

IN THE MATTER of the Resource Management Act 1991  
AND of appeals under Clause 14 of the Schedule  
1 of the Act in relation to the Proposed  
Regional Plan for Northland  
BETWEEN PUBLIC AND POPULATION HEALTH  
UNIT OF THE NORTHLAND DISTRICT  
HEALTH BOARD  
(ENV-2020-AKL-000126)  
Appellant  
AND NORTHLAND REGIONAL COUNCIL  
Respondent

Court: Environment Judge J A Smith – sitting alone pursuant to section 279  
of the Act  
Hearing: On the papers in Chambers at Auckland  
Counsel: W D McKean for Northland District Health Board  
M J Doesburg for Northland Regional Council  
K R M Littlejohn for Northport Limited (section 274 party)

Date of Decision: 09 JUL 2020

Date of Issue: 09 JUL 2020

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**DETERMINATION OF THE ENVIRONMENT COURT**

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A: Under 279 (1) Resource Management Act 1991, the Environment by consent orders that the proposed Regional Plan for Northland is to be amended as set out in **annexure A** to this Order.

B: This Determination resolves the Rule C.7.2.5 Discharges to air from industrial or

Public and Population Health Unit of the NDHB v Northland Regional Council (Determination 20200708)



trade premises. Together with the Consent Order **annexure B**, contemporaneously issued, this resolves all matters in terms of air discharges under the proposed Northland Regional Plan known as Topic 8 in respect of the Appeals before the Environment Court. The proceedings on Topic 8 are thus at an end.

C: The Hearing set down to commence on 20<sup>th</sup> July for 3 days is consequently vacated. There is no application nor is there any order for costs.

## REASONS

### Introduction

[1] These appeals are against provisions of the proposed Regional Plan for Northland as they relate to Topic 8: Discharges to air. There are a number of appeals commenced by Horticulture New Zealand (ENV-2019-AKL-000116), New Zealand Refining Company Limited (ENV-2019-AKL-000121) and Public and Population Health Unit (ENV-2019-AKL-000126). They relate to:

- i) Objective F.1.12: Air Quality;
- ii) Policies D.3.3 and D.3.5 with a request for a new policy regarding dust on roads; and
- iii) Rule C.7.1.1, C.7.1.2, C.7.1.8, C.7.2.5 and C.7.2.6, with a request for a new Rule on existing authorised burning at the Marsden Point Refinery.

[2] The matters were subject to Directions of the Court and were managed on a basis towards resolution with mediation occurring in respect of the Topic. As a result of this most of the matters are the subject of the appeals were resolved and consent memorandum filed with the Environment Court on 22<sup>nd</sup> May 2020.

[3] A consent order was consequently developed by the Court but remained unsigned pending the resolution of the only outstanding issue in Topic 8 relating to C.7.2.5 Discharge to air from industrial or trade premises.



That matter was managed to commence on 20<sup>th</sup> July 2020 to occupy 3 days. Evidence was exchanged, and reading was well advanced by the Court when the Court was advised on 8<sup>th</sup> July 2020 that the parties had reached resolution in respect of that issue.

[4] Accordingly, the Court had read the evidence of the parties and for reasons which will be briefly explained, considers that it can endorse the agreement of the parties by way of this Determination. This also means that the Court can consequently issue the consent order in respect of the other outstanding matters which had already been agreed. For the sake of clarity, the proposed settlement of the appeal subject to this Determination is **annexure A** and the consent order **annexure B** for completeness in respect of this Topic. The consent order will also be issued separately.

#### **The Consent Order**

[5] It is not necessary to go into details of the consent order and the reasons for that order are self-explanatory and contained in **annexure B**. I am satisfied that there is no inter-relationship between these provisions and those that are the subject of C.7.2.5 as the proposition is now put to this Court.

[6] Accordingly, in the consent order, I was satisfied that the provisions of s 32AA are generally met in negotiations between the parties and the settlement reached by the parties. The Court does not generally involve itself in full assessment in such circumstances. However, the fumigation issue was set down for hearing on 20<sup>th</sup> July 2020 and evidence circulated and read.

#### **Control of fumigants**

[7] The appeal was against two aspects of Rule C7.2.5 originally. They involved:

- (a) discharges from saw mills and quarrying operations;
- (b) the issue relating to the use of fumigants, in particular; methyl bromide at North Port. The resolution in relation to saw mills and quarries was settled in the consent order (**annexure A**) and imposes a



cascading activity status based on proximity of the activity to sensitive receivers and for quarrying also based on the size of that operation.

