

3 February 2020

The Registrar  
Environment Court of New Zealand  
Level 5  
49 Ballance Street  
Wellington 6011

**Email:** Jennifer.Gerritsen@justice.govt.nz

Dear Madam Registrar

**APPEAL BY CDL LAND NEW ZEALAND LIMITED**

Please find enclosed for filing a notice of appeal by CDL land New Zealand Limited. CDL was a successor to a number of parties including the former owners of 122 Arataki Road.

We therefore enclose:

- (i) notice of appeal (in duplicate)
- (ii) a copy of the CDL's submission as successor to the owners of 122 Arataki Road
- (iii) a copy of the relevant decision and resource consent
- (iv) a list of the names and addresses of perk persons to be served with a copy of this notice
- (v) a copy of the receipt showing electronic payment of the filing fee.

The appeal seeks some relatively minor amendments to consent conditions. The appellant considers that these matters are well capable of being resolved by discussions between the parties and if not, by Court assisted mediation.

Yours faithfully  
**LAWSON ROBINSON LIMITED**

**Matthew Lawson**  
Director

Email [mlawson@lawsonrobinson.co.nz](mailto:mlawson@lawsonrobinson.co.nz)  
Direct dial 06 833 5020



IN THE ENVIRONMENT COURT  
AT WELLINGTON

I MUA I TE KOOTI TAIAO O AOTEAROA

ENV-2020-WLG

UNDER THE RESOURCE MANAGEMENT ACT 1991  
IN THE MATTER of AN APPEAL PURSUANT TO SECTION 120 OF THE  
RESOURCE MANAGEMENT ACT 1991  
AND  
IN THE MATTER of AN APPLICATION FOR RESOURCE CONSENT  
APPLICATION FOR RESOURCE CONSENT BY TE MATA  
MUSHROOMS LTD  
BETWEEN CDL LAND NEW ZEALAND LIMITED  
Appellant  
AND HAWKE'S BAY REGIONAL COUNCIL  
Respondent

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NOTICE OF APPEAL

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To           The Registrar  
              Environment Court  
              Wellington

1. CDL Land New Zealand Ltd (CDL) appeals a part of a decision on the following matter:  

A decision by Hawke's Bay Regional Council to grant consent to Te Mata Mushrooms Ltd for the operation a mushroom growing facility and associated activities and discharges.
2. CDL made a submission on that application.
3. CDL received notice of the decision on 19 December 2019.
4. The decision was made by Hawke's Bay Regional Council.
5. CDL has a right to appeal this decision under section [120](#) of the Resource Management Act 1991. The decision to which this appeal relates is not one of those activities excluded by section [120\(1A\)](#) or [\(1B\)](#) of that Act.
6. CDL is not a trade competitor for the purposes of section [308D](#) of the Resource Management Act 1991.
7. The part of the decision CDL is appealing is:  

The conditions of consent and in particular conditions 15, 26 and 36.
8. The land (or resource) affected is:  

The activities to which the consent(s) relate are in close proximity to the residential development at Arataki and Brookvale roads, Havelock North. The activities involve the management of discharges to air which in turn affects neighbouring land uses.
9. The reasons for the appeal are as follows:
  - (a) The conditions of consent lack certainty in respect of key aspects of the design and construction of the proposed facilities and upgrades and which designs were the subject of considerable expert evidence from submitters, the Hastings District Council and the Hawke's Bay Regional Council.

- (b) Throughout the Council hearing, expert witness caucusing occurred which stressed the need to ensure final design was capable of meeting the desired parameters set out in the conditions.
- (c) The certification process anticipated by condition 15 would benefit from all parties receiving the final design/plans for comment prior to certification.
- (d) That condition 26 requires a pressure drop of “less than 100mm water gauge”. The word “generally” should be inserted as the condition as it stands may not be capable of being complied with.

10. CDL seeks the following relief:

- (a) The amendment to condition 15 as follows:

15. The consent holder shall engage a suitably qualified professional with at least 10 years practical experience with mushroom farming operations/practices to design the air extraction, odour capture, and odour treatment systems required by this consent. The designer shall provide the following information (Design Plans) to the Council (Manager Compliance) for certification prior to commencing construction of the upgrade works required by condition 4:

...

- d) the certification process shall be as follows:
  - i. the consent holder shall provide at least 10 working days notice to the Council brackets manager compliance of their intention to submit design plans for certification stop
  - ii. the Council (Manager Compliance) shall certify the design plans within 10 working days unless, acting reasonably, the Council (Manager Compliance) advises the consent holder in writing within the 10 working days of having been supplied with the design plans that the Council (Manager Compliance) acting in a technical certification capacity and on the basis of expert technical advice, refuses to certify that the design plans meet the requirements of condition 15 a – c and outlines in writing the reason(s) why certification has been withheld. The council

would be advised by an air quality expert, and other experts *with at least 10 years practical experience with mushroom farming operations/practices* as required, and the costs of the certification process and expert advice will be borne by the consent holder

...

- (b) The insertion of a new clause or amendment to condition 15 as follows:

Copies of the plans and designs, as required in Condition 15, including any that are re-submitted shall be provided to the submitters to the application for this consent within 24 hours of final submission to the Council.

- (c) The insertion of an amendment to condition 26(d) as follows

d) Pressure drop ~~of~~ generally less than 100 mm water gauge;

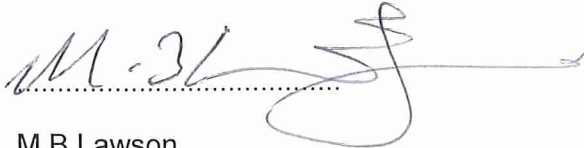
- (d) The insertion of an amendment to condition 36 by inserting 36(d) and changing 36(d) to 36(e) as follows

36. Within **three months** of commencement of this consent, the consent holder shall install and then operate and maintain a meteorological monitoring station to measure wind speed (m/s), wind direction (degrees true) and air temperature (dry bulb and wet bulb) at 10 metres above ground level at the site as follows:

- a) The monitor shall be in a location that minimises the potential for obstacles to affect the accuracy of the readings and in a location that will provide data that is representative of the wind patterns of the site.
- b) Wind speed resolution of measurement shall be not more than 0.1 metres per second and wind speed accuracy of measurement shall be at least within +/- 0.2 metres per second.
- c) Wind speed and direction shall be continuously recorded with an averaging time for each parameter of one minute.
- d) Wind speed and direction sensors shall have a start and stall speed of no more than 0.5 metres per second.
- e) Data shall be recorded continuously using an electronic data logging system, retained for the duration of this consent and provided to Council upon request.



11. I attach the following documents\* to this notice:
- (a) a copy of the CDL submission:
  - (b) a copy of the relevant decision (*or* part of the decision):
  - (c) a list of names and addresses of persons to be served with a copy of this notice.



M B Lawson

Solicitor for the Appellant.

Date 31 January 2020

Address for service of appellant: 73 Raffles Street, Napier  
Telephone: 06 833 5012  
email: mlawson@lawsonrobinson.co.nz  
Contact person: Matthew Lawson

**Advice to recipients of copy of notice**

*How to become party to proceedings*

You may be a party to the appeal if,—

- (a) within 15 working days after the period for lodging a notice of appeal ends, you 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
- (b) within 20 working days after the period for lodging a notice of appeal ends, you 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 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 requirements (see form [38](#)).

The copy of this notice served on you does not attach a copy of the relevant application (*or* submission) and (*or or*) the relevant decision (*or* part of the decision). 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.