

BEFORE THE ENVIRONMENT COURT

RMA _____

IN THE MATTER of the Resource Management Act 1991.

IN THE MATTER of an appeal pursuant to clause 14 First Schedule Resource Management Act 1991 against a decision of the Hawkes Bay Regional Council on submissions to the proposed Regional Coastal Environment Plan and Plan Change 1 to Regional Resource Management Plan.

BETWEEN **RAVENSDOWN FERTILISER CO-OPERATIVE LIMITED**, PO Box 1949, Christchurch.
Appellant

AND **HAWKES BAY REGIONAL COUNCIL**, a local authority under the Local Government Act, having its registered office at 159 Dalton Street, Napier.
Respondent

NOTICE OF APPEAL
1 September 2008

To: The Registrar
Environment Court
Wellington

1. Ravensdown Fertiliser Co-operative Limited ("the appellant") appeals against decisions of the Hawke's Bay Regional Council ("the respondent") dated 18 July 2008 in regards to the Proposed Regional Coastal Environment Plan and Plan Change 1.
2. The appellant made a submission on the Proposed Regional Coastal Environment Plan and Plan Change 1.

3. The appellant received notice of the decision on the 21 of July 2008.
4. The decision was made by the Hawke's Bay Regional Council pursuant to clause 29(4) of the First Schedule of the Resource Management Act ("the Act"), following the delegation to Hearing Commissioners pursuant to section 34A (1) of the Act to hear submissions and make recommendations to the respondent, and the subsequent receipt by the respondent of the Report and Recommendations of the Hearing Commissioners.
5. The decision being appealed against by the appellant relates to the matters outlined below:
 - a. Relationship of Maori and the Coast – Topic 2: Policies and Explanations.
 - b. Land Resources and Use of Land – Topic 4: Agrichemicals, Fertiliser, Compost and Solid Waste.
 - c. Coastal Hazard Zones.
6. The reasons for the appeal are as follows:
 - a. *Relationship of Maori and the Coast – Topic 2: Policies and Explanations.*
 - i. In its submission Ravensdown supported objective 6.1 and policies 6.1 to 6.7 and sought their retention. Ravensdown sought minor amendments to the anticipated environmental results to better reflect the requirements of the Resource Management Act 1991.
 - ii. The Council accepted Ravensdown's submission in part, however the explanation to the policy was amended by the

inclusion of a statement in paragraph 6.2 "the whole of the CMA and coastal environment is of significance to Ngati Kahungunu".

- iii. This statement does not assist plan users in the interpretation and application of objective 6.1 and policies 6.1 to 6.7. These policies are quite specific and the inclusion of such a general and subjective statement is unnecessary and furthermore will create uncertainty and confusion.

Relief sought:

- (a) Amend paragraph 6.2 explanation by deleting the sentence:

"the whole of the CMA and coastal environment is of significance to Ngati Kahungunu".

- (b) Any other similar relief to like effect.
- (c) Any consequential relief arising from this amendment.

b. *Land Resources and Use of Land – Topic 4: Agrichemicals, Fertiliser, Compost and Solid Waste.*

- i. In its submission Ravensdown sought clarification of condition (h) of Rules 13 and 14 as to how the requirements for a management plan to be submitted to the Hawke's Bay Regional Council would affect existing operations at Ravensdown's existing Awatoto plant and would be unnecessary given that Ravensdown already has a management plan for the Awatoto site.

- ii. The Council rejected Ravensdown's submission. The reasons given were maintaining consistency with the regional resource management plan outside of the coastal margin and that the rules were necessary and appropriate to enable the council to fulfill its resource management functions and responsibilities and to ensure consistent and fair management of activities with the same effect.
- iii. The reasons given for rejecting Ravensdown's submission do not adequately address Ravensdown's submission.
- iv. The decision will impose unnecessary costs on existing operators.
- v. The proposed rule fails to recognise that existing operators are already adequately addressing air discharge issues through management plans and that these plans are the most efficient means of dealing with air discharge issues.

Relief sought:

- (a) Amend Rules 13(h) and 14(h) to read:

"Where there is no existing council approved management plan, upon request by the Hawke's Bay Regional Council a management plan shall be submitted to Hawke's Bay Regional Council setting out how the conditions above will be met."