[8] However by the time of the Consent Memorandum on 22<sup>nd</sup> May 2020, the parties had not been able to agree on the approach in respect of fumigants.

### The issue

[9] The Regional Council originally included discharge of fumigants as a permitted activity and the appeal filed by the Public and Population Health Unit for the Northland District Health Board, sought to have these as full discretionary activities. The Council subsequently acknowledged the difficulties in relation to the products involved and evidence circulated (and read by the Court), originally suggested use of a restricted discretionary approach.

[10] The issue relating to fumigants is stated in paragraph 4.9 of the Notice of Appeal by the Northland Health Board:

4.9 ... case law has confirmed that the HSNO regulations are insufficient to protect against off-site effects for large scale use of methyl bromide and supports comprehensive regulatory control of such toxic agents (*Envirofume v BOPRC [2017] NZEnvC 12*) Northland Public Health is also aware that methyl bromide is being phased out and is concerned that the substance that will replace it is likely to be similarly toxic in nature (it being a necessity to kill insects) and present similar potential off-site effects.

From the evidence that has been circulated, it is clear that the potential replacements include Phosphine and a new product not yet authorised for use in New Zealand, Ethanedinitrile (EDN)

[11] What is clear from the evidence the Court has read is that methyl bromide is intended to be fully recaptured if used after October 2020. Further, as it is an Ozone depleting gas (ODG) and subject to the Montreal protocol. These matters are discussed in more detail in the Court's decision in *Envirofume*<sup>1</sup> noted in the appeal.



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<sup>1</sup> *Envirofume v BOPRC [2017] NZEnvC 12*

In brief however, methyl bromide is a colourless, odourless gas which is fatal if received in large quantities for humans and animals. Special safety procedures have been authorised by HSNO and the EPA for their use and the issue is a subject of an Environmental Risk Management Authority Decision (ERMA) amended in 2011 for use of Methyl Bromide.

[12] What is also clear is that the way in which the Northport log fumigation occurs is not exactly the same as that which occurred at the Port of Tauranga. There appears to be somewhat more control of the area surrounding the operation at Northport. However, the Appellant was still concerned in their evidence as to the potential impact at or beyond the buffer zones and at nearby beaches.

#### **Further progress**

[13] Subsequent upon the filing of rebuttal evidence, there have been further discussions and the parties have now agreed to resolve the appeal. The agreement is to include the discharge of fumigants in Northland as a discretionary activity. Essentially, this would allow the appeal of the health unit on this particular issue.

[14] Although the Council had originally supported restricted discretionary activity status in their evidence to the Environment Court, they acknowledge in their joint memorandum that full discretionary status enables proper assessment of any application. Accordingly, as shown in **annexure A** the changes are relatively small. Firstly, they removed premises used for fumigation for export or quarantine purposes from the permitted activities and secondly include under Rule C.7.2 XX(number to be supplied) discharge of contaminant from air from fumigation as a discretionary activity.

[15] The other changes that are shown on **annexure A** relate to the consent orders already made in respect of quarries and saw milling.

#### **Assessment of the change**

[16] From my reading of the evidence, there appears to be strong support for the view that the activity should be restricted and/or full discretionary. Given that the Court is not able to evaluate all the evidence, it can simply say that under s 32AA, the significant risks



to human and animal health needs to be balanced with the operation of the Port. The question here is whether or not potential adverse effects can be avoided or sufficiently mitigated so that there is no substantive risk to human life and/or other impacts upon the environment.

[17] The position that the activity should be discretionary is further supported by the fact that the activity will have to cease generally, unless there is recapture of the fumigant, after October 2020. If other fumigants are to be used, then similar issues would arise. We understand, for example, for EDN, there may be particular problems in monitoring and detection.

[18] Overall, I conclude that the "most appropriate" provisions, in the evidence I have seen (which I accept is untested) supports the consent position reached between the parties that the activity should be full discretionary. Accordingly, I conclude that the change sought by the parties is in keeping with the Objectives and Policies of the Plan, the New Zealand Coastal Policy Statement and Part 2 of the Act (to the extent it applies) to the activities generally.

[19] Given that key elements of the public interest in this issue are represented, I am also satisfied that these parties have been diligent in seeking an appropriate outcome available in terms of the appeal and plan provisions.

### **Conclusion**

[20] I conclude that the amendments already made in the consent order (**annexure B**) are supported by those in **annexure A**. Such provisions are the "most appropriate" under s 32 and s 32AA of the Act. I direct that the changes should be made forthwith to the proposed Northland Plan.

