

**IN THE ENVIRONMENT COURT**

**AT WELLINGTON**

**IN THE MATTER** of an appeal pursuant to section 121 of the  
Resource Management Act 1991 against  
the decision of the Hawkes Bay Regional  
Council on the Proposed Regional Policy  
Statement for the Hawkes Bay Region  
"Change 5"

**BETWEEN** **HAWKES BAY FISH & GAME COUNCIL**

Appellant

**AND** **HAWKES BAY REGIONAL COUNCIL**

Respondent

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**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST DECISION ON HAWKES  
BAY REGIONAL COUNCIL REGIONAL POLICY STATEMENT**

**Dated: 17 July 2013**

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**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST DECISION ON HAWKES  
BAY REGIONAL COUNCIL REGIONAL POLICY STATEMENT**

*Clause 14(1) of First Schedule, Resource Management Act 1991*

**To:** The Registrar  
Environment Court  
Wellington

1. The Hawkes Bay Fish & Game Council ("HBFG") appeals against parts of a decision of Hawkes Bay Regional Council ("HBRC") on the following Regional policy statement:  
  
Change 5: Hawkes Bay Regional Resource Management Plan – Land use and freshwater management ("Proposed Change 5").  
  
The Hawkes Bay Region Fish and Game council is public body established under the Conservation Act 1987, which has the statutory responsibility to "*represent the interests and aspirations of anglers and hunters in the statutory planning process*" (s26).
2. HBFG made a submission on that policy statement.
3. HBFG is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. HBFG received notice of the decision on 7 June 2013.
5. The decision was made by the Hawkes Bay Regional Council.
6. HBFG are interested in all of the Proceedings to the extent that resolution of them may affect or relate to the following matters of interest to me:

- (a) the provisions of the policy that deal with (or fail to adequately deal with) the protection of recreational fisheries and gamebird resources, including the protection of rivers, lakes, wetlands, and their margins;
- (b) maintenance and enhancement of the quality of freshwater environments, including wetland environments, as habitats for sports fish and gamebirds;
- (c) the maintenance and enhancement of amenity values, recreational values, and the intrinsic values of rivers, lakes, wetlands, and their ecosystems;
- (d) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development;
- (e) the maintenance and enhancement of public access to and along the coastal marine area, lakes, rivers, and wetlands;
- (f) provisions relating to land use and development which have the potential to impact on the life supporting capacity, natural character, and amenity and recreation values of river lakes and wetlands and their intrinsic and ecosystem values;
- (g) the provisions of the plan that give effect to (or fail to adequately give effect to) the Purpose and Principles of the Resource Management Act.
- (h) the provisions of the plan that give effect to (or fail to adequately give effect to)

the National Policy Statement for Freshwater Management 2011

- (i) the provisions of the plan that give effect to (or fail to adequately give effect to) the New Zealand Coastal Policy Statement 2010

**7. The reason for the appeal is:**

- (a) The decision is contrary to the purpose and principles of the Resource Management Act 1991, the National Policy Statement on Freshwater Management, the New Zealand Coastal Policy Statement, and sound planning practice;
- (b) The decision fails to adequately provide for/ or give effect to the: protection of outstanding natural features and landscapes; the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna; the maintenance or enhancement of amenity and recreational values; and the protection of the habitat of trout and salmon;
- (c) The decision fails to adequately provide for / or give effect to National Water Conservation Orders in the Region;
- (d) The decision fails to address the regionally relevant resource management issues in regards to ensuring land, freshwater, and coastal waters are sustainably managed in an integrated fashion:
  - i. to maintain their health where it is currently at a state to provide for ecosystem health, recreational, and intrinsic and amenity values;
  - ii. to improve their health by addressing over allocation of the resource where it is currently degraded such that ecosystem health, recreational, and intrinsic, and amenity values are compromised;
  - iii. To ensure that resource use is first necessary, secondly reasonable, and where it can be shown to be both necessary and reasonable to

ensure that the use of the resource including both quantity and quality is efficient;

**8. Relief sought:**

- (a) that "Proposed Change 5" give effect to the Resource Management Act 1991, the National Policy Statement on Freshwater Management, the New Zealand Coastal Policy Statement, and reflects sound planning practice;
- (b) that "Proposed Change 5" give effect to National Water Conservation Orders
- (c) that "Proposed Change 5" ensures that resource use (including the taking of water and use of the assimilative capacity of water) is necessary, reasonable, and where the take and use can be shown to be necessary and reasonable is also efficient;
- (d) that "Proposed Change 5" provides for the protection of recreational fisheries and gamebird resources, including the protection of rivers, lakes, wetlands, and their margins;
- (e) that "Proposed Change 5" provides for the maintenance and enhancement of the quality of freshwater environments, including wetland environments, as habitats for sports fish and game birds;
- (f) that "Proposed Change 5" provides for the maintenance and enhancement of recreational values, amenity values, and the intrinsic values of ecosystems;
- (g) that "Proposed Change 5" provides for the maintenance and enhancement of public access to and along the coastal marine area, lakes, rivers, and wetlands;
- (h) That provisions are included in "Proposed Change 5" to preserve the natural character of the coastal environment, wetlands, lakes and rivers and their margins and the protection of them from inappropriate subdivision, use, and development;

