

Western Bay of Plenty District Council

Change to the District Plan – First Review

Plan Change 38 Intensive Farming Activities

Section 32 Report

Prepared by: Russell De Luca, Resource Management & Planning Consultant

1.0 Introduction

- 1.1.** The purpose of this report is to examine the issues relating to the current District Plan definition of "intensive farming activities" as well as how provision is made for such activities in the District Plan rules. Options for amending the existing District Plan provisions are analysed and what are considered to be appropriate amendments to those provisions are recommended.
- 1.2.** It should be noted that District Plan provisions relating to aquaculture are separately and more particularly addressed through proposed Plan Change 37 which is the subject of a separate RMA section 32 report and which recommends specific Plan amendments relating to that activity. Recommended amendments include inserting a new definition of "land-based aquaculture" and adding that activity to the definition of "intensive farming activities". The report relating to Plan Change 37 should therefore be read in conjunction with this report.
- 1.3.** Four principal options are discussed in this report, being:
- (a) Retain status quo (no change to existing District Plan provisions);
 - (b) Completely rewording the definition of "intensive farming activities";
 - (c) As for (b) above but also including amendments to the definition of "farming" and adding a separate new definition for "extensive pig farming";
 - (d) As for (c) above but with further amendments which provide for a graduated activity status for "intensive farming activities" depending on their nature and scale.
- 1.4.** In assessing the issues and options relating to "intensive farming activities", consideration has been given to the overriding purpose of the Resource Management Act 1991 (the RMA) which is "to promote the sustainable management of natural and physical resources." [RMA section 5(1)] Regard also been had to other relevant matters set out in Part 2 of the RMA.

2.0 Resource Management Act 1991 (RMA)

2.1. Section 32

Before a proposed plan change can be publically notified the Council is required under section 32 ("s.32") of the Act to carry out an evaluation of alternatives, costs and benefits of the proposed review. With regard to the Council's assessment of the proposed plan change s.32 requires the following:

- (3) *An evaluation must examine-*
 - (a) *the benefits to which each objective is the most appropriate way to achieve the purpose of the Act; and*
 - (b) *whether, having regard to their efficiency and effectiveness, the policies, rules or other methods are the most appropriate for achieving the objectives.*

- (4) *For the purposes of the examinations referred to in subsections (3) and (3A), an evaluation must take into account-*
- (a) *The benefits and costs of policies, rules or other methods; and*
 - (b) *the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods.*

The benefits and costs include benefits and costs of any kind, whether monetary or not.

In short, this report must evaluate the extent to which the proposed plan change is the most appropriate way to achieve the purpose of the RMA.

2.2. Section 74

In accordance with Section 74(2A), Council must take into account any relevant planning document recognised by an Iwi authority lodged with Council. This particular plan change is not considered to raise any issues of relevance to the Iwi Management Plans that have been lodged with Council.

3.0 Consultation

3.1 Public notices about a raft of possible plan changes (including Plan Change 38) were put in local newspapers and an information page was also put on the Council website. In addition, notice of these changes was put in the Council's regular "Surveyors' Newsletter". No responses were received from the foregoing.

3.2 Direct consultation was undertaken with representatives of NZ Federated Farmers, the Poultry Industry Association of NZ, the Egg Producers Federation, the Bay of Plenty Regional Council and three local farmers known to have an interest in the issues raised. A preliminary discussion paper relating to "intensive farming activities" was provided to these parties who were generally supportive of the general direction taken in the discussion paper and who also provided helpful comments relating to suggested amendments. A copy of these comments is attached as Attachment A.

3.3 Feedback on the proposed amendments to the District Plan were also received from Council's compliance officers.

4.0 Issues Statement

4.1 Introduction

4.1.1 The anomalies created by the manner in which aquaculture is treated in the operative Western Bay of Plenty District Plan have been addressed in the separate RMA section 32 report for proposed Change 37. One of the recommendations in that report is to delete the reference to aquaculture in the District Plan definition of "farming" and include it in the definition of "intensive farming".

4.1.2 The current District Plan definition of “intensive farming” is not considered to be particularly well worded and in conjunction with any proposed amended wording, the opportunity exists to revisit the manner in which the District Plan provides for such activities, including the types of farming activities which should be included within the definition and the activity status of the activities themselves.

4.1.3 As part of this reassessment of the current Western Bay of Plenty District Plan provisions, the provisions of the following other District Plans have been reviewed:

- Franklin;
- Hauraki;
- Matamata-Piako;
- Rotorua;
- Tauranga;
- Thames-Coromandel;
- Waikato;
- Waipa;
- Whakatane.

