

**BEFORE THE ENVIRONMENT COURT
AUCKLAND REGISTRY**

ENV-2022-XXXX

**I TE KŌTI TAIAO O AOTEAROA
TĀMAKI MAKAURAU ROHE**

IN THE MATTER of the Resource management Act 1991 (the Act)

AND

IN THE MATTER of an appeal under clause 14 of Schedule 1 of the Act against the decision of the Hawkes Bay Regional Council on Proposed Plan Change 9 to the Hawkes Bay Regional Resource Management Plan

BETWEEN **WAIRUA DAIRIES LIMITED**

Appellant

AND **HAWKES BAY REGIONAL COUNCIL**

Respondent

**NOTICE OF APPEAL
26 October 2022**

SOLICITOR ACTING:

Andrew Harris/Stanley Roper

GIFFORD DEVINE

206 Queen Street East

PO Box 148

HASTINGS 4156

COUNSEL INSTRUCTED:

**Marianne
Mackintosh**

BARRISTER

Marianne Mackintosh

marianne@mmackintosh.co.nz

P: +21 332 572

PO Box 6

Raglan 3265

To: The Registrar
Environment Court
AUCKLAND

WAIRUA DAIRIES LIMITED (“WDL”) appeals against the decision of the Hawkes Bay Regional Council (“Council”) on Proposed Plan Change 9 to the Hawkes Bay Regional Resource Management Plan (“PC9” – also known as the “TANK” plan change).

Submission

1. WDL Made a submission on PC9 in 2020
2. WDL is not a trade competitor for the purposes of section 308D of the Act.
3. WDL received notice of the decision on or about 10 September 2022.
4. The decision was made by an Independent Hearing Panel appointed by the Council.

Decision by Council

5. WDL is generally supportive of the Decision. However, it is concerned with the Decision in relation to the following matters:
 - a. Policy TANK 40 allocation and use of water (Schedule 43 in notified version)
 - b. Policy TANK 44 (Schedule 47 in notified version)
 - c. Policy TANK 50 (Schedule 52 in notified version)
 - d. Chapter 6.10.1 Rules regarding the use of production land (including Schedule 28 Land use change (Schedule 29 in notified version)

General reasons for WDL Appeal

6. WDL supports changes to farming practices which will lead to improvements in water quality. However, the parts of the Decision referred to in paragraph 5 above do not appropriately address or consider

the matters raised in WDL's submission which primarily relate to the practical implementation of the provisions of PC9. Further amendments are sought which achieve the objectives of PC9 and the purpose of the Act.

REASONS FOR APPEAL AND RELIEF SOUGHT

Policy TANK 40 (decisions version): allocation and use of water (Notified version POL 40)

7. Policy TANK 40 has been extensively amended and references Schedule 30 allocation limits (alongside other policies). While WDL supports the simplification of the drafting of the Policy, WDL is concerned that the addition of Zone 1 to the "Ngaruroro River (surface and Zone 1 Groundwater)" prior to notification of PC9 has not been adequately factored into the analysis for determining the appropriate allocation limits in Schedule 30.
8. As it stands, the proposed limits will place unreasonable limitations on existing irrigators and their business viability, as well as the viability of downstream infrastructure in future dry years. It is not clear to WDL whether the economic analysis of the impacts of the proposed limits considered the addition of Zone 1.

Relief sought:

9. Amend (increase) the limits applying to "Ngaruroro River (surface and Zone 1 Groundwater)" to ensure existing river take irrigators are not unreasonably limited in their ability to access water to maintain the viability of both businesses and downstream infrastructure (during dry years).

Policy TANK 44 (Previously TANK 47)

10. The decision does not adequately consider the practical application of irrigation water on farm. The proposed wording relating to irrigation

efficiency in is an appropriate addition to the policy and should be added following clause (c).