- (i) that "Proposed Change 5" adequately identifies and lists the values of freshwater in the region (in relation to the waterbody, reach, zone) including but not limited to: recreational salmonid fishery and spawning values, contact recreation values, amenity values, and aesthetic values;
- (j) that "Proposed Change 5" provides that all rivers in the region are identified as being valued for contact recreation, and amenity value. Access to healthy rivers by which to recreate in or just enjoy is a common good, as such it is the birthright of all New Zealanders and should be protected;
- (k) that "Proposed Change 5" sets/provides for the setting of numerical water quality and quantity limits to protect freshwater ecosystem, intrinsic, salmonid fishery, amenity and recreational values, and gives effect to the NPS Freshwater and Management, National Water Conservation Orders;
- (l) that "Proposed Change 5" sets/provides for the setting of numerical water quality limits and provisions to give effect to the New Zealand Coastal Policy Statement. In particular Policy 21 which requires priority to be given to improving water quality where it has "deteriorated so that it is having significant adverse effect on ecosystems, natural habitats..." and other values;
- (m) that "Proposed Change 5" ensures that land use activities and development are managed so that life supporting capacity of water is safeguarded; and freshwater values including trout fishery, trout spawning, recreational, and amenity values; areas of significant indigenous vegetation and significant habitats of indigenous fauna; and the natural character of waterbodies is protected;
- (n) that provisions are included within the "Proposed Change 5" to ensure that water quality and water quantity in the region is maintained, and where degraded is restored;
- (o) that "Proposed Change 5" ensures that land use activities and development

are managed so that water quality and quantity is maintained, and where degraded restored. Where numerical water quality and quantity limits are currently being achieved that they continue to be met, and where water quality and quantity limits are not met (currently degraded) that water quality and quantity is restored to meet the limits.

- (p) provisions are included within the "Proposed Change 5" which identify that all remaining wetlands in the region are significant (s6c habitats under RMA) and should be protected;
- (q) provisions are removed from "Proposed Change 5" which create conflict between consumptive and non consumptive values and which may result in consumptive values being provided for above the Life supporting capacity and ecosystem health of freshwater and marine environments, and which may significantly impact on recreational, amenity, and intrinsic values of freshwater and marine environments.
- (r) remove the pre-emption of the identification of values at a catchment level in the RPS (as in policy POL LW2 and POL LW2.1, and table 1); and
- (s) remove the pre-emption of the prioritisation of those values or the resolution of competing values to set a freshwater objective (as in policy POL LW2. POL LW2.1 and table 1):
- (t) provisions are included to ensure that all contaminant losses from land uses which impact on freshwater and marine environments are managed to ensure that water quality limits are achieved. These include nitrogen, phosphorus, sediment, and pathogens.
- (u) provisions are included to ensure that both nitrogen and phosphorus instream concentrations are set based on life supporting capacity, ecosystem health, and fishery values, and which provide for amenity and recreational values of

freshwater. These levels should be set at concentrations appropriate to manage undesirable periphyton and cyanobacteria blooms and ensure macroinvertebrate community health:

(v) Such other or further relief as addresses the issues raised by this submission.

**9. Without limiting the generality of the foregoing the particular reasons for the appeal are as follows.**

**10. I am interested in the following particular issues:**

**10.1 ISSUES ( LW 1, LW2, and issue statements in chapter 3.10)**

(a) Issue LW1, the new issue LW2, and amendments to issue statement in chapter 3.10 fails to identify the regionally relevant resource management issues in regards to ensuring the sustainable and integrated management of the land and water resources to safeguard the life supporting capacity and ecosystem health of freshwater and marine environments.

(b) The quality of freshwater and marine environments in some water catchments are degraded as a result of intensification of land uses. The principal causes of this degradation are:

(i) nutrient enrichment caused by run off and leaching from agricultural land, stock access to waterbodies, and discharges of treated wastewater;

(ii) turbidity and deposited sediment caused by land erosion, river channel erosion, run off from agricultural land use, stock access to waterbodies, and point source discharges;

(iii) pathogens from agricultural run off, stock access to waterbodies, urban run off, and point source discharges



- (c) Shallow groundwater in areas of intensive rural land use has elevated nitrate levels which impact on human drinking water requirements, and surface waterbody life supporting capacity and ecosystem health along with amenity and recreational values.
- (d) The use of and demand for surface and groundwater is increasing and in some catchments already exceeds allocation limits. Use of water should be managed to ensure that it is firstly necessary, secondly reasonable, and where it can be shown is necessary and reasonable is used a manner which is efficient.
- (e) Fish and Game seeks the following relief:
  - (i) That ISS LW 1 is retained as amended by the decision
  - (ii) That new issue or issues are included, and that chapter 3,10 issue is amended, to more coherently expresses the significant resource management issues raised above, and requirements to ensure the sustainable and integrated management of the land and water resources. This should include requiring stock to be excluded from waterbodies, and land use to be managed to avoid either the direct or indirect discharges of contaminants to waterbodies.
  - (iii) Such other relief, including consequential relief, as may address the reasons for the appeal.

