

UNDER THE RESOURCE MANAGEMENT ACT 1991

IN THE ENVIRONMENT COURT AT WELLINGTON

IN THE MATTER of a reference to the Environment Court under
Clause 14 of the First Schedule to the Resource
Management Act 1991

AND

IN THE MATTER of Proposed Plan Change 5 to Hawkes Bay
Regional Resource Management Plan

BETWEEN Horticulture New Zealand

Applicant

AND Hawkes Bay Regional Council

Respondent

TO:

The Registrar
Environment Court
PO Box 5027
Wellington

1. Name of applicant, along with a statement that this person made a submission or is the relevant territorial authority:

Horticulture New Zealand
P.O. Box 10 232
Wellington

Attention: Mr Chris Keenan

Horticulture NZ made a submission and further submissions on the Proposed Plan Change 5.

2. Name of authority issuing the proposed policy or plan or making a decision on submissions:

Hawkes Bay Regional Council

3. Date of receipt or public notification of the decision (which ever is the latter):

6 June 2013

4. Decisions appealed against:

Decisions on Objective LW1

4.1 Description of the subject-matter of the proposal or decision and specific provision, omission, or part of decision on submissions being referred:

Horticulture NZ made submissions and further submission on Obj LW 1. The decisions amend the objective but not as sought by Horticulture NZ, in particular changes to clauses 1B, 2, 2B, 5, 6, 8, 9, and 13.

4.2 Reason for appeal:

The decision has restructured the objective so that the matters are objectives, rather than policies. While this approach is supported other changes are significant to how the objective will provide guidance to the plan.

Clause 1B: The s42A report recommended that a new clause 1B be included to identify values and uses of freshwater and establishing objectives for those values. The decisions report considers that this is essentially a process matter, rather than an objective, so does not include it as an objective.

Horticulture NZ considers it is a relevant objective to identify values and uses of water. This should be an overarching objective in the RPS. The process of how the values and uses are identified and established is a policy matter but there needs to be an overarching objective to support the identification of values and uses of freshwater.

Clause 2: The notified plan had an objective that “specifies targets and implements methods to assist improvement of water quality in catchments to meet those targets within specified timeframes.” The decisions change it to “the improvement of water quality in water bodies that have been degraded”. There is no benchmark as to how ‘degraded’ would be defined. The benchmark should be where water bodies do not meet the limits established to give effect to the freshwater objectives. HBRC has not established limits according to the NPS yet, and is currently using pre – NPS derived standards from the last generation plan as a substitute. This is not an acceptable approach

Clause 2B: A new clause has been added by decision “avoiding any further over-allocation of freshwater and phasing out existing over-allocation.” Before any actions to manage over-allocation can occur there needs to be identification of where there is over-allocation. The RPS is to give effect to the NPSFM and needs to demonstrate how that will be achieved, not simply repeating the NPSFM objective in the RPS.

Clause 5: The decisions add ‘municipal water supplies’ to Clause 5, hence giving such water uses the same status as human and animal drinking water. While human and animal drinking are recognised and provided for in s14 (3) b) municipal water supplies are not accorded the same status. Municipal water supplies can be used for a range of purposes, including industrial and primary production purposes. These uses should not be given a priority or status greater than other uses of water. It is important that there is provision for essential sanitary uses of water and an amendment to the clause is sought to reflect this use.

Clause 6: The decision deletes the 'value' of fresh water for food, beverage and fibre production and replaces it with 'importance'. Food production is a 'value' identified in the NPSFM and therefore needs to be a 'value' in the RPS. The decision appears to consider that the change recommended in the s42A report was a 'grammatical amendment'. Horticulture NZ considers that the change is fundamental and seeks that 'value' be reinstated.

Clause 8: Horticulture NZ sought the inclusion of audited self- management in the Objective. This submission does not appear to be addressed in the decisions relating to Obj LW1. Recognition of the benefits of industry good practice is supported but audited self-management is a key component of such good practice and should be specifically recognised in the RPS.

Clause 9: The decision report deletes Clause 9 'the efficient allocation and use of water' as it is encompassed in new Clause 2B. Clause 2B only relates to the over-allocation of water. Efficient allocation and use relates to all use of water, regardless of whether it is over-allocated or not. It is essential that there is an objective which seeks efficient allocation and use of water so that it provides a platform for the policy framework.