[21] No parties seek an order for costs, nor would the Court consider it appropriate in this case. Accordingly, the Court makes no orders to costs. I conclude that all matters in relation to Topic 8 are now at an end and the relevant Topic and files can be closed.

[22] The hearing set down to commence and other directions to hearing are vacated.



[23] Finally, I would commend the parties on achieving a sensible resolution in the circumstances of this matter.

For the court:



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**J A Smith**  
**Environment Court Judge**



## APPENDIX ~~A~~ AMENDMENTS TO THE PROPOSED PLAN

(Amendments proposed by this joint memorandum are shown in highlighted underline and ~~striketrough~~. Amendments proposed by a joint memorandum filed in May 2020 are shown for completeness in underline and ~~striketrough~~ (without highlighting)).

Amend Rule C.7.2.5 as follows:

### C.7.2.5 Discharges to air from industrial or trade premises - permitted activity

The discharge of a contaminant into air from the following industrial or trade premises is a permitted activity:

- 1) premises for the manufacture or preparation or cooking of food or beverages for human consumption but excluding:
  - a) the extraction, distillation, or purification of animal or vegetable oil or fat other than as a process incidental for the cooking of food, and
  - b) any process for the rendering or reduction or drying of animal matter (including feathers, blood, bone, skin or offal), and
  - c) any processes for the drying of milk or milk products, and
- 2) the refilling, storage, dispensing and sale of fuels, and
- 3) the operation of dry-cleaning facilities consuming solvents, and
- 4) the application of spray coating activities in quantities not exceeding 30 litres per day, and
- 5) the operation of air conditioning systems and ventilation systems, and
- 6) the operation of industrial and commercial refrigeration systems, and
- 7) moving or stationary engine exhaust systems, and
- 8) premises used as or associated with funeral parlours, chapels, or stonemasons, but excluding crematoria, and
- 9) premises used for the application of surface coatings, including printing or manufacture of packaging materials and the printing of paper, but excluding spray coating activities in quantities exceeding 30 litres per day, and
- 10) premises used for processes involving dyeing, printing, or finishing of yarns, threads, woven, non-woven or knitted fabrics or garments, but excluding: chemical reactions of monomers for the production of synthetic threads, fellmongery, tanning, the curing of leathers or wool scouring, and
- 11) premises used for the sale, servicing, or repairs to motor vehicles, trailers, boats or like equipment, including body and engine repairs, panel beating and fibre-glassing, and
- 12) yards used to hold stock and/or buildings used solely for animal slaughtering and skinning, and
- 13) premises used for portable saw milling, joinery, cabinet making, furniture restoration and finishing, wood craft manufacture, but excluding the





production of any form of particle-board, hardboard, medium density fibre-board or similar product), and

- 13a) premises used for saw milling that are more than 250 metres from any residential buildings and associated garden areas, schools, hospital buildings and care facilities and their grounds, and
- 14) premises or activities where water vapour or steam are released, and
- 15) ~~premises used for fumigation for export or quarantine purposes, and~~
- 16) the construction, repair, maintenance and demolition of buildings, and
- 17) the refilling, storage and dispensing of tallow, and
- 18) the construction, use and maintenance of roads (including unsealed roads) and railways on industrial and trade premises, and
- 19) the loading and unloading and on-site movement of materials, and
- 20) a recycling depot, and
- 21) premises used for the bulk storage, mixing and distribution of fertiliser, and
- 22) farm quarries quarrying operations, earthworks and clean fill operations, and
- 23) rotational plastic moulding, and
- 24) a poultry hatchery or poultry feed mill,

provided the discharge does not result in any noxious, dangerous, offensive or objectionable odour, smoke, dust, or any noxious or dangerous levels of airborne contaminants beyond the boundary of the subject property or in the coastal marine area.

**For the avoidance of doubt this rule covers the following RMA activities:**

- Discharge of a contaminant into air (s15(1)).

...

**Insert new rule as follows:**

### **C.7.2.XX Discharges to air from fumigation**

The discharge of a contaminant into air from fumigation is a discretionary activity.

**For the avoidance of doubt this rule covers the following RMA activities:**

- Discharge of a contaminant into air and any incidental discharge of a contaminant onto or into land (s15(1) and s15(2A)).