Relief sought:

11. Amend Policy TANK 44 to add clause as follows (amendment shown in underlined text):

c) allocating water for irrigation on the basis of an 80% application efficiency, and 95% reliability of supply

ca) allocating water for irrigation on the basis that 80% of applied water is retained within the root zone, after an irrigation event and/or for the irrigation season.

Policy TANK 50 (Previously TANK Policy 52)

12. The amendments to Policy 50 inappropriately restrict the matters which will be considered at the time of consent renewal to programmed or staged development which is expressly referred to by the existing water take consent or other resource consent. Provided an applicant can demonstrate a programmed or staged development in the future which relies on the existing volume of take, the policy should apply.

Relief sought

13. Amend Policy TANK 50 as follows (amendments shown in underlined text):

b) for applications in respect of existing consents due for expiry or when reviewing consents, to:

i. allocate water according to Actual and Reasonable use demonstrated actual and reasonable need (except as provided for by POLs TANK Policy 50 48 and 49) and take into account any water use required as part of a programmed or staged development whether or not it is specified within the existing water permit or associated resource consent, if:

1. the consent holder can demonstrate that existing investment is dependent on water use over and above Actual and Reasonable use

2. the specified activity or development has not lapsed during the resource consent duration where that is relevant

3. the activity or development is integral to the on-going operation of the activity or development for which the permit was issued

4. where applicable, water demand is calculated for rootstock only where there is evidence of a contract for the supply of that rootstock existing as at 2 May 2020

Chapter 6.10.1 Rules regarding the use of production land: TANK 4 & 5 (Previously TANK 5 & 6)

14. These rules are linked to Schedule 28 and the relief sought in relation to Rules 5 acknowledges the changes to the notified version of PC9 in the Decisions version, and the amendments to the proposed Rules 4 and 5.

15. WDL's concern is that large land holdings, where 10ha is a very small portion of the overall productive area, will be subject to a consenting process which is disproportionate to the risk the proposed land use change presents. Accordingly, WDL seeks relief in relation to the notification provision in Rule 5 to simplify the process.

Relief sought

16. Amend the notification rule in Rule 5 as follows:

If water quality limits and targets in Schedule 26 are being met in the catchment consent applications in that catchment will be considered without public notification and without the need to obtain written approval of affected persons; OR

If the area of land subject to change represents 10% of the total enterprise or farm area; or up to 50ha of an enterprise or farm area which exceeds 200ha (whichever is higher), consent applications in that catchment will be considered without public notification and without the need to obtain written approval of affected persons.

Schedule 28 Land use change (Schedule 29 in notified version of PC9)

17. For completeness, WDL supports the amendments to Schedule 28 to introduce a risk-based approach. No specific relief is sought on appeal.

Relief Sought

18. WDL respectfully requests that the provisions of PC 9 be amended as set out above or by words to like effect. The relief sought:
- a. promotes the sustainable management of resources;
 - b. is appropriate pursuant to section 32 of the Act; and
 - c. is consistent with Part 2 of the Act.
19. WDL further requests any other consequential amendments be made to the provisions of PC 9 or to any other provisions, to respond to the concerns set out in this notice of appeal.

Material attached to this notice of appeal

20. The following documents are attached to this notice:
- a. Copy of submission:
 - b. Copy of Decision appealed:
 - c. A list of names and addresses of persons to be served with a copy of this notice.

WAIRUA DAIRIES LIMITED, by its counsel Marianne Mackintosh:



M Mackintosh

DATE: 26 October 2022

Address for service:

Gifford Devine
Andrew Harris/Stanley Roper
206 Queen Street East
P.O. Box 148
HASTINGS 4156

Telephone: 06-8730420

Email: stanley@gifforddevine.co.nz

Copy to Counsel instructed:

M Mackintosh

marianne@mmackintosh.co.nz

TO: Registrar, Environment Court, Auckland

AND TO: Respondent

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 decision appealed. This document may be obtained via the Hawkes Bay Regional Council's website at: <https://www.hbrc.govt.nz/hawkes-bay/projects/the-tank-plan/tank-decision/> or on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

