the 'interim decision' will be treated as the 'final findings' in relation to Rules AQ R22A, R22B and R22C; at which time they will be deemed operative. The parties understanding was that the 'Final Decision' on these appeals will not be issued until after the s 293 process on unsealed yards is completed; so as to ensure that the Court does not become functus officio in relation to the appeals.

[16] By Minute dated 12 December 2023, the Court advised:⁸

The parties are correct in their assumption that the Court will issue a final decision on PC1[3] following completion of the s 293 process. The reference to "final decision" in paragraph [20] of the second interim decision, related to the substantive appeals only, not a further decision related to the s 293 process, but accept this was not clear. As to the date on which Rule AQ R22A, Rule AQ R22B, and Rule AQ R22C become operative, we note that the rules and Policy AQ P11 relating to the handling of bulk solid materials and logs for an interim period will not be affected by the s 293 process. This means they can be deemed operative in accordance with version of the plan change attached to the memorandum, amended in accordance with paragraph [3] above.

Policy AQ P12 will apply to the handling of bulk solid materials and logs on expiry of the Interim Permitted Activity Rule, but its finalisation as part of the s 293 process does not need to delay Rule AQ R22A, Rule AQ R22B, and Rule AQ R22C becoming operative.

Section 293 process

[17] The Regional Council advised it had commenced circulation of the draft plan change in relation to unsealed yards, as directed under s 293 RMA. It did however note that, given the truncated timeline between issuing a draft of the plan change and receiving feedback, it was unlikely to be in a position to meaningfully consider any feedback and publicly notify the proposed plan change by the end of November 2023. It considered the preferable course of action would be to provide further time for

⁸ Minute of the Environment Court, dated 12 December 2023, at [5] – [6].

consideration of responses to the draft provisions and make any necessary amendments, before publicly notifying the changes in early January 2024. This would still align with the Court’s timeframes set out in Appendix C to the Second Interim Decision.

[18] The Court accepted the need to revise the timetable for the s 293 process and that public notification in January, rather than early January, is appropriate.⁹

Standard 1(f)

[19] In a Minute dated 12 December 2023, the Court stated:

We note that parties consider that the words “Except for” should be reinstated in Standard 1(f). Our concern is that the exception can be read as meaning standards (g) to (x) do not have to meet the less effective requirement. We consider clearer wording to be “In addition to mitigation measures required by standards (g) to (x), all other **PM10** mitigation measures in place on the **subject site** must be no less effective...”. This wording is to be included in the plan change.

[20] With regard to the other matters raised in the 16 November 2023 memorandum, the Court accepted the amended version of the plan change attached to the memorandum.¹⁰

Minute dated 12 December 2023

[21] By Minute dated 12 December 2023, the Court directed the parties to file a clean version of the plan change. The Court advised it would then issue a third interim decision, after which Rule AQ R22A, Rule AQ R22B, and Rule AQ R22C can be deemed operative.

Memorandum of counsel for the Regional Council dated 20 December 2023

[22] The memorandum attached a clean version of the provisions.

[23] The Regional Council raised a matter which had arisen on final review of the provisions, and relates to the timing for submission of Dust Management Plans (**DMP**).

⁹ Minute of the Environment Court, dated 12 December 2023, at [7].

¹⁰ Minute of the Environment Court, dated 12 December 2023, at [4(b)].

[24] The current wording set out in 3(c)(iii) is:

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 **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.

[25] The Regional Council's concern is whether all parties subject to the Interim Permitted Activity Rule (IPAR) will be in a position to submit their DMP within three months of the Court's final findings. The Council's concern is that given the Christmas/January period where a number of industries shut down, this may affect the availability of both staff and/or more particularly the required Suitably Qualified and Experienced Air Quality Persons (**SQEP**) (and peer review by a SQEP) to meet the required timeframe. Although the Regional Council appreciates that parties to the current process are probably already well underway with their DMP preparation, there are other sites/businesses who have not formed part of the Court process.

[26] The Council requested that the Court amend 3(c)(iii) as follows:

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~~ six 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 **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.

[27] Counsel raised this issue with the other parties to the proceeding and received the following responses:

- (a) SSL, Timberlands Limited and ADM agree with the amendment;
- (b) Port of Tauranga Limited are 'not opposed' to the amendment. Toi Te Ora and Ngāi Te Rangi are neutral;
- (c) at the time of filing the memorandum, it was the Regional Council's understanding that counsel for Viterra and Agrifeeds did not have instructions.

[28] The Court agrees that further time should be given for submission of DMP, for the reasons set out by the Regional Council.

Outcome

[29] The Plan Change 13 provisions as set out in **Appendix A** are approved.