#### **10.2 ISS LW 2**

- (a) Fish and Game welcome the separation of the two issues into ISS LW 1 and ISS LW 2. However, ISS LW 2 as drafted does not describe a resource management issue.
- (b) Fish and Game's original submission sought that the issue as drafted be amended to more coherently express the significant resource management

issue the Region faces, in respect of achieving integrated management of freshwater and land use and development.

(c) Fish and Game seeks the following relief:

(i) That ISS LW 2 is worded as follows:

*There is inadequate integration of the management of land use and water quality and quantity, increases the and limited ability to promotion of sustainable management of the region's natural and physical resources.*

(ii) Such other relief, including consequential relief, as may address the reasons for the appeal.

**10.3 OBJ LW 1, OBJ LW2, OBJ 25, OBJ 27 and supporting policies (POL LW1, POL LW2)**

(a) Fish and Game support in part the proposed objectives, policies and principles.

(b) However the proposed Objectives and supporting policies are attempting to incorporate (sometimes within one Objective or Policy) numerous and sometimes competing concepts and management approaches. This results in unclear guidance on how these competing values and management approaches will be addressed to ensure that the life supporting capacity and ecosystem health of freshwater bodies and the marine environment will be safeguarded, and the regionally relevant resource management issues addressed.

(c) Fish and Game seeks the following relief

(i) The Objectives and Policies should be amended to set out clearly:

1. the principles for integrated management in the region

2. the process for achieving those principals in the regional plan / plans which follow
3. sets out some bottom line objectives that must be achieved to ensure the sustainable use and development of the land and water resources to safeguard life supporting capacity and ecosystem health, protect natural character, and provide for amenity, recreational, and fishery values of waterbodies.
4. bottom line objectives should include consideration of periphyton and cyanobacteria growth, macroinvertebrate community health, visual clarity, deposited sediment, and in regards to groundwater limits for human drinking water standards.
5. address over allocation and degradation of water resources and provide for the enhancement of these resources

#### **10.4 OBJ LW1**

- (a) Objective LW1 Principles 1A is not supported. All Wetlands should be considered significant and be protected. It is not appropriate to just protect their significant values.
- (b) Objective LW1 Principals 3, 5, 6, 7, 8, and 8A, are not supported. These principles require 'recognising' of matters. It is Fish and Game's view that to simply 'recognise' a matter weakens the intent of the principle.
- (c) Objective 4 is supported in part. However the omission of the habitat of trout and salmon is opposed.
- (d) Natural character is not provided for. HBFGC note that OBJ LW 1 does not provide for the management of fresh water and land use and development that recognizes or provides for the natural character of wetlands, rivers, lakes and the coastal environment, and as such, fails to meet the requirements of Part II

matters of the RMA. Ensuring that adverse effects on natural character of the coastal environment, wetlands, rivers and lakes are avoided in areas or locations with a high degree of naturalness, and avoided, remedied, or mitigated in other areas, is critical to an integrated and sustainable approach to the management of freshwater and land use development.

- (e) The efficient use of freshwater is not provided for. Principle 2B requires the avoidance of any further over-allocation, and phasing out existing over allocation, but does not specifically address the matter of efficient use of freshwater. It is requested that principle 2B enables an assessment as to whether resource use and allocation is reasonable and justifiable.
- (f) The objective fails to provide for the maintenance of water quality and quantity across the region where it is sufficient to safeguard life supporting capacity and ecosystem health and provide for instream values
- (g) The objective fails to provide for the enhancement of water quality and quantity where it is not currently sufficient to safeguard life supporting capacity and ecosystem health and provide for instream values
- (h) Fish and Game seeks the following relief:
  - (i) New objective is included which recognises that Wetlands are significant habitats which should be protected;
  - (ii) New Objective which gives effect to the New Zealand Coastal Policy statement in particular Policy 21
  - (iii) Amend Objective LW1 so that the interconnected nature of natural resources including coastal environment within each catchment are recognised and managed
  - (iv) Amend provision 4 to read "safeguard the life supporting capacity and ecosystem health of freshwater".
  - (v) Delete principles 3, 5, 6, 7, 8, and 12;

