

Update on Plan Change 13 (Air Quality)

Bay of Plenty Region | July 2020

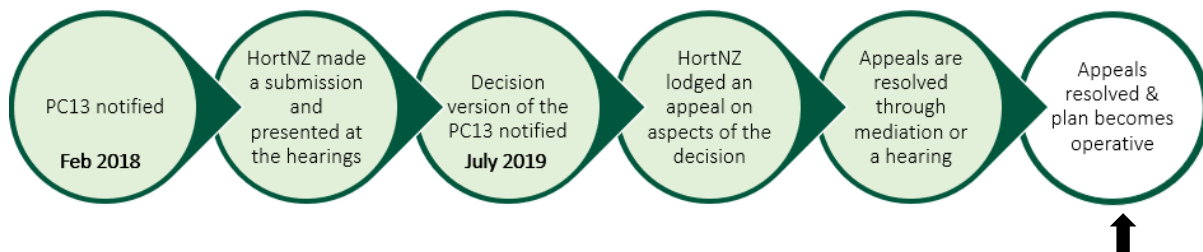


What is Plan Change 13 (Air Quality)?

- Plan Change 13 (PC13) is a review of the air discharge rules and will replace the Regional Air Plan. It sets out the policy and rules which control discharges of contaminants into air in the Bay of Plenty region.
- The Regional Air Plan/PC13 will be incorporated into one Regional Natural Resources Plan (RNRP), so all the regional plans are in the same place (this does not change the content).
- **A decision version of PC13 was notified on 12 March 2019.** From this date PC13 has reflected the decisions made by a Hearing Committee panel, taking into account submissions and hearing evidence. **Even though at the time of writing, PC13 is called ‘proposed’, the objectives, policies and rules in the plan change apply.**
- HorticultureNZ has been involved throughout the development of PC13 telling the horticulture story and promoting outcomes that enable growing— providing feedback on the draft plan change, making a submission, further submission and presenting at hearings in 2018 and involvement in mediations.

Throughout this process, HorticultureNZ has had some wins including:

- Encouraging best practice to manage potential adverse effects and the reflection of this in the policy and rules
- A minimum 12-hour notification period instead of 24 hours
- A more certain activity status for agrichemical applications that require resource consent
- Ensuring the plan change included an interpretation of the terms noxious, dangerous, offensive, objectionable
- Greater recognition of the issue of reverse sensitivity
- Ensuring that for air quality standards, guidelines are not incorporated inappropriately.



- PC13 is in the appeals stage (see diagram above), however the majority of appeals (including HortNZ’s) have been resolved. Where appeals have been resolved the PC13 rules are operative. There is one appeal outstanding matter (relating to bulk materials). At the time of writing, the plan text had not yet been updated on BoPRC’s website, however HortNZ’s resolved changes can be seen in the consent notices which have been posted on Council’s [website](#). Once all appeals are resolved the plan will become fully operative (and the existing Air Plan will no longer apply).

What does it mean for growers?

Even though the plan is still called “proposed” the objectives, policies and rules in the plan apply. As aspects of the decision are subject to appeal, the existing plans still remain relevant for activities where decisions on PC13 have been appealed to the Environment Court (until the appeals are resolved). As a basic guide:

- Where there are no appeals on a rule – the PC 13 rule applies and supersedes other rules. *This is now the case for the majority of rules.*
- Where part of the PC is subject to appeal (e.g. bulk solid materials provisions) – both the current operative regional plans and PC13 apply.

The [appeal version](#) of the plan notes whether a provision is subject to appeal (the rules are highlighted). In this situation, Bay of Plenty Regional Council enforce both sets of rules with the strictest requirement generally prevailing.

How the new rules apply will vary according to the status and nature of the activity:

Existing consented activities:	If you already have a resource consent, the new plan will only become relevant if, or when, you need to renew your consent (or if your consent conditions are reviewed).
Existing permitted uses or new activities:	Some activities may have limited existing use rights (for 6 months after a rule becomes operative, until a resource consent is sought) under Section 20A of the RMA – we recommend seeking advice from the Council or a planning consultant if you think this might apply. Otherwise: <ul style="list-style-type: none">• You will need to determine if your activity meets the permitted activity standards for the activity in the Plan.• If it doesn't, you will need to apply for a resource consent. The Council will consider the objectives and policies of the Plan and how adverse effects of the activity can be managed or mitigated.

