

**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 **T&G Global Limited**
Appellant

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

**Notice of appeal by T&G Global Limited against decisions on
Proposed Plan Change 9**

26 October 2022

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LJB-135413-3-127-V1

To The Registrar
Environment Court
WELLINGTON

1 T&G Global Limited (**T&G**) 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 T&G 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.

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

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

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

6 The particular parts of the decision that T&G is appealing are:

6.1 POL 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 T&G sought changes to POL TANK 36(f) to make it clear that it did not apply to consented takes for planned primary production developments which have not been fully implemented at the time of renewal.

- 9 The Hearing Panel addressed this concern by making changes to POL TANK 37(d) (now POL TANK34(d)) which 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.

10 There is little discussion of this new provision in the Hearing Panel's decision.¹ The requirements of POL TANK 34(d)(iii) are conjunctive and onerous. It appears that a consent holder must:

10.1 hold an existing water permit which on its face specifies that the water use is for a programmed or staged development; and

10.2 demonstrate that it had an existing contract at 2 May 2020 for the supply of rootstock which has not yet been planted; and

10.3 satisfy the requirements of POL TANK 34(d)(iii)(1)-(3).

11 The provision does not assist consent holders with existing permits which do not specify that the consented water use is for a programmed or staged development.

12 The requirement in POL TANK 34(d)(iii)(4) 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.

The definition of 'Actual and Reasonable'

13 POL TANK 34(d) and the definition of 'Actual and Reasonable' require the Council to apply an assessment of actual and reasonable use (as

¹ Such discussion as there is appears at para 5.170 of the Hearing Panel's Decision LJB-135413-3-127-V1

defined) when considering applications in respect of existing consents due for expiry.

- 14 The changes made to POL TANK 34(d) are not reflected in the definition of 'Actual and Reasonable'. 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.

Relief sought

- 15 T&G seeks the following relief:

15.1 Amend POL TANK 34(d)(iii) so that it reads:

- iii. take into account any water use required ~~for as part of~~ a programmed or staged development ~~contemplated by 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.~~

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

- 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 irrigated in the ten years preceding 2 May 2020 except that on a consent renewal for a programmed or staged development which has not been fully implemented the irrigated area may be no more than in the permit due for renewal; 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 development, evidence must be supplied to demonstrate that the area will be irrigated and the permit substantially given effect to.

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

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

16.1 A copy of T&G submission on Plan Change 9 (**Appendix A**);

16.2 A copy of the relevant decision (**Appendix B**); and

16.3 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 T&G Global Ltd

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.