

# Planning Report

## Plan Change 37 – Aquaculture

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### 1.0 Introduction

- 1.1** The purpose of this report is to provide recommendations on submissions and further submissions to Plan Change 37 – Aquaculture.
- 1.2** Plan Change 37 proposes to amend the provisions of the Operative District Plan applying to aquaculture, in particular:
- (a) Delete “aquaculture” from the current District Plan definition of “farming” and include “land-based aquaculture” in the definition of “intensive farming activities”;
  - (b) Add a separate definition for “land-based aquaculture”;
  - (c) Make separate provision for aquaculture as a permitted activity in the Industrial Zone.
- 1.3** For a full background to the Plan Change and the proposed provisions please refer to the Section 32 Report. For a list of the proposed provisions only, please refer to the document titled ‘Proposed Plan Change Combined Notification Document’.
- 1.4** Any recommended amendments to rules in this report will be shown as follows; existing District Plan text in black, proposed changes as included in the Section 32 Report in red, and recommendations as a result of this report in blue.

### 2.0 Topic 1: Deletion of “aquaculture” from definition of “farming”

#### 2.1. Background

The anomalous and ambiguous nature of the existing provisions of the District Plan relating to aquaculture were highlighted in a recent Environment Court decision relating to a proposal to establish a land-based aquaculture facility on rural zoned land at Katikati. As part of a number of changes to the District Plan aimed at addressing these issues, Plan Change 37 includes a proposal to delete “aquaculture” from the existing definition of “farming”.

The amended definition of “farming” (as notified in both Plan Change 37 and Plan Change 38) is 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))~~ 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.

**2.2. Submissions received**

Three submissions have been received in support of this proposal, one of which requests other District Plan changes relating to the manner in which resource consent applications for aquaculture are dealt with. That particular request is discussed later in this report. One of the three principal submissions was the subject of a further submission generally supporting the proposed deletion of "aquaculture" from the definition of "farming" but also raising other matters relating to other parts of Plan Change 37. Those other matters are discussed elsewhere in this report in conjunction with the other relevant parts of the Plan Change.

**2.3. Recommendation**

That the deletion of "aquaculture" from the definition of "farming" be confirmed.

2.4. The following submissions are therefore:

**Accepted**

Submission	Point Number	Name
15	5	Bay of Plenty Regional Council
14	5	Rodney James Hodge

**Accepted in part**

Submission	Point Number	Name
FS 73	1, 12 & 15	Stewart Family Trust
29	1	Uretara Estuary Managers

**2.4. Reason**

Aquaculture has the potential to create adverse effects not generally associated with other activities included within the definition of "farming". Such effects are similar to those of intensive farming activities.

## 3.0 Topic 2: New definition of "land-based aquaculture"

### 3.1 Background

Again, this particular amendment is part of the package of measures included in Plan Change 37 aimed at addressing the anomalies and ambiguities contained in the existing District Plan provisions relating to aquaculture. The term "land-based aquaculture" is used to distinguish this type of aquaculture from the term "aquaculture activities" as defined in section 2 of the RMA. The latter RMA term relates only to aquaculture undertaken in the coastal marine area (CMA), which generally lies outside the boundaries of territorial local authorities.

The definition of "land-based aquaculture", as notified, is as follows:

"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.

### 3.2 Submission points

Four principal submissions were received on this proposed new definition, with three in support and one requesting that the term "land-based" be deleted and that the wording of the definition itself be expanded to include specific associated activities. Four further submissions were received, two opposing the submissions supporting the proposed new definition and two opposing the submission requesting modifications to the definition.

### 3.3 Discussion

3.3.1 As noted above, use of the term "land-based" is intended to distinguish aquaculture activities covered by the District Plan from those occurring within the CMA and which come within the jurisdiction of the Regional Council and DOC. However, it is acknowledged that aquaculture activities within the CMA may have associated or ancillary activities on land within the District and these are not currently covered by the proposed new definition. An amended definition, encompassing aquaculture activities within the CMA as well as on land within the District, is therefore recommended to address this matter.

3.3.2 An expansion of the proposed definition to include associated activities (such as water supply, waste management, despatch facilities etc) is not considered necessary as the definition already refers to "ancillary activities". The term "ancillary" is defined in the on-line Oxford Dictionary as meaning:

*"providing necessary support to the primary activities or operation of an organization, system etc."*

### 3.4 Recommendation

That the definition of "land-based aquaculture" (as notified) be amended as follows:

"Land-based Aquaculture" means the breeding, hatching, cultivating, rearing, or on-growing of fish, aquatic life, or seaweed in confined areas within natural water bodies or on land (whether in buildings, constructed ponds or other artificial water bodies), and includes ancillary activities.

3.5 The following submissions are therefore:

#### Accepted in part

Submission	Point Number	Name
15	6	Bay of Plenty Regional Council
FS 39	1	Bay of Plenty Regional Council
FS 42	1	Bay of Plenty Regional Council
27	4	Helen & David Stewart and others
14	7	Rodney James Hodge
FS 73	2, 14	Stewart Family Trust
29	2	Uretara Estuary Managers

### 3.6 Reasons

3.6.1 It is appropriate to expand the definition to include aquaculture activities undertaken within natural water bodies (including within the CMA) because such activities will often include land-based facilities coming within the jurisdiction of the District Council and which would otherwise default to "non-complying" status pursuant to rule 4A.1.4 of the District Plan.

3.6.2 Expanding the definition to specifically list examples of associated activities would add nothing to the definition which through the use of the phrase "and includes ancillary activities", already encompasses the types of activity in question.