PC13 can be viewed on Bay of Plenty Regional Council's website [here](#).

When appeals are resolved through mediations, a consent order is prepared and signed off by the Environment Court. Rules in consent orders are operative (any previous rule no longer applies). Consent notices are uploaded on BoPRC's [website](#). To date no Environment Court hearings have been needed to resolve appeals on the plan.

What does the plan cover?

The plan has rules, objectives and policies for discharges to air. A summary of the rules most relevant to horticulture is provided in relation to the following activities, below:

- Agrichemical spraying
- Fertiliser application
- Open burning
- Boilers (e.g. in greenhouses) or solid fuel burners
- Fumigation (injection into soil)

If the activity is listed as a Permitted Activity and meets the applicable permitted activity standards = resource consent is not required.

Resource consent is required if:

- If your activity does not meet the permitted activity standards
- If your activity is listed as a Controlled, Restricted Discretionary, or Discretionary Activity.

If you need assistance reading the plan or understanding whether you need consent, please contact the Bay of Plenty Regional Council or your local planning consultant.

Overview of the key relevant rules

Agrichemical spraying

This summary reflects the rules agreed to through appeals and signed by the Court in a Consent Notice – this differs from the decision version of the provisions. The new rules are now **operative**.

- Controls on agrichemical spraying are consolidated into one rule, **Rule AQ R15** – if the conditions of this rule can be met, the activity can occur without requiring a resource consent. The permitted activity controls are distinguished by the method of application (see below) and the area to be sprayed – **refer to Appendix 1** below for a summary. If the permitted activity requirement cannot be met, resource consent is required as a Controlled Activity (Rule AQ R25).
- The previous regional plan has separate rules for each application method - Rule 10 (biosecurity management), Rule 11 (Non-motorised hand-held application), Rule 12 (Application from an aircraft), Rule 13 (Other application techniques).
- There is a general requirement that a discharge must not to be obnoxious or dangerous, offensive or objectionable beyond the boundary or non-target waterbody. *NB: further guidance is provided on the interpretation of these terms below the rules in the plan.*

	RULES IN THE PREVIOUS REGIONAL AIR PLAN	RULES IN PC13
Training	<ul style="list-style-type: none"> • Contractors - minimum GROWSAFE Registered Chemical Applicators certificate or equivalent. • Other commercial users - current GROWSAFE Introductory Certificate or equivalent or be under the direct supervision of a person holding a current GROWSAFE Introductory Certificate or equivalent (except for hand-held application). 	Similar (but simplified) provisions apply - unless the application is hand-held , the person carrying out spraying requires a GROWSAFE certificate or other qualification that meets the 'Training requirements: Application of Agrichemicals' schedule.
Notification of nearby property	Notification of spraying required, for any property within: <ul style="list-style-type: none"> • Motorised boom which meets specified design conditions (pressure, height, nozzles) = 10m • Other application methods (excluding non-motorised hand-held or aerial) = 50m • Aerial application = 200m 	Notification of spraying required, for any property within: <ul style="list-style-type: none"> • Hand-held application or application using a low-pressure boom are not subject to these notification requirements (The same design criteria have been carried across into the definition of 'low pressure boom'¹) • Other ground-based application methods (and drones up to 5m above target) = 50m • Aerial application (including drones more than 5m from the tallest point of target) = 200m (no change)
	Notification required no earlier than 20 days and no later than 12 hours before the agrichemical use – unless an agreed form of notification has not been reached.	Notification must occur no earlier than 72 hours (amended) and no later than 12 hrs before (same) the agrichemical spraying OR according to a notification agreement with the occupier. Similar information is required to be provided – however, the address and registration information of the applicator is no longer required.
Notification - public places	Agrichemical use in public places (public land, public roads or railways) must be notified at least 1 week before application by a public notice in	For spraying in a public amenity area* - notice on a publicly available webpage is required, no

