

s274 Notices – Environmental Defence Society Inc.

Plan Change 9: TANK

Appellant No.	Appellant Name
192	Federated Farmers of New Zealand
195	Hawke's Bay Winegrowers Association Inc, Gimblett Gravels Winegrowers Association Incorporated, Villa Maria Estate Limited, Pernod Ricard Winemakers New Zealand Limited (The Winegrowers);
196	Royal Forest and Bird Protection Society of New Zealand
200	Horticulture New Zealand
204	Heinz Wattie's Limited
206	Ngāti Kahungunu Iwi Incorporated

**BEFORE THE ENVIRONMENT COURT
WELLINGTON REGISTRY**

ENV-2022-

**I MUA I TE KOOTI TAIAO O AOTEAROA
WHANGANUI-A-TARA**

IN THE MATTER

of the Resource Management Act 1991 (Act)

AND

an appeal under clause 14 of the First Schedule
of the Act

BETWEEN

**FEDERATED FARMERS OF NEW
ZEALAND INC**

Appellant

AND

HAWKES BAY REGIONAL COUNCIL

Respondent

**NOTICE OF ENVIRONMENTAL DEFENCE SOCIETY INCORPORATED'S
WISH TO BECOME A PARTY TO PROCEEDINGS PURSUANT TO SECTION
274 RESOURCE MANAGEMENT ACT 1991**

Environmental Defence Society Inc
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Counsel: Madeleine Wright
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TO: The Registrar
Environment Court
WELLINGTON

1. The Environmental Defence Society Incorporated (**EDS**) wishes to be party to the appeal by Federated Farmers of New Zealand Inc (**Appellant**) on the Hawkes Bay Regional Council's (**Respondent**) decisions on Plan Change 9 (**PC9**) to the Regional Resource Management Plan (**Plan**). PC9 relates to four rivers and their catchments in the Hawkes Bay region: Tūtaekuri, Ahuriri, Ngaruroro and Karamū (**TANK catchments**).
2. EDS made a submission on PC9 in respect of matters broadly raised by the appeal. In particular on the need to:
 - a. simplify the structure and reduce the complexity of PC9.
 - b. give effect to the National Policy Statement for Freshwater Management 2020 (**NPSFM 2020**).
 - c. identify all waterbodies within the TANK catchments within a freshwater management unit (**FMU**).
 - d. identify freshwater values for all FMUs.
 - e. avoid or reduce over-allocation/over-abstraction, and avoiding 'locking in' the status quo in over-allocated/over-abstracted catchments.
 - f. ensure flows and levels are specified for all relevant waterbodies and that they are at a level that aligns with achieving freshwater values.
 - g. include provisions (in particular objectives) relating to Te Mana o Te Wai, wetlands, and significant values of outstanding water bodies.
 - h. prevent transfer of water permits to over-allocated/over-abstracted waterbodies/catchments.
3. EDS has an interest in the proceeding that is greater than that of the public generally.
4. EDS is a not-for-profit national environmental advocacy group. It was established in 1971 with the objective of bringing together the disciplines of law, science, and planning to advocate for better environmental outcomes in resource management

matters. It has been active in assessing the effectiveness of the Act and statutory planning documents created under it in addressing key environmental issues, including in relation to freshwater.

5. EDS is not a trade competitor for the purposes of s 308D of the Act.
6. EDS agrees to participate in mediation or other alternative dispute resolution.

Interest

7. EDS is interested in and opposes the Appellant's appeal in relation to the matters at para 8 below, with the exception of the matter raised in para 8c. It is interested in and supports the Appellant's appeal in relation to the matter at para 8c, in so far as the relief sought is shown to be consistent with the hierarchy of obligations in Te Mana o te Wai and ensuring the life-supporting capacity of freshwater and freshwater ecosystems.

