



RESOURCE MANAGEMENT INVOLVEMENT SUMMARY SHEET

TO: Andrew Baucke, Director Operations, Auckland

DATE: 10/04/2018

CC: Amy Robinson, Manager Planning and Land, Hamilton

FROM: Graeme Silver, RMA Planner, Hamilton

AUCKLAND UNITARY PLAN – Amendments to the regional coastal plan provisions prior to the granting of Ministerial approval

Executive summary

The Auckland Unitary Plan became operative in part in November 2016. Those parts of the Unitary Plan that relate to the coastal marine area cannot become operative until the Minister of Conservation has approved them. A separate briefing is being prepared for the Minister on this matter.

Before giving that approval, the Minister can direct the Council to make changes to the Unitary Plan. Seven amendments have been proposed by Auckland Council. After reviewing the Unitary Plan and these proposed amendments, I am of the opinion that these changes are appropriate and should be made. I am also of the view that no further changes to the Plan are required.

The authority to instruct a council to make amendments to its regional coastal plan has been delegated to the Director of Operations¹. Your approval is sought to instruct the Council to make these amendments.

The amendments are summarised below. Attached is a letter to the Council requiring it to make these changes. The letter includes a more detailed description of the amendments and the reasons for them.

If you agree that these amendments should be made, please sign the attached letter. I can arrange for it to be forwarded to Auckland Council.

Once the changes have been made, Auckland Council will forward an amended copy of the Unitary Plan to the Minister for her approval.

¹ This delegation is also granted to the Director of Planning, Permissions and Land.

Purpose

To seek your approval to instruct the Auckland Council to make seven amendments to the coastal marine area provisions of the Auckland Unitary Plan.

Context: The coastal marine area and coastal plans

The coastal marine area is all the space seaward of the line of mean high water springs. Within this area the policies and rules of the district plan do not apply. This space is managed by a regional coastal plan prepared by the relevant regional council.

The final step in preparing a regional coastal plan is obtaining the approval of the Minister of Conservation. When granting that approval, the Minister may require the council to make amendments to the plan, as long as those amendments are not inconsistent with any decision of the Environment Court, except where the Minister made a submission to the Court on that provision.

A regional coastal plan may form part of a combined plan, such as the Unitary Plan. Where this occurs the requirement to obtain the Minister's approval only applies to those parts of the combined plan that apply to the coastal marine area.

How this works in Auckland

As a unitary council, Auckland Council exercise the functions of both a district and regional council. It prepares a single combined plan (the Unitary Plan) which fulfils the role of a district plan, regional plans, regional coastal plan and regional policy statement.

The process for preparing the Auckland Unitary Plan was prescribed by special legislation and differed from the usual Resource Management Act process, mainly by requiring the use of an Independent Hearings Panel and limiting appeal rights.

However, the requirements for regional coastal plans still apply. The Minister's approval is required for those parts of the Unitary Plan that apply to the coastal marine area and are effectively a regional coastal plan.

Implications of the America's Cup

Consent applications have been lodged for the America's Cup bases, and a second application will soon be lodged for an alternative base layout. The applications include structures and activities within the coastal marine area. Since the relevant coastal rules of the Unitary Plan are not yet operative, the rules of the older Auckland Regional Coastal Plan still apply.

Under the older Plan the applications are a non-complying activity. When the Unitary Plan becomes operative they will become a restricted discretionary activity. This is expected to make the approval of the consent applications a quicker and smoother process.

Because of Government's involvement in the negotiations over the layout of the bases, there is considerable interest from the Ministry of Business, Innovation and Employment in this matter. The

Minister for Economic Development, Hon David Parker, has spoken to the Minister of Conservation and emphasised the urgency of the approval of the Unitary Plan.

Summary of the amendments to the Unitary Plan

Seven amendments have been identified by Auckland Council. These are:

1. Correcting a rule for mangrove removal.

The rule currently does not apply to areas of Outstanding Natural Character. This was an accidental omission.

2. Correcting a rule to manage the discharge of hull biofouling.

The rule currently does not apply to the Historic Heritage overlay. This was an accidental omission.

3. Addressing a gap in the management of relocating structures.

Relocation of structures within Auckland's coastal marine area is generally well managed to reduce the risk of spreading harmful aquatic structures. However there is a gap in the policies and rules regarding the movement of structures to and within the port, marina and ferry terminal zones. This is allowed as a permitted activity but lacks a standard to require removal of any biofouling that contains harmful aquatic organisms.

4. Clarifying the application of discharge rules to the coastal marine area.

To improve the clarity of the Plan it would be beneficial to cross-reference the rules for discharges of agrichemicals and of industrial and trade wastes. This would be consistent with other cross-referencing already in the plan, such as for the discharge of stormwater.

5. Correcting the application of assessment criteria for mangrove removal.

The activity status of some types of mangrove removal was changed by the Independent Hearings Panel, but a consequential change that should have been made to the assessment criteria was omitted. This amendment corrects that omission.

6. Reinstatement of assessment criteria for depositing material in the coastal marine area.

The proposed assessment criteria for depositing material in the coastal marine area were uncontested by submitters but appear to have been removed by accident. Such assessment criteria are required in the Plan.

7. Correcting the schedule listing Significant Ecological Areas near Ambury

Auckland has mapped Significant Ecological Areas (SEAs). Some of these are classified as important for wading birds and different rules apply. Two SEAs mapped at Ambury have not been recorded in the Schedule, and one SEA is incorrectly labelled in the maps.

Overall assessment of the proposed amendments

In most cases the amendment corrects a minor mistake or omission (1, 2, 6, 7), or improves the usability of the plan by explaining how the existing rules in the plan work together (4).

Amendment 3 is a more significant change as it imposes a requirement to treat or clean any structure that is relocated into or within zones and overlays where that is a permitted activity. This is not considered an unreasonable or onerous change as the activity remains a permitted activity with the addition of a new standard. It is consistent with the existing rules and policy direction in the Unitary Plan. The amendment is required to properly give effect to Policy 12 of the New Zealand Coastal Policy Statement.

Amendment 5 is a more complex change. The Independent Hearings Panel changed the activity status for some mangrove clearance from restricted discretionary to discretionary. The original restricted discretionary activity rule was retained as it still applied to mangrove clearance that failed to meet the standards for permitted activity rules. However the assessment criteria needed amending to clarify this and that consequential change did not occur. The proposed amendment completes the change necessary and gives effect to the decision of the Independent Hearings Panel.

Other potential changes to the Plan

While assessing the Plan for the Minister's approval, staff have considered whether other changes should be made to it. A detailed briefing is being prepared for the Minister.

DOC has been involved in all stages of its development, albeit at a high level and with a strategic approach focusing on the implementation of the New Zealand Coastal Policy Statement. Comments were provided on a draft in 2013 and a submission lodged on the proposed plan in February 2014. DOC's submission was generally supportive of the Plan with some fine tuning of rules.

The issues raised by DOC's submission were addressed and where necessary, amendments were made to the proposed version of the Plan to satisfy those concerns. DOC did not lodge an appeal on any of the decisions of the Independent Hearing Panel or any changes Auckland Council made when adopting those decisions.

DOC joined an appeal relating to kauri dieback. This has been satisfactorily resolved and the appeal withdrawn.

The Plan is considered to give effect to the New Zealand Coastal Policy Statement and meet the requirements of the Resource Management Act.

Based on this, it's is my view that no further amendments to the Plan are required.

Risk Assessment

There are some reputational risks involved in approving the coastal marine provisions of the Unitary Plan because the Plan and the process for developing it has been controversial. These will be considered in a separate briefing after the amendments have been made.

The risks involved in directing the Council to make these amendments are described and assessed below:

Risk	Assessment	Level of risk
Delay: Making amendments to the plan adds a step to the process and delays the final approval.	There is no statutory deadline or timeframe for the Minister to provide (or withhold) its approval of the plan, other than the general duty to avoid unnecessary delay. Auckland Council advise that it can expedite the amendments and provide the Minister with a new version of the Plan within 7 to 10 days.	Low
Controversy: The Unitary Plan process has been controversial among some parties. One party has contacted the Minister directly, requesting that she decline to approve parts of the Plan.	The changes are relatively minor and few in number. It is very unlikely that they will directly affect any party that would be upset enough to lodge any complaint or attempt to make it a media issue.	Very low
Unintended consequences: The Plan is extremely large and complex. There is potential that amendments to one part could create unintended problems elsewhere in the Plan.	The potential for unintended consequences has been taken into account and is thought to be unlikely given the relatively minor nature of the amendments. The changes have been suggested by planning staff of the Auckland Council, who have the greatest familiarity with the Plan and are best placed to identify any unintended consequences.	Low
Legal authority to make the changes: The Minister can make any change except if they are inconsistent with a decision of the Environment Court.	There were no Environment Court appeals that related to these provisions. An appeal to the High Court was lodged by Forest and Bird on some coastal marine provisions. That appeal was refined to address the identification of new Significant Ecological Areas. It was resolved by consent order and did not amend any of the provisions affected by these amendments.	Very low

My assessment is that the risks involved in directing Auckland Council to make these amendments is low. This is because the changes would affect very few parties and where they do, they do not impose a new onerous restriction on any activity.

Conclusion

It is my view that the amendments proposed by Auckland Council are appropriate because:


1. they are relatively minor;
2. they do not prejudice any other party in any significant way;
3. several of them correct errors and omissions; and
4. one of the amendments fills a policy and rule gap in the management of harmful aquatic organisms.

The seven amendments are within the power of the Minister to require as they are not inconsistent with or in conflict with any decision of the Environment Court.

Recommended Action

1. Agree to instruct Auckland Council to make the seven amendments proposed by them.
 2. Sign the attached letter to Auckland Council to give effect to that decision (doc-5462773).
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Sec 9(2)(a)




Graeme Silver
RMA Planner

Date: 12/04/2018

AGREE

Sec 9(2)(a)



Dave Smith ✓
Acting Director Operations, Auckland
(under delegation for Andrew Baucke)

Date: 17/04/2018

Released under the Official Information Act



16 April 2018

Auckland Council
Attention: Kath Coombes, Principal Planner
Private Bag 92300
Victoria Street West
Auckland 1142

Dear Kath

**AMENDMENTS TO THE REGIONAL COASTAL PLAN PROVISIONS OF THE
ADOPTED AUCKLAND UNITARY PLAN**

I refer to your letter of 14 July 2017 requesting that the Minister of Conservation approve the regional coastal plan provisions of the Auckland Unitary Plan.

