

BEFORE THE ENVIRONMENT COURT
AT AUCKLAND

ENV-2022-AKL-[]

I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU

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

AND

IN THE MATTER of an appeal under Clause 14 of the First
Schedule of the Act

BETWEEN **Horticulture New Zealand**
Appellant

AND **Hawke's Bay Regional Council**
Respondent

NOTICE OF APPEAL – HORTICULTURE NEW ZEALAND



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TO: The Registrar
Environment Court
AUCKLAND

NOTICE OF APPEAL OF HORTICULTURE NEW ZEALAND

1. Horticulture New Zealand (**HortNZ**) appeals part of the decision of Proposed Plan Change 9 (the TANK Plan Change) to the Hawke's Bay Regional Resource Management Plan (**PC9**).
2. HortNZ made a submission and further submission on PC9 and has participated throughout the hearing process.
3. HortNZ is not a trade competitor for the purposes of section 308D of the Act.
4. HortNZ received notice of the decision on 9 September 2022.
5. The decision was made by the Hawke's Bay Regional Council (**Council**).

APPEAL

6. HortNZ is appealing those parts of the decision relating to source protection zones, the proposed land use change framework, provisions for rootstock survival water, the policy and rule governing new takes, and provisions related to stream flow maintenance and habitat enhancement schemes. In particular:
 - (a) Policy 8 to ensure that the location and extent of source protection zones/extents take into account the location of highly productive land;
 - (b) The reference to '*non-commercial needs*' in Policy 48 and TANK Rule 11;

- (c) TANK Rules 3, 4 and 5, Schedule 28, and the definition of '*land use change*' to ensure that the land use change framework is clear, consistent and workable;
 - (d) TANK Rules 7 and 9 to ensure they allow for rootstock survival water to be taken as a permitted activity during times of low flow;
 - (e) Policy 35 and TANK Rules 8 and 10 to facilitate the operation of stream flow maintenance and habitat enhancement schemes, and allow the reallocation of water for the purposes of stream flow augmentation;
 - (f) The definition of TANK Industry programme and TANK Catchment Collective to ensure consistency with Schedule 29.
7. The specific amendments are included in **Appendix A** to this appeal.

REASONS FOR APPEAL

8. The specific reasons for this appeal and the relief sought are detailed in **Appendix A**.
9. The general relief sought is any consequential amendments to be made as a result of the relief sought.

RELIEF SOUGHT

10. HortNZ seeks the amendments detailed in the table at **Appendix A**, or otherwise such orders, relief, consequential amendments or other amendments as are considered appropriate and necessary to address the appeal points.

ATTACHMENTS

11. The following documents are attached to this notice:

- (a) A copy of HortNZ's submission, noting that HortNZ also made further submissions which are not attached here (**Annexure A**);
- (b) A copy of the relevant decision noting this is a copy of the provisions the Decision Report is provided in a link to the Council website (**Annexure B**);
- (c) A list of relevant names and addresses of persons to be served with a copy of this notice – note this is a list of those submitters who submitted on the provisions that Horticulture New Zealand is appealing. A full list of submitters is provided in a link to the Council website (**Annexure C**).

DATE: 26 October 2022



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Legal Counsel for Horticulture New Zealand

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ADVICE TO RECIPIENTS OF COPY OF NOTICE

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must —

- (a) within 15 working days after the period for lodging a notice of appeal ends, you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- (b) within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

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 or service requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the original submission nor does it attach the relevant decision. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland.