B

BEFORE THE ENVIRONMENT COURT  
I MUA I TE KOOTI TAIAO O AOTEAROA

IN THE MATTER of the Resource Management Act 1991  
(the Act)

AND of appeals under Clause 14 of Schedule 1  
of the Act in relation to the Proposed  
Regional Plan for Northland

BETWEEN HORTICULTURE NEW ZEALAND  
(ENV-2019-AKL-000116)

THE NEW ZEALAND REFINING  
COMPANY LIMITED  
(ENV-2019-AKL-000121)

PUBLIC AND POPULATION HEALTH  
UNIT OF THE NORTHLAND DISTRICT  
HEALTH BOARD  
(ENV-2019-AKL-000126)

Appellants

AND NORTHLAND REGIONAL COUNCIL

Respondent

Environment Judge J A Smith sitting alone under s 279 of the Act  
IN CHAMBERS at Auckland

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CONSENT ORDER

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[A] Under s 279(1) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

- (1) The Proposed Regional Plan for Northland is amended as set out in **Annexure A** to this Order.
- (2) The order resolves the appeals as they relate to Objective F.1.12, Policies D.3.3, D.3.5, the proposed new policy regarding dust on roads and Rules C.7.1.1, C.7.1.2, C.7.1.8, C.7.2.5 and C.7.2.6 and a request for a new rule on existing authorised burning at Marsden Point refinery.
- (3) The outstanding appeal point in this topic (Topic 8) relates to Rule C.7.2.5 in relation to fumigants. That matter is to be set down for hearing.

[B] Under s 285 of the Resource Management Act 1991, there is no order as to costs.

### REASONS

#### Introduction

- [1] These appeals are against the provisions of the Proposed Regional Plan for Northland as it relates to Topic 8 – Discharges to Air.
- [2] The parties have reached an agreement which will resolve these appeals as they relate to:
  - (a) Objective F.1.12 Air Quality;
  - (b) Policies D.3.3 and D.3.5 and a request for a new policy regarding dust on roads; and
  - (c) Rules C.7.1.1, C.7.1.2, C.7.1.8, C.7.2.5 and C.7.2.6 and a request for a new rule on existing authorised burning at Marsden Point refinery.

#### *Objective F.1.12 Air quality*

- [3] The Northland District Health Board and Horticulture New Zealand appealed against Objective F.1.12:
  - (a) The Northland District Health Board sought amendments to place greater focus on protecting human health from the adverse effects of discharges to air, including reference to the National Environmental



Standards for Air Quality (**NESAQ**) and National Ambient Air Quality Guidelines.

- (b) Horticulture New Zealand sought to delete clause 2 of the Objective, which relates to protecting dust, odour, smoke and spray-sensitive areas from exposure to dangerous or noxious levels of gasses or airborne contaminants.

- [4] Following mediation and subsequent discussions, the parties have agreed to amend Objective F.1.12 to focus the objective on the resource management outcome sought for air quality in Northland. The parties also agreed that parts of the Objective would be better expressed as policy. As a result new Policy D.3.1A has been added to the plan. The new policy identifies how air quality will be achieved.

*Policy D.3.3 Dust and odour generating activities*

- [5] The Northland District Health Board sought amendments to Policy D.3.3 that it considered were necessary to achieve progress to compliance with the NESAQ.
- [6] Following mediation the parties have agreed to a change to clause 1 of Policy D.3.3 to provide an additional trigger for resource consent applicants to prepare a dust or odour management plan.

*Policy D.3.5 Activities in the Marsden Point airshed*

- [7] The New Zealand Refining Company Limited appealed Policy D.3.5 seeking a minor amendment. The Policy requires resource consent applications involving the discharge of sulphur dioxide to avoid adverse effects on the operation of regionally significant infrastructure in the "Marsden Point Port Zone". However, that zone only applies to the coastal marine area, whereas the intention of the Policy is to protect regionally significant infrastructure at Marsden Point on land and in the coastal marine area.
- [8] The parties have agreed to correct the Policy by instead referring to the "Marsden Point Air Shed".



*New Policy – Monitoring dust from roads and Rule C.7.2.6 Discharges to air from the use of public roads by motor vehicles*

- [9] The Northland District Health Board sought a new Policy and amendments to Rule C.7.2.6 in relation to the issue of managing the effects from discharges of dust to air from the use of public roads by motor vehicles. Following mediation and the pre-hearing conference on this Topic, the Northland District Health Board confirmed that it will not be pursuing this aspect of its appeal.

*Rule C.7.1.1 Outdoor burning outside the Whangarei airshed and Rule C.7.1.2 Outdoor burning in the Whangarei airshed*

- [10] Horticulture New Zealand appealed Rules C.7.1.1 and C.7.1.2 seeking amendment to clause 1 of each rule, to provide greater certainty about when the rules would apply. At mediation, Horticulture New Zealand confirmed that it will not be pursuing this aspect of its appeal.