Reasons

8. The appeal seeks amendments across PC9 relating to:
 - a. use of production land.
 - b. water takes and limits.
 - c. climate change.
 - d. source protection zones.
 - e. registered drinking water supplies.
 - f. wetlands.
 - g. riparian margins.
 - h. farm plans.
 - i. municipal and industrial water takes.
 - j. stormwater.
 - k. water quality.
 - l. vegetation clearance.
9. EDS opposes the relief sought relating to all matters in para 8 above except for that in para 8c because:

- a. the changes sought to PC9 relating to use of production land reduce regulation of productive land uses with corresponding increase in risk of detrimental effects on freshwater and freshwater ecosystem health.
- b. the changes sought to PC9 relating to water takes and limits simultaneously seek to decrease restrictions on take/abstraction and increase certainty over grant of consent and consent duration, including in already over-allocation/over-abstracted catchments. This unjustifiably compromises local authority oversight of freshwater use and increases the risk of 'locking in' poor practice and over-allocation/over-abstraction.
- c. the changes sought to PC9 relating to source protection zones and registered drinking water supplies reduce the extent and nature of controls applying to activities within those zones. This increases the risk of adverse effects on drinking water and the wider environment. It is important that a cautious approach is taken to controlling activities that can impact drinking water sources.
- d. wetlands are some of Aotearoa New Zealand's most threatened ecosystems. For that reason, to the extent the appeal seeks to reduce controls on activities potentially affecting wetlands it is opposed. EDS agrees in principle that PC9 should be amended to align with the NPSFM 2020 where it fails to do so.
- e. the changes sought seek to 'water down' local authority support for initiatives providing for maintenance, protection, and improvement of riparian margins. The relevant provisions are already broadly framed, providing for a spectrum of ways in which they will be achieved. There is no need to add further caveats or exceptions as sought by the Appellant. Doing so risks rendering the provisions completely ineffective.
- f. the changes sought relating to farm plans seek to reduce the situations where a farm plan is required. This is opposed. It is important that farm plans (and regulation of farming activities in a broader sense) are used in all catchments, not just in those areas where the freshwater environment is already compromised. Failure to do so results in inadequate oversight of activities with the potential for resultant over-allocation and/or degradation of freshwater.

- g. the changes sought to the stormwater policy framework seek to reduce its scope so it no longer captures all stormwater sources. This risks taking an unduly narrow perspective of sources of stormwater and potential contaminants. All sources need to be within the decision-making framework to ensure integrated management and properly manage potential effects.
 - h. to the extent the changes sought to water quality objectives result in an increase in allowable effects, or an increased level of contaminant, they are opposed. PC9 should be focused on achieving environmental objectives consistent with ensuring the life-supporting capacity of freshwater is achieved and then maintained.
 - i. the changes to the vegetation provisions seek to increase the number and nature of activities that are able to be undertaken within 5m-15m setbacks from a waterbody. This is of concern to EDS given the sensitivity and ecological importance of riparian areas. Excessive riparian vegetation clearance risks extensive loss of important habitat and simultaneous increase in contaminants entering water bodies through erosion and runoff.
10. EDS supports the relief sought in relation to the matter at para 8c, subject to the caveat in para 7 above because:
- a. improving resilience to climate change is a critical part of future resource management. It is however important that the methods adopted to do this do not have perverse outcomes and compromise environmental limits.

Dated: 11 November 2022

Signed for and on behalf of the **Environmental Defence Society Inc** by Shay Schlaepfer, Chief Operations Officer



ADDRESS FOR SERVICE

Environmental Defence Society Inc:
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ENV-2022-

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WHANGANUI-A-TARA**

IN THE MATTER

of the Resource Management Act 1991 (Act)

AND

an appeal under clause 14 of the First Schedule
of the Act

BETWEEN

**HAWKE'S BAY WINEGROWERS
ASSOCIATION INCORPORATED;
GIMBLETT GRAVELS
WINEGROWERS ASSOCIATION
INCORPORATED; VILLA MARIA
ESTATE LIMITED; PERNOD
RICARD WINEMAKERS NEW
ZEALAND LIMITED**

Appellants

AND

HAWKES BAY REGIONAL COUNCIL

Respondent

**NOTICE OF ENVIRONMENTAL DEFENCE SOCIETY INCORPORATED'S
WISH TO BECOME A PARTY TO PROCEEDINGS PURSUANT TO SECTION
274 RESOURCE MANAGEMENT ACT 1991**

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TO: The Registrar
Environment Court
WELLINGTON

