

**In the Environment Court
at Wellington**

**I Mua I Te Kōti Taiao o Aotearoa
Te Whanganui-a-Tara**

ENV-2022-WLG-

In the matter of an appeal under clause 14(1) of the
First Schedule to the Resource
Management Act 1991

Between **Delegat Limited**
Appellant

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

**Notice of appeal by Delegat Limited against decisions on
Proposed Plan Change 9**

26 October 2022

Sainsbury Logan & Williams
Solicitors
Cnr Tennyson Street and Cathedral Lane
Napier
PO Box 41
DX MP70039
Direct dial (06) 833 7844
Email: ljb@slw.co.nz
Ref: Lara Blomfield

LJB-014888-16-143-V1

To The Registrar
Environment Court
WELLINGTON

1 Delegat Limited (**Delegat**) appeals against the decisions of the Independent Hearing Panel appointed by the Hawke's Bay Regional Council on submissions to Proposed Plan Change 9 (Tūtaekurī, Ahuriri, Ngaruroro and Karamū catchments).

2 Delegat made a submission on Proposed Plan Change 9 (copy attached at Appendix A) and appeared at the hearing of submissions on the Proposed Plan Change.¹

3 Delegat is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.

4 Delegat received notice of the decisions on 9 September 2022. The appeal period closes on 26 October 2022.

5 The decisions were made by an Independent Hearing Panel appointed by Hawke's Bay Regional Council.

6 The particular parts of the decision that Delegat is appealing are:

6.1 Policy TANK 34(d);

6.2 The definition of 'Actual and Reasonable'.

7 The reasons for the appeal and the relief sought in respect of each provision are set out below.

POL TANK 34(d)

8 Delegat sought amendments to POL TANK 36(f) (now POL TANK 34(f)(i)) and the definition of 'Actual and Reasonable' because it was concerned that those provisions potentially precluded the renewal of

¹ The evidence and submissions for Delegat were heard on 7 June 2021.
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irrigation consents for future planned primary production development which had not been fully implemented at the time the consent expired.

- 9 The development of new vineyards and wineries takes time. It can be affected by market and climatic conditions and disruptive global issues such as Covid 19. A consent holder may have a consent to take water at the volume needed to irrigate the entire vineyard because the application and consent contemplated the programmed or staged development of that vineyard, but not have developed all of the vineyard by the time that consent expires. If at consent renewal time water use is capped at the maximum water use prior to full development of the vineyard the remaining area cannot be developed.
- 10 In response to that submission, the Hearing Panel amended POL TANK 37(d) (now POL TANK 34(d)) which now reads as follows:

In managing the allocation and use of groundwater in the Heretaunga Plains Groundwater Quantity Area ~~Water Management Unit~~, the Council will:

- a) adopt an interim allocation limit of 90 million cubic metres per year based on ~~the~~ Actual and Reasonable water use ~~prior to 2017~~
- b) Except for providing water for stream flow maintenance avoid re-allocation of any water that might become available within the interim groundwater allocation limit or within the limit of any connected water body until there has been a review of the relevant allocation limits within this plan
- c) manage the Heretaunga Plains Groundwater Quantity Area ~~Water Management Unit~~ as an overallocated management unit and prevent any new allocations of groundwater except as provided for by POL TANK 48
- d) when considering applications in respect of existing consents due for expiry, or when reviewing consents, to:
 - i. allocate groundwater the basis of the maximum quantity that is able to be abstracted during each year or irrigation season expressed in cubic meters per year

- ii. apply an assessment of ~~a~~Actual and ~~r~~Reasonable use ~~that reflects land use and water use authorised in the ten years up to August 2017~~ (except as provided by Policy POL TANK 48)
- iii. take into account any water use required as part of a programmed or staged development specified within the existing water permit or associated resource consent, if:
 - 1. the consent holder can demonstrate that the existing investment is dependent on water use over and above Actual and Reasonable use
 - 2. the whole or part of the specified activity or development has not lapsed during the resource consent duration
 - 3. the activity or development is integral to the on-going operation of the activity or development for which the permit was issued
 - 4. where applicable, water demand is calculated for rootstock only where there is evidence of a contract for the supply of that rootstock existing as at 2 May 2020.
- e) mitigate stream depletion effects on lowland streams by providing for stream flow maintenance and habitat enhancement schemes.