Clause 13: The decisions add an additional clause 'recognising and providing for the recreational and conservation values of fresh water bodies'. The recreational and conservation values have not been specified so 'the' should be deleted. Such values should be identified so they are known.

4.3 Relief Sought:

Amend Objective LW 1 as follows:

1B Identify values and uses of freshwater and establish objectives for those values.

2: The improvement of water quality in waterbodies that do not meet freshwater objectives.

2B Establish where over-allocation of freshwater has occurred and phase out existing over-allocation.

5. Recognising the regional value of fresh water for essential human and drinking purposes and sanitary purposes.

6. Recognising the significant regional and national value of fresh water use for production and processing of beverages, food and fibre.

8. Recognising the benefits of industry good practice, including audited self-management programmes, to land and water management.

9. Ensures efficient allocation and use of water.

13. Recognising and providing for identified recreational and conservation values of fresh water bodies.

5. Decisions appealed against:

Decisions on Principal Reasons and explanation for Objectives

5.1 Description of the subject-matter of the proposal or decision and specific provision, omission, or part of decision on submissions being referred:

The Horticulture NZ submission sought changes to the Principal Reasons and explanation for Objectives. The decisions report (Para 193) does not specifically consider the changes sought but states that it accepts the amendments recommended in the s42A Report.

5.2 Reason for appeal:

Horticulture NZ does not accept that RiVAS as a suitable tool for ascertaining values as it is not objective in the selection of values, and it has not been completed as an assessment tool. Therefore it was sought that the tool be deleted as a specific method in the RPS. In addition the process described for setting values in the Hawkes Bay has not been inclusive and should be deleted.

5.3 Relief Sought:

Delete Paragraph 4 of the Principal Reasons and explanation for Objectives.

6. Decisions appealed against:

Decisions on Policy LW 1

6.1 Description of the subject-matter of the proposal or decision and specific provision, omission, or part of decision on submissions being referred:

Horticulture NZ made a submission and further submission on Policy LW1.

The decision has restructured the policy so that the matters are clearly policies. While this approach is supported other changes are significant to how the policy will work to implement the objectives, in particular 1a), 1 gA) 1 iE), 2 b), 2c), 2 d), 2 e) and 4.

6.2 Reason for appeal:

The purpose for POL LW1 is to give direction for the preparation of regional plans. If that is the case then the heading to the policy should make that clear. A change is sought to include 'plans' in the heading of the policy.

Clause 1a): The decisions delete Clause 1a) which refers to the integrated management approach in Objective LW1. It is accepted that a policy implements an objective – not be consistent with the objective. The decision does not consider that it is necessary to refer to the objectives. However OBJ LW 1 and OBJ LW 2 are critical to how the policy will be implemented so it is important that they are specifically referred to. The aim is for the policy to achieve the objectives and a change is sought to provide this direction.

Clause 1 gA): The decision includes a new policy to work collaboratively with the catchment communities. Horticulture NZ supports this approach. However it needs to be clear that for a collaborative process to be effective communities need to choose their own representation so that it has the buy-in of the community.

Clause 1 iE): Horticulture NZ sought that a new policy be included to recognise and provide for existing use and investment including the production of food, fibre and beverages. This is needed to implement Objective LW 1 6). The decision does not add the policy sought.

Other policies are included to provide for matters identified in Obj LW 1, such as infrastructure. To be consistent food production should also be included in the policy framework. The s42A Report recommended that a policy be included, but used essentially the same wording as OBJ LW 1. 6). The decision (Para 234) considers potential wording to include a policy regarding food production but considers that there was no jurisdiction for the proposed wording. The Horticulture NZ submission sought specific wording on this matter and this is sought to be included as Policy LW1 iE).

Clause 2 b): Policy 1.2b) has been added in the decision. It seeks to identify the values for freshwater and the spatial extent within each catchment. While this is supported ISS LW 1 and OBJ LW2 seeks to balance values and uses within a catchment so it is important that Policy LW1.2 b) also identifies values and uses. Policy LW2 and Table 1 also refer to values and uses so it is clear the intent of the RPS is to include both values and uses and POL LW 1 should be consistent with that approach.