1. The Environmental Defence Society Incorporated (**EDS**) wishes to be party to the appeal by Hawke's Bay Winegrowers Association Incorporated; Gimblett Gravels Winegrowers Association Incorporated; Villa Maria Estate Limited; Pernod Ricard Winemakers New Zealand Limited (**Appellants**) on the Hawkes Bay Regional Council's (**Respondent**) decisions on Plan Change 9 (**PC9**) to the Regional Resource Management Plan (**Plan**). PC9 relates to four rivers and their catchments in the Hawkes Bay region: Tūtaekuri, Ahuriri, Ngaruroro and Karamū (**TANK catchments**).
2. EDS made a submission on PC9 in respect of matters raised in the appeal. In particular on the need to:
 - a. simplify the structure of the PC9 and reduce complexity.
 - b. give effect to the National Policy Statement for Freshwater Management 2020 (**NPSFM 2020**).
 - c. identify all waterbodies within the TANK catchments within a freshwater management unit (**FMU**).
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 - e. avoid or reduce over-allocation/over-abstraction, and avoiding 'locking in' the status quo in over-allocated/over-abstracted catchments.
 - f. ensure flows and levels are specified for all relevant waterbodies and that they are at a level that aligns with achieving freshwater values.
 - g. include provisions (in particular objectives) relating to Te Mana o Te Wai, wetlands, and significant values of outstanding water bodies.
 - h. prevent transfer of water permits to over-allocated/over-abstracted waterbodies/catchments.
3. EDS has an interest in the proceeding that is greater than that of the public generally.

4. EDS is a not-for-profit national environmental advocacy group. It was established in 1971 with the objective of bringing together the disciplines of law, science, and planning to advocate for better environmental outcomes in resource management matters. It has been active in assessing the effectiveness of the Act and statutory planning documents created under it in addressing key environmental issues, including in relation to freshwater.
5. EDS is not a trade competitor for the purposes of s 308D of the Act.
6. EDS agrees to participate in mediation or other alternative dispute resolution.

Interest

7. EDS is interested in and conditionally opposes the appeal in its entirety.

Reasons

8. The Appellants appeal provisions concerning water quantity management, in particular the water allocation provision framework for the Heretaunga Plains Aquifer. The Appellants are focused on providing not only for the maintenance of existing viticulture activities but for expansion and for new viticulture.
9. EDS is concerned that the relief sought will provide for viticulture in inappropriate situations and/or locations. It acknowledges the contribution of the viticulture industry to the region, but this does not justify it being provided for in a way that risks adverse effects on freshwater and freshwater ecosystems. EDS is concerned to see that any amendments to PC9 ensure this is avoided.
10. EDS is also concerned to see that PC9 does not set up a framework that 'locks in' existing use and users. It is concerned that the relief sought will result in this outcome. There needs to be flexibility in PC9's provisions to reduce takes in order to address environmental issues, and to ultimately create headroom for new uses where this is possible.

Dated: 11 November 2022

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IN THE MATTER

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BETWEEN

**THE ROYAL FOREST & BIRD
PROTECTION SOCIETY OF NEW
ZEALAND INC**

Appellant

AND

HAWKES BAY REGIONAL COUNCIL

Respondent

**NOTICE OF ENVIRONMENTAL DEFENCE SOCIETY INCORPORATED'S
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TO: The Registrar
Environment Court
WELLINGTON

1. The Environmental Defence Society Incorporated (**EDS**) wishes to be party to the appeal by the Royal Forest & Bird Protection Society of New Zealand Inc (**Appellant**) on the Hawkes Bay Regional Council's (**Respondent**) decisions on Plan Change 9 (**PC9**) to the Regional Resource Management Plan (**Plan**). PC9 relates to four rivers and their catchments in the Hawkes Bay region: Tūtaekuri, Ahuriri, Ngaruroro and Karamū (**TANK catchments**).
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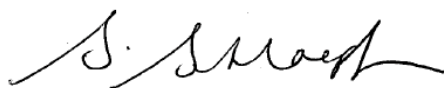
Reasons

