

**IN THE ENVIRONMENT COURT
AUCKLAND REGISTRY**

ENV-2019-AKL-

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of appeals under Clause 14(1) of the First
Schedule of the Act in relation to the
Proposed Regional Plan for Northland

BETWEEN **Horticulture New Zealand**

Appellant

AND **NORTHLAND REGIONAL COUNCIL**

Respondent

**NOTICE OF APPEAL
ON PROPOSED PLAN REGIONAL PLAN FOR NORTHLAND**

To: The Registrar

Environment Court

Auckland

1. Horticulture New Zealand ("**HortNZ**") appeals part of the decisions of the Proposed Regional Plan for Northland.
2. HortNZ made a submission and further submissions on the Proposed Regional Plan for Northland.
3. HortNZ is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. HortNZ received notice of the decisions on 6 May 2019.
5. The decisions were made by the Northland Regional Council.
6. Decisions appealed against:
 1. C.6.5.1 Application of agrichemicals – permitted activity
 2. C.6.5.2 Application of agrichemicals into water – permitted activity
 3. Definition spray sensitive activity
 4. C.7.1.1 Outdoor burning outside the Whangarei Airshed
 5. C.7.1.2 Outdoor burning in the Whangarei Airshed
 6. Policy H.6.1 Minimum Flows for Rivers
 7. Policy H.6.3 Allocation limits for rivers
 8. Rule C.8.2.1 Land Preparation – permitted activity
 9. Definition Natural wetland
 10. Objective F.1.12 Air Quality
7. The reasons for the appeals and relief sought are detailed in the table below.
8. General relief sought:
 - (a) That consequential amendments be made as a result of the relief sought from the specific appeal points above.
9. The following documents are attached to this notice:
 - (a) a copy of HortNZ's submission
 - (b) a list of names and addresses of persons to be served with a copy of this notice

Michelle Sands

Manager, Natural Resources and Environment
Horticulture New Zealand

17 June 2019

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Decisions of Northland Regional Council on the Proposed Regional Plan for Northland which are appealed by HortNZ:

Appeal Point	Provision or Decision	Scope	Reason	Relief sought
1.	Rule C.6.5.1	HortNZ made submissions and further submissions on Rule C.6.5.1	HortNZ sought a number of changes to AQ R15 the rule for agrichemical use. The decisions make some change but HortNZ considers that these do not reflect best practice for agrichemical use and seek additional changes relating to signage, notification of spray plans and the thresholds for noxious or dangerous, offensive or objectionable. Condition 1 requires that the discharge does not result in any noxious, dangerous, offensive or objectionable odour, smoke, spray or dust or any noxious or dangerous levels of airborne contaminants. This condition is based on interpretation in H.7 of noxious, dangerous offensive or objectionable. This interpretation is not certain in that an assessment of the effects could not be undertaken till after the application. Agrichemical users need certainty that they can meet PA conditions. HortNZ seeks an amended wording that requires a user to take all reasonable steps to minimise the potential for noxious, dangerous, offensive or objectionable odour, smoke, spray or dust or any noxious or dangerous levels of airborne contaminants. Such an approach will provide the ability to assess the steps that were taken before the application to minimise such effects. The relevant policy framework in under D.3 Air while the rule is under Discharges to land and water. Notification: Clause c) requires notification 24 hours	Refer to strikethrough rule in Appendix 1 for changes sought to C.6.5.1

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			before an application. Such a provisions presents difficulties as multiple notifications may need to occur because of weather changes within the 24 hour timeframe. A time of 12 hours is adequate to provide for appropriate actions to be taken by those notified of an application. Signage: Clause d) provides for actions to be taken if spraying within 100m of a public amenity area which include signage. The clause states that a record of the notification undertaken must be kept and made available to the Council on request. As the clause requires signage the reference should be to signage, not notification. The notification requirements in Table 6 are 50m from a spray sensitive area and this distance should also apply to public amenity areas. Condition f) has been amended relating to spraying in public road corridors and rail corridors. It provides that the provision does not apply to backpack spraying of roadside boundary fence lines adjacent to private land. Farmers and growers may spray outside their property to control pests and plant growth. It is important that this is able to be done. However a limitation to backpack spraying will limit the extent to which such spraying will be undertaken, with a consequential reduction in public benefit. HortNZ seeks that the exclusion for backpack spraying is amended to 'ground based spraying' to ensure that these areas can be adequately managed.	

