

**BEFORE THE ENVIRONMENT COURT  
AT AUCKLAND**

**I MUA I TE KOOTI TAIAO O AOTEAROA  
TAMAKI MAKAUROA ROHE**

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

**AND**

**IN THE MATTER** of an appeal under Clause 14 of Schedule 1 of the Resource Management Act 1991 against the decision of the Hawke's Bay Regional Council on Proposed Plan Change 9 to the Hawke's Bay Regional Resource Management Plan

**BETWEEN**

**AOTEAROA NEW ZEALAND FINE WINE  
ESTATES LP**  
(ENV-2022-)

Appellant

**AND**

**HAWKE'S BAY REGIONAL COUNCIL**

Respondent

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**NOTICE OF APPEAL BY AOTEAROA NEW ZEALAND FINE WINE  
ESTATES LP**

Dated: 25 October 2022

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Counsel Acting; Dean van Mierlo  
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Solicitor H Bodle, Greymouth

# **Notice of Appeal to Environment Court against decision on Proposed Plan Change 9: Hawke’s Bay Regional Resource Management Plan.**

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

To the Registrar  
Environment Court  
Auckland

1. Aotearoa New Zealand Fine Wine Estates LP appeals against parts of a decision of the Hawke’s Bay Regional Council (the Council) on Proposed Plan Change 9: Hawke’s Bay Regional Resource Management Plan (the Plan Change)
2. Aotearoa New Zealand Fine Wine Estates LP made a submission on the Plan Change.
3. Aotearoa New Zealand Fine Wine Estates LP is not a trade competitor for the purposes of [section 308D](#) of the Act.
4. Aotearoa New Zealand Fine Wine Estates LP received notice of the decision on 10 September 2022.
5. The decision was made by the Council.
6. The parts of the decision that Aotearoa New Zealand Fine Wine Estates LP is appealing are the parts of the Council’s decision as set out in the second column of Table 1 Appended to this Notice of Appeal under the heading “*Provision reference (decisions version)*”.

7. The reasons for the appeal are set out in the third column of Table 1 appended to this Notice of Appeal under the heading “*Reason(s) for appeal*”.
  
8. In addition to the reasons set out in Table 1, the general reasons in support of the appeal are that the parts of the decision appealed;
  - a. Do not promote the sustainable management of natural and physical resources as required by Part 2 of the Act,
  - b. Do not implement the Council’s functions under s 30 of the Act,
  - c. Do not give effect to the NPS-FM.
  - d. Do not give effect to the Regional Policy Statement provisions of the Hawke’s Bay Regional Resource Management Plan.
  - e. In the case of policies, do not give effect to the objectives of the plan and plan change.
  - f. In the case of methods, do not implement or achieve the policies and objectives of the plan and plan change, and/or
  - g. Do not represent best resource management practice.
  
9. Aotearoa New Zealand Fine Wine Estates LP seeks the following relief:
  - a. The relief specified in the fourth column of Table 1 appended to this Notice of Appeal under the heading “Relief Sought”, and
  - b. Such further orders, alternative relief, consequential amendments or other amendments as are considered appropriate or necessary to address the concerns and reasons set out in this Notice of Appeal and appended Table 1.

I attach the following documents or links to this notice:

- a copy of Aotearoa New Zealand Fine Wine Estates LP’s submission is **attached**

- a copy of the Council's decision may be found at [Independent Panel's Decision Report](#)
- and a tracked changes version of the Plan Change may be found at [Tracked Changes Version of Proposed Plan Change 9](#)
- a list of names and addresses of persons to be served with a copy of this notice is being requested from the Council, and the submitters served will be advised to the court within 5 working days.

Signed

A handwritten signature in black ink, appearing to be 'MJ Loza', written in a cursive style.

MJ Loza

CEO and Authorised signatory for Aotearoa New Zealand Fine Wine  
Estates LP

25 October 2022

Address for service of appellant:

Dean van Mierlo, Barrister  
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West Coast 7873  
Telephone: 03 7311070  
Email: dean@environmentalbarrister.co.nz  
Contact person: Dean van Mierlo

A copy of Aotearoa New Zealand Fine Wine Estates LP's submission and an electronic link to the decision has been forwarded to the Environment Court with this notice of appeal. If any party served with this notice requires a copy of the submission to be served on them, please email the appellant at the address for service given above and provide an email address so that this document can be forwarded electronically.

**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 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 Auckland, Wellington, or Christchurch.