¹ Means any boom with the following design conditions: (a) the liquid pressure through the boom is less than 3 bar, (b) the height of the discharge point on the boom is less than 1 metre from the ground, (c) the nozzles point down, (d) the nozzles are designed to create coarse droplets of greater than 250 microns in diameter

	RULES IN THE PREVIOUS REGIONAL AIR PLAN	RULES IN PC13
	<p>the local newspaper and/or other recommended methods including letter drops.</p> <p><i>Note: Notification requirements within a public area differed based on design specification of the equipment - similar to above.</i></p>	<p>earlier than 10 days and no later than 24 hours before application.</p> <p><i>*means a public area where members of the public are likely to congregate for extended periods of time. This may include (but is not limited to): backcountry huts, barbeques, changing facilities, cycleways, outdoor sports facilities, parks and reserves, playgrounds and playground equipment, public toilets, seating and picnic tables, shelters, squares, and walkways</i></p>
Signage	<p>Where agrichemicals are applied to land adjoining public roads and places, signs must be placed on the road boundary 24 hours before the time of application and removed by the applicator when safe for re-entry.</p>	<p>Signage is required:</p> <ul style="list-style-type: none"> • Within a public amenity area, including vehicles being used to apply spray on public amenity areas • Spraying near a public amenity area – signs required if within 50m of a (for ground-based or drone 5m below target) or 200m (for aerial or drone more than 5m above target) • On private property, signage is required at the entrance to the property (except for hand held spraying) <p>The plan includes requirements for what the signs must include.</p> <p>Signs are no longer required to be put up 24 hours beforehand, however signs must:</p> <ul style="list-style-type: none"> • In/near a public amenity area: remain until airborne spray has settled and be removed within 5 days of the area being safe to re-enter. • Private property: be removed within 5 days of completion of spraying
Other requirements	<ul style="list-style-type: none"> • Requirement to not contravene any requirement specified in the manufacturer’s instructions • Reference to compliance with NZS 8409:1999 Code of Practice for the Management of Agrichemicals • For aerial application, the applicator was required to must notify the Council immediately in the event of any discharge of agrichemical beyond the boundary of the subject property 	<p>Spray Risk Management Plans are required for application methods that are not hand-held. (NEW)</p> <p>The Plan specifically manages drones (as either non-aerial or aerial, depending on the height they are operated).</p>

Other rules to be aware of

ACTIVITY	RULES IN THE PREVIOUS REGIONAL AIR PLAN	RULES IN PC13
Fertiliser Application	<p>Rule 9 - Spray Irrigation of Liquid Waste</p> <ul style="list-style-type: none"> ○ Permitted provided discharge does not result in either of the following beyond the boundary of the subject property: <ul style="list-style-type: none"> - noxious or dangerous, offensive or objectionable effect - harmful concentrations of contaminants. ○ Must not be within 20m of boundary or within 20m of any surface water body <p>Rule 17 – General activities, was applicable to other fertiliser application. Permitted</p>	<p>Rule AQ R3 (includes (1) spray irrigation, soil injection, truck spreading, or land soakage of liquid waste and (3) the use and application of fertiliser and lime).</p> <ul style="list-style-type: none"> ○ These activities are permitted provided the discharge does not cause any noxious or dangerous, offensive or objectionable effect beyond the boundary of the subject property. <p>The previous rules included setbacks from property boundaries for spray irrigation.</p>