## 4.0 Topic 3: Inclusion of aquaculture within definition of "intensive farming activities"

### 4.1. Background

This part of Plan Change 37 relates to the deletion of the word "aquaculture" from the definition of "farming" (as discussed in section 2 of this report) and proposes that the newly defined activity "land-based aquaculture" be included within the definition of "intensive farming activities", where it is considered to more appropriately fit. The existing definition of "intensive farming activities" is as follows:

*"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 on 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. Submission points**

Three submissions were received on this part of Plan Change 37, all in support of the notified provision. The one further submission is also in support, subject to amendments to the definition of "aquaculture" as discussed above.

#### **4.3. Recommendation**

That the inclusion of "aquaculture" (as recommended to be amended above) in the definition of "intensive farming activities" be confirmed. The amended definition (including amendments recommended in the report on Plan Change 38), will therefore read as follows:

"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;
- 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.

4.4. The following submissions are therefore:

**Accepted in part**

Submission	Point Number	Name
27	1	Helen & David Stewart and others
14	6	Rodney James Hodge
FS 73	13	Stewart Family Trust
29	4	Uretara Estuary Managers

4.5. **Reasons**

Aquaculture more properly fits within the definition of “intensive farming activities” (rather than within the definition of “farming”) because by its nature it is more similar to other intensive farming activities and has the potential to create similar adverse effects.

**5.0 Topic 4: Resource consent application processing requirements**

**5.1 Submission points**

One submission is generally supportive of the provisions of Plan Change 37 but also requests that aquaculture be subject to “a robust consents process including mandatory public notification, mandatory environmental reports, no self-monitoring provision, and an integrated assessment and decision-making model between regional and district councils.” A further submission, supporting in part the foregoing principal submission, requests a new District Plan provision which promotes a joint application process where multiple consents are required from both the regional and district councils.

**5.2 Discussion**

5.2.1 Mandatory notification

While the RMA provides for plans to include specific rules dispensing with the usual notification and affected persons provisions applying to resource consent applications, there is no ability to do the reverse, ie introduce a rule requiring mandatory notification.

5.2.2 Mandatory environmental reporting

In respect of environmental reporting, there is considered to be ample discretion available to Council to determine on a case by case basis the need for and where appropriate impose consent conditions, rather than introduce a District Plan rule requiring mandatory reporting.

### 5.2.2 Integrated application assessment and decision-making

Again, the provisions of the RMA (in particular section 102) provides for the joint hearing and consideration of applications which require consents from more than one consent authority. However, this is not a mandatory provision and allows the need for joint processes to be considered on a case by case basis. The most that a District Plan could include in respect of this matter would be a "statement of intent" to adopt an integrated approach to applications requiring multiple consents from two or more consent authorities. Such a provision, while having merit, should apply to all applications, not just those relating to aquaculture or other intensive farming activities. It is not therefore considered appropriate to introduce a provision of the nature requested through the currently proposed changes to the District Plan as it would be beyond the scope of those changes.

### 5.2 Recommendation

That the requested additional provisions not be included within the District Plan through the current plan change processes.

### 5.3 The following submissions are therefore:

#### Rejected

Submission	Point Number	Name
27	1	Helen & David Stewart and others
FS 73	15, 16, 17	Stewart Family Trust
29	1, 2, 4, 5	Uretara Estuary Managers

### 5.4 Reasons

The requested additional provisions relate to matters which are either ultra vires the RMA or are already covered under relevant sections of the Act. The requested provisions are also beyond the scope of Plan Change 37 and Plan Change 38.

## 6.0 Topic 5: Include "aquaculture" as a permitted activity in the Industrial Zone

### 6.1 Submission points

Two submissions were received on this part of Plan Change 37, both in support. One further submission (also in support) was received, which also referred to other matters relating to the Plan Change and which have been discussed elsewhere in this report.

### 6.2 Recommendation

That "aquaculture" be included as a permitted activity in the Industrial Zone.

### 6.3 The following submissions are therefore:

## Accepted

Submission	Point Number	Name
27	3	Helen & David Stewart and others
FS 73	16	Stewart Family Trust
29	3	Uretara Estuary Managers

### 6.4 Reason

Unlike other uses coming within the definition of "intensive farming activities, the environmental effects associated with aquaculture make it suitable for inclusion as a permitted activity in the Industrial Zone.

## 7.0 Topic 6: 300m yard requirement for "intensive farming activities"

This topic is covered in the report on Plan Change 38 (intensive farming activities).

## 8.0 Plan Change 37 - Recommended Changes to the District Plan First Review

**8.1** The purpose of this part of the report is to show the Proposed Plan Change in full including any recommended changes in response to the submissions and further submissions.

**8.2** Recommended changes to the District Plan First review are shown as follows; existing District Plan text in black, proposed changes as included in the Section 32 Report in red, and recommendations as a result of this report in blue.

**8.3 That the definition of "Farming" is amended by deleting the word "Aquaculture"**

**8.4 That the definition of "Intensive Farming" is amended by including the term "land based aquaculture"** [Note: see also separate report on Proposed Change 38 (Intensive Farming Activities).

**8.5 That a new definition for "Land Based Aquaculture" is added as follows:**

"~~Land-based~~—Aquaculture" means the breeding, hatching, cultivating, rearing, or on-growing of fish, aquatic life, or seaweed in confined areas within natural water bodies or on land (whether in buildings, constructed ponds or other artificial water bodies), and includes ancillary activities.

**8.6 That a new permitted activity is added to Rule 21.2.1 (Industrial Section) as follows;**

(r) ~~land-based~~ aquaculture