APPENDIX A

Table of Relief Sought and Reasons for Relief

	Provision	Relief sought	Reasons
1	Policy 8	The addition of the following subclause to d): <i>iv) the extent of highly productive land in the Source Protection Zone or extent.</i>	Policy 4 of the National Policy Statement for Highly Productive Land requires the use of highly productive land for land-based primary production to be prioritised and supported. The location of registered drinking water supplies, and their source protection zones or extents, must take into account the ongoing use of highly productive land for land-based primary production purposes.
2	Policy 35	Add the wording indicated with underline: <i>The Council will restrict the re-allocation of groundwater to holders of permits to take and use water in the Heretaunga Plains Groundwater Quantity Area Water Management Unit issued before 2 May 2020, <u>or entities associated with the operation of stream flow maintenance and habitat enhancement schemes,</u> and will review permits or allocate water according to the plan policies and rules either.....</i>	Enables water to be re-allocated to mitigate stream depletion effects through the operation of stream flow maintenance and habitat enhancement schemes, which we believe the wording of Policy 34 indicates was the intent of the panel.
3	Policy 48	The deletion of 'or unforeseen non-commercial needs'.	This term is not defined, and it is therefore unclear what it may encompass.
4-7	Rules TANK 3, 4 and 5	Amend as necessary to ensure Consistency across rules, and with Schedule 28. In particular: <ul style="list-style-type: none">- Amend the activity definition for TANK 5 to be consistent with TANK 3 and 4.	It is critically important that the land use change framework is consistent and clear.

	<ul style="list-style-type: none"> - Clarification of the non-notification guidance for TANK 4 and 5. - Delete from activity definition of Rule 5 '<i>on farm properties or farming enterprises that are greater than 10ha</i>'. 		
8	Rule TANK 7	Amendments to make it explicitly clear that the abstraction of up to 20 m ³ per property per day is permitted for the purposes of rootstock protection.	Ensuring the survival of permanent horticultural crops is critically important, and the current drafting is considered to lack clarity.
9	Rule TANK 8	Amend Matter for Discretion 1) by adding subclause e): <i>for stream flow maintenance and habitat enhancement schemes, the quantity of water required for augmentation during low flow periods.</i>	Ensures that the volume of water required for augmentation of stream flow maintenance and habitat enhancement schemes is provided over and above water allocated to the scheme in accordance with the definition of actual and reasonable Use
10	Rule TANK 9	Amendments to make it explicitly clear that the abstraction of up to 20 m ³ per property per day is permitted for the purposes of rootstock protection.	Ensuring the survival of permanent horticultural crops is critically important, and the current drafting is considered to lack clarity.
11	Rule TANK 10	Add a further subclause to Condition b): <i>or iii): The amount taken is the quantity required by a stream flow maintenance and habitat enhancement scheme to augment stream flow during low flow periods, and that volume of water is available for re-allocation in the same water quantity area.</i>	The current TANK rule framework does not provide a clear consenting pathway that allows for the re-allocation of water to stream flow maintenance and habitat enhancement schemes (as provided for by Policy 24).
12	Rule TANK 11	Delete (b)(ii) in Conditions.	The term ' <i>non-commercial need</i> ' is not defined, and it is therefore unclear what it may encompass.
13	Schedule 28	Various amendments including: <ul style="list-style-type: none"> - Amend the definition of 'land use activity or type' for <i>Horticulture</i> to explicitly exclude commercial 	Clarity and consistency across the land use change framework.

14	<p>vegetable growing (which has its own N leaching risk level, yet falls within the definition of horticulture).</p> <ul style="list-style-type: none"> - Clarification and consistency of use of term production land, compared land use – is scrub land, a land use activity? 	
15	<p>Definition – Land Use Change</p> <p>Delete the following indicated with strikethrough:</p> <p><i>Land Use Change means a change from one leaching level to a higher leaching level as shown in Table 1 of Schedule 28 or where the area of intensive winter grazing is changed by more than the amounts specified. Land use change does not include where there is arable or vegetable cropping on a rotational basis (including with animal grazing), and including on lease land at variable locations, where the total area of arable or vegetable cropping on that farm does not change by more than the amounts specified.</i></p>	<p>Reference to 'on that farm' creates tension with the specific inclusion of 'lease land at variable locations'.</p>
16	<p>Definition – TANK Industry Programme or a TANK Catchment Collective</p> <p>Amend definition to create separate definitions for TANK Industry Programme, and TANK Catchment Collective.</p>	<p>Will improve consistency with Schedule 29 which now separates out requirements for Catchment Collectives, and Industry Programmes.</p>

ANNEXURE A - HORTICULTURE NEW ZEALAND'S SUBMISSION

ANNEXURE B - RELEVANT DECISION OF THE HAWKE'S BAY REGIONAL COUNCIL

[**Note:** This is the Decisions Version of Plan Change 9. The Decision Report can be found at this link:

<https://www.hbrc.govt.nz/assets/Uploads/Decision-Combined.pdf>]

ANNEXURE C - PERSONS TO BE SERVED WITH A COPY OF THIS NOTICE

[**Note:** These are those persons who submitted or further submitted on the provisions that this appeal relates to. A full list of submitters can be found at this link:

<https://www.hbrc.govt.nz/assets/Uploads/Tank-Submitter-Contact-Details.xlsx>

SUBMITTER NAME	CONTACT DETAILS
Ministry of Education c/- Alec Duncan	Address: PO Box 448, Hamilton, New Zealand, 3240 Email: alec.duncan@beca.com
Federated Farmers of New Zealand c/- Rhea Dasent	Address: 105 Queen St, Palmerston North, New Zealand, 6140 Email: rdasent@fedfarm.org.nz
Hastings District Council c/- Mark Clews	Address: Private Bag 9002, Hastings, New Zealand, 4146 Email: markac@hdc.govt.nz
Mr Apple New Zealand Ltd c/- Karen Morrish	Address: 2 Station Road, Whakatu, Hawke's Bay, New Zealand, 4172 Email: Karen.Morrish@mrapple.com
Water Force Ltd c/- Ronald McFetridge	Address: 2068 Pakowhai Road, Napier, New Zealand Email: rmcfetridge@waterforce.co.nz
A Ngaruroro Irrigation Society Incorporated c/- Anthony Davoren	Address: PO Box 3132 Christchurch 8140 Email: tony@swims.co.nz

<p>T&G Global Limited and ENZIL c/- Rebecca Blunden</p>	<p>Address: 2 Anderson Road, Whakatu, Hastings, New Zealand, 4180 Email: rebecca.blunden@tandg.global</p>
<p>Pernod Ricard Winemakers New Zealand Limited c/- Ezekiel Hudspith</p>	<p>Address: Private Bag 92030, Auckland, New Zealand, 1142 Email: ezekiel.hudspith@dentons.com</p>
<p>Royal Forest and Bird Protection Society of New Zealand (Forest & Bird) c/- Tom Kay</p>	<p>Address: PO Box 631, Wellington, New Zealand, 6140 Email: j.miller@forestandbird.org.nz</p>
<p>Department of Conservation c/- Jenny Nelson-Smith</p>	<p>Address: 59 Marine Parade, Napier South, Napier, New Zealand, 4110 Email: jnsmith@doc.govt.nz</p>
<p>Te Taiwhenua o Heretaunga c/- Marei Apatu</p>	<p>Address: PO Box 718, Hastings, New Zealand Email: marei.apatu@ttoh.iwi.nz</p>
<p>Ballance Agri-Nutrients Limited c/- Dominic Adams</p>	<p>Address: Private Bag 12503, Tauranga Mail Centre, Tauranga, New Zealand, 3143 Email: dominic.adams@ballance.co.nz</p>
<p>Delegat Limited c/- Rengasamy Balasubramaniam</p>	<p>Address: PO Box 305, Blenheim, New Zealand, 7240 Email: bala@delegat.com</p>

Ravensdown Limited c/- Anna Wilkes	Address: 292 Main South Road, PO Box 1059, Christchurch, New Zealand, 8140 Email: anna.wilkes@ravensdown.co.nz
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Berrilea Orchards Ltd, Waitohi Trust and SP&GC Horn c/- Stewart Horn	Address: 31 Iller Road, Havelock North, Hastings, New Zealand Email: stewart.horn@xtra.co.nz
Oderings Nurseries c/- Julian Odering	Address: PO Box 33-124, Christchurch, New Zealand, 8244 Email: julian@oderings.co.nz
Brian McClay	Address: 82 Carrick Road, RD5, Hastings, New Zealand, 4172 Email: b.mclay@airnet.net.nz
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Napier City Council c/- Steph Rotarangi	Address: Private Bag 6010, Hawkes Bay Mail Centre, Napier, New Zealand, 4142 Email: chiefexecutive@napier.govt.nz

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