ACTIVITY	RULES IN THE PREVIOUS REGIONAL AIR PLAN	RULES IN PC13
	<p>activity conditions of this rule include (as applicable):</p> <ul style="list-style-type: none"> ○ The discharge is required to not result in either of the following beyond the boundary of the subject property: <ul style="list-style-type: none"> - noxious or dangerous, offensive or objectionable effect - harmful concentrations of contaminants. ○ Permitted emissions of hazardous air pollutants are specified in kg/p/hr – vary depending on type of pollutant and the plan included limits on the amount of suspended particulate matter 	<p>Note: The application of fertiliser (as a discharge of nutrients to land) may also be subject to other regional rule controls.</p>
<p>Open burning</p>	<p>Rule 5 Open Burning permitted, provided:</p> <ul style="list-style-type: none"> ○ No objectionable or offensive particulate deposition, smoke or odour, or any harmful concentrations of gases beyond the boundary of the subject property or into water ○ Good management practice is applied ○ Fire not lit when chance of an inversion layer ○ Lists materials which cannot be burnt in the open air. 	<p>The new rules introduce <u>distances in relation to neighbouring properties</u> as a permitted activity condition, reference to inversion layers has been removed.</p> <p>Rule AQ R6; open burning is permitted if not located <u>within 100 metres of any neighbouring dwelling house</u> and:</p> <ul style="list-style-type: none"> • No materials either listed in AQ R10 or prohibited by the regulations of the National Environmental Standards for Air Quality are burned; • The discharge of smoke must not adversely affect the safety of any vehicle, aircraft, or ship; • The discharge must not be noxious or dangerous, offensive, or objectionable beyond the boundary of the subject property. <p>Rule AQ R8a and Rule AQ R8b Open burning of vegetative material carried out as part of rural production activities where the fire is located:</p> <ul style="list-style-type: none"> • <u>between 50 to 100 metres</u> of any neighbouring dwelling house – requires resource consent as a Controlled Activity (Rule AQ R8a). • <u>closer than 50 metres</u> from any neighbouring dwelling house - requires resource consent a Restricted Discretionary Activity (Rule AQ R8b). <p>Specific rules apply to burning for emergency disposal/biosecurity purposes (refer to Rule AQ R7).</p> <p>(This summary reflects the rules agreed to through appeals and signed by the Court in a Consent Notice – this differs from the decision version of the provisions. The rules for outdoor burning are now operative.)</p>
<p>Boilers (Greenhouses)</p>	<p>Rule 3 Small Combustion Sources Rule 4 Medium Combustion Sources</p>	<p>The applicable rule depends on the type of equipment and the location, refer to:</p> <p>Rule AQ R18 – Fuel burning equipment (boilers) Rule AQ R11 - Solid fuel burners outside the Rotorua Airshed</p>

ACTIVITY	RULES IN THE PREVIOUS REGIONAL AIR PLAN	RULES IN PC13
		<p>Rule AQ R12* - Solid fuel burners in the Rotorua Airshed</p> <p>Rule AQ R13A* - Existing outdoor solid fuel burners in the Rotorua Airshed</p> <p><i>*Aspects of these rules are subject to appeal by other parties which have been resolved by Consent Order and now operative.</i></p>
<p>Fumigation (soil injection)</p>	<p>Rule 17 – General Activities (Not specifically stated in the plan – covered by this general rule, subject to permitted activity conditions)</p> <p>The general conditions include the requirement to not result in objectionable or offensive odour or particulates or no harmful concentrations of contaminants beyond the boundary of the subject property or into water.</p>	<p>Refer to Rule AQ R3 - The discharge of contaminants to air from: (1) ... soil injection.</p> <p>This activity is Permitted provided the discharge does not cause any noxious or dangerous, offensive or objectionable effect beyond the boundary of the subject property.</p>