*C.7.1.8 Existing authorised burning*

- [11] The New Zealand Refining Company Limited appealed provisions relating to burning, and sought to introduce a new controlled activity rule for the replacement of existing resource consents for burning at the Marsden Point Refinery.
- [12] Following mediation and subsequent discussions, the parties have agreed that a restricted discretionary activity status would be appropriate for re-consenting existing discharges to air from burning on an industrial or trade site. Rather than introduce a new rule for the Marsden Point Refinery, the parties have instead agreed to amend Rule C.7.1.8 Existing authorised burning for energy generation – restricted discretionary activity.

*C.7.2.5 Discharges to air from industrial or trade premises – permitted activity*

- [13] Rule C.7.2.5 provides for discharges to air from identified industrial or trade premises as a permitted activity. The Northland District Health Board appealed Rule C.7.2.5, seeking that sawmilling, premises used for fumigation for quarantine purposes and quarrying operations be removed from the rule. If that amendment were made, those activities would have required resource consent as discretionary activities under Rule C.7.2.11.



- [14] The Northland District Health Board's rationale was that sawmilling, fumigation and quarrying can generate adverse effects that are harmful to human health that are not adequately managed by the permitted activity conditions of Rule C.7.2.5.
- [15] Following mediation and subsequent discussions, the parties have reached agreement on amended provisions relating to sawmilling and quarrying operations. The appeal point in relation to fumigation has not been agreed and has been set down for hearing.

### Sawmilling

- [16] For sawmilling, the parties have agreed to amendments to implement a cascading activity status, based on the proximity of the activity to sensitive receivers. The rules provide that:
- (a) portable sawmilling is a permitted activity under Rule C.7.2.5(13);
  - (b) sawmilling more than 250 metres from sensitive receivers (being residential buildings and associated garden areas, schools, hospital buildings and care facilities and their grounds) is a permitted activity under new Rule C.7.2.5(13a);
  - (c) sawmilling within 250 metres of sensitive receivers is a controlled activity under proposed new Rule C.7.2.5A; and
  - (d) sawmilling that does not meet the conditions of new Rule C.7.2.5A is a discretionary activity under Rule C.7.2.11.

### Quarries

- [17] For quarrying activities, the parties have agreed on a similar cascading approach as for sawmilling, based on the location of sensitive receivers and the size of the quarrying operation. The rules provide that:
- (a) air discharges from farm quarries, earthworks and clean fill operations are permitted activities under rule C.7.2.5;
  - (b) air discharges from quarries (excluding farm quarries) are permitted activities, provided that:



- (i) they do not result in noxious, dangerous, offensive or objectionable effects beyond the boundary; and
  - (ii) if the quarry operation is within 500m of sensitive receivers or has annual production of greater than 50,000 tonnes, then it must have been authorised as at 1 January 2020 and must have a dust management and monitoring plan certified as being in accordance with the Ministry for the Environment Good Practice Guidelines for Assessing and Managing Dust; and
  - (iii) the quarry operator provides the Council, on request, with evidence how the dust management and monitoring plan is being complied with.
- (c) air discharges from quarries (excluding farm quarries) that are not permitted activities are controlled activities, provided that:
- (i) they do not result in noxious, dangerous, offensive or objectionable effects beyond the boundary; and
  - (ii) if the quarry operation is established after 1 January 2020, is within 500m of sensitive receivers and has annual production greater than 50,000 tonnes, the discharge must not result in an exceedance of the NESAQ standard for PM10 at the sensitive receiver.
- (d) air discharges from quarries that are not controlled activities require resource consent as a discretionary activity under Rule C.7.2.11.

### Consideration

- [18] In making this order the Court has read and considered the memorandum of the parties dated 22 May 2020 requesting this order.
- [19] The following people gave notice of their intention to become parties under s 274 of the Act and have signed the memorandum of the parties dated 22 May 2020:

- (a) Atlas Quarries Limited and Atlas Concrete Limited;
- (b) Wheeler DW and LS;



- (c) Adams HF and Ross DA;
- (d) Smith CA;
- (e) Federated Farmers of New Zealand;
- (f) Far North District Council;
- (g) Horticulture New Zealand;
- (h) The New Zealand Refining Company Limited;
- (i) New Zealand Transport Agency;
- (j) Northport Limited;
- (k) Patuharakeke Te Iwi Trust Board;
- (l) Whangarei District Council; and
- (m) Winstone Aggregates and Golden Bay Cement, divisions of Fletcher Concrete and Infrastructure Limited.