4.2 Range of activities within District Plan definitions

4.2.1 The current District Plan definitions of “farming” and “intensive farming” are as follows:

***“Farming”** means and includes agriculture, including outdoor (extensive) pig farming (means the keeping of pigs in an extensive manner in paddocks where groundcover is maintained and where no fixed buildings are required), horticulture, floriculture, beekeeping, aquaculture, the keeping of not more than 25 poultry; and/or the keeping of not more than 12 weaned pigs when these are kept mainly within buildings or outdoors without groundcover being maintained.*

***“Intensive Farming Activities”** means mushroom farming, intensive livestock farming (whether free range or indoors but excludes extensive pig farming) including poultry farms, piggeries, fitch farms, rabbit farms, animal feed lots and other activities which have or require:*

- (a) no dependency of the quality of the soils naturally occurring on the site, or*
- (b) buildings for the housing and growth of livestock or fungi, and*
- (c) excludes greenhouses and other buildings used for the growth of vegetative matter.*

4.2.2 As already noted, the merits of deleting aquaculture from the definition of “farming” and including it in the definition of “intensive farming activities” are discussed in the separate RMA section 32 report for proposed Plan Change 37 relating to aquaculture.

4.2.3 An analysis of the various definitions of intensive farming activities in other district plans reveals that such activities are generally seen to have the following characteristics:

- (a) they are carried out within buildings or other structures, or they are undertaken at an intensity which precludes the continuous maintenance of groundcover, and
- (b) they have no dependence on the quality of the soils naturally occurring on the site.

Activities typically included are:

- intensive livestock farming;
- animal feed lots;
- poultry farming;
- piggeries.

Activities typically excluded are:

- greenhouses;
- "extensive" pig farming;
- calf-rearing;
- stock wintering sheds;
- horse stables.

4.2.4 While mushroom farming is specifically included in the current definition of "intensive farming activities", recent consultation with a local mushroom grower has raised the question of whether it is appropriate for a distinction to be made between "clean" and "dirty" mushroom farming operations, in particular based on how composting and the associated leachate which is generated are handled.

4.2.5 Both of the existing District Plan definitions set out in paragraph 4.2.1 above refer to pig farming either in the definition of "farming" as:

outdoor (extensive) pig farming (means the keeping of pigs in an extensive manner in paddocks where groundcover is maintained and where no fixed buildings are required);

or in the definition of "intensive farming activities" as:

piggeries [Note: "extensive pig farming" is specifically excluded from the definition.]

It is considered that the foregoing provisions relating to pig farming can be rationalised so as to be clearer and more logically set out. In particular, the definition of "outdoor (extensive) pig farming" which is currently contained within the definition of "farming" is considered better set out in a separate stand-alone definition.

Based on Council's experience with monitoring and compliance, the principal adverse environmental concern with respect to pig farming is odour. Council currently has a bylaw which requires a 50m separation distance between land used for pig farming and a dwelling. However enforcement of such a distance under the Bylaw is problematic as the only redress is through summary prosecution. It is therefore considered that the same buffer should be adopted in the District Plan because more effective enforcement provisions are available under the RMA.

4.3 Activity status

- 4.3.1** In the other district plans reviewed, intensive farming activities invariably have “discretionary” status in rural areas, presumably because of their deemed potential to create more than minor adverse environmental effects which are unable to be readily addressed through permitted or controlled activity standards. However, some intensive farming activities may be considered to have at least the potential to be suitable for a lesser activity status such as “controlled” or even “permitted”. Such activities may include those which are of a smaller scale or those which employ operational systems which make it unlikely that any effects of a more than minor nature will be created.
- 4.3.2** Smaller-scale intensive farming operations which may be considered suitable for a lesser activity status (eg restricted discretionary, controlled or permitted) could include those which involve small building floor areas such as below 200m². Under the current WBOP District Plan Rural Zone provisions, buildings which are accessory to a permitted farming activity and have a floor area of 200m² or more are a restricted discretionary activity if within a lot of 2ha or less. There is no maximum floor area for these buildings within a lot greater than 2ha.
- 4.3.3** An example of an intensive farming activity with operational systems more sophisticated than the norm is a mushroom farm which uses a completely enclosed and self-contained composting and leachate treatment and disposal system, thereby eliminating any potential for the creation of off-site odour effects.
- 4.3.4** With respect to the two foregoing examples, the question then becomes one of whether the District Plan should be amended so as to distinguish such exceptions from the norm or to leave them under the general discretionary activity provision so as to enable individual proposals to be assessed on their merits on a case by case basis.