[30] The s 293 process continues in accordance with the timeline previously approved.

[31] Costs are reserved.

For the Court:



MJL Dickey
Environment Judge



Appendix A

PC13 – Clean copy of provisions

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)

Handling of logs means conveying, transferring, loading, unloading, storage, and debarking of logs, and ancillary activities within the **Mount Maunganui Airshed**, but does not include fumigation.

Mount Maunganui Airshed means the area of Mount Maunganui and Tauranga specified by the Minister for the Environment as a separate **airshed**, by notice in the New Zealand Gazette¹ on 31 October 2019.

Port company is as defined by the Port Companies Act 1988.

Port Industry Area is the area shown within the red polygon in Figure 1 of AIRSCHED3

Port Operational Area is the area shown within the black polygon in Figure 1 in AIRSCHED3

SQEP (for the purposes of the Air Quality chapter only) means a Suitably Qualified and Experienced independent Person who has professional qualification, training, skills, and experience relating to discharges to air, and can give authoritative assessment, advice and analysis on performance relating to the subject matter using relevant national and international standards and guidelines.

Subject site means the property except where otherwise mapped in AIRSCHED3.

Policies

New Policy AQ P11 – Existing activities permitted for an Interim period

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

¹ Bay of Plenty Regional Airshed Notice 2019

- (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 review 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 its amendment or replacement) is met.

Method

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.

Rule outside Mount Maunganui Airshed

Rule AQ R22: Handling of bulk solid materials outside the MMA

AQ R22 Handling of bulk solid materials –Discretionary

Unless otherwise permitted by AIR-R10, the discharge of *contaminants* to air from the **handling of bulk solid materials** outside the **Mount Maunganui Airshed** where:

(A) the rate of **bulk solid material** 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 material** handling exceeds 50 tonnes in any hour, is a discretionary activity.

Rules inside Mount Maunganui Airshed

Rule AQ 22A 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 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; and
- (f) In addition to 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 produce 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.

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

- (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 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 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 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 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 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 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 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 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 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 **subject site** must be the same or less than the maximum daily number in the 12-months ending on 31 July 2019; and
- (w) All trucks used for transporting **bulk solid materials** must 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 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 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 of 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 six 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 Rangī 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 Rangī for the **Port Industry Area**, within one month of its review.
- (d) The dust management plan required by (3)(a) or 3(b) must 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 handling** or **handling of logs** 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 Rangī 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 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 its 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 its 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.

Rule AQ 22B Restricted Discretionary for Existing Activities in the MMA

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, 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 of affected persons

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.

Schedules

AIRSCHEM2 – Dust Management Plan requirements for AQ R22A

AIRSCHEM2 – 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 **handling of logs**; and
 - (d) the type(s), volume(s) and frequency of **handling of bulk solid materials** or **handling of 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) Requires 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 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 be documented by the **SQEP** in an Investigation Report;
- (c) The Investigation Report in (b) must 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 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 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.