Pursuant to clause 19(1) of Schedule One of the Resource Management Act I hereby require the council to make the following amendments to the regional coastal plan:

1. Amend activity table 2.19.4 to include ONC within the scope of rule A48.
2. Amend activity table F2.19.7 to include an activity status for rules A73, A74, A75, A76 within the Historic Heritage overlay.
3. Amend policy F2.16.3, and standard F2.21.20.11 to address harmful aquatic organisms on relocated structures in areas where structures can be installed as a permitted activity.
4. Amend activity table F2.19.7 to add a cross-reference to rules E33 and E34.
5. Amend assessment criteria F2.23.2(12) to refer to mangrove removal that does not meet the standards in F2.21.11 or F2.21.5.6.
6. Amend F2.23.2(10A) to include assessment criteria for the deposition of material in the coastal marine area.
7. Amend schedule 4 to add mapped Significant Ecological Areas SEA-M2-23w4 and SEA-M2-23w5, and amend the GIS maps to correctly annotate SEA-M1-23w3

These amendments are described in more detail, along with the reasons for these changes pursuant to clause 19(3), in the attachment.

Please contact Graeme Silver (Sec 9(2)(a) [redacted] gsilver@doc.govt.nz) if you wish to discuss any of the matters raised in this letter.

Kind regards

Sec 9(2)(a)
[redacted]

Dave Smith

Acting Director Operations, Auckland
(under delegation for Andrew Baucke)

Pursuant to delegated authority

On behalf of

Hon. Eugenie Sage

Minister of Conservation

Note: A copy of the Instrument of Delegation may be inspected at the Director-General's office at Conservation House Whare Kaupapa Atawhai, 18/32 Manners Street, Wellington 6011.

Released under the Official Information Act

Attachment: Amendments to the regional coastal plan provisions of the Auckland Unitary Plan

The relevant provisions of the Auckland Unitary Plan are shown in blue with the required amendments shown as ~~strikethrough~~ for deletions and underline for insertions.

1. Mangrove removal activity table

Activity table F2.19.4

	Activity	Activity status						
		GCM Zone	SEAM1, ONC	ONL	SEAM2, HNC,	ONF Type A1 and A	ONF Type V1, V2, B, C, D, E, F	HH
(A47)	Mangrove removal to enable the operation, maintenance, use and functioning of existing lawful structures, infrastructure, or to ensure public health and safety in the use or operation of infrastructure: <ul style="list-style-type: none"> • maximum of 200m² in the Coastal – General Coastal Marine Zone and SEA-M2, ONL and HNC overlay; or • maximum of 30m² in SEA-M1, ONC, ONFs and HH overlays 	P	C	P	P	C	C	C
(A48)	Mangrove removal to enable the operation, maintenance, use and functioning of existing lawful structures, infrastructure, or to ensure public health and safety in the use or operation of infrastructure: <ul style="list-style-type: none"> • greater than 200m² in the Coastal – General Coastal Marine Zone and SEA-M2, ONL and HNC overlay; or • greater than 30m² in SEA-M1, ONC, ONFs and HH overlays 	D	D	D	D	D	D	D

Reason:

The Outstanding Natural Character (ONC) overlay was omitted from rule A48. This is inconsistent with rule A47 and is considered to be an accidental omission. The rule should apply to mangrove removal of more than 30 square metres in areas of Outstanding Natural Character.

2. Hull Biofouling

Activity table F2.19.7

	Activity	Activity status						
		GCM Zone	SEAM1, ONC	ONL	SEAM2, HNC,	ONF Type A1 and A	ONF Type V1, V2, B, C, D, E, F	HH
(A73)	Discharge of hull bio-fouling organisms resulting from in-water cleaning of a vessel with macro-fouling from within Auckland (standards to be complied with: Standard F2.21.8.7 (2), (5) and (7))	P	Pr	P	P(HNC) Pr (SEA – M2)	D	P	<u>P</u>
(A74)	Discharge of hull bio-fouling organisms resulting from in-water cleaning of a vessel with macro-fouling of domestic origin following a risk assessment that determined a relative biosecurity risk of negligible or low (standards to be complied with: Standard F2.21.8.7 (2), (5) and (7))	P	Pr	P	P(HNC) Pr (SEA – M2)	D	P	<u>P</u>
(A75)	Discharge of hull bio-fouling organisms resulting from in-water cleaning of a vessel with macro-fouling where the fouling is: <ul style="list-style-type: none"> • of international origin; or • of domestic origin but more than low biosecurity risk or has not had a risk assessment (or extensive to very heavy macro-fouling) (standards to be complied with: Standard F2.21.8.7 (2), (3), (4), (5) and (7))	P	Pr	P	P (HNC) Pr (SEA – M2)	D	P	<u>P</u>
(A76)	Discharges associated with in-water treatment methods that render bio-fouling organisms non-viable (standards to be complied with: Standard F2.21.8.7 (2), (6) and (7))	P	Pr	P	P(HNC) Pr (SEA – M2)	D	P	<u>P</u>

Reason:

The rule currently does not apply to the Historic Heritage overlay. This is considered to be an accidental omission. An activity status of permitted was agreed in the mediation statement and in Council's evidence to the Independent Hearing Panel. A permitted activity is consistent with the General Coastal Marine Zone and appropriate for the Historic Heritage overlay as the discharge of biofouling (that meets the relevant standards) will not adversely affect heritage values. All the other rows in the discharges activity table have the same activity status for the Historic Heritage overlay and the General Coastal Marine Zone.

3. Harmful aquatic organisms

Policy F2.16.3 (Structures)

- (10) Require the building material used for structures to be appropriately marine treated, or if relocated or recycled building material or structures are is used, that it is treated or cleaned to prevent the transference or introduction of harmful aquatic organisms.

Standard F2.21.10.11 Relocation of structures with harmful aquatic organisms attached

- (1) Any structure being relocated to a different part of Auckland should be clear of suspected harmful aquatic organisms prior to relocation, unless the new location already has that organism.

Reason:

Installation of of structures within Auckland's coastal marine area is carefully managed to reduce the risk of spreading harmful aquatic structures, thus giving effect to policy 12 of the NZCPS. However there is a gap in the policies and rules regarding the movement of small-scale structures (such as pontoons and piles) to and within the port, marina and ferry terminal zones. This is allowed as a permitted activity but lacks a standard to require removal of any biofouling that contains harmful aquatic organisms.

This amendment to policy F2.16.3(10) clarifies that relocated structures must be cleaned or otherwise treated to prevent the spread of harmful aquatic organisms. A further amendment is required to introduce a standard that prevents the spread of harmful aquatic organisms in areas where the installation of certain structures is a permitted activity.

4. Cross-references for discharges from industrial and trade activities and discharges of agrichemicals

Table F2.19.7 Activity table Discharges to the CMA pursuant to section 15 of the RMA

(A65) Discharge of stormwater, discharge of contaminants from industrial or trade activity areas, or discharge of agrichemicals - Refer to E8 Stormwater – Discharge and diversion, to E33 Industrial and trade activities, E34 Agrichemicals and vertebrate toxin agents.

Reason:

Discharges to the coastal marine area are dealt with in Chapter E. There is cross-reference in Chapter F to clarify that the provisions in Chapter E apply to some activities and discharges into the coastal marine area. However the cross-referencing is incomplete and this has the potential to generate confusion for plan users.

The amendment provides a cross-reference to the relevant rules of Chapter E for discharges from industrial and trade activities, and of agrichemicals and vertebrate toxins.

5. Mangrove removal assessment criteria

F2.23.2 Assessment – Restricted discretionary activities – Assessment criteria

(12) ~~Mangrove removal that does not meet the standards in F2.21.1 or F2.21.5.6 Mangrove removal, and other pruning, vegetation alteration or vegetation removal, not otherwise provided for and mangrove removal to enable the operation, maintenance, use and functioning of existing lawful structures, infrastructure, to ensure public health and safety in the use or operation of infrastructure:~~

- (a) whether removal of mangroves, including seedlings, has been avoided in areas:
- (i) where mangroves provide important ecological values;
 - (ii) of potential coastal erosion where mangroves provide a buffer against coastal processes causing erosion; and
 - (iii) where the sediments contain high levels of contaminants at risk of being resuspended.

Reason:

This amendment is consequential to changes made by the Independent Hearing Panel but overlooked in the final drafting of the adopted version of the Plan. The activity status of specific types of mangrove removal was changed from restricted discretionary to discretionary. The assessment criteria are relevant for the assessment of mangrove removal activities that do not meet the permitted activity standards as that was retained as a restricted discretionary activity. However, the assessment criteria no longer apply to 'mangrove removal not otherwise provided for' or to 'mangrove removal to enable the operation, maintenance, use and functioning of existing lawful structures, infrastructure, to ensure public health and safety in the use or operation of

infrastructure' as those are now a discretionary activity. The assessment criteria in (12) all relate to mangroves so it is inconsistent to retain 'other pruning, vegetation alteration or vegetation removal, not otherwise provided for' in the heading. The removal of vegetation other than mangroves is to be assessed under the general assessment criteria in F2.23.2(1). The amendment clarifies this.

6. Depositing of material – assessment criteria

F2.23.2

...

(10A) Coastal marine area depositing of material:

(a) whether the depositing of material:

(i) uses methods that include appropriate sediment retention methods, such as using coarser sediment, combining with planting or frequency of sand transfer, to retain the deposited material within the coastal cell in which it is placed;

(ii) avoids the introduction of waste, contaminants or harmful aquatic organisms; and

(iii) is designed to provide beach elevations and contours that provide environmental, scientific, cultural, amenity or social benefits, or is for erosion control.

Reason:

Deposition of material in the coastal marine area is a restricted discretionary activity within specified volumes. Assessment criteria for the restricted discretionary activity were proposed by the Auckland Council and uncontested. They appear to have been omitted by accident as no reasons for the omission were provided by the Independent Hearing Panel. This amendment corrects that omission.

7. Wading bird areas at Ambury

Schedule 4 Significant Ecological Areas – Marine Schedule

ID	Name/ Location	Values of Significant Ecological Area - Marine	SEA-M type
23w1-3	<i>Wading bird habitat</i>	Extensive areas of feeding habitat for waders along this coastline.	SEA-M1w
<u>23w4, 5</u>	<u><i>Wading bird habitat</i></u>	<u>Extensive areas of feeding habitat for waders along this coastline.</u>	<u>SEA-M2w</u>

Amendment to the GIS maps

Amend the attributes for SEA-M1-23c so that it is also marked as SEA-M1-23w3, Significant wading bird area, Marine 1.