Table 1: Decisions of Hawke's Bay Regional Council on this Plan Change  
which are appealed by Aotearoa New Zealand Fine Wine Estates LP

Appeal point	Provision reference (decision version)	Reason(s) for appeal	Relief sought (Amendments from decisions version with additions <u>underlined</u> and deletions <del>struck through</del> )
1	POL TANK 34	<p>Policy 34(d)(ii) requires that, when considering applications in respect of existing consents due for expiry, or when renewing consents, that an assessment of Actual and Reasonable water use will be applied. The term Actual and Reasonable is defined in the glossary.</p> <p>In the context of Policy 34, and the Heretaunga Plains Groundwater Quantity Area, the replacement of resource consents due for expiry, or when reviewing consents, should apply an assessment of actual and reasonable water use that reflects actual land use practices and circumstances and actual water use as authorised and used in the 10 years prior to the 2020 irrigation season</p>	<p>Amend Policy 34(d)(ii) as follows;</p> <p>ii. apply an assessment of Actual and Reasonable use <u>that reflects land use and water use authorised and used in the 10 years up to the end of the 2020 water year</u> (except as provided by POL TANK 48)</p>

2	POL TANK 34	<p>Policy 34(d)(iii) provides that the consent authority must take into account any water use required as part of a programmed or staged development specified within an existing water permit or resource consent, when considering replacement consents or reviewing conditions of consent.</p> <p>However, programmed or staged developments can also occur under existing water permits, in reliance on the rate of take specified in that permit. In this situation, the existing water permit or associated resource consent may not specify a programmed or staged development.</p> <p>Staged or programmed developments made in reliance on authorised water takes, should be recognised and provided for under this policy, irrespective of whether the programmed or staged development is specified within the existing resource consent.</p>	<p>Amend Policy 34(d)(iii) as follows;</p> <p>Take into account any water use required as part of a programmed or staged development <u>either</u> specified within the existing water permit or associated resource consent, <u>or</u> <u>commenced in reliance on the rate of water take specified within the existing water permit or associated resource consent, if; ...</u></p>
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3	<p>RULE TANK 8 Groundwater take – Heretaunga Plains Replacement of existing consent to take and use water</p>	<p>Condition c) requires that the quantity taken and used is the Actual and Reasonable amount. The term Actual and Reasonable is defined in the glossary. However, the matters for control under this rule provide that the council can amend the quantities assessed as Actual and Reasonable. The rule should more clearly reflect that council can amend the Actual and Reasonable quantity of water in accordance with the matters for discretion, under this rule.</p>	<p>Amend Conditions/Standards/Terms to reflect and recognise listed matters for Control/Discretion</p> <p>c) The quantity taken and used, other than provided for under d), is the Actual and Reasonable amount, <u>as amended taking into account the relevant matters for Control or Discretion.</u></p>
4	<p>RULE TANK 8 Groundwater take – Heretaunga Plains Replacement of existing consent to take and use water</p>	<p>The decisions version deleted a matter for control/discretion which was worded;</p> <p>2. The extent to which the application was subject to programmed or staged completion of authorised major infrastructure developments over time.</p> <p>A similar matter for discretion should be reinserted into the plan change, to recognise and provide for staged or programmed developments that have commenced in reliance on water takes authorised under existing permits or consents being replaced.</p>	<p>Amend Matters for Control/Discretion by inserting the following additional matter;</p> <p><u>2. The extent to which the application was subject to programmed or staged completion of authorised developments over time.</u></p>

5	<p>RULE TANK 8 Groundwater take – Heretaunga Plains Replacement of existing consent to take and use water</p>	<p>The matters of discretion for this restricted discretionary activity rule are too narrow, and are required to also include “the value of the investment of the existing consent holder” when s 104(2A) RMA applies. Additionally, the rule should preserve the ability of the consent authority to consider the individual circumstances of the applicant and existing development.</p>	<p>Amend Matters for Control/Discretion by inserting the following additional matter;</p> <p>Add a new matter for control/Discretion 1.e as follows,</p> <ol style="list-style-type: none"> <li>1. <u>e. the individual circumstances associated with the applicant and any existing development, including the value of investment of the existing consent holder.</u></li> </ol>
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6.	Glossary Definition of “Actual and Reasonable”	<p>The definition of Actual and Reasonable is critical to the working of Rule TANK 8 (and others). However, the definition stated in the decisions version is uncertain and ambiguous, and will lead to inequities, and poor resource management outcomes.</p> <p>The definition states that in applying the IRRICALC model, council will take into account any water meter data that is applicable. However, the rule is prescriptive, and requires the least of either the maximum annual amount as measured by water meter, or the amount as modelled by IRRICALC to be applied. It is unclear how water meter data will be taken into account in applying the IRRICALC model.</p> <p>IRRICALC is not fit for purpose, in the specific context of Hawkes Bay, and particularly for close density planted vineyards on free draining soils with a deep water table. In relation to AONZ’s vineyard, our calculations have shown that IRRICALC would model its water use as approx. 25% less than both the authorised take under our existing permit, and our previous actual usage in 2020/2021.</p>	<p>Amend the definition of Actual and Reasonable as follows;</p> <p>Either;</p> <p>Develop a Hawke’s Bay specific IRRICALC model which is demonstrated to model actual and reasonable water use for close density planted vineyard irrigation in Hawke’s Bay free draining soils with a deep water table, and enable use of that model in calculating Actual and Reasonable water use;</p> <p>Or</p> <p>Delete paragraph c) of the definition and remove the reference to, and use of, IRRICALC in the assessment of Actual and Reasonable use.</p>
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