AIRSCHEDED3 – Subject Site Exceptions

AIRSCHEDED3: Definitions of Port of Tauranga and De Havilland Way subject sites

(A) Port of Tauranga

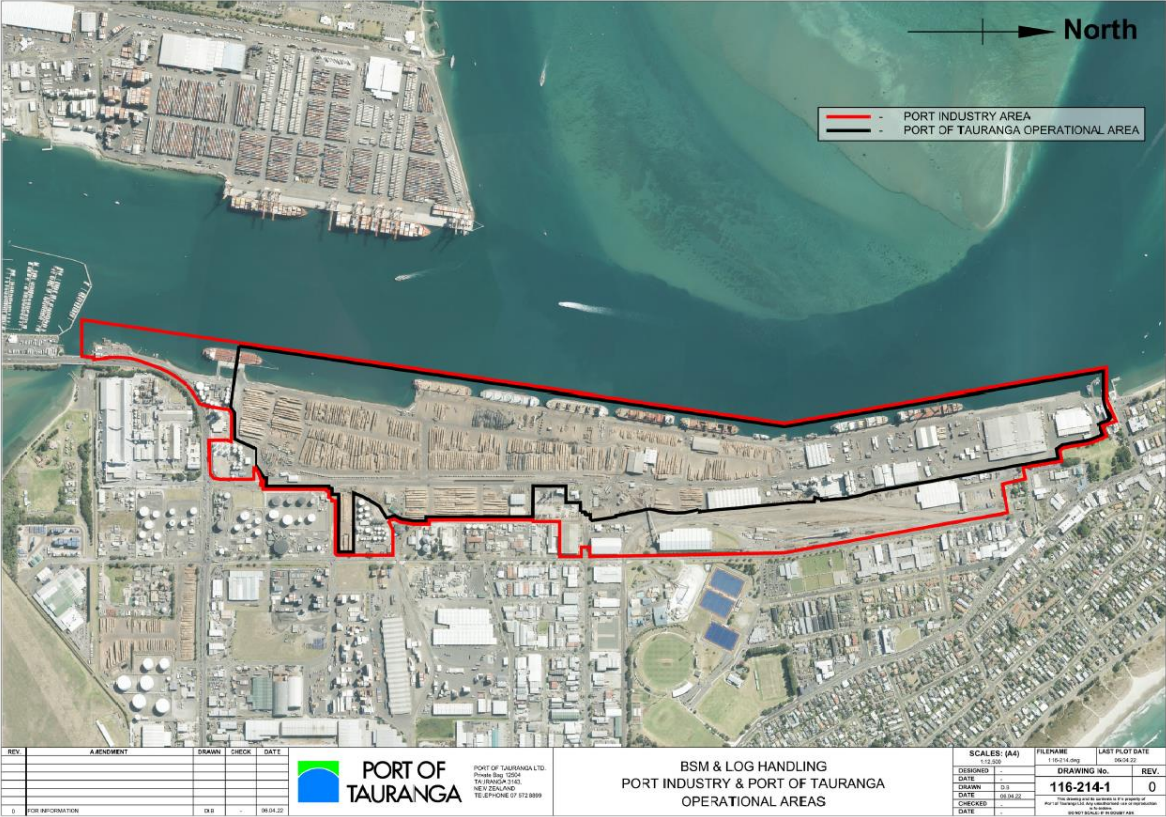
The **Port Industry Area** (the red polygon in Figure 1.) forms one **subject site**.

The rationale for the location of the proposed boundary is that effects on air quality, namely discharge of particulate to air, occurring in this area as a result of numerous bulk solids material handling and log handling activities would not be readily differentiated from one another, and therefore should be managed as a single subject site not numerous sites.

There are some complexities and nuances with the ownership and control of certain areas encompassed with the red polygon;

At [date to complete] POTL does not regulate the handling of bulk solids materials or logs with its procedures in some areas within the **Port Industry Area** and does not currently maintain any operational control of activities within those areas.

Figure 1: Aerial Image Showing the Extent of the Port of Tauranga “subject site” – Port Operational Area (shown by the black polygon) and Port Industry Area (shown by the red polygon)



(B) 101 Aerodrome Road

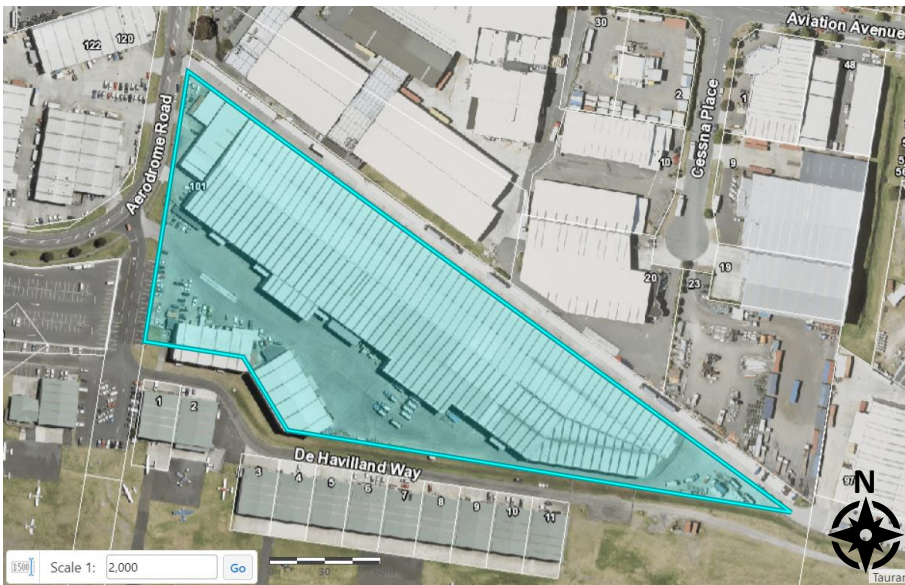
The subject site shall be the leasehold area of 3.1417 hectares as defined as Lot 1 DP 403092 and described in Record of Title 410120. The Record of Title shows the owner of the lease as MM Group 3 Limited with the lease extending to 30 April 2049 and there is a fencing covenant relating to the lease. Refer to Figure 2 and Figure 3.

The leasehold area is part of a larger site of 54.4858 hectares owned by Tauranga City Council (Whareroa 2A2B1 Block) as described in Record of Title SA2B/115. That land extends from 101 Aerodrome Road (this being the leasehold area), across De Havilland Way (not legal road reserve), to the 11 hangars that are shown in Figure 2, and part of the runway of Tauranga Airport, and the southern boundary being the Tauranga Harbour.