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			The decision adds new clauses under 2A c) requiring risk assessment where the activity is undertaken within 100m of a spray sensitive activity and includes specific management methods in c) ii) and iii) that must be used. HortNZ supports the risk management approach but does not support the inclusions of sub-clauses ii) and iii). It is important that the agrichemical user is able to use all the most appropriate methods for minimising potential for spray drift. Technology is always improving and limiting use to a specific range of nozzles does not provide for up to date technology to be used. In addition the notification distance is 50m and it is considered that the same distance should apply in 2A c). HortNZ sought the deletion of 'or equivalent' in provisions for training. The Environment Court has determined that 'or equivalent' is not certain for a permitted activity condition and should not be included in the rule.	
2	C.6.5.2 Application of agrichemicals into water	HortNZ made submissions and further submissions on	Changes are sought consistent with the changes to C.6.5.1 and are set out in Appendix 1 to this appeal.	Refer to strikethrough rule in Appendix 1 for changes sought to C.6.5.1
3	Definition spray sensitive	HortNZ made further submissions on	The definition of spray sensitive activity includes wetlands. Many references to wetlands throughout the plan have been amended to 'natural wetlands'	Amend the definition of spray sensitive activity by placing 'natural' before 'wetland' in point 8.

Appeal Point	Provision or Decision	Scope	Reason	Relief sought
	activity		consistent with a refining of the wetland framework. HortNZ seeks that it is clear the wetlands that are included as a spray sensitive area, and should exclude the exclusions in constructed wetlands.	
4	C.7.1.1 C.7.1.2	HortNZ made submissions and further submissions on Rule C.7.1.1	HortNZ is concerned about the C.7.1.1 Outdoor burning Condition 1 requires that the discharge does not result in any noxious, dangerous, offensive or objectionable odour, smoke, dust or any noxious or dangerous levels of airborne contaminants. Beyond the boundary of the subject property or in the coastal marine area. This condition is based on interpretation in H.7 of noxious, dangerous offensive or objectionable. This interpretation is not certain in that an assessment of the effects could not be undertaken till after the burning activity is undertaken. Users need certainty that they can meet PA conditions. HortNZ seeks an amended wording that requires a user to take all reasonable steps to minimise the potential for noxious, dangerous, offensive or objectionable odour, smoke, dust or any noxious or dangerous levels of airborne contaminants. Such an approach will provide the ability to assess the steps that were taken before the application to minimise such effects.	Amend C.7.1.1 1) 1) all reasonable steps are taken to minimise the potential for any noxious, dangerous, offensive or objectionable odour, smoke, spray or dust, or any noxious or dangerous levels of airborne contaminants beyond the boundary of the subject property or in the coastal marine area.
5	C.7.1.2	HortNZ made submissions and further	HortNZ is concerned about the C.7.1.2 Outdoor burning and the requirement of condition 1	Amend C.7.1.2 1) 1) all reasonable steps are taken to minimise

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		submissions on Rule C.7.1.2	Condition 1 requires that the discharge does not result in any noxious, dangerous, offensive or objectionable odour, smoke, dust or any noxious or dangerous levels of airborne contaminants. Beyond the boundary of the subject property or in the coastal marine area. This condition is based on interpretation in H.7 of noxious, dangerous offensive or objectionable. This interpretation is not certain in that an assessment of the effects could not be undertaken till after the burning activity is undertaken. Users need certainty that they can meet PA conditions. HortNZ seeks an amended wording that requires a user to take all reasonable steps to minimise the potential for noxious, dangerous, offensive or objectionable odour, smoke, dust or any noxious or dangerous levels of airborne contaminants. Such an approach will provide the ability to assess the steps that were taken before the application to minimise such effects.	the potential for any noxious, dangerous, offensive or objectionable odour, smoke, dust, or any noxious or dangerous levels of airborne contaminants beyond the boundary of the subject property or in the coastal marine area,
6.	Policy H.6.1 Minimum Flows for Rivers	HortNZ made submissions and further submissions on Policy H.6.1 (Previously D.4.14)	The minimum flows for rivers are set out in Policy H.6.1 Table 24 and apply to Northland's rivers (excluding ephemeral rivers or streams) unless a lower minimum flow is provided for under Policy D.4.19 Minimum flows and levels. Under the table there are a number of notes relating to applying the provisions. It is uncertain what status the notes have and HortNZ seeks that they are included in the policy rather than as notes so there status is certain. HortNZ considers that there needs to be greater	Amend the points in the note to part of the policy When considering a resource consent application the following will be considered: 1) The minimum flow will be applied based on the nearest downstream monitoring site 2) The seven –day mean annual low flow (MALF) at the relevant flow recorder sites will be determined

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			certainty as to how the methodology will be applied. For instance: Note 1: There could be numerous sites and it is uncertain if all or which would apply. Note 2: The calculation of seven –day mean annual flow - the number of years needs to be defined to avoid consequential interference by climate variation. Note 3: The MALF for other sites, for which no measured flow data exists, will be determined through gauging of river flows correlated with water level monitoring sites or flow recorded sites. The Regional Council will have discretion over the location and method for the gauging. This is a significant issue for consent applicants - there is likely to be a high level of bias in the monitoring data which is from 'spot' gauging to inform consent decisions. The outcome will be uncertainty for all parties. This is best resolved by requiring numerical flow modelling which can predict long term trends for river levels based on soils, climate and existing use. The provisions sought are to incorporate the concept in the notes into clauses in the policy.	using the lowest average river flow for any consecutive seven-day period for each year of record based on the minimum of ten years of measured or simulated flow data 3) If there is no minimum flow information available numerical modelling will be undertaken to determine long term trends for river levels from which MALF could be calculated
7.	Policy H.6.3 Allocation limits for rivers	HortNZ made submissions and further submissions on Policy H.6.3 (Previously D.4.16)	Policy H.6.3 sets allocation limits for rivers. Under the table there are a number of notes relating to applying the provisions. It is uncertain what status the notes have and HortNZ seeks that they are included in the policy rather than as notes so there status is certain.	Amend the points in the note to part of the Policy H.6.3: When considering a resource consent application the following will be considered: 1) The minimum flow will be applied based on the nearest downstream