8. The appeal seeks amendments across PC9 to:
 - a. give effect to the NPSFM 2020.
 - b. give effect to the New Zealand Coastal Policy Statement 2010.
 - c. ensure consistency with Part 2 of the Act.
 - d. meet the mandatory statutory obligations placed on the Respondent by s 30 of the Act.
 - e. ensure PC9 represents sound resource management practice.
9. EDS considers that the relief sought by the Appellant is necessary to achieve those outcomes, and to ensure that freshwater management in the TANK catchments:
 - a. prioritises first the health and mauri of freshwater bodies and ecosystems.
 - b. does not exacerbate over-allocation of freshwater takes/abstraction through 'locking-in' existing allocation, and instead reduces and removes, or avoids, over-allocation/over-abstraction.
 - c. protects the values of all natural inland wetlands.
 - d. is underpinned by limits on contaminants set at the level required to provide for ecosystem health, and that activities are regulated to ensure those limits are met.

- e. requires resource consent for activities impacting on water quality (in particular farming) to ensure the Respondent retains the oversight necessary to ensure limits/targets, and the requirements of the NPSFM2020 are met.
- f. requires resource consent for water take/abstraction to ensure that instream flows remain at a level that ensures the health of the waterbody.
- g. prohibits take/abstraction over and above the overarching limits set in PC9.
- h. more stringently controls activities in water bodies to ensure freshwater health is protected, including in some instances by prohibiting some activities.
- i. is underpinned by a complete suite of freshwater quality and quantity limits/targets and flows, and that those are set at a level which protects the health of the freshwater body.
- j. adopts interim targets that fit with the life-expectancy of PC9 to ensure progress towards meeting overarching limits/targets can be measured.

Dated: 11 November 2022

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BETWEEN

HORTICULTURE NEW ZEALAND

Appellant

AND

HAWKES BAY REGIONAL COUNCIL

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TO: The Registrar
Environment Court
WELLINGTON

1. The Environmental Defence Society Incorporated (**EDS**) wishes to be party to the appeal by Horticulture New Zealand (**Appellant**) on the Hawkes Bay Regional Council's (**Respondent**) decisions on Plan Change 9 (**PC9**) to the Regional Resource Management Plan (**Plan**). PC9 relates to four rivers and their catchments in the Hawkes Bay region: Tūtaekuri, Ahuriri, Ngaruroro and Karamū (**TANK catchments**).
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3. EDS has an interest in the proceeding that is greater than that of the public generally.
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matters. It has been active in assessing the effectiveness of the Act and statutory planning documents created under it in addressing key environmental issues, including in relation to freshwater.

5. EDS is not a trade competitor for the purposes of s 308D of the Act.
6. EDS agrees to participate in mediation or other alternative dispute resolution.

Interest

7. EDS is interested in and conditionally opposes the appeal in its entirety.

Reasons

8. The Appellant appeals aspects of PC9 relating to source protection zones, the proposed land use change framework, provisions for rootstock survival water, the policy and rule governing new takes, and provisions related to stream flow maintenance and habitat enhancement schemes.
9. Some of the change sought seek to remove ambiguity. Others seek to increase access to water for horticulture purposes.
10. EDS is concerned to see that that PC9 (and the Plan overall) is drafted in a clear, consistent, and straightforward manner. It directly raised the need for this, and the failure to achieve it, in its submission. It is important that changes for clarity and consistency are undertaken with an eye across PC9 (and the Plan) as a whole to prevent unintended consequences and adverse effects on freshwater ecosystems.
11. EDS appreciates the importance of protecting existing crops. However, it is imperative that any increased access to water for horticulture purposes is not provided for at the expense of the health of freshwater ecosystems. EDS is concerned that the relief sought by the Appellant is inconsistent with this bottom line.

Dated: 11 November 2022

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HEINZ WATTIES LTD

Appellant

AND

HAWKES BAY REGIONAL COUNCIL

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TO: The Registrar
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1. The Environmental Defence Society Incorporated (**EDS**) wishes to be party to the appeal by Heinz Watties Ltd (**Appellant**) on the Hawkes Bay Regional Council's (**Respondent**) decisions on Plan Change 9 (**PC9**) to the Regional Resource Management Plan (**Plan**). PC9 relates to four rivers and their catchments in the Hawkes Bay region: Tūtaekuri, Ahuriri, Ngaruroro and Karamū (**TANK catchments**).
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5. EDS is not a trade competitor for the purposes of s 308D of the Act.
6. EDS agrees to participate in mediation or other alternative dispute resolution.