Clause 2 c): Policies 1.2c) has been added in the decision. It seeks to establish freshwater objectives based on the values identified in clause b) and set priorities amongst those values. A change is sought to POL LW1.2 b) to refer to values and uses. Clause c) should be amended to be consistent with this change.

Clause 2 d): Policy 1.2 d) has been added by the decision. It seeks that water quality limits, targets and minimum flows, and water quantity allocation limits are set. Horticulture NZ seeks that the policy specifically states that both ground and surface water limits are set. It is important that both are set independently of each other.

Clause 2 e): Consistent with the changes sought to Clause 2d) clause e) should be amended to refer to ground and surface water quality and quantity limits and targets.

Clause 4: Policy LW1.4 has been added by the decision based on the notified POL LW1 j) which allowed for reasonable transition times and pathways. However the policy added by the decision only has to 'have regard to' allowing reasonable transition times and pathways. When developing regional plans it should be required to allow for reasonable transition times and pathways. Therefore a change is sought to Clause 4 to delete 'have regard to'. In addition clause 4b) refers to 'good land and water management practices' but does not provide guidance as to how such practices will be defined. It is important to recognised the role of industry in defining good land and water management practices.

6.3 Relief Sought:

Amend Policy LW 1 as follows:

POL LW 1 Problem Solving approach – catchment based integrated management plans

Add at the beginning of the POL LW 1.1 'In achieving OBJ LW 1 and LW 2, adopt an integrate management approach....

OR reinstate amended 1a) to achieve the integrated management approach in Obj LW1 and Obj LW2.

1 gA) Involves working collaboratively with the catchment communities, including allowing communities to choose their own representation in the collaborative process;

1 iE) Recognises and provides for existing use and investment including the production of

food, fibre and beverages.

2 b) identify the values and uses for freshwater

2c) establish freshwater objectives based on the values and uses identified in clause b) above....

2 d) set ground and surface water quality limits, minimum flows and ground and surface water quantity allocation limits so as to achieve the freshwater objectives identified under clause c);

2 e) set out how the ground and surface water quality and quantity limits will be implemented....

4. When identifying methods and timeframes in regional plans to achieve limits required by Policy LW1.2 e):

a) Allow reasonable transition times and pathways....; and

b) promote and enable the adoption and monitoring of industry defined good land and water management practices

7. Decisions appealed against:

Decisions on Principal explanation and reasons Policy LW1

7.1 Description of the subject-matter of the proposal or decision and specific provision, omission, or part of decision on submissions being referred:

The decision adds reasons and explanation but does not provide any reasons or justification for the additional text.

7.2 Reason for appeal:

The text added to the Principal reasons and explanations identifies some values. By identifying some values, and not others, it effectively establishes a priority of values. This is inappropriate as the policy framework seeks to identify values for freshwater. The explanation in the RPS should not predicate or anticipate the values establishment process.

7.3 Relief Sought:

Delete Paragraph 2 of Principal reasons and explanation to POL LW1.

8. Decisions appealed against:

Decisions on Policy LW 2 Prioritising values and Table 1

8.1 Description of the subject-matter of the proposal or decision and specific provision, omission, or part of decision on submissions being referred:

Horticulture NZ made submissions seeking addition of values to Table 1. Some changes have been made but not the addition of food production as sought.

8.2 Reason for appeal:

The decisions amend Table 1. Horticulture NZ sought the addition of fresh water use for beverages, food and fibre production and processing as a primary value and use. The Notified OBJ LW1 6) identified the significant regional and national value of fresh water use for beverages, food and fibre production and processing. Therefore these values and uses should be included in Table 1. The Table includes water use associated with maintaining or enhancing land-based primary production but this does not adequately incorporate the production of food for social and economic wellbeing of the community.

8.3 Relief Sought:

Include as primary values in each catchment:

- fresh water use for beverages, food and fibre production and processing.