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			HortNZ considers that there needs to be greater certainty as to how the methodology will be applied. For instance: Note 1: There could be numerous sites and it is uncertain if all or which would apply. Note 2: The calculation of seven –day mean annual flow - the number of years needs to be defined to avoid consequential interference by climate variation. Note 3: The MALF for other sites, for which no measured flow data exists, will be determined through gauging of river flows correlated with water level monitoring sites or flow recorded sites. The Regional Council will have discretion over the location and method for the gauging. This is a significant issue for consent applicants - there is likely to be a high level of bias in the monitoring data which is from 'spot' gauging to inform consent decisions. The outcome will be uncertainty for all parties. This is best resolved by requiring numerical flow modelling which can predict long term trends for river levels based on soils, climate and existing use. Policy H.6.3 1) b) ii) provides an amnesty condition which will mean most high use catchments will be over-allocated and have minimum flows below the Table 24 guidelines. There is no efficiency of use for minimum flow and allocation criteria. HortNZ seeks that consideration of efficiency is determined for all consent applications.	monitoring site 2) The seven –day mean annual low flow (MALF) at the relevant flow recorder sites will be determined using the lowest average river flow for any consecutive seven-day period for each year of record based on the minimum of ten years of measured or simulated flow data 3) If there is no minimum flow information available numerical modelling will be undertaken to determine long term trends for river levels from which MALF could be calculated. 4) Efficiency of the allocation and use

Appeal Point	Provision or Decision	Scope	Reason	Relief sought
8.	C.8.2.1 Land preparation	HortNZ made submissions and further submissions on C.8.2.1	HortNZ sought that Rule C.8.2.1 be amended to provide for land preparation be undertaken based on best practice, including the use of the Erosion and sediment control Guidelines for Vegetable Production (HortNZ 2014). HortNZ also sought the deletion of condition 1): the activity is not undertaken in the catchment of an outstanding lake. The decision does not delete the clause, rather adding to it: or a dune lake with outstanding or high ecological value. The decision to add the dune lakes is based on the evidence presented at the hearing by Dairy NZ. There appears to be no submissions that sought inclusion of the dune lakes as now added by decision or a s32 AA of the effects of adding the additional limitation within the rule. HortNZ considers that the condition of requiring best practice for land preparation activities should ensure that the potential for sediment is adequately managed as a permitted activity condition.	Amend C.8.2.1 1) by deleting: or a dune lake with outstanding or high ecological value. As a consequence delete the definition of dune lake with outstanding or high ecological value.
9.	Definition natural wetland	HortNZ made submissions and further submissions on the definition of natural wetland	HortNZ made a number of submissions relating the suite of provisions and definitions relating to wetlands. The decisions make a number of changes to clarify how the various definitions interface. The definition of constructed wetland specifically excludes artificial water storage facilities, detention dams, reservoirs of firefighting, irrigation, domestic or community water supply; engineered soil conservation structures including sediment traps; and roadside drainage channels, both as constructed	Amend the definition of natural wetland by adding exclusions as an additional point: 5) artificial water storage facilities, detention dams, reservoirs of firefighting, irrigation, domestic or community water supply; engineered soil conservation structures including sediment traps; and roadside drainage channels.

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			wetlands or natural wetlands. The definition of natural wetland does not include constructed wetlands or wet pasture, damp gully heads, areas where water temporarily ponds after rain or pasture containing patches of rushes. The exclusions do not include the list of areas that are listed under the definition of constructed wetlands which are not classed as natural wetlands. For clarity the exclusions listed under the definition of constructed wetland should also be included under the definition of natural wetland.	
10.	Objective F.1.12 Air Quality	HortNZ made submissions and further submissions on the need objectives	New objectives have been added into the Plan. HortNZ is concerned about the objective for Air Quality. The first clause of the objective to minimise cross-boundary effects on sensitive areas is supported. However it is not clear why clause b) is then required, in particular an objective of 'protect'.	Amend F.1.12 by deleting clause 2.

Advice to recipients:

How to become a party to proceedings

You may be a party to the appeal if you made a submission or further submission on the matter of this appeal.

To become a party 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
- 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 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).

How to obtain copies of documents relating to the appeal

The copy of this notice served on you does not attach a copy of the appellants submission or the decisions appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any question about this notice contact the Environment Court in Auckland.

APPENDIX A - Copy of the Appellant's submission to which this appeal relates.

APPENDIX B - Name and address of persons to be served with a copy of this notice.

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