5.0 Options

5.1. Option 1 – Status Quo – no change to District Plan

Advantages	<ul style="list-style-type: none">▪ None
Disadvantages	<ul style="list-style-type: none">▪ Notwithstanding the District Plan amendments proposed under Plan Change 37 relating to aquaculture, the current rather clumsy wording of the definition of “intensive farming activities” would remain with the attendant administrative inefficiencies.
Efficiency/Effectiveness	<ul style="list-style-type: none">▪ Leaving the wording of the definition unchanged would be neither efficient nor effective.

5.2. Option 2 – reword definition

Advantages	<ul style="list-style-type: none"> ▪ Simple and straightforward; ▪ Improves clarity and removes some of the uncertainty associated with the existing wording; ▪ Enhances administrative efficiency.
Disadvantages	<ul style="list-style-type: none"> ▪ Does not fully address the uncertainty relating to which forms of pig farming come within the definition.
Efficiency/Effectiveness	<ul style="list-style-type: none"> ▪ Improves administrative efficiency and is moderately effective in the way in which the District Plan provides for “intensive farming activities”.

5.3. Option 3 – as for Option 2 but with the addition of a new separate definition for “extensive pig farming”

Advantages	<ul style="list-style-type: none"> ▪ Improves clarity and removes uncertainties created by existing definition, including in respect of pig farming; ▪ Enhances administrative efficiency.
Disadvantages	<ul style="list-style-type: none"> ▪ By not introducing a system of graduated activity status, may be seen as unreasonably penalising small-scale, low-impact activities.
Efficiency/Effectiveness	<ul style="list-style-type: none"> ▪ The option is considered both administratively efficient and moderately effective in the way it provides for “intensive farming activities”.

5.4. Option 4 – as for Option 3 but with inclusion of graduated activity status for “intensive farming activities” depending on their nature and scale

Advantages	<ul style="list-style-type: none"> ▪ Targeted approach allowing small-scale, low-impact operations to be subject to less onerous District Plan provisions, possibly including permitted activity status; ▪ Administratively efficient.
Disadvantages	<ul style="list-style-type: none"> ▪ Potentially complicated in the way in which activities qualifying for less onerous activity status are determined; ▪ Likely to raise issues of consistency and equity among various types of “intensive farming activities”; ▪ Will often be reliant on individual operators adopting and maintaining “best industry practice”; ▪ Likely to require greater monitoring and compliance time; ▪ The “discretionary activity” status currently applying to all intensive farming activities has not been raised as a significant issue.
Efficiency/Effectiveness	<ul style="list-style-type: none"> ▪ Effective in better providing for “benign” activities; ▪ Has potential to be administratively inefficient.

6.0 Preferred Option

- 6.1. It is recommended that Option 3 be adopted, ie comprehensively rewording the existing definition of “intensive farming activities” and adding a new definition of “extensive pig farming”. This option is preferred because it:
- Addresses the uncertainty created by the existing wording and increases clarity as to which types of intensive farming activities fall within or outside of the definition;
 - Clarifies the meaning and status of “extensive pig farming”;
 - Will improve efficiency in the administration of District Plan provisions relating to intensive farming activities.
 - Avoids the potential complications and inconsistencies of providing for a graduated activity status based on the nature and scale of individual operations.
- 6.2. The following specific amendments to the District Plan provisions are recommended;

[Note: New text to be added to the District Plan is shown in red underlined font.]

Existing definitions

Farming

Amend definition to read:

“Farming” means and includes agriculture, ~~including outdoor (extensive pig farming (means the keeping of pigs in an extensive manner in paddocks where groundcover is maintained and where no fixed buildings are required) pastoral farming (including extensive pig farming),~~ horticulture, floriculture, beekeeping, ~~aquaculture,~~ the keeping of not more than 25 poultry birds, and the keeping of up to 12 weaned pigs at least 50m from an adjoining property boundary when these are kept mainly within *buildings* or outdoors in enclosed yards without where groundcover ~~being is not continuously~~ maintained.

Excluded from this definition are intensive farming activities and land-based aquaculture.

[Note: The exclusion of aquaculture from this definition is also recommended through proposed Plan Change 37.]