9. Decisions appealed against:

Decisions on Policy LW3 Problem solving approach – Managing use of production land use

9.1 Description of the subject-matter of the proposal or decision and specific provision, omission, or part of decision on submissions being referred:

The decisions amend the focus of POL LW3 to now apply region wide and does not include all contributors of nitrogen. Horticulture NZ made submissions on POL LW 3 seeking changes to the policy.

9.2 Reason for appeal:

Policy LW 3 a) as notified addressed all forms of discharge of nitrogen. The decisions amended the discharges to only be only losses from crops and plants grown on production land. Therefore all other sources of nitrogen were excluded, such as urine from livestock and leachate from compost and silage. It is not clear whether it was the intent to specifically exclude some sources of nitrogen. Such an approach does not implement the objectives and should be amended.

As notified POL LW 3 applied to specified catchments. It was taken to mean the catchments specified in POL LW 2 and Table 1. However the decision deletes the specified catchments as it appeared unclear. This means that the policy is applied region wide, even though this approach was not considered as part of the notification of Change 5. The effects of applying the policy region wide need to be assessed, including costs and benefits. The policy should be amended so that it is clear that it refers to the catchments specified in POL LW 2, consistent with the notified intent.

Horticulture NZ sought recognition of existing investment and the ability of production land to meet nitrogen limits set in regional plans. The decision appears to consider that Horticulture NZ withdrew from that position at the hearing. That was not the case. Rather it was identified that inclusion of the loss of nitrogen below the root zone of the crops being grown was an effective mechanism to address issues raised, but that did not foreclose on recognition of existing investment.

Horticulture NZ also sought recognition of audited self-management programmes. The decision states that the Officers recommended that this could be included in the Principal

reasons and explanation, however no such change is included in the decision. It is important that industry good practice, in particular audited self-management programmes are included as part of the policy for managing production land activities. Inclusion in an explanation is not sufficient. This would give effect to OBJ LW 1.8.

9.3 Relief Sought:

Rename POL LW 3 – Problem solving approach – Managing production land use activities.

Amend POL LW 3.1 as follows:

To manage the use of and discharges from production land in the catchments specified in POL LW 2 and Table 1:

Amend POL LW 3 a): the loss of nitrogen from the root zone of crops and plants grown on production land, the discharge of urine from livestock to land, and the discharge of nitrogen from other sources, and thereafter to groundwater and surface water, does not cause catchment area or sub-catchment limits of nitrogen set out in regional plans to be exceeded, taking into account the existing investment (including investment in natural capital), and the ability of existing production land uses to meet those limits.

Provide for the use of audited self-management programmes to achieve good management of production land.

10. Decisions appealed against:

Decisions on Policy LW 4 Role of non-regulatory methods

10.1 Description of the subject-matter of the proposal or decision and specific provision, omission, or part of decision on submissions being referred:

Horticulture NZ made submissions on POL LW 4. The decision adds a new clause relating to industry good practice as a non-regulatory method.

10.2 Reason for appeal:

While the addition of recognition of industry good practice as a non-regulatory method is supported it should not take the place of industry good practice as a regulatory tool. The policy sets out that HBRC will strongly encourage collaborative partnership initiatives through the Pan Sector Group and adds a footnote regarding the Pan Sector Group.

Horticulture NZ does not consider that the policy should be limited to implementation through one particular mechanism. The Pan Sector Group may cease to be in existence in the future and so limit the implementation of POL LW 4 e).

10.3 Relief Sought:

Delete the 2nd sentence of POL LW 4 e) and the footnote to the policy regarding the Pan Sector Group.

11. Decisions appealed against:

Definition efficient allocation

11.1 Description of the subject-matter of the proposal or decision and specific provision, omission, or part of decision on submissions being referred:

Horticulture NZ sought a definition for efficient allocation and use. The decision includes a definition for efficient allocation, but not use.

11.2 Reason for appeal:

Throughout the change the term 'efficient allocation and use' is used, such as OBJ LW 1 9) and POL LW 1 j). Therefore the term that should be defined in 'efficient allocation and use'. The definition is based on the definition in the NPSFM which is 'efficient allocation.' However in the RPS the term also incorporates 'use' so it is important that it is included in the definition. While the NPSFM can be used as a basis the Plan should specifically define the terminology that it uses.