- (b) Any other like relief to the same effect.
- (c) Any consequential relief.

c. *Coastal Hazard Zones – Topic 1: Policies and Explanations*

- i. Ravensdown in its submission sought clarification of Guideline 1(iii) and 6(a) of Policy 15-1 as to the how structures will be evaluated for either relocation or retreat and the effect of the guidelines and policy on Ravensdown's Awatoto site.
- ii. The Hawkes Bay Regional Council accepted the submission in part as Policy 15-1(6) was amended but not in the manner sought by Ravensdown.
- iii. The amendments to Policy 15-1(6) fail to address the matters raised in Ravensdown's submission. The Ravensdown site at Awatoto is a significant physical resource for the Hawkes Bay region and the policy and guidelines in their present form create uncertainty and could potentially have a significant impact on that resource. This will not achieve the purpose of the Resource Management Act 1991.
- iv. The Hawkes Bay Regional Council has failed to give reasons for its decision to accept Ravensdown's submission in part.

Relief sought:

- (a) Amend Policy 15-1(6) as follows:

Clarify Guideline 1(iii) and 6(a) of Policy 15-1 in terms of:

- i. What the evaluation of feasibility of relocation and/or retreat of existing uses and development is; and

- ii. How such an evaluation is to be used by council; and
 - iii. How the evaluation will affect Ravensdown's existing Awatoto site; and
- (b) Any other likely relief to the same effect.
- (c) Any consequential relief arising from this appeal.
- d. *Coastal Hazard Zones Chapter 27.6 Rule 79 – Existing Structures in Coastal Hazard Zones, Rule 82 and 84 External Building work and Hazard Zone 1*
- i. In its submission Ravensdown supported Rules 79, 82 and 84 as notified. This submission was accepted in part by Hawke's Bay Regional Council as Rule 79 was deleted and replaced with Rule 78A. Ravensdown's submission in respect of rule 82 was also accepted in part.
 - ii. Rule 78A is a significant departure from Rule 79. Rule 78A only provides for minor structures as defined in the plan's definition section as permitted activities. Structures not meeting a minor structure definition are now restricted discretionary activities under a new Rule 82. These rules are supported by adding a new objective 15-1(A) and amending objective 15-2 which are also opposed by Ravensdown.
 - iii. The amendments to rule 82 combined with the effect of new rule 78A has the effect of making activities which were formerly permitted Restricted Discretionary.

- iv. The plan has also been amended by altering the boundary of Coastal Hazard Zone 1. This now affects Ravensdown's settling ponds and discharge. Ravensdown did not make a submission on the Coastal Hazard Zone 1 boundary as it was not concerned about its location, however the combination of the relocated coastal hazard zone boundary, new Rule 78A and associated policies will substantially affect Ravensdown's operation.
- v. These rules are inappropriate and will impose a significant burden on existing commercial operations and will not achieve the purpose of the Resource Management Act 1991.

Relief sought:

- (a) Reinstate Rules 79 and 82 as originally notified
 - (b) Delete Rule 78A from the plan and the associated objectives 15.1(A) and objective 15.2
 - (c) Amend the boundary of Coastal Hazard Zone 1 to show the hazard line as originally notified;
 - (d) Such other relief as to this like effect;
 - (e) Any such consequential relief arising from this submission.
7. The appellant attaches the following documents to this notice
- a. A copy of the submission of the Ravensdown Fertiliser Co-operative Limited dated 11 January 2008.
 - b. A copy of the notification by the respondent of its decision.

- c. A copy of the Report and Recommendations of the Commissioners including the schedule and accompanying annexures.
- d. A list of the names and addresses of persons to be served with a copy of this notice.

DATED this 1st day of September 2008.



Mark Christensen/ Sarah Barnes
Counsel for the Appellant

TO: The Registrar. Environment Court, Wellington.

AND TO: The Respondent

AND TO: Ravensdown Fertiliser Co-operative Ltd

This Notice is filed by Mark Christensen and Sarah Barnes, Anderson Lloyd Christchurch, counsel for the appellant, whose address for service is:

10th Floor
Clarendown Towers
Cnr Worcester Street and Oxford Terrace
PO Box 13-831
Christchurch.

Documents for service on Appellant may be delivered to the above address.

Memorandum and Advice to Recipients of copy of notice of appeal

How to become a party to the proceedings

You may be party to the appeal if you made a 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 30 working days after this notice was lodged with the Environment Court.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing 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 or the decision appealed. These documents may be obtained, on request, from counsel for the appellant.

Advice

If you have any questions about this notice, contact the Environment Court Unit of the Department for Courts, PO Box 5027, Wellington.