Reason:

The Auckland Unitary Plan contains a schedule and maps of Significant Ecological Areas (SEA) of various types, with two categories of marine areas (SEA-M1 and SEA-M2), including some that have been identified as significant for wading birds (designated as SEA-M1w or SEA-M2w). There are a few inconsistencies between the schedule and the maps and these amendments correct those errors.

There are five SEAs identified and mapped at Ambury, three are M1w and two are M2w SEAs. Only the three M1 SEAs were recorded in the schedule with a line specifically for 'wading bird habitat'. The two SEA-M2w areas are considered to have been accidentally omitted and this amendment corrects that error.

The SEA designated as SEA-M1-23c in the maps is described in Schedule 4 as being used by thousands of wading birds, so it should be designated SEA-M1-23w3 in the GIS maps.

Released under the Official Information Act

14 January 2020

Natasha Hayward
Acting Director – Planning, Permissions and Land

Chatham Islands Resource Management Document

The Chatham Islands Council (CIC) has written to the Minister requesting that they approve its proposed Chatham Islands Resource Management Document (CIRMD). Attached is a copy of the proposed plan.

1. Department's Prior Involvement

DOC on behalf of the Minister made a submission on this proposed plan. No appeals were lodged following the council decision, however there have been extensive discussions on the approval of the CIRMD since the CIC requested Minister approval of the coastal provisions in 2015.

In response to the CIC's request for Minister approval, an assessment of the CIRMD was carried out and it was determined that the CIRMD would need to be amended to include introductory text, and a new objective, policy and method which effectively stated that the CIRMD will give effect to the New Zealand Coastal Policy Statement (NZCPS) within 3 years of the CIRMD becoming operative.

The Minister sent a letter to the CIC in September 2016 requesting changes to the CIRMD.

This request was declined by CDC as:

- Many minor amendments requested by you could be made as minor corrections pursuant to Clause 16(2) of Schedule 1 of the RMA 1991.
- Objective 4.3.1(iii) was included through the hearing process in response to the Ministers specific submission and evidence at the hearing. If DOC or the Minister had concerns with this outcome, a more appropriate way to address this would have been to appeal the decision in 2015.
- Objective 4.3.1(iii) indicates that the CIC will develop a programme of implementation of the NZCPS. The CIC notes that methods of implementation will include a variety of tools and will not be driven exclusively by the CIRMD.
- The only specificity provided in the letter from the Minister the around what the future plan change should include, were broadly:
 - i. The protection of indigenous biological diversity (NZCPS policy 11);

- ii. The control of harmful aquatic organisms (NZCPS policy 12);
 - iii. The preservation of natural character (NZCPS policy 13);
 - iv. The protection of natural features and natural landscapes (NZCPS policy 15); and
 - v. The control of vehicle access (NZCPS policy 20).
- The CIC did not consider that the Minister was clear in what changes were necessary, or the reasons for these changes.
 - A three-year timeframe to undertake a plan change process for the above would place a significant financial burden on the council, likely to exceed \$200,000
 - The CIRMD already contains sufficient controls, giving effect to the policy direction in the NZCPS.
 - You stated that the plan change is required to 'further the objectives and policies of the NZCPS', and that this exceeds the legal requirement to 'give effect to' the NZCPS.
 - That the changes being sought by the Minister go beyond the Ministers functions, as the changes related to parts of the CIRMD which apply to the environment landward of the Mean High Water Springs (MHWS).

Following this letter from CIC, DOC commissioned an independent consultant to review the CIRMD to consider whether changes were required for the CIRMD to give effect to the NZCPS. It was the view of this consultant that changes were required to the introductory text, and a new objective, policy and method needed to be inserted which effectively stated that the CIRMD will give effect to the NZCPS within 3 years of the CIRMD becoming operative. The consultants report was then sent to the CIC.

In response to the consultants report, CIC retained their position that the CIRMD gave effects to the NZCPS and could be approved by the Minister without any further changes.

CIC officials then stated that they required:

"an understanding of the specific sorts of changes DoC advisors would suggest to avoid inconsistencies with the NZCPS. To date, the issues the Department has raised have been broad (i.e. the plan needs to give effect to the NZCPS and that would involve identifying natural character, and might involve doing some other things too). Given the fact that the CIC position is that the NZCPS is given effect to in those broad terms because development is subject to natural character assessment, we are left asking what else would the CIC need to agree to for DoC advisors to recommend the Minister approves the Plan – the CIC have no certainty around what would be acceptable to the Minister and what they would be agreeing to."

This instigated a new assessment of the CIRMD against the policy framework of the NZCPS. A key parameter for this assessment was the acknowledgment that the Minister only has authority to approve the Coastal Marine Area provisions of the CIRMD and not the provisions which apply landward of the Mean High Water Springs.

This assessment has identified some specific amendments that could be made to the CIRMD to improve consistency with the NZCPS. These are discussed further in the following section.

3. Criteria for plan approval

It is considered that some minor amendments are necessary to improve clarity and consistency with the NZCPS. It is not considered that the CIRMD contains provisions which are ultra vires the Resource Management Act 1991. Until the changes suggested in (4) below are made, it is not considered that the CIRMD addresses the resource management issues of the Chatham Islands, including the recognition and protection of areas of significant conservation value.

4. Amendments to the Proposed Plan

Sub clause 19(1) of the first schedule to the RMA allows the Minister, prior to approving a plan, to require a council to make amendments to a plan. The power to require amendments is delegated to Director level. In this case I consider that a number of amendment are required. These amendments are considered to be minor and will improve the clarity of the CIRMD in relation to specific NZCPS policies.

These amendments will not make significant changes to the CIRMD, and I am confident that the changes can occur without the need for a Schedule 1 process. These amendments will be beneficial in terms of improving clarification, interpretation and consistency with the NZCPS.

These amendments are tabled below:

Provision	Required Amendment
4.3.1(i)	<p>This amendment incorporates New Zealand Coastal Policy Statement (NZCPS) policy 13(1) which requires that natural character is preserved.</p> <p><i>Preserve the natural character of the Chatham Island's through the control of inappropriate use, development and subdivision where it may adversely affect the natural character of the coastal environment.</i></p>
4.3.1.1(i)	<p>The amendment to chapeau (i) recognises that NZCPS policy 13(1) contains a hierarchy of how avoidance, remediation or mitigation should be applied to the effects of activities on specific natural character values in the coastal environment. This hierarchy is not clear with the current drafting.</p> <p>Rather than referring directly to the NZCPS, we have drafted 'any relevant national policy statement'. The purpose of this wording is to provide for any change to the NZCPS, or new national policy statement coming into force.</p> <p>The use of the term 'land' should be deleted from this policy, as the policy is intended to cover activities within the Coastal Marine Area (CMA).</p> <p>The amendment to 4.3.1.1(i)(b) removes the repetition of the term 'landforms'. The second 'landforms' in (b) is amended to 'features'. NZCPS</p>

	<p>policy 1(2)(f), refers to ‘natural elements and features’, and it is considered that the term ‘features’ is more appropriate to be listed in CIRMD 4.3.1.1(i)(b).</p> <p>(i) <i>To avoid, remedy or mitigate, in accordance with any relevant national policy statement, the adverse effects of land activities on the natural character of the coastal environment, including:</i></p> <ul style="list-style-type: none"> (a) <i>coastal processes,</i> (b) <i>natural landforms such as landscapes, seascapes and landforms features,</i> (c) <i>ecosystem functioning and health,</i> (d) <i>significant areas of indigenous vegetation and habitats of fauna,</i> (e) <i>historic heritage, cultural and recreational values,</i> (f) <i>water quality.</i>
4.3.1.1(ii)	<p>This amendment seeks a consistent use of terminology with the terminology used in the NZCPS.</p> <p><i>To locate, design and manage subdivision, use and development of land in a way that protects areas of significant indigenous vegetation and significant habitats of indigenous fauna, outstanding natural character and outstanding natural features and landscapes.</i></p>
4.4.1.1(ii)	<p>This amendment recognises that NZCPS policy 11 contains a hierarchy of how avoidance, remediation or mitigation should be applied to the effects of activities on specific indigenous vegetation or habitat of indigenous fauna in the coastal environment. This hierarchy is not clear with the current drafting.</p> <p>Rather than referring directly to the NZCPS, we have drafted ‘any relevant national policy statement’. The purpose of this wording is to provide for any change to the NZCPS, or new national policy statement coming into force.</p> <p><i>To avoid, remedy, or mitigate, in accordance with any relevant national policy statement, adverse effects on the ecological integrity, functioning, habitat values and natural character of areas of significant indigenous vegetation and habitats.</i></p>
5.6.4.1(i)	<p>This amendment recognises that NZCPS policies 11 and 15 contain a hierarchy of how avoidance, remediation or mitigation should be applied to the effects of activities on specific indigenous vegetation, habitat of indigenous fauna, natural landscape values or natural features within the coastal environment. This hierarchy is not clear with the current drafting.</p> <p>Rather than referring directly to the NZCPS, we have drafted ‘any relevant national policy statement’. The purpose of this wording is to provide for any change to the NZCPS, or new national policy statement coming into force.</p> <p><i>Activities in the Coastal Marine Area should be located and designed in a way which avoids, remedies or mitigates adverse effects in accordance with any relevant national policy statement, to and protects areas of significant indigenous vegetation, significant habitats of indigenous fauna, and outstanding natural features and landscapes.</i></p>
5.6.11.4(i)	<p>This amendment seeks to include conditions on the permitted activity for disturbance within the CMA, to include impacts on natural coastal processes and natural hazard risks.</p> <p>This amendment will give effect to NZCPS policies 13 and 25.</p> <p>(i) <i>Disturbance of foreshore or seabed is a permitted activity if:</i></p>

	<p>(a) <i>the volume of sediment disturbed does not exceed 50m³ in any 12 month period per hectare; or</i></p> <p>(b) <i>the disturbance is for the marine rescue and disposal of marine mammals.</i></p> <p><i>Provided that:</i></p> <p>(a) <i>the stability of the foreshore is not affected,</i></p> <p>(b) <i><u>natural coastal processes are not affected,</u></i></p> <p>(c) <i><u>natural hazard risk is not exacerbated,</u></i></p> <p>(d) <i>conditions (b) and (c) of Rule 5.3.4.10(i) are complied with,</i></p> <p>(e) <i>nesting sites and indigenous vegetation are not displaced.</i></p>
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5. Next Steps

Attached for your consideration is a draft letter to the CIC which identifies the changes required to the CIRMD pursuant to the First Schedule, clause 19(2) of the RMA. It also gives the reasons for these changes, pursuant to the First Schedule, clause 19(3).