[20] The Court is making this order under s 279(1)(b) of the Act; such order being by consent, rather than representing a decision or determination on the merits pursuant to s 297. The Court understands for present purposes that:

- (a) All parties to the proceedings that have an interest in the matters to be resolved by this order have executed the memorandum of the parties requesting this order;
- (b) All parties are satisfied that all matters proposed for the Court's endorsement are within the scope of submissions and appeals, fall within the Court's jurisdiction, and conform to relevant requirements and objectives of the Resource Management Act 1991, including in particular Part 2.

#### Order

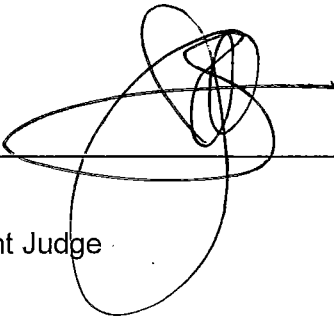
[21] Therefore, the Court orders, by consent, that the Proposed Regional Plan for Northland is amended as set out in **Annexure A** to this Order.





- [22] The order resolves the appeals as they relate to Objective F.1.12, Policies D.3.3, D.3.5, the proposed new policy regarding dust on roads and Rules C.7.1.1, C.7.1.2, C.7.1.8, C.7.2.5 and C.7.2.6 and a request for a new rule on existing authorised burning at Marsden Point refinery.
- [23] The outstanding appeal point in this topic (Topic 8) relates to Rule C.7.2.5 in relation to fumigants. That matter is to be set down for hearing.
- [24] There is no order as to costs in relation to this order.

DATED at Auckland this 8<sup>th</sup> day of July 2020

  
\_\_\_\_\_  
J A Smith  
Environment Judge



## Annexure A

### F.1.12 Air quality

Adverse effects from discharges to air are managed by:

- 1) — minimising cross-boundary effects on sensitive areas from discharges of dust, smoke, agrichemical spray drift, and odour, and
- 2) — protecting dust, odour, smoke and spray sensitive areas from exposure to dangerous or noxious levels of gases or airborne contaminants, and
- 3) — recognising that land use change can result in reverse sensitivity effects on existing discharges to air, but existing discharges should be allowed to continue providing they are employing best practice, and
- 4) — Maintaining, or enhancing where it is degraded by human activities, ambient air quality by avoiding significant cumulative adverse effects of air discharges on human health, cultural values, amenity values and the environment.

Human health, ambient air quality, cultural values, amenity values and the environment are protected from significant adverse effects caused by the discharge of contaminants to air.

### D.3.1A General approach to managing adverse effects of discharges to air

Adverse effects from the discharge of contaminants to air are managed by:

- 1) avoiding, remedying or mitigating cross-boundary effects on dust, odour, smoke and spray-sensitive areas from discharges of dust, smoke, agrichemical spray drift, and odour, and
- 2) protecting dust, odour, smoke and spray-sensitive areas from exposure to dangerous or noxious levels of gases or airborne contaminants, and
- 3) recognising that land use change can result in reverse sensitivity effects on existing discharges to air, but existing discharges should be allowed to continue where appropriate.

### D.3.3 Dust and odour generating activities



When considering resource consent applications for discharges to air from dust or odour generating activities:

- 1) require a dust or odour management plan to be produced where there is a likelihood that there will be objectionable or offensive discharges of dust or odour at the boundary of the site where the activity is to take place, or where the activity is likely to cause a breach of the ambient air quality standard for PM<sub>10</sub> in Schedule 1 of the National Environmental Standard for Air Quality. The dust or odour management plan must include:
  - a) a description of dust or odour generating activities, and
  - b) potentially affected dust sensitive areas or odour sensitive areas, and
  - c) details of good management practices that will be used to control dust or odour to the extent that adverse effects from dust or odour at the boundary of the site are avoided, remedied or mitigated, and
- 2) take into account any proposed use of low dust generating blasting mediums when assessing the effects of fixed or mobile outdoor dry abrasive blasting or wet abrasive blasting.

**Note:**

*Policy D.3.3 does not apply to odour associated with the controlled discharge of gas containing an odorant (such as mercaptan) from pipelines and ancillary equipment.*

### D.3.5 Activities in the Marsden Point airshed

The Marsden Point Air Quality Strategy must be taken into account when considering resource consent applications for discharges to air in the Marsden Point airshed as shown in | Maps | Ngā mahere matawhenua. In particular, resource consent applications involving the discharge of sulphur dioxide (SO<sub>2</sub>) to air must avoid adverse effects on the operation of regionally significant infrastructure within the Marsden Point Air Shed~~Port Zone~~.