- (vi) Inclusion of an Objective or clause to ensure that the natural character of wetlands, river, and lakes is protected;
- (vii) Inclusion of a new Objective or amend clause 2B of OBJ LW 1 to enable an assessment as to whether resource use and allocation is necessary;
- (viii) Inclusion of a new Objective or amendments to Objective LW1 to ensure that resource use is reasonable;
- (ix) Inclusion of a new Objective or amendments to Objective LW1 to ensure that resource use is efficient where it has been shown to be both necessary and reasonable;
- (x) Inclusion of a new objective or amendment to LW1 to ensure that water quality and quantity are maintained where it is sufficient to safeguard life supporting capacity and ecosystem health and provide for instream values, or enhanced where degraded.
- (xi) That the objective statement, and the principles not specifically mentioned above, are retained as proposed in the decisions version of Plan Change 5.
- (xii) Such other relief, including consequential relief, as may address the reasons for the appeal.

#### **10.5 OBJ LW 2**

- (a) Fish and Game oppose the wording of OBJ LW 2, as it creates confusion as to management hierarchy. Consumptive values should only be provided for once life supporting capacity, ecosystem health, and natural character have been provided for.
- (b) Fish and Game seeks the following relief:

(i) That OBJ LW 2 is deleted or amended to ensure that the management of land use and freshwater use safeguards life supporting capacity and ecosystem health and protects natural character.

(ii) That OBJ LW 2 be amended as follows:

*“OBJ LW 2 Integrated management of fresh water and land use and development*

*The management of land use and freshwater use that recognises and balances the multiple and competing values and uses of those resources within catchments. Where significant conflict between competing values or uses exists or is foreseeable, the regional policy statement and regional plans provide a clear framework priorities for the protection and efficient use of those freshwater resources.”*

(iii) Such other relief, including consequential relief, as may address the reasons for the appeal.

## 10.6 POL LW 1

- (a) Fish and Game support in part the proposed policy and clauses.
- (b) The policy is intended to provide a general management regime that is applicable in all instances. Consequently a policy clause providing for water storage or electricity generation would not be applicable in all instances. Large-scale community water storage infrastructure may be one way to provide increased security for water users, and may avoid remedy or mitigate some adverse effects on freshwater values. However, the current wording in clause k) (iC) and (iD) assumes that the benefits *will* accrue and the effects *will* be appropriate, when in fact this is only true if the infrastructure and any associated land uses are appropriately located, designed and managed, and the effects including cumulative effects are avoided, remedied, or mitigated. The wording should be changed to reflect this and to ensure that the objectives in OBJ LW<sup>1</sup> are achieved.
- (c) It is not just appropriate to maintain water quality and quantity in outstanding waterbodies. Water quality and quantity should be maintained in all waterbodies where it currently provides for ecosystem health, safeguards life supporting capacity, and protect natural character. Water quality and quantity should be enhanced where degraded.
- (d) Clauses d) and dA) are not supported. In the original submission, HBFG sought the inclusion of the policies into the RPS that: identify criteria for recognition of freshwater bodies as outstanding; identify waterbodies that currently meet that criteria; and provide for the protection of water quality and other values within those waterbodies.
- (e) Clause e) and gA) have similar intent, and therefore to limit complexity, these two clauses should be combined.
- (f) Fish and Game seeks the following relief:

- (i) Include provisions which ensure that water quality and quantity is maintained where it is currently provides for ecosystem health, safeguards life supporting capacity, protects natural character, and provides for fishery, amenity, recreational, and intrinsic values.
- (ii) Include provisions which ensure that water quality and quantity will be enhanced where degraded.
- (iii) That clauses d) and dA) are removed, or amended so that the policy does not limit the maintenance or enhancement of water quality and protection of water quantity, to water bodies that have been assessed as outstanding.
- (iv) That clause k) (ic) and (iD) of POL LW 1.1 be deleted removed
- (v) That clause gA) be removed, and clause e) be amended as follows:  
*“promotes collaboration and information sharing between relevant management agencies, iwi, landowners and other stakeholders, and collaboration with catchment communities”*
- (vi) Include new Policy or provisions which set out criteria to determine freshwater bodies as ‘Outstanding Waterbodies’ and which identify waterbodies which currently meet that criteria.

Wording to provide the relief sought could include, but is not limited to, wording similar to the following:

*Outstanding freshwater bodies are those freshwater bodies that:*

1. *Are in their natural state; or*
2. *Are no longer in their natural state, but that support one or more of the following values and characteristics that stand out on a national or regional comparative basis:*



- a. *Biodiversity*
  - b. *Habitat for indigenous fauna, wildlife, trout or salmon*
  - c. *Values to tangata whenua*
  - d. *Spiritual and cultural*
  - e. *Recreation and amenity*
  - f. *Community*
  - g. *Landscape*
  - h. *Natural character*
  - i. *Scientific*
  - j. *Historical*
- or
3. *are the best remaining example of a particular freshwater environment type remaining within the Region, as defined using the FWENZ data set.*