Once signed by you, this letter will be sent to the CIC.


Following the CIC making the required changes, the CIRMD can then be referred to the Minister for approval pursuant to the First Schedule, Clause 19(4).

Recommendation

It is recommended that you:

1. note that I do consider that amendments are required to the adopted CIRMD; and
2. sign the attached letter to the CIC, requiring that they amend parts of the CIRMD pursuant to the First Schedule, clauses 19(1) and 19(3).

Sec 9(2)(a)



Nardia Yozin – Senior RMA Planner



16 January 2019

Chatham Islands Council

9 Tuku Road

Waitangi

Attention: Owen Pickles

Dear Owen,

AMENDMENTS TO ADOPTED REGIONAL COASTAL PLAN

I refer to your letter of 15 December 2015 requesting that the Minister of Conservation approve the coastal marine area provisions contained in the Chatham Islands Resource Management Document (CIRMD).

Pursuant to clause 19(1) of the First Schedule to the Resource Management Act 1991 I hereby require the council to make the following amendments to the CIRMD:

Provision	Required Amendment
4.3.1(i)	<i><u>Preserve the natural character of the Chatham Islands through the control of inappropriate use, development and subdivision where it may adversely affect the natural character of the coastal environment.</u></i>
4.3.1.1(i)	<i>(i) <u>To avoid, remedy or mitigate, in accordance with any relevant national policy statement, the adverse effects of land activities on the natural character of the coastal environment, including:</u></i> <ul style="list-style-type: none"> <i>(a) coastal processes,</i> <i>(b) natural landforms such as landscapes, seascapes and landforms-features,</i> <i>(c) ecosystem functioning and health,</i> <i>(d) significant areas of indigenous vegetation and habitats of fauna,</i> <i>(e) historic heritage, cultural and recreational values,</i> <i>(f) water quality.</i>

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4.3.1.1(ii)	<i>To locate, design and manage subdivision, use and development of land in a way that protects areas of significant indigenous vegetation and <u>significant habitats of indigenous fauna, outstanding natural character and outstanding natural features and landscapes.</u></i>
4.4.1.1(ii)	<i>To avoid, remedy, or mitigate, in accordance with any relevant national <u>policy statement, adverse effects on the ecological integrity, functioning, habitat values and natural character of areas of significant indigenous vegetation and habitats.</u></i>
5.6.4.1(i)	<i>Activities in the Coastal Marine Area should be located and designed in a way which avoids, remedies or mitigates adverse effects <u>in accordance with any relevant national policy statement, to</u> and <u>protects</u> areas of significant indigenous vegetation, significant habitats of indigenous fauna, and outstanding natural features and landscapes.</i>
5.6.11.4(i)	<p><i>(i) Disturbance of foreshore or seabed is a permitted activity if:</i></p> <p><i>(a) the volume of sediment disturbed does not exceed 50m³ in any 12 month period per hectare; or</i></p> <p><i>(b) the disturbance is for the marine rescue and disposal of marine mammals.</i></p> <p><i>Provided that:</i></p> <p><i>(a) the stability of the foreshore is not affected,</i></p> <p><i>(b) <u>natural coastal processes are not affected,</u></i></p> <p><i>(c) <u>natural hazard risk is not exacerbated,</u></i></p> <p><i>(d) conditions (b) and (c) of Rule 5.3.4.10(i) are complied with,</i></p> <p><i>(e) nesting sites and indigenous vegetation are not displaced.</i></p>

Pursuant to clause 19(3) the reasons for requiring these amendments are as follows:

Provision	Reason for required Amendment
4.3.1(i)	This amendment incorporates New Zealand Coastal Policy Statement (NZCPS) policy 13(1) which requires that natural character is preserved.
4.3.1.1(i)	<p>The amendment to chapeau (i) recognises that NZCPS policy 13(1) contains a hierarchy of how avoidance, remediation or mitigation should be applied to the effects of activities on specific natural character values in the coastal environment. This hierarchy is not clear with the current drafting.</p> <p>Rather than referring directly to the NZCPS, we have drafted 'any relevant national policy statement'. The purpose of this wording is to</p>

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	<p>provide for any change to the NZCPS, or new national policy statement coming into force.</p> <p>The use of the term 'land' should be deleted from this policy, as the policy is intended to cover activities within the Coastal Marine Area (CMA).</p> <p>The amendment to 4.3.1.1(i)(b) removes the repetition of the term 'landforms'. The second 'landforms' in (b) is amended to 'features'. NZCPS policy 1(2)(f), refers to 'natural elements and features', and it is considered that the term 'features' is more appropriate to be listed in CIRMD 4.3.1.1(i)(b).</p>
4.3.1.1(ii)	<p>This amendment seeks a consistent use of terminology with the terminology used in the NZCPS.</p>
4.4.1.1(ii)	<p>This amendment recognises that NZCPS policy 11 contains a hierarchy of how avoidance, remediation or mitigation should be applied to the effects of activities on specific indigenous vegetation or habitat of indigenous fauna in the coastal environment. This hierarchy is not clear with the current drafting.</p> <p>Rather than referring directly to the NZCPS, we have drafted 'any relevant national policy statement'. The purpose of this wording is to provide for any change to the NZCPS, or new national policy statement coming into force.</p>
5.6.4.1(i)	<p>This amendment recognises that NZCPS policies 11 and 15 contain a hierarchy of how avoidance, remediation or mitigation should be applied to the effects of activities on specific indigenous vegetation, habitat of indigenous fauna, natural landscape values or natural features within the coastal environment. This hierarchy is not clear with the current drafting.</p> <p>Rather than referring directly to the NZCPS, we have drafted 'any relevant national policy statement'. The purpose of this wording is to provide for any change to the NZCPS, or new national policy statement coming into force.</p>
5.6.11.4(i)	<p>This amendment seeks to include conditions on the permitted activity for disturbance within the CMA, to include impacts on natural coastal processes and natural hazard risks.</p> <p>This amendment will give effect to NZCPS policies 13 and 25.</p>

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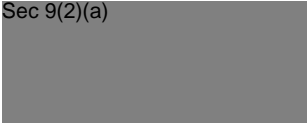
The amendments identified are all considered to be minor amendments.

In our assessment of the CIRMD, some minor drafting errors were identified. These have already been shared with the Council planner and these errors can be amended if you wish, pursuant to clause 16(2) of the First Schedule.

Please contact Nardia Yozin if you wish to discuss any of the matters raised in this letter.

Yours sincerely

Sec 9(2)(a)



Natasha Hayward

Acting Director – Planning, Permissions and Land

Acting under delegated authority from the Minister of Conservation

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Office of Hon Poto Williams

Read

Departmental Briefing



Department of
Conservation
Te Papa Atawhai

In Confidence

GS ref: 21-B-0165

DOCCM: 7082295

To: Minister of Conservation

Date: 1 September 2022

Subject: Bay of Plenty Plan Change 13 (Air Quality): approval of provisions that apply to the coastal marine area – Part 1: amendments to rules

Action sought: Direct the Bay of Plenty Regional Council to make amendments to several rules in Plan Change 13 (Air Plan) that apply to the coastal marine area

Time Frame: 14 September 2022 (suggested timeframe – there is no statutory deadline)

Risk Assessment:	Low risk. The proposed amendments are not controversial and will not have a significant impact on any party.	Department's Priority:	Normal
		Level of Risk:	Low

Contacts

Name and position	Cellphone	First contact	Principal author
Steve Taylor, Director, Planning, Permissions and Land	Sec 9(2)(a)	✓	
Graeme Silver, Team Leader, RMA			✓

Executive summary

1. Bay of Plenty Regional Council are replacing their current Air Plan with Plan Change 13 (Air Quality) to their Regional Natural Resources Plan.
2. Plan Change 13 applies to the coastal marine area as well as applying on land. It is therefore a regional coastal plan in part. Regional coastal plans require your approval.
3. Bay of Plenty Regional Council has requested your approval of those parts of Plan Change 13 that apply to the coastal marine area.
4. Before approving a regional coastal plan, you may direct a regional council to make amendments to it.
5. We have identified several technical flaws with the way Plan Change 13 manages air discharges in the coastal marine area. These flaws could allow adverse effects on people and the environment that are considered unacceptable.
6. Regional Council planning staff agree with our assessment. In discussion with them, we have developed a set of amendments that would address these issues.
7. We recommend that you use your power to amend the Plan Change to implement the amendments agreed with the Regional Council.
8. These changes are not controversial. They will have little direct impact on any person and will not unduly prejudice any party.
9. If you agree, you can direct the Regional Council to make the proposed amendments by signing the attached letter.
10. This is the first of two briefings on this matter. Once the amendments are made, we will prepare a second briefing concerning your approval of the amended Plan Change 13.

We recommend that you ...

Decision

- a) Note that the Bay of Plenty Regional Council has requested that you approve Plan Change 13 (Air Quality) to the Regional Natural Resources Plan, to the extent that it applies to the coastal marine area.
- b) Agree to direct the Council to make the amendments to Plan Change 13 (Air Quality) listed in **Attachment 1** by signing the letter to Council in **Attachment 3**

Yes / No

Sec 9(2)(a)

Henry Weston
Deputy Director-General Operations
For Director-General of Conservation


Hon Poto Williams
Minister of Conservation

9/10/22

Purpose

1. To advise you of the procedure for amending and approving regional coastal plans under clause 19 of Schedule 1 of the Resource Management Act 1991 (RMA).
2. To seek your agreement to require the Bay of Plenty Regional Council to amend Plan Change 13 (Air Quality) to the Bay of Plenty Regional Natural Resources Plan, using your powers under clause 19(1) of Schedule 1 of the Resource Management Act 1991.