11.3 Relief Sought:

Amend the definition of 'efficient allocation' to 'efficient allocation and use' as follows:
Efficient allocation and use, for the puposes of this plans means

12. Decisions appealed against:

The decision to not include a new issue, objective and policy to provide for how decisions on over-allocated water resources should be made.

12.1 Description of the subject-matter of the proposal or decision and specific provision, omission, or part of decision on submissions being referred:

Horticulture NZ made a submission seeking new issue, objective and policy to provide for how decisions on over-allocated water resources should be made. The decision does not include the new framework.

12.2 Reason for appeal:

It is considered that the RPS and Change 5 do not adequately address how management decisions on over-allocated water resources should be made. It is appropriate that the RPS give direction for such decisions and establishes a framework for the work required to underpin such decisions. In the absence of such knowledge the decisions on over-allocation are compromised.

As the matter involves both land and water use it is appropriate that provisions are included in the new Chapter 3.x

12.3 Relief Sought:

Add a new LW Issue as follows

ISS LW X1 Management decisions are being made under assumptions that some waterbodies are over-allocated, in the absence of completed water balance models, established limits for groundwater resources, established abstractive limits and methods for assessing the nature of takes, or their contribution to established limits.

Add a new LW Objective as follows

Ensure that there is adequate information available to establish limits for water quantity and water quality.

Principal reasons and explanation:

Establishing limits for waterbodies is dependent on adequate and robust information.

Currently there is a lack of information, particularly on groundwater models and allocation volumes and methods for assessing the nature of takes, or their contribution to established limits. There is pressure on resources and the information is required to enable resource allocation decisions to be made.

Complete development of:

1. A groundwater model for the Heretaunga Plains by 2013;
2. Groundwater limits for Heretaunga Plains groundwater bodies by 2015;
3. Established groundwater management zones by 2015;
4. Transitional allocation volumes for surface and groundwater bodies by 2013;
5. Allocation volumes for surface and groundwater bodies by 2025;
6. Surface water quality limits by 2017;
7. Ground water quality limits by 2025;
8. Reassessment of allocation status by 2025.

Or provide similar relief through a policy suite tied back to an appropriate issue and objective.

Include a new POL LW X1 Resource assessment

1. Develop discreet water management zones or units and assign existing takes and uses to the appropriate water body management unit by 2013.
2. Prioritise completion of resource assessments for the Heretaunga Plains, to aid the establishment of limits and to determine the allocation status for the Heretaunga Plains water management zones by 2025.
3. Develop transitional allocation limits not less than the sum of paper allocation (consents), and modelled abstractions (permitted activities and other existing takes) for Heretaunga Plains water bodies by the dates specified in the Objective above.
4. Develop limits for water quality resources that provide for existing primary production activities.
5. Take a whole – of – catchment approach when establishing limits, to ensure that existing land use activities are not compromised by new or proposed land use activities.
6. Provide for transition to the limits – based approach, by establishing transitional limits that protect efficient existing investment in the short term.
7. Develop priorities for management of water in times of restriction, including allowance for drought intolerant crops, water for production and processing of food post-harvest, stock drinking water and human health and sanitation requirements.
8. Develop methods for managing within limits, to detail how over-allocation will be managed once a limit has been established.

13. General Reasons

Notwithstanding the specific reasons stated for appeal Horticulture New Zealand considers that the Plan is not consistent with the Purposes and Principles of the Resource Management Act 1991.

14. General Relief Sought:

That consequential amendments be made as a result of relief sought above.



Chris Keenan
**Manager – Resource Management and Environment
Horticulture New Zealand**

Dated: 18 July 2013

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Advice to recipients:

How to become a party to proceedings

You may be a party to the appeal if you made a submission or further submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in Form 33) with the Environment Court within 15 working days after the period for lodging of notice of appeals end.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274 (1) and Part 11A of the Resource Management Act 1991. You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements or service requirements (see Form 38).

How to obtain copies of documents relating to the appeal

The copy of this notice served on you does not attach a copy of the appellant's submission or the decisions appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any question about this notice contact the Environment Court in Auckland, Wellington or Christchurch.

Contact details of Environment Court for lodging documents

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