*The following waterbodies have been identified as outstanding in accordance with the criteria set out in Policy above:*

- *Lake Waikareiti*
- *Lake Waikaremoana*
- *Mohaka River catchment above Willow flat*
- *Ngaruroro, Tauarau River and their tributaries above Whanawhana cable way*
- *Tukituki River*
- *Tulaekuri River*
- *Maraeotara River*

- Ruakituri River
- Waiau River
- Waikaretaheke River
- Hopuruahinem River
- Lake Whakaki complex
- Opoutama Swamp
- Maungawhio Lagoon
- Lake Poukawa,
- Pekapeka Swamp Lake Hatuma
- Lake Runanga
- Lake Oingo
- Waitangi wellanmd,
- Ngamotu Lagoon
- Whakamahia Lagoon

*To protect the water quality in waterbodies that meet the criteria for outstanding freshwater bodies set out in [Policy 1] and listed in Policy 2 and to recognise and provide for the other values that contribute to the outstanding nature of that waterbody.*

- (vii) All other clauses are retained as proposed in Plan Change 5.
- (viii) Such other relief, including consequential relief, as may address the reasons for the appeal.

#### **10.7 POL LW 1.2**

- (a) Fish and Game support in part the proposed POL LW 1.2 policy and clauses.
- (b) Fish and Game prefer the wording for clauses d) and e) that was drafted by Helen Marr in her supplementary statement of evidence.
- (c) Fish and Game seeks the following relief:

(i) That clauses d) and e) of POL LW 1.2 be amended as follows:

*d) where the limits set under c) are not met:*

*i) specify methods (including rules) to avoid any further over allocation*

*ii) specify targets and timeframes by which targets and limits will be met*

*e) where limits set under c) are met, set out methods (including rules) specifying how the limits will continue to be achieved.*

(ii) Such other relief, including consequential relief, as may address the reasons for the appeal.

#### **10.8 POL LW 1.3**

(a) Fish and Game support in part the proposed policy and clauses.

(b) Fish and Game request that Policy LW1.3 clause a) be amended to include salmonids. This amendment would align with the Resource Management Act 1991 where section 7(h) states that all persons 'shall have particular regard to... the protection of the habitat of trout and salmon.'

(c) Policy LW1.3 Clause c) as it is worded is not supported. Clause c) refers to 'microbiological water quality', which is one of many factors relating to water quality that contribute to a waterbody's level of safety for swimmers and other recreational users. It is requested that the clause is amended so as not to limit the factors measured when assessing water quality. For a waterbody to be suitable for contact recreation including swimming, visual clarity, deposited sediment, periphyton, cyanobacteria, and microbacterial and toxin levels need to be set at appropriate limits.

(d) Fish and Game seeks the following relief:

(i) That clause a) of POL LW 1.3 be amended as follows:

*“the life supporting capacity, ecosystem processes, and indigenous and salmonid species including their associated ecosystems of fresh water are safeguarded”;*

(ii) That clause c) of POL LW 1.3 be amended as follows:

*the microbiological water quality in rivers and streams provides for amenity values, and is safe suitable for people to contact recreation including swimming.*

- (iii) Such other relief, including consequential relief, as may address the reasons for the appeal.
- (iv) Such other relief, including consequential relief, as may address the reasons for the appeal.

#### **10.9 POL LW 1.4**

(a) Fish and Game support the wording of POL LW 1.4.

(b) Fish and Game seeks the following relief:

- (i) That POL LW 1.4 be retained as written in decision proposed change 5.
- (ii) Such other relief, including consequential relief, as may address the reasons for the appeal.

#### **10.10 POL LW 2**

(a) Fish and Game have concerns that this policy goes further than setting clear priorities in the event of conflict. It also sets up a management regime for values, and in so doing creates conflict between consumptive and on consumptive values. The approach proposed within this policy and table 1 is inconsistent with purpose and principals of the RMA, fails to address the regionally relevant resource management issues, and is contrary to best

planning practices. The justification and reasoning for this is unclear. As written, POL LW2 establishes an inappropriate framework of priorities regarding freshwater values, that ultimately undermines the process of setting values, objectives, target and limits as envisioned by the NPSSFM (and which is provided for in the recommended relief set out in this submission document).

(b) The values identified in Table 1 can and should be identified with more precision, both defining what the value is and where it applies. The current identification of values in Table 1 does not state whether the values identified are existing values, or future values. This could mean that future out of stream uses are prioritised ahead of existing instream values. This is inappropriate.

(c) In relation to instream values, the native fish and trout habitat values need further refinement. The locations and requirements of fish for spawning are quite different to that for adults. Some of the native fish are migratory and therefore use whole catchments, not just defined areas.

(d) Fish and Game have some concerns about the method used to define the values, their locations and priorities. Fish and Game would like to be involved with the council to further refine and better define the values and their priorities. This is currently on going as part of catchment based consultations. Fish and Game are concerned that the listing of values at this time in the RPS will undermine that catchment based value setting and mean that those values cannot adequately be provided for in future plan change processes.