Background and context – Te horopaki

The statutory role of the Minister of Conservation in approving regional coastal plans

3. Regional councils are responsible for managing the coastal marine area under the RMA. This role is carried out *"in conjunction with the Minister of Conservation"*¹.
4. The coastal marine area is everything seaward of the line of mean high water springs to the 12 nautical mile territorial sea limit. It includes the foreshore, seabed, the water column and the air above it.
5. Regional councils are required to prepare a regional coastal plan to assist them to manage the coastal marine area. The content and purpose of a regional coastal plan is defined by the RMA and it must give effect to the New Zealand Coastal Policy Statement.
6. The New Zealand Coastal Policy Statement is prepared by the Minister of Conservation.
7. Once a proposed plan has completed the submission and appeal processes required by Schedule 1 of the RMA, it is made 'operative' and replaces any earlier plan.
8. A regional coastal plan cannot be made operative until the Minister of Conservation has approved it. Your approval of coastal plans has not been delegated.
9. You can direct councils to amend the plan before approving it². Those amendments cannot be inconsistent with any decision of the Environment Court, except when submissions were made on your behalf to the Court on that matter³.
10. A regional coastal plan may be combined with other RMA plans. In those cases, your approval is only required for those parts of the combined plan that apply to the coastal marine area, and your power to amend them is limited to those same parts.
11. When parts of a coastal plan are still subject to an Environment Court appeal, the council can request your approval of the rest of the plan.

RMA Plans in the Bay of Plenty region

12. Like most regions, the Bay of Plenty Regional Council (the Council) has produced multiple plans to manage resource management issues, including an Air Plan, a Water and Land Plan and a River Gravel Management Plan.
13. Since 2017 the Council has been reviewing them and combining them into a single plan, the Regional Natural Resources Plan, except for their Regional Coastal Environmental Plan (the Coastal Plan) which remains a standalone plan.
14. The Coastal Plan was reviewed in 2017 and a replacement plan produced. The new plan was approved in 2019 by Hon. Eugenie Sage, apart from parts of it that were still subject to appeals. These were resolved in 2020 and approved by Hon. Kiritapu Allen.

¹ Section 30(1)(d) of the RMA.

² Clause 19(1): *"Prior to his or her approval of a regional coastal plan, the Minister of Conservation may require the regional council to make any amendments to the plan specified by that Minister."*

³ Clause 19(2): *"The Minister of Conservation may not require a regional council to make an amendment to a regional coastal plan that is in conflict or inconsistent with any direction of the Environment Court, unless the Minister made a submission on the provision concerned when the provision was referred to the court."*

15. The Coastal Plan manages all activities and discharges in the Bay of Plenty's coastal marine area except for discharges to air. These are currently managed by the Bay of Plenty Regional Air Plan.
16. The Regional Air Plan is one of only two regional air plans that apply to the coastal marine area⁴. It required the approval of the Minister, to the extent that it applies to the coastal marine area. This was granted by Hon. Chris Carter, in 2003.

The Bay of Plenty Regional Natural Resources Plan and Plan Change 13 (Air Quality)

17. The Council is replacing the Regional Air Plan by inserting an Air Quality chapter into the Regional Natural Resources Plan. This chapter addresses discharges to air, including agrichemical spraying, fumigation, open burning, spray-painting and abrasive blasting.
18. The majority of these activities are land based but the rules do not limit their application to land. It is conceivable that some activities, such as spray-painting and abrasive blasting could be carried out in the coastal marine area.
19. Plan Change 13 (PC13) is the document that inserts the new chapter in the Plan.
20. PC13 was notified in February 2018. Hearings occurred in October 2018 and decisions were released in March 2019. Ten appeals were lodged and nine have been resolved by mediation.
21. The last appeal concerns a single rule⁵. An Environment Court hearing commenced in October 2020 but has been adjourned and remains unresolved. A further hearing was held in June 2022 and a decision may be released by the Court in the next few months.
22. In the meantime, the Council has requested your approval of the provisions that are not subject to the remaining appeal.

DOC involvement in Plan Change 13 (Air Quality)

23. DOC's involvement in regional air plans is normally limited to operational matters. The environmental effects managed by air plans otherwise do not generally affect priority conservation values.
24. DOC engages in regional air plans when the rules affect DOC management of public conservation land. This typically relates to weed spraying operations and the use of vertebrate toxins not covered by the Resource Management (Exemption) Regulations⁶.
25. DOC provided comments on a draft of PC13 in 2016. At that time, it was noted that DOC's only interest in the Air Plan related to the use of agrichemicals to control weeds.
26. When it was notified in 2018, DOC lodged a brief submission supporting a rule for the application of agrichemicals but seeking a change relating to public notification of spraying. The panel accepted our submission and made the change we requested.
27. As originally drafted, PC13 did not clearly state that it applied to the coastal marine area, and this was not identified by DOC at the time. Had we done so, it is likely that we would have applied greater scrutiny to it. The hearing panel later added a statement to the chapter's introduction noting that the chapter applied to the coastal marine area.
28. DOC's submission was lodged in the name of the Director-General, rather than in the Minister's name. It is normal practice for submissions on a regional coastal plan to be in the name of the Minister because this prevents any restriction on the Minister's powers under clause 19 of the First Schedule of the RMA. Submissions on any other regional plan, district plans and resource consents are in the name of the Director-General.

⁴ The other air plan that applies in the coastal marine area is the West Coast Regional Air Quality Plan.

⁵ Rule AQ R22 Handling of bulk solid materials – Discretionary.

⁶ The regulations provide for the use of 1080, rotenone and brodifacoum.

29. DOC reviewed 3 appeals that affected the agrichemical rule that DOC had submitted on. None of them affected the rule in a way that was detrimental to DOC's interests and we did not join those proceedings.
30. DOC did not review the other 7 appeals because they related to provisions we had not submitted on and DOC had no standing to join those appeals.

Recommended amendments to Plan Change 13 (Air Quality)

31. PC13 does not distinguish between activities on land and in the coastal marine area when managing the adverse effects of air discharges. This fails to recognise that the coastal marine area is predominantly public space. As a result, some effects are not properly managed.
32. Because many activities that are managed by PC13 are unlikely or not expected to occur in the coastal marine area, the potential environmental effects of those activities in the coastal marine area were not properly considered by the Council.
33. While unlikely, it is conceivable that some of these activities could be carried out in the coastal marine area with a risk that the environmental effects would be largely uncontrolled.
34. We have identified four issues that affect eleven rules (listed in Table 1). These have been discussed with the Council and they agree with our assessment and the proposed amendments.
35. The amendments are shown as track changes in Attachment 1.

Harmful and nuisance effects allowed in permitted activity rules

36. A key method of managing effects in PC13 is including a condition that states:

The discharge must not be noxious or dangerous, offensive or objectionable beyond the boundary of the subject property.
37. This prevents health and nuisance effects on neighbours and other members of the public. Many air discharges that meet this condition are allowed as a permitted activity, including a catch-all rule for all discharges not covered by a specific rule.
38. This condition does not work in the coastal marine area as there are no property boundaries, except where subdivided land has eroded to create "blue-water" title. The rules using this condition would allow noxious or dangerous, offensive or objectionable effects on members of the public at any location in the coastal marine area and at any distance from the source.
39. Members of the public should not be exposed to harmful or nuisance effects by a permitted activity. If an activity could cause such effects, it should be subject to a resource consent process, allowing the public to engage and the council to impose conditions to manage the effects of the activity.
40. We recommend that six rules that use this condition should be amended to include a similar condition that prevents these effects occurring at any location in the coastal marine area:

If the discharge is in the coastal marine area, it must not be noxious or dangerous, offensive or objectionable.
41. Any air discharge in the coastal marine area that breaches this condition, and is not provided for by another rule specific to that activity, will default to a catch-all discretionary activity rule and require consent.

Protection of coastal water quality from air discharges

42. A potential effect of some air discharges is the contamination of water. This mainly occurs when particulates in the discharge settle on to water, or occasionally when gases in the discharge dissolve into water on contact⁷.
43. In addition to affecting water quality, contaminants can settle to the bed of the water body, resulting in accumulation of harmful or toxic substances such as heavy metals.
44. Several rules in PC13 restrict discharges if they would enter a water body. However, the RMA definition of water body excludes coastal water. As a result, the same effect is not managed in the coastal marine area.
45. Coastal waters are generally more resilient by virtue of the greater volumes for dilution of contaminants and the 3-dimensional mixing that can occur. However coastal waters include shallow and poorly flushed estuaries, and those parts of rivers and streams that are in the coastal marine area.
46. As estuaries are a depositional environment, they are more vulnerable to contamination by pollutants that settle out of the water column and accumulate in sediment.
47. We recommend that four rules that use a condition to prevent effects on water bodies should also include a condition that prevents those effects on coastal water.

Exclusion of inappropriate activities from the coastal marine area

48. Many of the rules of PC13 refer to specific activities that would not occur in the coastal marine area, such as the discharge of dust from unsealed roads. These rules can be considered not to be coastal plan rules and not relevant for the purposes of your approval or amendment.
49. Some rules apply to activities that are not expected to occur in the coastal marine area, but potentially could, such as the discharge of fertiliser or lime as a permitted activity. While unlikely, this would have adverse effects that are not controlled by PC13.
50. We recommend that five rules are amended to exclude them from applying in the coastal marine area.

The risk of fuel spills when using generators and pumps

51. Rule AIR-R7 enables the use of mobile diesel generators and pumps as a permitted activity. This may occur in the coastal marine area when they are placed on wharves and jetties, pontoons or vessels.
52. Use of such equipment creates a risk of fuel spills when they are refuelled. It is normal practice for coastal plans to prevent refuelling of equipment, machinery and vehicles in the coastal marine area without a consent. These are normally able to leave the coastal marine area to be refuelled.
53. It may be impractical for pumps or generators to be removed from the coastal marine area for refuelling, particularly if they are being used for emergency response purposes. In this case, a tier 1 oil spill response plan should be put in place. This is required for any transfer of fuel in the coastal marine area under the Maritime Transport Act and managed by regional councils.
54. We recommend adding an advice note to remind plan users of their responsibilities to manage the risk of oil spill if they refuel such equipment in the coastal marine area.

⁷ For example, sulphur dioxide will dissolve in water to form sulphuric acid.