APPENDIX 1: Summary of PC13 agrichemical rules

REQUIREMENT	Hand-held non-motorised application	Hand-held motorised, or application methods using a low-pressure boom	Other application methods	
			Ground-based or drone operated ≤5m above target	Aerial or drone operated >5m above target
<p>Permitted activity conditions applicable to all agrichemical application methods:</p> <ul style="list-style-type: none"> - The discharge must not to be obnoxious or dangerous, offensive or objectionable beyond the boundary or non-target waterbody. - If agrichemical use 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. - Where the rules specify a notification requirement and agrichemical application 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. - <u>Unless</u> the application is hand-held, the person carrying out spraying requires a GROWSAFE certificate or other qualification that meets the ‘Training requirements: Application of Agrichemicals’ schedule. - If agrichemical application is within/on a public amenity area (all application methods): <ul style="list-style-type: none"> - Signage is required: <ul style="list-style-type: none"> o Signs including the information below are required at every entrance the public usually has entry to the area, o These signs should remain in place until all airborne spray has settled and the agrichemical has dried on its target surface. o Signs must be removed within 5 days once the area is safe to re-enter. <div style="background-color: #e0f2e0; padding: 10px; margin: 10px 0;"> <p>Signs required by this condition must clearly state:</p> <ul style="list-style-type: none"> (i) “CAUTION – SPRAYING IN PROGRESS” or similar wording (ii) the name and type of agrichemical used (iii) a start and end date for spray operations (iv) the name and phone number of the person carrying out the spraying (v) that while signs are in place, it is not safe to enter. </div> <ul style="list-style-type: none"> - If agrichemical application is within/on a public amenity area or public road (all application methods): <ul style="list-style-type: none"> - Notification if required: <ul style="list-style-type: none"> o Notice on a publicly available webpage is required, no earlier than 10 days (or 20 for plantation forestry or conservation area) and no later than 24 hours before application o The following information is required: (i) The name and type of agrichemical to be used, (ii) a start and end date for spray operations, (iii) contact details for the authority responsible for the spraying. 				
Vehicles spraying on public amenity areas or public roads:	N/a	Vehicles must display prominent signs front and back - “CAUTION – SPRAYING IN PROGRESS” or similar.		N/a
Spraying on private property	N/a for this application method	<p>Signage must be placed at the entrance to the property stating “CAUTION – SPRAYING IN PROGRESS” <u>and</u> a sign must be displayed at the entrance stating:</p> <ul style="list-style-type: none"> (i) <i>the name of the agrichemical used,</i> (ii) <i>the date of commencement of spray operations,</i> (iii) <i>the date when it is safe to re-enter the property and that it is not safe to enter until this date,</i> (iv) <i>the name and phone number of the person carrying out the spraying.</i> <p>Signs must be removed within 5 days of completion of spraying.</p>		

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			Ground-based or drone operated ≤5m above target	Aerial or drone operated >5m above target
Spraying near to public amenity areas:	<i>N/a for this application method</i>		If spraying is within 50m of a public amenity area:	If spraying is within 200m of a public amenity area:
			<ul style="list-style-type: none"> Signs must be prominently displayed on the boundary of the public amenity area and must clearly state “CAUTION – SPRAYING IN PROGRESS” or similar wording; Signs should remain in place until all airborne spray has settled and the agrichemical has dried on its target surface and must be removed within 5 days once the area is safe to re-enter. 	
Notification (of nearby properties)	<i>N/a for this application method</i>		Notification of occupiers of any properties within 50m of spraying is required:	Notification of occupiers of any properties within 200m of spraying is required:
			<ul style="list-style-type: none"> Notification is required either: <ul style="list-style-type: none"> No earlier than 72 hrs (or 20 days for plantation forestry or in a conservation area), and no later than 12 hrs before the agrichemical spraying and include address and location of proposed application, date(s) of proposed application, name and type of agrichemical to be applied and the name and phone number of the person carrying out the spraying.; Notification must include the following: <ul style="list-style-type: none"> the address and location of proposed application, the date/s of proposed application, name and type of agrichemical to be applied, name and phone number of person carrying out the spraying. <p><u>OR</u></p> <ul style="list-style-type: none"> Notification may be undertaken according to a notification agreement containing the (reviewed and signed annually) with the occupier. <ul style="list-style-type: none"> A notification agreement must contain (as a minimum) method of notification and minimum time for notification prior to spraying be recorded in writing and signed by all parties be reviewed and re-signed annually. Details of notification must be recorded. 	
Spray Risk Management Plans	<i>N/a for this application method</i>		<p>A Spray Risk Management Plans is required to be prepared prior to the agrichemical spraying and implemented.</p> <ul style="list-style-type: none"> Spray Risk Management Plans must be reviewed and updated each year that spraying will be carried out, and made available to the Regional Council or a part located within a sensitive area (defined in the Plan) within 20 working days of this being requested. The spray risk management plan must include: <ul style="list-style-type: none"> 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 (less than 5m above target) or within 200 metres of the land being sprayed by aerial application (and drone application more than 5m above target). Areas to be sprayed, type of agrichemical likely to be used during the year and the times of year that spraying is likely to occur. 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. Strategies to mitigate any spray drift caused by particular weather conditions, Strategies to manage any specific hazard associated with the agrichemical to be sprayed (e.g. toxicity to bees). 	