(e) The use of maps and grid references to identify values and uses would aid interpretation and clarity. The approach used by Horizons Regional Council in Schedule AB of the Proposed One Plan is a good example of a useful method, and one which is supported by Fish and Game.

(f) Fish and Game seeks the following relief:

(i) Delete POL LW2 in its entirety; or

- (ii) Delete Table 1 and refine the remainder of POL LW 2 to address the issues identified in this submission; or
  - (iii) Amend Table 1 to address the issues identified in this submission, including, but not limited to the following types of changes:
    1. Define values with more precision as to location and aspect that is valued.
    2. Ensure that values do not apply to future out of stream uses.
    3. Better define and identify the instream fish values including trout fishery and trout spawning values. Fish and Game will provide a list of these values and sites for inclusion into the RPS.
    4. Ensure that catchment values identified during current and future catchment based values identification processes can be incorporated into the RPS and Plan without being inconsistent with the policy approach in POL LW2
    5. Ensure that life supporting capacity and ecosystem health are safeguarded and natural character is protected, and that amenity, recreational, and fishery values are provided for before providing for consumptive use values. Ensure that the framework meets the requirements of sustainable management.
  - (iv) Grant other general or specific relief in order to address the matters raised in this submission, including but not limited to the relief raised in the following submission points related to POL LW2
- 10.11 POL LW 3**
- (a) Fish and Game support in part the proposed policy POL LW 3 and clauses.
    - (b) To improve the effectiveness in managing the use of productive land and its environmental effects, Fish and Game seek the use of more detailed decision-

making criteria, and the creation of a clearer link to impacts on water quality. This amendment will more effectively contribute to the Plan's goal of establishing integrated management of fresh water and land use and development.

(c) All contaminants of concern from production land should be managed to either maintain water quality where it currently provides for ecosystem health and recreational and intrinsic values or enhance water quality where it is currently degraded. Contaminants of concern include nitrogen, phosphorus, sediment, and pathogens. Nitrogen and phosphorus can be lost from the land both directly (overland flow pathways and stock access to waterbodies) and indirectly (leaching to groundwater). Pathogens and sediment are lost via overland flow pathways or direct inputs through stock access to waterbodies. Intensive and extensive land uses should be managed.

(d) Clause b) is unclear on why the levels should only be set to levels suitable for human consumption and irrigation. Contact recreation levels should also be included in this consideration.

(e) The Principle reasons and explanation for POL LW 3 states that phosphorous leaching and run off is primarily caused by soil loss, which is incorrect. Phosphorous can enter water bodies from intensive land use activities, including stock access to water, trampling of banks by stock causing erosion, inappropriate management of phosphorus fertiliser use, and poorly managed dairy shed effluent applications.

(f) Fish and Game seeks the following relief:

- (i) Amend the policy to provide for a framework for identifying specified catchments.
- (ii) Reword clause a) to recognise that the chief cause of nitrogen contamination of water caused by primary production activities is urine patches from animals. Amend provisions to ensure that Nitrogen

leaching will be managed to leaching standards set in regulation in order to ensure that water quality (groundwater and surface water) is maintained, or where degraded restored. Nitrogen limits should be set to ensure groundwater is safe for human drinking, and that instream nitrogen concentrations are set to protect ecosystem health, manage periphyton and cyanobacteria blooms, protect macroinvertebrate community health, and provide for recreational and amenity values.

- (iii) Amend clause b) to accurately characterise the pathways of contamination, i.e. these contaminants primarily travel directly from land to surface water by overland flow, rather than through groundwater to surface water. And amend the provision to ensure that best environmental management practice for reducing faecal run off to surface water is set through regulation
- (iv) Amend the Principle reasons and explanation for POL LW 3 to properly characterise the pathways for phosphorous contamination to water.
- (v) To exclude stock from waterbodies including ephemeral waterbodies.
- (vi) Address sediment
- (vii) Such other relief, including consequential relief, as may address the reasons for the appeal.

#### **10.12 New Policy – regulatory methods to manage production land use**

- (a) Management of land use should not solely focus on non regulatory methods. Both sections 9 and 15 of the RMA 1991 should be used to manage land use within freshwater limits, not just section 9 of the Act. The Regional council cannot permit activities which breach s15 standards (see section 70 of the RMA). The Regional Council should also consider s107 of th Act in regards to the appropriateness of controlled activity status for activities which may breach s15 standards as set out in the Act



(b) Fish and Game seeks the following relief:

(i) Include a new policy which sets out regulatory methods for managing production land to ensure that water quality is maintained or where degraded enhanced.