Intensive farming activities

Delete existing definition in its entirety and replace with the following:

“Intensive farming activities” means agricultural production activities which have no dependency on the quality of the soils occurring naturally on the site and which are either:

- (a) carried out within the confines of *buildings* or pens or yards enclosed by fences or walls; or
- (b) undertaken in a manner which precludes the continuous maintenance of pasture or other groundcover.

Included in this definition are:

- Mushroom farming;
- Intensive livestock farming;
- Poultry farming involving the keeping of more than 25 birds (whether outdoors or indoors);
- Piggeries;
- Land-based aquaculture
- Rabbit farming;
- Mustelid farming;

Excluded from this definition are:

- The growing of plants or other vegetative matter in greenhouses or other covered structures;
- Temporary uses or practices which are ancillary to a principal farming activity, such as the wintering of stock in *buildings* and calf-rearing;
- The keeping of not more than 25 poultry birds;
- Extensive pig farming;
- The keeping of up to 12 weaned pigs at least 50m from an adjoining property boundary within *buildings* or outdoors without groundcover being continuously maintained.

[Note: The inclusion of *land-based aquaculture* in this definition is also recommended through proposed Plan Change 37.]

New definitions

“**Extensive pig farming**” means the keeping of pigs outdoors on land at least 50m from an adjoining property boundary at a stock density which ensures groundcover is maintained and where no fixed buildings are used for the continuous housing of animals.

“**Land-based aquaculture**” means the breeding, hatching, cultivating, rearing, or on-growing of fish, aquatic life, or seaweed on land whether in buildings, constructed ponds or other artificial water bodies, and includes ancillary activities.

[Note: This new definition is also recommended to be adopted through proposed Plan Change 37.]

Russell De Luca

From: "Ruth Lee" <ruthlee@moreporklaw.co.nz>
To: "Russell De Luca" <rdeluca@xtra.co.nz>
Cc: "Ian Schultz" <schultz@moreporkfarm.co.nz>
Sent: Friday, 16 November 2012 8:42 a.m.
Subject: RE: Western Bay of Plenty District Plan - definition of "intensive farming activities"

Hi Russell,

Thanks for consulting with us on this matter.

No real feedback for now. One of the interesting things that is evolving throughout the country is that intensive farming is one way to avoid more adverse environmental effects, for example through nitrogen leaching in to waterways. The focus on adverse effects on amenity values ignores that it is in the rural environment which is a primarily a farming production environment but of course in the last 20 years it has been taken over by life stylers view of what the rural environment should be. No cow pats, no frost fans, no milking shed noise early in the morning etc. We could have that but we will lose our agricultural production base which underpins the NZ economy...

I don't know anything about the mushroom operations or the land based aquaculture but they will share the same issue – if they aren't in the rural zone where do they locate? And do we want these industries in NZ? We could have no odour and no buildings in the rural environment but we might not have any jobs!

Ruth Lee Lawyer

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From: Russell De Luca [<mailto:rdeluca@xtra.co.nz>]
Sent: Thursday, 1 November 2012 2:18 PM
To: Ruth Lee
Subject: Western Bay of Plenty District Plan - definition of "intensive farming activities"

Hi Ruth and Ian,

I have been engaged by the Western BOP District Council to review the current definition of "intensive farming activities" in the Operative Western BOP District Plan and attach for your information and comments a preliminary discussion paper which I have prepared. I would appreciate receiving any feedback you may have by Friday 16 November. If you have any queries in the interim, please don't hesitate to contact me.

Regards,

Russell De Luca
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From: "geoff oliver" <geoffoliver@xtra.co.nz>
To: "Russell De Luca" <rdeluca@xtra.co.nz>
Sent: Friday, 2 November 2012 2:08 p.m.
Subject: RE: Western Bay of Plenty District Plan - definition of "intensive farming activities"

Thanks for that Russell

I agree that a case by case bases would be the best approach. Human nature being human nature someone is always going to try things on.

Regards Geoff

From: Russell De Luca [mailto:rdeluca@xtra.co.nz]
Sent: Thursday, 1 November 2012 2:21 p.m.
To: geoffoliver@xtra.co.nz
Subject: Western Bay of Plenty District Plan - definition of "intensive farming activities"

Hi Geoff,

As you are aware, I have been engaged by the Western BOP District Council to review the current definition of "intensive farming activities" in the Operative Western BOP District Plan. I attach for your information and comments a preliminary discussion paper which I have prepared and would appreciate receiving any feedback you may have by Friday 16 November. If you have any queries in the interim, please dont hesitate to contact me.

Regards,

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