Within 101 Aerodrome Road there are several warehouse buildings that may be occupied by different tenants and supporting a range of activities within the site. In the past the site has often had a mix of activities, including handling of different bulk solid materials and different operators. Since this is a large site with a mix of separate activities within it, it is appropriately considered as a subject site in the same way as the Port of Tauranga and managed through a single Dust Management Plan.

The leasehold area is a legally defined area that is certain, and that this is the fenced area for all activities within 101 Aerodrome Road. It is acknowledged that that the concrete walls of the buildings in the south-west corner of the subject site form the boundary at that location without the need for a physical fence since there are no openings (windows, or doors) along these walls.

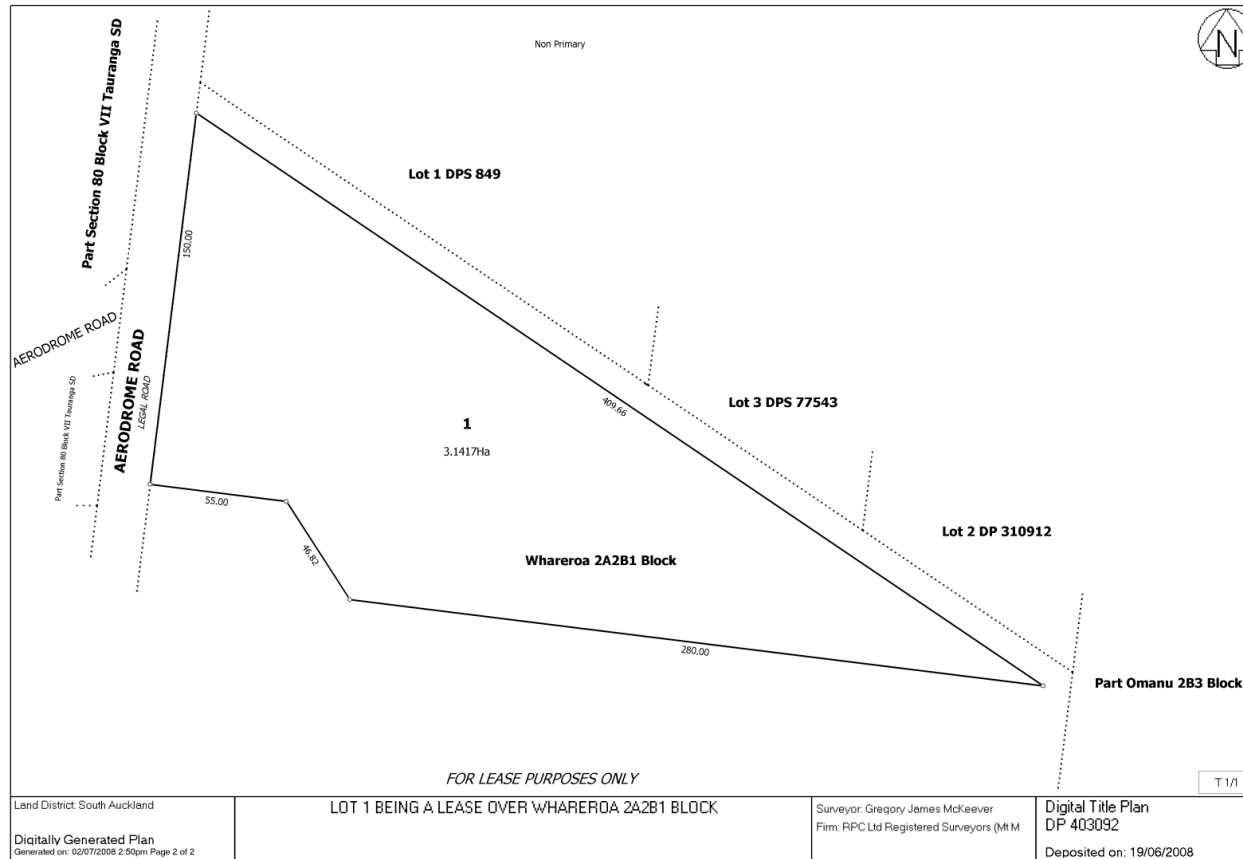
Figure 2: Aerial image showing cadastral boundary of 101 Aerodrome Road Lease Area.



Source: [MAPI - Tauranga City Council](#)

Field Code Changed

Figure 3: Lease Plan



Source: Record of Title 410120, [Land Record Search \(linz.govt.nz\)](http://linz.govt.nz)

Field Code Changed