#### C.7.1.8 Existing authorised burning ~~for energy~~ generation – restricted discretionary activity

An application for a new resource consent to replace an existing resource consent for the discharge of a contaminant into air from burning of coal, oil<sup>1</sup> (but not waste oil), natural gas,

<sup>1</sup> For the purposes of this rule 'oil' includes petrol, diesel fuel, asphalt, kerosene, jet fuel and fuel oils



biogas, oil refining process gas, liquid petroleum gas or untreated wood for energy (electricity or heat) generation is a restricted discretionary activity, provided:

- 1) the existing air discharge is authorised by an existing resource consent at the time of the resource consent application, and
- 2) there is no increase in the scale or change to the type of the discharge as authorised by the existing resource consent.

**Notification:**

Applications processed under this rule are precluded from public (but not limited) notification.

**Matters of discretion:**

- 1) Best practicable option measures to avoid, remedy or mitigate the adverse effects on smoke-sensitive areas and neighbouring dwelling places or properties.
- 2) The location of the discharge in relation to sensitive areas.
- 3) The method of discharge, including stack height, design and exit velocity.
- 4) Emission control equipment, its effectiveness, operation and maintenance.
- 5) Combustion rate, efficiency, operation and maintenance.
- 6) Fuel use, quality (including sulphur content), storage and handling.
- 7) Requirement for, and contents of, a management plan.
- 8) Emission limits (concentrations and rates) on the discharge.
- 9) Local air quality, compliance with the standards prescribed in Schedule 1 of the National Environmental Standards for Air Quality 2004, and ambient air quality effects relative to appropriate air quality criteria referenced in order of priority as set out in the *Good Practice Guide for Assessing Discharges to Air from Industry (Ministry for the Environment, June 2008)*.
- 10) Effects on tangata whenua cultural values.

**For the avoidance of doubt this rule covers the following RMA activities:**

- Discharge of a contaminant into air from the burning of coal, oil (but not waste oil), natural gas, biogas, oil refining process gas, liquid petroleum gas or untreated wood (s15(1) and s15(2A)).

### C.7.2.5 Discharges to air from industrial or trade premises - permitted activity

The discharge of a contaminant into air from the following industrial or trade premises is a permitted activity:

...



13) premises used for portable saw milling, joinery, cabinet making, furniture restoration and finishing, wood craft manufacture, but excluding the production of any form of particle-board, hardboard, medium density fibre-board or similar product), and

13a) premises used for saw milling that are more than 250 metres from any residential buildings and associated garden areas, schools, hospital buildings and care facilities and their grounds, and

...

22) farm quarries-quarrying operations, earthworks and clean fill operations

...

provided the discharge does not result in any noxious, dangerous, offensive or objectionable odour, smoke, dust, or any noxious or dangerous levels of airborne contaminants beyond the boundary of the subject property or in the coastal marine area.

**For the avoidance of doubt this rule covers the following RMA activities:**

- Discharge of a contaminant into air (s15(1)).

### C.7.2.5A Discharges to air from saw milling – controlled activity

The discharge of a contaminant into air from sawmilling, that is not a permitted activity under Rule C.7.2.5 Discharges to air from industrial or trade, premises - permitted activity is a controlled activity, provided:

- 1) Discharges to air shall not result in any noxious, dangerous, offensive or objectionable odour, smoke, dust, or any noxious or dangerous levels of airborne contaminants beyond the boundary of the subject property; and
- 2) The saw mill operates a dust collection, conveyance and storage system which as a minimum, includes a filtration system with a maximum PM<sub>10</sub> emission limit of 50 mg/Sm<sup>3</sup>; and
- 3) For sawmills established after 1 January 2020 discharges to air from the sawmill do not result in an exceedance of the following standards, measured at or as near as possible to any residential buildings and associated garden areas, school, hospital building and care facility and grounds:



- a) the ambient standard for PM<sub>10</sub> in Schedule 1 of the Resource Management (National Environmental Standards for Air Quality) Regulations 2004; or
- b) 5 µg/m<sup>3</sup> (for hard wood PM<sub>100</sub>) and 10 µg/m<sup>3</sup> (for soft wood PM<sub>100</sub>) when expressed as a 1-hour average

**Matters of control:**

- 1) The methods to control the discharge and avoid, remedy or mitigate any adverse effects, including methods to ensure the discharge does not result in an exceedance of an ambient air quality standard in the current edition of Resource Management (National Environmental Standards for Air Quality) Regulations and the one-hour average ambient standards derived from current Worksafe Workplace Exposure Standards for hard and soft wood at locations beyond the site boundary where people are likely to be exposed.<sup>1</sup>
- 2) Dust mitigation measures.
- 3) Dust monitoring methods.
- 4) Content, adequacy and implementation of a dust management and monitoring plan, prepared in accordance with Appendix 4 of the Good Practice Guide for Assessing and Managing Dust (Ministry for the Environment, 2016).
- 5) Measures necessary to ensure the ability of equipment and/or site management practices to mitigate and/or disperse contaminants, including chimney height, chimney design and emission velocity, to achieve compliance with conditions (a), (b) and (c) above.