Table 1: Summary of amendments to Plan Change 13 rules

Rule	comments	amendments
AIR-R1 General activities – Permitted – Ngā mahinga noa – E whakaaehia ana	This catch-all rule would allow any discharge not otherwise controlled by the plan to occur as a permitted activity in the coastal marine area with no controls on harmful, nuisance or water quality effects.	Amend to include controls over harmful and nuisance effects and prevent discharge into coastal water.
AIR-R2 Miscellaneous discharges – Permitted – Ngā tukunga matahuhua – E whakaaehia ana	Applies to a range of specific activities that mostly do not occur in the coastal marine area or would be inappropriate there (eg. spray irrigation of liquid waste, and application of fertiliser or lime).	Amend the rule to exclude these activities from the coastal marine area.
AIR-R5 Spraypainting – Permitted – Peita tōrehu – E whakaaehia ana	This would only occur in limited circumstances, such as maintenance of boats and wharves, but the rule as written fails to manage all adverse effects in the coastal marine area.	Amend to include controls over harmful and nuisance effects and prevent discharge into coastal water.
AIR-R6 Abrasive blasting – Permitted – Te whakapahū pākaha – E whakaaehia ana	This would only occur in limited circumstances, such as maintenance of boats and wharves, but the rule as written fails to manage all adverse effects in the coastal marine area.	Amend to include controls over harmful and nuisance effects and prevent discharge into coastal water.
AIR-R7 Mobile or emergency diesel generators and pumps – Permitted – Ngā pukuhiko me ngā papu tihara nekeneke, ohotata rānei – E whakaaehia ana	May occur on wharves and jetties in the coastal marine area.	Amend to include controls over harmful and nuisance effects and an advice note regarding refuelling.
AIR-R8 Fuel burning equipment (Boilers) – Permitted – Ngā taonga ngingiha kora (Ngā kōhua nunui) – E whakaaehia ana	This activity is not expected to occur in the coastal marine area and Council did not intend to provide for it as a permitted activity in the coastal marine area.	Amend the rule to exclude this from the coastal marine area. NB. use of boilers as part of normal operation of a vessel is provided for by the Marine Pollution Regulations (reg 15)
AIR-R9 Flaring of natural gas – Permitted – Te mura o te kapuni - E whakaaehia ana	Unlikely to occur but potential if petroleum resources are discovered in the Bay of Plenty.	Amend to include controls over harmful and nuisance effects.
AIR-R10 Cement storage and handling – Permitted – Te putu me te whāwhā raima – E whakaaehia ana	Potential for this to occur at wharves when unloading cement from vessels.	Amend to include controls over harmful and nuisance effects and prevent discharge into coastal water.

AIR-AGR-R18 Agrichemical spraying – Permitted — Tōrehu matūahuwhenua – E whakaaehia ana	Use of herbicides for pest control in the coastal marine area is managed by the Regional Coastal Environment Plan. Council did not intend to duplicate controls in this Plan.	Amend the rule to exclude this from the coastal marine area.
AIR-AGR-R19 Agrichemical spraying – Controlled – Torehu matuahuwhenua - E whakahaerehia ana	Use of herbicides for pest control in the coastal marine area is managed by the Regional Coastal Environment Plan. Council did not intend to duplicate controls in this Plan.	Amend the rule to exclude this from the coastal marine area.
AIR-OBURN-R21 Open burning – Permitted — Te tahutahu ahi noa – E whakaaehia ana	This would allow burning of mangroves and any other material in the inter-tidal zone. Council did not intend to allow open burning in the coastal marine area.	Amend the rule to exclude this from the coastal marine area.

Potential conflict with Environment Court decisions

55. You may not amend a regional coastal plan in a way that is in conflict or inconsistent with any decision of the Environment Court, unless you were a party to the court case.
56. In this case, DOC did not lodge a submission on your behalf and you were not represented at the Environment Court.
57. Nine of the appeals have been resolved by consent orders. The Court-directed amendments modify seven rules in PC13 and insert four new rules.
58. Of the eleven rules we recommend that you amend, only three were subject to appeals and affected by consent orders. These are rules AIR-R7 Mobile or emergency diesel generators and pumps, AIR-R18 Agrichemical spraying and AIR-R21 Open burning.
59. The text of these three rules, with both sets of amendments highlighted, is shown in Attachment 2. The amendments we recommend deal with different aspects of each rule to those aspects that have been amended by the Court.
60. Therefore the amendments you will be requiring the Council to make are not in conflict or inconsistent with the any direction of the Environment Court.

Risk assessment – Aronga tūraru

61. The risk level for this decision is considered low. No person is directly affected or prejudiced by these amendments to the rules of PC13.
62. The application of PC13 to the coastal marine area was not controversial and attracted little public attention. Ten Environment Court appeals were lodged but nine have been resolved by mediation.
63. The risk of not amending these rules is that adverse effects on people and the environment could occur.

Consultation – Kōrero whakawhiti

64. The Council carried out consultation as required under Schedule One of the Resource Management Act when carrying out a plan change.
65. DOC engaged with the Council at the staff level to discuss the identified flaws and develop the recommended solution. The Council's planner acknowledged that there was

little consideration of how PC13 would apply to the coastal marine area beyond the Port of Tauranga area. She agreed with our assessment and assisted with the wording of the amendments.

66. No further consultation is required by the RMA and none has occurred.

Next steps – Ngā tāwhaitanga

67. Should you agree to the recommended amendments, direct the Bay of Plenty Regional Council to amend PC13 by signing and sending the attached letter (attachment 3).
68. Once Council has made the amendments, we will provide you with a second briefing regarding your approval of the amended PC13.

Attachments – Ngā tāpiritanga

1. Track changes of recommended ministerial amendments.
2. Comparison of Court and ministerial amendments.
3. Letter to Council requiring the amendments to be made (DOC-7106346).

ENDS

Attachment 1: Track changes of recommended ministerial amendments

Recommended amendments are shown as **red track changes**.

AIR-R1

General activities – Permitted — Ngā mahinga noa – E whakaaehia ana

Any discharge of *contaminants* into air which is not subject to any other rule in this regional plan and excluding the discharge of dust to air associated with a plantation forestry activity, is a permitted activity provided the following conditions are complied with:

- (1) The discharge must not be noxious or dangerous, offensive or objectionable beyond the boundary of the **subject property** into any *water body*.
- (2) The discharge of smoke or water vapour must not adversely affect the safety of any vehicle, aircraft, or *ship*.
- (3) If the discharge is in the coastal marine area the discharge must not be noxious or dangerous, offensive or objectionable or into coastal water.

AIR-R2

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

The discharge of *contaminants* to air from:

- (1) spray irrigation, soil injection, truck spreading, or land soakage of **liquid waste**
- (2) the ventilation and displacement of liquids in storage tanks and tankers
- (3) the use and application of **fertiliser** or lime
- (4) the disturbance of land and soil carried out according to rules LM R1, LM R2, and LM R3 of this regional plan
- (5) **contaminated land remediation** permitted by DW R24 of this regional plan
- (6) roasting of coffee beans
- (7) **fully enclosed in-vessel composting** producing up to 200 tonnes per year (of finished product) where emissions are captured and filtered
- (8) **free range farms** of up to 100 **poultry** birds
- (9) **open burning** for **recreational/cultural** purposes

are permitted activities provided the discharge is not in the coastal marine area and does not cause any noxious or dangerous, offensive or objectionable effect beyond the boundary of the **subject property**.

AIR-R5

Spraypainting – Permitted — Peita tōrehu – E whakaaehia ana

The discharge of *contaminants* to air from the spray application, of surface coatings, including those containing di-isocyanates, or spray on anti-fouling paint (excluding the application of protective coatings to **transmission line support structures**, the use of water based paints, or up to 0.5 litres per hour and 5 litres per month of solvent based paints) is a permitted activity if:

...

- (5) If the discharge is in the coastal marine area the discharge must not be noxious or dangerous, offensive or objectionable, or into coastal water.

AIR-R6

Abrasive blasting – Permitted — Te whakapahū pākaha – E whakaaehia ana

The discharge of *contaminants* to air from an abrasive blasting operation (excluding blasting of **transmission line support structures**) is a permitted activity provided the following conditions are complied with:

...

(6) If the discharge is in the coastal marine area the discharge must not be noxious or dangerous, offensive or objectionable, or into coastal water.

AIR-R7

Mobile or emergency diesel generators and pumps – Permitted – Ngā pukuhiko me ngā papu tīhara nekeneke, ohotata rānei – E whakaaehia ana

(1) The discharge of *contaminants* to air from the internal combustion of diesel in any mobile or emergency generator or pump with a maximum load of 1000 kilovolt-amperes is a permitted activity provided the following conditions are met:

...

(b) fuel used in the generator or pump must comply with the Engine Fuel Specifications Regulations 2011, ~~and~~

(c) the discharge must not be noxious or dangerous, offensive or objectionable beyond the boundary of the **subject property**, ~~and~~

(d) if the discharge is in the coastal marine area the discharge must not be noxious or dangerous, offensive or objectionable.

(2) For the internal combustion of diesel in any mobile or emergency generator or pump with a total combined output of less than 5000 kilovolt-amperes, the discharge is a permitted activity provided:

...

(d) fuel used in the generator or pump must comply with the Engine Fuel Specifications Regulations 2011, ~~and~~

(e) the discharge must not be noxious or dangerous, offensive or objectionable beyond the boundary of the **subject property**, ~~and~~

(f) if the discharge is in the coastal marine area the discharge must not be noxious or dangerous, offensive or objectionable.

Advice Note: The refuelling of any equipment in the coastal marine area requires a Tier 1 Oil Spill Management Plan. Any spill of fuel must be immediately reported to the regional council 24 hour Pollution Hotline.

AIR-R8

Fuel burning equipment (Boilers) – Permitted — Ngā taonga ngingiha kora (Ngā kōhua nunui) – E whakaaehia ana

(1) General discharges from **fuel burning equipment**

All discharges of *contaminants* to air from **fuel burning equipment** under any part of this rule must comply with all of the following conditions:

...

(f) The discharge is not in the coastal marine area.

AIR-R9

Flaring of natural gas – Permitted – Te mura o te kapuni - E whakaaehia ana

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

...

(4) the discharge must not be noxious or dangerous, offensive or objectionable beyond the boundary of the **subject property**, ~~and~~

(5) if the discharge is in the coastal marine area the discharge must not be noxious or dangerous, offensive or objectionable.

AIR-R10 Cement storage and handling – Permitted – Te putu me te whāwhā raima – E whakaaehia ana

The discharge of *contaminants* to air from the storage, **handling**, redistribution, or packaging of cement, and cement additives is a permitted activity provided the following conditions are complied with:

...

(6) If the discharge is in the coastal marine area the discharge must not be noxious or dangerous, offensive or objectionable, or into coastal water.

