

**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** **Heinz Wattie's Limited**  
**Appellant**

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

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**Notice of appeal by Heinz Wattie's Limited against decisions on  
Proposed Plan Change 9**

**26 October 2022**

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LJB-130422-2-255-V1

To The Registrar  
Environment Court  
**WELLINGTON**

1 Heinz Wattie's Limited (**Heinz Wattie's**) 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 Heinz Wattie's 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 Heinz Wattie's is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (RMA).

4 Heinz Wattie's 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 Heinz Wattie's is appealing are:

6.1 POL TANK 34(d);

6.2 The provisions regarding water storage, use and reticulation.

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

*POL TANK 34(d)*

8 POL TANK 34(d) applies when water take consents are renewed. It requires an assessment of Actual and Reasonable use which limits consent holders to their maximum annual take over the ten-year period prior to 2 May 2020.

- 9 Heinz Wattie's total consented volume is 8,908,652 m<sup>3</sup> per year. Its maximum water use over the relevant ten-year period is 4,587,376 m<sup>3</sup>. If the volume of produce processed by Heinz Wattie's increases (which has been the trend over the last few years), at consent renewal time Heinz Wattie's will seek a volume less than its currently consented volume but more than the maximum volume over the ten-year period prior to 2 May 2020. Heinz Wattie's has also invested considerable resources in the development of a proposed pet food plant in the expectation that it would obtain replacement consents at volumes similar to its current consented volume.
- 10 The amendments the Hearing Panel made to POL TANK 34(d)(iii) do not assist because that provision appears to be limited to existing permits which specify that the consented water use is for a programmed or staged development. Heinz Wattie's permits were granted 25 years ago and contain no such specification.

### **Provisions regarding water storage, use and reticulation**

- 11 There is a lack of clarity in the plan change about how stored water will reach users – and whether it could be released into waterways to the ultimate users who could use existing groundwater infrastructure to access that water.
- 12 If that is a possibility, the plan change does not presently allow for it – given its direction that no new takes from groundwater should be granted.
- 13 If that reticulation method is not possible, stored water must either be piped to where it is needed, or the storage facility must be built on the property where it is required. This potentially encourages landowners to build small dams on land containing versatile soils and removes the prospect of any ecological benefit from storage in the headwaters and release through existing waterways.

- 14 POL TANK 54(d) includes, as one of the criteria the Council must take into account when considering applications for water storage and augmentation schemes, ‘whether the proposal provides for the productive potential of un-irrigated land or addresses the adverse effects of water allocation limits on land and water users, especially in relation to primary production on versatile land’.
- 15 There does not appear to be a pathway for a ‘new’ consent to take groundwater, even that derived from stored water.
- 16 This issue raised in Heinz Wattie’s submission has not been addressed in the decision.

*Relief sought*

- 17 Heinz Wattie’s Limited seeks the following relief:

17.1 POL TANK 34(d) be amended to read:

- d) when considering applications in respect of existing consents due for expiry, or when reviewing consents, to;
- (i) allocate groundwater on 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) as a starting point, apply an assessment of Actual and Reasonable use (except as provided by Policy 50), and then, subject to the proposal being for no more than the quantity specified on the existing consent, consider any volume beyond this taking the following into account;
1. reasons for the proposed volume of water;
  2. efficiency of use;
  3. the proposed use, particularly if for beverages, food and fibre production and processing and other land-based primary production;

4. the value of the investment associated with the certainty of the volume as previously authorised;

5. whether substantial progress or effort has been, and continues to be, made towards giving effect to the proposed use and investment enabled by the original volume authorised;

17.2 The policy and rule framework for water storage, use and reticulation be amended to:

- 2 (i) allow stored water to be harvested at times between median and 3 times median flows into an off-stem containment or dam on a minor (not named) tributary;
- 3 (ii) enable that water to be released to the mainstem when required for potential use, which can then provide an environmental benefit as it travels down the mainstem, while also recharging the aquifer;
- 4 (iii) enable groundwater to be extracted using existing groundwater takes infrastructure.
- 5 (iv) provide a pathway enabling ‘new’ consents to take groundwater where that groundwater is derived from the use and reticulation of stored water.

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

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


18.1 A copy of Heinz Wattie’s submission on Plan Change 9 (**Appendix A**);

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

18.3 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



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Lara Blomfield  
Counsel for Heinz Wattie's 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](mailto: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.