(ii) Regulatory should include establishment of nitrogen leaching allocations and standards per hectare of land use (Nitrogen leaching kg/ha/yr), along with input based best management practice standards to address sediment, pathogen and phosphorus losses to surface waterbodies. Ensure stock are excluded from waterbodies. That the assumptions made by OVERSEER or appropriate model are met. Industry codes are adhered to.

#### **10.13 POL LW 4**

(a) Fish and Game support the proposed policy POL LW 4 and clauses.

(b) Fish and Game seeks the following relief:

(i) That POL LW 4 be retained as worded

(ii) Such other relief, including consequential relief, as may address the reasons for the appeal.

#### **10.14 AER**

(a) Fish and Game support in part the proposed AER. AER clauses 2, 5, 6, 7 are opposed as discussed in the body of this appeal. It is not sufficient to just maintain net water quality across the region. Water quality should be maintained in each waterbody to safeguard its life supporting capacity and protect ecosystem values. Degraded waterbodies should be enhanced.

(b) Fish and Game seeks the following relief:

- (i) The AER's should be amended consistent with the other submissions made by Fish and Game in relation to the objectives and policies of introduced by RPS Change 5.
- (ii) Delete the Anticipated Environmental Results and develop new Anticipated Environmental Results to be consistent with the relief sought for other provisions of Change 5.

#### **10.15 POL 4A**

- (a) Fish and Game oppose the proposed policy POL 4A.
- (b) The policy as currently worded will result in only the 'significant values' of wetlands being protected. This would be inconsistent with s6(a) and (c) of the RMA, which require wetlands as a whole (not just their values) to be protected.
- (c) Fish and Game seeks the following relief:
  - (i) That POL 4A and the explanation for 4A be amended so that 'significant values of wetlands' is replaced with 'wetlands'.
  - (ii) Such other relief, including consequential relief, as may address the reasons for the appeal.

#### **10.16 Definition of Wetland**

- (a) The definition of wetland introduces an exclusion for "wet pasture or cropping land" as an exclusion to the definition. However, the region comprises ephemeral wetlands which can be grazed for part of the year but which still provide significant habitat values. These wetlands should be protected.
- (b) Fish and Game seeks the following relief:
  - (i) Amend the definition of 'wetland' to read:

“**Wetland** includes permanently or intermittently wet area, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions. For the purposes of this Plan, a wetland is not/does not include:

i. Damp gully heads subject to regular ponding, dominated by pasture or exotic species in association with wetland sedge and rush species.

Or

ii. Ditches or drains supporting raupo, flax or other wetland species (eg., Carex sp., Isolepis sp.), or populations of these species in drains or slumps associated with road reserves or rail corridors.

Or

iii. Areas of wetland habitat specifically designed, installed and maintained for any of the following purposes:

(a) stock watering (including stock ponds), or

(b) water storage for the purposes of fire fighting or irrigation (including old gravel pits), or

(c) treatment of animal effluent (including pond or barrier ditch systems), or

(d) wastewater treatment, or

(e) sediment control, or

(f) any hydroelectric power generation scheme, or

(g) water storage for the purposes of public water supplies.

Or

iv. Areas of wetland habitat maintained in relation to the implementation of any resource consent conditions or agreements relating to the operation of any hydroelectric power scheme currently lawfully established.

Or

iv. **Open water and associated vegetation created for landscaping purposes or amenity values where the planted vegetation is predominately exotic, or includes assemblages of species not naturally found in association with each other, on the particular landform, or at the geographical location of the created site"**

**10.17 POL 4**

- (a) Fish and Game oppose the proposed policy POL 4.
- (b) The policy as currently worded will result in only the 'significant values' of wetlands being protected. This would be inconsistent with s6(c) of the RMA.
- (c) Fish and Game seeks the following relief:
  - (i) That POL 4 and the explanation for POL 4 be amended so that 'significant values of wetlands' is replaced with 'wetlands'.
  - (ii) Such other relief, including consequential relief, as may address the reasons for the appeal.

**10.18 OBJ 22**

- (a) Objective 22 is opposed. Groundwater quality should be maintained. As currently worded this objective allows groundwater to be degraded.
- (b) Fish and Game seeks the following relief:
  - (i) Reject the proposed change to OBJ 22 and retain OBJ 22 as contained in the operative Regional Policy Statement.

**10.19 OBJ 25**

- (a) Fish and Game support in part the proposed Objective 22. Fish and Game are concerned that the Objective as worded states that water quantity will be

provided for both ecosystem values and consumptive values. This may not always be the case. Where conflict arises, primacy should be given to safeguarding life supporting capacity and protecting ecosystem integrity.

- (b) Fish and Game seeks the following relief:
  - (i) Amend Objective 25 to provide for life supporting capacity and protect ecological integrity and natural character firstly and then secondly to provide for consumptive uses.