<sup>1</sup> The reference for the wood dust ambient standards is WorkSafe Exposure Standards and Biological Exposure Indices (Worksafe New Zealand, 2019 refer here for hardwood and softwood species classifications) corrected to a one-hour average by dividing by 100 for carcinogenic contaminants in accordance with the Good Practice Guide for Assessing Discharges to Air from Industry (Ministry for the Environment, 2016).

### C.7.2.5B Discharges to air from quarries (excluding farm quarries) – permitted activity

The discharge of a contaminant into air from quarrying operations (excluding farm quarries) is a permitted activity, provided that:

- 1) the discharge does not result in any noxious, dangerous, offensive or objectionable odour, smoke, dust, or any noxious or dangerous levels of airborne



contaminants beyond the boundary of the subject property or in the coastal marine area; and

- 2) if the quarrying operation is either within 500m of any residential buildings and associated garden areas, school, hospital building and care facility and grounds or in excess of 50,000 tonnes per annum transported from the quarry, then:
- a) the quarry existed and the discharge of contaminants to air from the quarrying operations were authorised as at 01 January 2020, and
  - b) the quarry is operating in compliance with a Dust Management and Monitoring Plan which the Regional Council's Compliance Manager has certified is in accordance with Appendix 4 of the Good Practice Guide for Assessing and Managing Dust (Ministry for the Environment, 2016) and with reference to the following matters:
    - i) Amount of exposed area that could potentially generate windblown dust, and
    - ii) Speed of trucks on site, and
    - iii) Separation distances between the activity and any residential buildings and associated garden areas, schools, hospital buildings and care facilities and grounds, and
    - iv) Emissions management and monitoring, including where appropriate in respect of PM<sub>10</sub> and respirable crystalline silica, and
    - v) The availability of water for dust suppression.
  - c) Upon request of the Regional Council, the quarry operator provides the Regional Council with evidence of how the dust management and monitoring plan is being complied with.

### C.7.2.5B Discharges to air from quarries (excluding farm quarries) – controlled activity

The discharge of a contaminant into air from quarrying operations (excluding farm quarries) that is not a permitted activity under Rule C.7.2.5B Discharges to air from quarries (excluding farm quarries) – permitted activity is a controlled activity, provided that:



- 1) the discharge does not result in any noxious, dangerous, offensive or objectionable odour, smoke, dust, or any noxious or dangerous levels of airborne contaminants beyond the boundary of the subject property, and
- 2) for quarries established after 1 January 2020 that are, in excess of 50,000 tonnes per annum transported from the quarry and are within 500m of any residential buildings and associated garden areas, school, hospital building and care facility and grounds, discharges to air from the quarrying operation of particulate matter less than 10 micrometres in diameter (PM<sub>10</sub>) shall not cause an exceedance of the standard for PM<sub>10</sub> in Schedule 1 of the National Environmental Standard for Air Quality measured at or as near as possible to any residential buildings and associated garden areas, school, hospital building and care facility and grounds.

**Matters of control:**

- 1) Any measures necessary to ensure the ability of site activities and processes to mitigate and/or manage discharges to air to achieve compliance with condition 1) and if applicable condition 2) above and good management practice. These shall include, but not be limited to:
  - a) Amount of exposed area that could potentially generate windblown dust;
  - b) Speed of trucks on site;
  - c) Separation distances between the activity and any residential buildings and associated garden areas, schools, hospital buildings and care facilities and grounds;
  - d) Emissions management and monitoring, including where appropriate in respect of PM<sub>10</sub> and respirable crystalline silica; and
  - e) The availability of water for dust suppression.
- 2) Carrying out of measurements, analyses, surveys, investigations, or inspection, if necessary, to assess the ongoing implications of discharges to air on any applicable ambient standards for PM<sub>10</sub> and respirable crystalline silica.
- 3) Content, adequacy and implementation of the Dust management and monitoring plan.

**New Definition - Farm Quarry**

Farm Quarry(ies) – a quarry or quarries where extracted aggregate is only used on the farm that the farm quarry is situated on, and is not sold or otherwise commercially disposed of.