- 11 There is little discussion of this new provision in the Hearing Panel's decision.²
- 12 It is unclear what is meant by POL TANK 34(d)(iii)(2). It could be read in a way which treats a programmed or staged area of a primary production development which has not yet been planted as having lapsed, which would defeat the purpose of POL TANK 34(d)(iii).
- 13 It is unclear what is meant by POL TANK 34(d)(iii)(4). It could be interpreted to mean that a consent holder wishing to rely on POL TANK 34(d)(iii) must demonstrate that it had an existing contract at 2

² Such discussion as there is appears at para 5.170 of the Hearing Panel's Decision LJB-014888-16-143-V1

May 2020 for the supply of rootstock for the later stages of the development which has not yet been planted.

- 14 That requirement is onerous and will disqualify consent holders who do not yet have a contract of supply for rootstock for future planting, or have a contract which post-dates the arbitrary cut-off date of 2 May 2020.
- 15 The requirement in POL TANK 34(d)(iii)(4) is unnecessary in light of the requirements in POL TANK 34(d)(iii)(1)-(3).

The definition of 'Actual and Reasonable'

- 16 POL TANK 34(d) and the definition of 'Actual and Reasonable' require the council to apply an assessment of actual and reasonable use (as defined) when considering applications in respect of existing consents due for expiry.
- 17 The Hearing Panel amended the definition of 'Actual and Reasonable' to refer to the maximum annual amount as measured by accurate water meter data in the 10-year period prior to 2 May 2020. Deleat supports that change.
- 18 The changes made to POL TANK 34(d) are not reflected in this definition. Clause (c) appears to limit irrigation takes to the quantity required to meet the modelled crop water demand for the irrigated area which, in the case of the Heretaunga Plains Groundwater Quantity Area, is not more than the amount irrigated in the ten years preceding 2 May 2020. That would not enable the allocation of water for the type of programmed or staged but as yet unimplemented primary production development contemplated by POL TANK 34(d)(iii).

Relief sought

19 Deleगत seeks the following relief:

19.1 The deletion of POL TANK(d)(iii)(2), or alternatively the amendment of that clause to read:

2. the whole ~~or part~~ of the specified activity or development has not lapsed during the resource consent duration

19.2 The deletion of POL TANK 34(d)(iii)(4).

19.3 Clauses (b) and (c) of the definition of ‘Actual and Reasonable’ be amended as follows:

Actual and Reasonable in relation to applications to take and use water means:

- a) no more than the quantity specified in the permit due for renewal or any lesser amount applied for; and the least of either:
- b) the maximum annual amount as measured by accurate water meter data in the ten years preceding 2 May 2020 if accurate water meter data is available, plus for replacement consents any allocation previously held for programmed or staged but as yet unimplemented primary production development and associated processing. (If insufficient or no accurate data is available either clause a) or c) will apply)
or
- c) for irrigation takes, the quantity required to meet the modelled crop water demand for the irrigated area with an efficiency of application of no less than 80% as specified by the IRRICALC water demand model (if it is available for the crop and otherwise with an equivalent method), and to a 95% reliability of supply where the irrigated area is:
 - (i) no more than in the permit due for renewal, or any lesser amount applied for, and in the

case of Heretaunga Plains Groundwater Quantity Area, is not more than:

- the ~~amount~~ area irrigated in the ten years preceding 2 May 2020; or
- for a replacement consent, the area irrigated in the ten years preceding May 2020, plus any allocation previously held for planned but as yet unimplemented primary production development; and

- (ii) evidence is supplied to demonstrate that the area has, and can continue to be, irrigated and the permit substantially given effect to. In the case of a replacement consent for planned but as yet unimplemented primary production development, evidence must be supplied to demonstrate that the area will be irrigated and the permit substantially given effect to.

19.4 Consequential relief as may be required to give effect to the relief sought in the preceding paragraphs.

20 The following documents are **attached** to this notice:

- 20.1 A copy of Deleat's submission on Plan Change 9 (**Appendix A**);
- 20.2 A copy of the relevant decision (**Appendix B**); and
- 20.3 A list of the names and addresses of persons served with a copy of this notice (**Appendix C**).

Copies of Appendix A and Appendix B may be obtained on request from the appellant.

26 October 2022



Lara Blomfield
Counsel for Deleat Ltd

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Address for service of appellant:

The address for service of the appellant is at the offices of its solicitor Lara Jane Blomfield, Sainsbury Logan & Williams, 61 Tennyson Street, Napier. Documents may be served upon the appellant at that address or by way of PO Box 41, Napier and by email at ljb@slw.co.nz.

Advice to recipients of copy of notice of appeal*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,—

- within 15 working days after the period for lodging a notice of appeal ends, 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
- 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 Act.

You may apply to the Environment Court under section 281 of the Act 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 have attached a copy of the appellant's submission and (*or* or) the decision (*or* part of the decision) appealed. These documents may be obtained, on request, from the appellant.

Advice

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