Interest

7. EDS is interested in and conditionally opposes the appeal in its entirety.

Reasons

8. The Appellant appeals Policy TANK 34(d) and the provisions relating to water storage, use, and reticulation.
9. EDS is concerned that the changes sought to Policy TANK 34(d) significantly down-grade the actual and reasonable use test and create a framework that will 'lock in' existing use and existing users. The Act does not set up a system which guarantees that existing water permits will be regranted. It is not appropriate to draft plan provisions based on an expectation a new consent(s) will be granted.
10. EDS is concerned to see that any changes to the provisions to provide for release of stored water are drafted in a way that prioritises first the health of freshwater bodies and ecosystems, consistent with Te Mana o te Wai.

Dated: 11 November 2022

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NGĀTI KAHUNGUNU IWI INC

Appellant

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TO: The Registrar
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WELLINGTON

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Interest

7. EDS is interested in and supports the Appellant's appeal in its entirety.

Reasons

Duty to give effect to the National Policy Statement for Freshwater Management 2022

8. The appeal says decisions on PC9 were wrong in law in finding, in summary, that PC9 did not need, and indeed could not, give "full" effect to the NPSFM 2020.
9. EDS agrees. PC9 presents a reasonable and appropriate opportunity to implement the NPSFM 2020 in the TANK catchments. FMUs should have been identified and where a water body or aquifer is over-allocated/over-abstracted PC9 must reduce this over-allocation/over-abstraction. For water bodies or aquifers that are not over-allocated/over-abstracted, allocation/abstraction must be managed to avoid this.
10. Failure to implement the NPSFM 2020 and provide for these (and other) matters is contrary to the mandatory duty in s 67(3)(a) of the Act and is inconsistent with sustainable management as defined in Part 2 RMA.

Tikanga and cultural practices

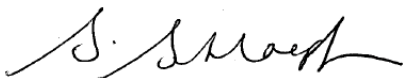
11. The Appellant opposes the approach to tikanga and cultural practices in PC9 and, at a high level, the failure to provide for the active protection of the Appellant's freshwater ancestors through the management approach underpinning PC9.
12. EDS considers the changes sought by the Appellant on that basis are needed for PC9 to implement Te Mana o Te Wai and the statutory obligation that PC9's provisions put the health of the waterbodies and aquifers in the TANK catchments as PC9's first priority.

Drafting and environmental issues

13. The appeal identifies several failings of PC9 in relation to its structure and drafting, its identification of FMUs and freshwater values, and its approach to managing freshwater quality and quantity. EDS agrees with the failings identified by the Appellant, in summary the failure to:
- a. structure PC9 to reduce length and complexity and reflect the hierarchy of objectives enshrined in Te Mana o te Wai.
 - b. properly and consistently identify FMUs, and freshwater values of each FMU.
 - c. properly address freshwater allocation, and the related reliance on narrow and outdated allocation methods ('first in first served' and 'grandparenting').
 - d. adopt a precautionary approach to determining the limit applying to the Heretaunga Aquifer, and the related adoption of an arbitrary and excessive 90million cubic metre limit.
 - e. include provisions focused on managing effects on coastal marine and estuarine receiving environments.
 - f. regulate nutrient and sediment discharges, in particular from primary production and urban development, and related unlawful reliance on permitted activity rules to manage these activities.
14. Because of failing to address these matters EDS considers that PC9 does not safeguard the life-supporting capacity of the TANK catchment's waterbodies and aquifers, does not give effect to the NPSFM 2020 or the New Zealand Coastal Policy Statement 2010, does not achieve integrated management of natural and physical resources (as between land and freshwater, and freshwater and the coast), and does not meet the requirements of ss 69 and 70 of the Act. EDS considers the relief sought by the Appellant is needed to remedy this.

Dated: 11 November 2022

Signed for and on behalf of the **Environmental Defence Society Inc** by Shay Schlaepfer,
Chief Operations Officer



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