AIR-AGR-R18 Agrichemical spraying – Permitted — Tōrehu matūahuwhenua – E whakaaehia ana

All discharges of *contaminants* to air from the use of **agr chemicals** under any part of this rule must comply with the following conditions:

- (1) General use of **agr chemicals**
 - (a) The discharge must not be in the coastal marine area, noxious or dangerous, offensive or objectionable beyond the boundary of the **subject property**, in any non-target *water body*, or in any non-target watercourse listed in Schedule 3 of this regional plan.

AIR-AGR-R19 Agrichemical spraying – Controlled – Tōrehu matūahuwhenua - E whakahaerehia ana

The discharge of *contaminants* to air from the use of **agr chemicals** not otherwise permitted by AIR-AGR-R18, and not within the coastal marine area, is a controlled activity.

AIR-OBURN-R21 Open burning – Permitted — Te tahutahu ahi noa – E whakaaehia ana

Except where AIR-R2, AIR-OBURN-R22, AIR-OBURN-R23, AIR-OBURN-R24, AIR-OBURN-R25, or AIR-R17 apply, the discharge of *contaminants* to air from **open burning** is a permitted activity provided the fire is not located within 100 metres of any neighbouring **dwelling house**, and the following conditions are complied with:

- (1) No materials either listed in AIR-R17 or prohibited by the regulations of the National Environmental Standards for Air Quality are burned.
- (2) The discharge of smoke must not adversely affect the safety of any vehicle, aircraft, or *ship*.
- (3) The discharge not be noxious or dangerous, offensive, or objectionable beyond the boundary of the **subject property**.
- (4) The discharge is not in the coastal marine area.

Attachment 2: Comparison of Court and ministerial amendments

Environment Court directed amendments are shown in **blue track changes**.
Recommended ministerial amendments are shown in **red track changes**.

AIR-R7

Mobile or emergency diesel generators and pumps – Permitted – Ngā pukuhiko me ngā papu tihara nekeneke, ohotata rānei – E whakaaehia ana

- (1) The discharge of *contaminants* to air from the internal combustion of diesel in any mobile or emergency generator or pump with a maximum load of ~~600~~ 1000 kilovolt-amperes is a permitted activity provided the following conditions are met:
 - (a) the discharge must not occur for more than 48 hours during any single event within 50 metres of a **sensitive area**, and
 - (b) fuel used in the generator or pump must comply with the Engine Fuel Specifications Regulations 2011, ~~and~~
 - (c) the discharge must not be noxious or dangerous, offensive or objectionable beyond the boundary of the **subject property**, ~~and~~
 - (d) if the discharge is in the coastal marine area the discharge must not be noxious or dangerous, offensive or objectionable.
- (2) For the internal combustion of diesel in any mobile or emergency generator or pump with a total combined output of less than 5000 kilovolt-amperes, the discharge is a permitted activity provided:
 - (a) the discharge is associated with geothermal electricity generation activities, including geothermal drilling, and
 - (b) the discharge must not occur for a period of more than 3 months per wellhead or generation site, and
 - (c) the discharge must not occur within 200 metres of a **sensitive area**, excluding discharges to air from pumps which may be located adjacent to *water bodies* and buildings that are defined as a **sensitive area** and are uninhabited for the duration of the discharge, and
 - (d) fuel used in the generator or pump must comply with the Engine Fuel Specifications Regulations 2011, ~~and~~
 - (e) the discharge must not be noxious or dangerous, offensive or objectionable beyond the boundary of the **subject property**, ~~and~~
 - (f) if the discharge is in the coastal marine area the discharge must not be noxious or dangerous, offensive or objectionable.

Advice Note: The refuelling of any equipment in the coastal marine area requires a Tier 1 Oil Spill Management Plan. Any spill of fuel must be immediately reported to the regional council 24 hour Pollution Hotline.

AIR-AGR-R18

Agrichemical spraying – Permitted — Tōrehu matūahuwhenua – E whakaaehia ana

All discharges of *contaminants* to air from the use of **agrichemicals** under any part of this rule must comply with the following conditions:

- (1) General use of **agrichemicals**
 - (a) The discharge must not be in the coastal marine area, noxious or dangerous, offensive or objectionable beyond the boundary of the **subject property**, in any non-target *water body*, or in any non-target watercourse listed in Schedule 3 of this regional plan.
 - (b) Where the use of the **agrichemical** is for the prevention, eradication or management of unwanted organisms or pests, the **agrichemical** must be used under the direction of the responsible authority under the Biosecurity Act 1993.

- (c) Where the **agricultural** is sprayed using **drone application**, the **drone** must not operate more than ~~40~~ **5** metres above the tallest point of the target to be sprayed while **agricultural** are being distributed from the **drone**. If this condition cannot be complied with, the spray method is **aerial application**, and conditions relevant to **aerial application** must be complied with.
- (d) Persons carrying out spraying of **agricultural**, other than the use of hand-held application methods, must hold a Growsafe certification or have a qualification that meets the requirements of Air-Sched1 be certified by an industry approved training programme, designed to encourage best practice to prevent spray drift in accordance with New Zealand Standard 8409:2004 (or its replacement or amendment).

(2) Method of application of **agricultural**

- (a) The discharge of *contaminants* into air from **agricultural** spraying using **hand-held non-motorised application** methods is a permitted activity provided conditions 3(a) and 4(d) are complied with.
- (b) **Hand-held motorised application** methods or application methods using a **low pressure boom** is a permitted activity provided conditions 3(a), 3(d), 3(e), 4(c), 4(d), are complied with.
- (c) Any other application method is a permitted activity provided conditions 3(a), 3(b), 3(c), 3(e), 4(a), 4(b), 4(c), 4(d), 5(a), 5(b), 5(c) and 5(d) are complied with.

(3) Signage

Where specified by condition (2), the following conditions apply:

- (a) Where **agricultural** are sprayed on **public amenity areas** signs must be displayed at every entrance where the public usually have entry to the area where the **agricultural** is being sprayed (except where the entrance is from private property). Where agricultural are sprayed in other areas, signs must be displayed at the main entrance to the property. Signs required by this condition must clearly state:
- “CAUTION – SPRAYING IN PROGRESS” or similar wording
 - the name and type of **agricultural** used
 - a start and end date for spray operations
 - the name and phone number of the person carrying out the spraying
 - that while signs are in place, it is not safe to enter.
- (b) Where **agricultural** are sprayed within 50 metres of any **public amenity area (ground-based application or drone application)** complying with condition 1(c) or 200 metres (**aerial application** excluding **drone application** complying with condition 1(c)), signs must be prominently displayed on the boundary of the **public amenity area** and must clearly state “caution – spraying in progress” or similar wording.
- (c) Signs required by 3(a) or 3(b) should remain in place until all airborne spray has settled and the **agricultural** has dried on its target surface. Signs must be removed within 5 days once the area is safe to re-enter.
- (d) Any vehicles being used to apply **agricultural** spray on **public amenity areas or public roads** must display prominent signs front and back that clearly state “CAUTION – SPRAYING IN PROGRESS” or similar wording.
- (e) Where agricultural are sprayed on private property signs stating “CAUTION – SPRAYING IN PROGRESS” must be placed at the entrance to the property, and be removed within 5 days from

completion of spraying. In addition a sign must be displayed at the entrance of the property stating as a minimum the following:

- (i) the name of agrichemical used
- (ii) the date for commencement of spray operations
- (iii) the date when it is safe to re-enter the property and that it is not safe to enter until this date
- (iv) the name and phone number of the person carrying out the spraying.

(4) Notification

Where specified by condition (2), the following conditions apply:

- (a) The owner/occupier or agent must notify the occupier of any properties within 50 metres (**ground-based application** or **drone application** complying with condition 1(c)) and 200 metres (**aerial application** excluding **drone application** complying with condition 1(c)) of where the **agrichemical** is being sprayed:

EITHER

- A. by notification, required no earlier than 72 hours, or no earlier than 20 days for spraying carried out on plantation forestry or in a conservation area, and no later than 12 hours before the **agrichemical** spraying. Notification must include the following:

- (i) the address and location of proposed application
- (ii) the date/s of proposed application
- (iii) name and type of **agrichemical** to be applied
- (iv) name and phone number of person carrying out the spraying.

OR

- B. according to a notification agreement with the occupier. The notification agreement must:

- (i) contain (as a minimum) method of notification and minimum time for notification prior to spraying
- (ii) be recorded in writing and signed by all parties
- (iii) be reviewed and re-signed annually.

- (b) Details of notification (including but not limited to date and time of notification, parties notified, method of notification) must be recorded.

- (c) Where **agrichemical** spraying is being carried out by any person other than the owner/occupier or agent responsible for notification, the person carrying out the spraying must confirm that notification requirements have been met before spraying takes place.

- (d) Where **agrichemicals** are sprayed on **public amenity areas** or **public roads**, the owner/occupier or agent must publish on a publicly available webpage ~~notify (according to section 2AB(1)(a) of the Act)~~ the **agrichemical** spraying no earlier than 10 days, or no earlier than 20 days for spraying carried out on plantation forestry or in a conservation area, and no later than 24 hours before the **agrichemical** spraying. Notification must include the following information:

- (i) The name and type of **agrichemical** used.
- (ii) A start and end date for spray operations.
- (iii) Contact details of the authority responsible for the spraying.

(5) Spray Risk Management Plan

Where specified by condition (2), the following conditions apply:

- (a) Prior to the **agricultural** spraying, a spray risk management plan must be prepared and implemented by the owner/occupier or agent.
- (b) The spray risk management plan must contain the following information:
 - (i) A plan or map identifying the location of any **sensitive areas and public roads** within 50 metres of the land being sprayed by **ground based application** or **drone application** (complying with condition 1(c)), or within 200 metres of the land being sprayed by **aerial application** (excluding **drone application** complying with condition 1(c)).
 - (ii) Areas to be sprayed, type of **agricultural** likely to be used during the year and the times of year that spraying is likely to occur.
 - (iii) Strategies used to avoid contamination of **sensitive areas and public roads including consideration of the Draft Hazard Guidance Chart contained within Table G1 to NZS 8409:2004**.
 - (iv) Strategies to mitigate any spray drift caused by particular weather conditions,
 - (v) Strategies to manage any specific hazard associated with the **agricultural** to be sprayed (eg. toxicity to bees).
- (c) The spray risk management plan must be reviewed and updated each year that spraying will be carried out.
- (d) The spray risk management plan must be made available to the Regional Council and to any party located within a sensitive area as identified in the spray risk management plan upon request within 20 working days of such a request being made.