#### **10.20 OBJ 27**

- (a) Fish and Game support in part the proposed Objective 27 and clauses.
- (b) Fish and Game are concerned at the proposed deletion of the words 'The maintenance and enhancement of' from the objective. A goal that seeks to maintain and enhance water quality would provide greater assurance that the management of the surface water resource is an environmental bottom line, and be in accordance with the requirements of the NPSFM. Fish and Game suggest that the words 'the maintenance and enhancement' be reinstated.
- (c) OBJ 27 also includes reference to POL LW2. This is unhelpful, as POL LW2 identifies freshwater values for specified catchments only. The current structure of and relationship between POL LW2 and POL LW1 will result in the freshwater values of unspecified catchments being unidentified.
- (d) Fish and Game has sought amendments to LW1 and LW2 and table 1.
- (e) Fish and Game seeks the following relief:
  - (i) Reinstate the words 'The maintenance and enhancement of water quality...' and;

- (ii) Delete reference to POL LW 1 and POL LW 2.
- (iii) Retain reference to recreational values and include reference to amenity values.
- (iv) Such other relief, including consequential relief, as may address the reasons for the appeal.

#### **10.21 Policy 50**

- (a) POL 50 cross references the values and uses identified in OBJ LW1 and POL LW2. This is problematic, as several clauses of OBJ LW 1 serve to reiterate the conflicts between some of the competing values and uses of freshwater (e.g. clauses 5, 6 and 7). Neither OBJ LW 1 nor the ensuing proposed policies (or proposed amendments to existing policies), including POL LW2, offer a management framework by which to effectively to resolve the conflicts. Furthermore, the current relationship between POL LW2 and POL LW1 results in a lack of provision for unspecified catchments.
- (b) Policy 50 does not ensure that natural character is protected. Gravel management should be undertaken in a manner that maintains diversity of pool/ run/ riffle habitats and bed configuration and prevents degradation of the river bed.
- (c) Fish and Game seeks the following relief:
  - (i) Remove reference to OBJ LW 1 and POL LW2.
  - (ii) Include provision which ensure that gravel management is sustainable and protect natural character.

#### **10.22 Consequential Relief**

- (a) Summary of the part of the decision to which this appeal point relates together with the text of the relevant provision of the Proposed Change 5:

Throughout the Proposed Change.

- (b) The reasons for the appeal are:  
Amendment sought by HBFEG may necessitate amendments to other parts of the Proposed Change 5.
- (c) HBFEG seeks the following relief:  
Consequential amendments resulting from granting or partially granting the relief sought by HBFEG elsewhere in this Appeal.

- 11. HBFEG attaches the following documents to this notice:
  - (a) A copy of its submission;
  - (b) A list of names and addresses of persons to be served with a copy of this notice.

Signed



Pete McIntosh



Regional Manager – Hawkes Bay Fish and Game Council

P O Box 7345

Taradale

NAPIER 4141

**DATED** this 17 day of July 2013

**Hawkes Bay Region Fish and Game New Zealand's** address for service is at its offices at  
22 Burness Road, Greenmeadows, Napier 4112, P O box 7345, Taradale NAPIER 4141,  
telephone 06 844 2460, fax 06 844 2461, [pmcintosh@fishandgame.org.nz](mailto:pmcintosh@fishandgame.org.nz).

**Note to appellant**

You may appeal only if—

- you referred in your submission or further submission to the provision or matter that is the subject of your appeal; and
- in the case of a decision relating to a proposed policy statement or plan (as opposed to a variation or change), your appeal does not seek withdrawal of the proposed policy statement or plan as a whole.

Your right to appeal may be limited by the trade competition provisions in Part 11A of the Resource Management Act 1991.

The Environment Court, when hearing an appeal relating to a matter included in a document under section 55(2B), may consider only the question of law raised.

You must lodge the original and 1 copy of this notice with the Environment Court within 30 working days of being served with notice of the decision to be appealed. The notice must be signed by you or on your behalf. You must pay the filing fee required by regulation 35 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003.

You must serve a copy of this notice on the local authority that made the decision and on the Minister of Conservation (if the appeal is on a regional coastal plan), within 30 working days of being served with a notice of the decision.

You must also serve a copy of this notice on every person who made a submission to which the appeal relates within 5 working days after the notice is lodged with the Environment Court.

Within 10 working days after lodging this notice, you must give written notice to the Registrar of the Environment Court of the name, address, and date of service for each person served with this notice.

However, 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).

### **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 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 a notice of appeal ends.

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 appellant's submission and (or or) the decision (or part of the decision) appealed. These documents may be obtained, on request, from the appellant.

- \* Delete if these documents are attached to copies of the notice of appeal served on other persons.

#### *Advice*

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

**Contact details of Environment Court for lodging documents**

Documents may be lodged with the Environment Court by lodging them with the Registrar.

**The Wellington address of the Environment Court is:**

The District Court Building  
43 – 49 Ballance Street  
Wellington 6011

And its telephone and fax numbers are:

Telephone: (04) 918 8300  
Fax: (04) 918 8303

