

**BEFORE THE INDEPENDENT HEARING PANEL
APPOINTED BY HAWKE'S BAY REGIONAL COUNCIL**

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the hearing of submissions on Proposed Plan Change
9 (PPC9) – Tūtaekurī, Ahuriri, Ngaruroro and Karamū
Catchments (TANK)

**LEGAL SUBMISSIONS OF COUNSEL
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Introduction

1. These legal submissions are made on behalf of Limestone Properties Limited (**Limestone**).
2. As explained in Limestone's submission, the company is the owner of a property at 2596 SH50. In March 2017 Limestone was granted a subdivision consent by the Hastings District Council for 35 residential farm park sites (ranging in area from 0.2750ha to 0.3874ha) with a balance lot of 130.2 ha.
3. Potable water for each farm lot will be obtained from individual roof rainwater collection tanks. However, reticulated irrigation water from existing bore 4909 will be used for the lawns and gardens of each residential farm lot. Existing consent WP030582T'a provides for 35 L/s at a maximum volume of 19,404 m³ in any 7-day period and it is intended to be used for the lawns and gardens of each residential farm lot, once it is renewed.
4. Limestone is concerned about potential adverse effects of PC9 on the viability of its residential farm park development site and its intended future use of bore 4909.
5. Limestone supported some TANK provisions and opposed others.

Provisions Supported

6. For the provisions that Limestone supported the Hearing Report recommended no material changes to:
 - (a) Objective 14(a)
 - (b) Policy 43(a)
 - (c) Policy 47(d)
 - (d) Rule TANK 9 condition (d)(i)
 - (e) Schedule 32 Ngaruroro groundwater
 - (f) Schedule 33 Ngaruroro groundwater
7. Limestone supports those recommendations.
8. For other provisions that Limestone supported the Hearing Report and/or Addendum Report recommended changes to the following provisions:
 - (a) Objective 16(a) and (b)

- (b) Policy 37(a)
 - (c) Policy 43(c) and (d)
 - (d) Policy 46(b)
 - (e) Policy 47(a)(ii)
 - (f) Policy 49(g)
9. Limestone supports the officer's recommendations to change those provisions.
10. Limestone also supported Policy 43(b). The Hearing Report recommended amending it by including the words "for consumptive uses at time of low flow". The Panel may wish to query the necessity for that amendment because the Ngaruroro River is already subject to a minimum flow regime requiring the restriction of abstractions at times of low flow.

Provisions Opposed

11. Limestone Properties opposed a number of provisions.

Objective TANK 11(g)

12. Limestone asked that Objective 11(g) be amended to provide for rural residential activities that were equally reliant on a reliable source of water. The Hearing Report did not recommend that change, but Limestone would accept that on the understanding that the reference in Objective 11(f) to "people and communities" domestic needs includes rural residential activities of the sort outlined in paragraph 3 above.

Objective TANK 17(a)

13. Limestone asked for a change to Objective 17(a) but it no longer seeks that change because other provisions (e.g. Objective 14 (b)) provide for non-Maori economic well-being.

Policy TANK 36(g)

14. Limestone sought a change to Policy 36(g) to refer to reducing existing levels of water use to actual and reasonable water needs. The Hearing Report rejected that, but Limestone's concerns can be met by the Panel adopting the recommended change to Policy 37(d)(ii) which indicates replacement consents will be allocated water based on 'Actual and Reasonable Use' which is defined in the Glossary. That could be made clearer if 37(d)(ii) said:

- (ii) allocate groundwater on the basis of ~~apply~~ an assessment
...

Policy TANK 37(d)(ii) and Policy TANK 48(e)

15. Limestone was concerned that Policy 37(d)(ii) did not provide for the situation where an existing water take was sought to be renewed with no increase in the rate of or volume of take, but where the intended use differed from that undertaken in the ten years prior to 2017.
16. For Policy 48(e) Limestone thought it was inappropriate to prioritise the end use of existing water takes to irrigation, particularly where an intended different end use related to human health and welfare or peoples domestic needs and there were no additional adverse effects on the water source.
17. I discussed POL TANK 37(d)(ii) above.
18. The Hearing Report recommended a new Policy 48(c)(ii) in response to Limestone’s submission (point 3.19). The company supports that recommendation on the understanding that the phrase “the efficient delivery of water supplies” includes the needs of rural residential communities such as were outlined in paragraph 3 above.
19. Consequently, for the avoidance of doubt Limestone asks that Policy 48(c)(ii) is further amended as follows:
- (ii) The efficient delivery of water supplies, including to rural residential properties, and to meet the communities’ human health needs for water supply, including ...

Policy TANK 39, Policy TANK 45(d) and Rule TANK 9(f).

20. Limestone sought changes to these provisions to align them with what it understood was Council’s approach to stream depleting takes in the Tukituki catchment. The Hearing Report has recommended a whole new Policy 39.
21. Limestone supports the new Policy 39 as it now says that HBRC will investigate options (including funding) for stream flow enhancement in consultation with stakeholders (including presumably Limestone) and look to implement the preferred options within 10 years. The company considers that to be appropriate as it and other consent holders will more than likely be the ones who will have to pay for the implementation of those options one way or another.

Actual and Reasonable use

22. Some of Limestone's submission points referred to actual and reasonable use. Limestone supports the Addendum Report's recommendation to revert back to the "maximum annual amount" in clause (b) of the definition of 'Actual and Reasonable' because simple statistics suggest the average will be less than the maximum amount and also less than amounts between the average and the maximum. So, in all likelihood users would not have had enough water for their needs up to half of the time.
23. It is unclear if clause (b) is intended to apply to irrigation, because of the specific reference to irrigation in clause (c). If clause (b) is intended to apply to irrigation takes (as is suggested by the words in brackets at the end of the clause) then it would be helpful to explicitly state that. For example, clause (b) could be amended to commence as follows:

For irrigation takes and non-irrigation takes the maximum annual amount as measured ...

Concluding comments

24. I am happy to answer questions.
25. Gavin Yortt, a Limestone Director, has not prepared written evidence but is available to answer any questions from the Panel about Limestone's farm park subdivision.

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