Advice Note: This rule manages the air discharge component of **agricultural** use. Users must also comply with all other rules in this regional plan (see DW Discharges to Water and Land). Other matters that should be considered when using **agricultural** include: ~~certification, personal protection equipment,~~ storage, transport, and disposal. Users (particularly large-scale) should also comply with the New Zealand Standard Management of Agriculturals NZS 8409:2004.

Users applying agricultural using drones should also comply with Civil Aviation Authority regulations.

For the purposes of AIR-R18 public road means any road which the public have permission to access and use, and includes footpaths, berms and cycle-lanes in the road.

AIR-OBURN-R21 Open burning – Permitted — Te tahutahu ahi noa – E whakaahia ana

Except where AIR-R2, AIR-OBURN-R22, ~~and~~ AIR-OBURN-R23, AIR-OBURN-R24, AIR-OBURN-R25, or AIR-R17 apply, the discharge of *contaminants* to air from **open burning** is a permitted activity provided the fire is not located within 100 metres of any neighbouring **dwelling house**, ~~unless written approval has is obtained from the occupier/s of all such neighbouring dwelling houses,~~ and the following conditions are complied with:

- (1) No materials either listed in AIR-R17 or prohibited by the regulations of the National Environmental Standards for Air Quality are burned.
- (2) The discharge of smoke must not adversely affect the safety of any vehicle, aircraft, or *ship*.
- (3) The discharge not be noxious or dangerous, offensive, or objectionable beyond the boundary of the **subject property**.
- (4) The discharge is not in the coastal marine area.

Advice Note: This rule manages **open burning** according to the potential for adverse *effects* on air quality. **Open burning** must also be carried out according to local bylaws and the Fire and Emergency New Zealand Act 2017.



Hon Poto Williams

MP for Christchurch East
Minister of Conservation
Minister for Disability Issues
Associate Minister for Children

10 OCT 2022

Ref: 21-B-0165

Fiona McTavish
Chief Executive
Bay of Plenty Regional Council

Email: fiona.mctavish@boprc.govt.nz

Tēnā koe Ms McTavish

Amendments to the Bay of Plenty Regional Natural Resources Plan Change 13 (Air Quality)

Thank you for your letter of 24 February 2021 requesting approval of the regional coastal plan provisions in Plan Change 13 (Air Quality) to the Bay of Plenty Regional Natural Resources Plan.

Following discussions between the Department of Conservation and your staff, several matters were identified in the way some rules would apply within the coastal marine area. A number of amendments have been identified to address these and improve the management of air discharges in the coastal marine area.

Pursuant to clause 19(1) of Schedule One of the Resource Management Act 1991 prior to approving the plan change I require the Bay of Plenty Regional Council to amend rules:

- R1, R5, R6, R7, R9, R10 to manage potential noxious or dangerous, offensive or objectionable effects of discharges on members of the public;
- R1, R5, R6, R10 to manage potential effects of air discharges on coastal water quality;
- R2, R8, R18, R19, R21 to exclude their application to the coastal marine area because these are activities that should not be allowed as permitted activities in the marine environment or in public space; and
- R7 by adding an advice note regarding managing the risk of oil spills associated with refuelling of pumps and generators operating within the coastal marine area.

These amendments are described in more detail, along with the reasons for these changes, in the attached table.

I wish to thank your staff for the constructive and collaborative approach they took to identifying these matters and finding solutions to them.

Please contact Graeme Silver Sec 9(2)(a) (gsilver@doc.govt.nz) if you wish to discuss any of the matters raised in this letter.

Nāku noa nā



Hon Poto Williams
Minister of Conservation

cc. Karen Parcell, Team Leader Kaiwhakatinana, Karen.Parcell@boprc.govt.nz

Released under the Official Information Act

Table 1: Amendments required to Plan Change 13 pursuant to clause 19(1) of Schedule One of the Resource Management Act 1991

Rule	AIR-R1 General activities – Permitted — Ngā mahinga noa – E whakaaehia ana
Amendment	Add condition (3): <u>(3) If the discharge is in the coastal marine area the discharge must not be noxious or dangerous, offensive or objectionable or into coastal water.</u>
Reason	This catch-all rule would allow any discharge not otherwise controlled by the plan to occur as a permitted activity in the coastal marine area. It contains no controls on harmful or nuisance effects on any person in the coastal marine area and does not control potential effects of contamination on water quality.
Rule	AIR-R2 Miscellaneous discharges – Permitted — Ngā tukunga matahuhua – E whakaaehia ana
Amendment	Amend the rule to exclude the coastal marine area: ...are permitted activities provided the discharge <u>is not in the coastal marine area and</u> does not cause any noxious or dangerous, offensive or objectionable effect beyond the boundary of the subject property.
Reason	This rule applies to a range of specific activities that mostly do not occur in the coastal marine area or would be inappropriate there (eg. spray irrigation of liquid waste, and application of fertiliser or lime).
Rule	AIR-R5 Spraypainting – Permitted — Peita tōrehu – E whakaaehia ana
Amendment	Add condition (5): <u>(5) If the discharge is in the coastal marine area the discharge must not be noxious or dangerous, offensive or objectionable or into coastal water.</u>
Reason	This would only occur in limited circumstances, such as maintenance of boats and wharves, but the rule as written does not control harmful or nuisance effects on any person in the coastal marine area and does not control potential effects of contamination on water quality.
Rule	AIR-R6 Abrasive blasting – Permitted — Te whakapahū pākaha – E whakaaehia ana
Amendment	Add condition (6): <u>(6) If the discharge is in the coastal marine area the discharge must not be noxious or dangerous, offensive or objectionable or into coastal water.</u>
Reason	This would only occur in limited circumstances, such as maintenance of boats and wharves, but the rule as written does not control harmful or nuisance effects on any person in the coastal marine area and does not control potential effects of contamination on water quality.
Rule	AIR-R7 Mobile or emergency diesel generators and pumps – Permitted – Ngā pukuhiko me ngā papu tihara nekeneke, ohotata rānei – E whakaaehia ana

Amendment	<p>Add condition (1)(b) and (c), and add (1)(d):</p> <p>(b) fuel used in the generator or pump must comply with the Engine Fuel Specifications Regulations 2011, and</p> <p>(c) the discharge must not be noxious or dangerous, offensive or objectionable beyond the boundary of the subject property, and</p> <p><u>(d) if the discharge is in the coastal marine area the discharge must not be noxious or dangerous, offensive or objectionable.</u></p> <p>Add condition (2)(d) and (e), and add (2)(f):</p> <p>(d) fuel used in the generator or pump must comply with the Engine Fuel Specifications Regulations 2011, and</p> <p>(e) the discharge must not be noxious or dangerous, offensive or objectionable beyond the boundary of the subject property, and</p> <p><u>(f) if the discharge is in the coastal marine area the discharge must not be noxious or dangerous, offensive or objectionable.</u></p> <p>Add advice note: <u>Advice Note: The refuelling of any equipment in the coastal marine area requires a Tier 1 Oil Spill Management Plan. Any spill of fuel must be immediately reported to the regional council 24 hour Pollution Hotline.</u></p>
Reason	<p>The rule as written does not control harmful or nuisance effects on any person in the coastal marine area and does not control potential effects of contamination on water quality.</p> <p>Refuelling of portable equipment in the coastal marine area requires a Tier 1 oil spill plan under Part 130B of the Marine Protection Rules.</p>
Rule	AIR-R8 Fuel burning equipment (Boilers) – Permitted – Ngā taonga ngingiha kora (Ngā kōhua nunui) – E whakaaehia ana
Amendment	<p>Add condition (1)(f): <u>(f) The discharge is not in the coastal marine area.</u></p>
Reason	<p>There is no demand for this activity, and the rule was not intended to provide for it, to occur within the coastal marine area. Fuel burning should not be allowed as a permitted activity in coastal marine area because of the potential for adverse effects. Excluding the coastal marine area from the rule will require a consent and proper consideration of effects.</p> <p>NB. use of boilers as part of normal operation of a vessel is provided for by regulation 15 of the Marine Pollution Regulations.</p>
Rule	AIR-R9 Flaring of natural gas – Permitted – Te mura o te kapuni - E whakaaehia ana
Amendment	<p>Amend condition 4 and add condition 5:</p> <p>(4) the discharge must not be noxious or dangerous, offensive or objectionable beyond the boundary of the subject property, and</p> <p><u>(5) if the discharge is in the coastal marine area the discharge must not be noxious or dangerous, offensive or objectionable.</u></p>
Reason	<p>The rule as written does not control harmful or nuisance effects on any person in the coastal marine area and does not control potential effects of contamination on water quality.</p>

Rule AIR-R10 Cement storage and handling – Permitted – Te putu me te whāwhā raima – E whakaaehia ana

Amendment Add condition (6):
(6) If the discharge is in the coastal marine area the discharge must not be noxious or dangerous, offensive or objectionable, or into coastal water.

Reason The rule as written does not control harmful or nuisance effects on any person in the coastal marine area and does not control potential effects of contamination on water quality.

Rule AIR-AGR-R18 Agrichemical spraying – Permitted — Tōrehu matūahuwhenua – E whakaaehia ana

Amendment Amend condition (1)(a) to exclude the coastal marine area:
(a) The discharge must not be in the coastal marine area, noxious or dangerous, offensive or objectionable beyond the boundary of the subject property, in any non-target water body, or in any non-target watercourse listed in Schedule 3 of this regional plan.

Reason Use of herbicides for pest control in the coastal marine area is managed by the Regional Coastal Environment Plan. It was not intended to duplicate controls in this Plan.

Rule AIR-AGR-R19 Agrichemical spraying – Controlled – Torehu matūahuwhenua - E whakahaerehia ana

Amendment Amend this rule to exclude the coastal marine area:
The discharge of contaminants to air from the use of agrichemicals not otherwise permitted by AIR-AGR-R18, and not within the coastal marine area, is a controlled activity.

Reason Use of herbicides for pest control in the coastal marine area is managed by the Regional Coastal Environment Plan. It was not intended to duplicate controls in this Plan.

Rule AIR-OBURN-R21 Open burning – Permitted — Te tahutahu ahi noa – E whakaaehia ana

Amendment Add condition (4) to exclude the activity from the coastal marine area:
(4) The discharge is not in the coastal marine area.

Reason This would allow burning of any other material, such as mangroves, in the inter-tidal zone. This was an unforeseen consequence of the rule and it was not intended to allow open burning in the coastal marine area.