

BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

ENV-2018-CHC-26 TO 50

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of appeals under clause 14 of Schedule
1 to the Act relating to the proposed
Southland Water and Land Plan

BETWEEN

HORTICULTURE NEW ZEALAND

Appellant in ENV-2018-CHC-28

AND

SOUTHLAND REGIONAL COUNCIL

Respondent

**MEMORANDUM OF COUNSEL FOR HORTICULTURE NEW ZEALAND
REGARDING TOPIC A AND WETLANDS DEFINITION**

16 NOVEMBER 2018



ATKINS | HOLM | MAJUREY

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MAY IT PLEASE THE COURT:

1. This memorandum of Counsel is filed on behalf of Horticulture New Zealand (**HortNZ**). It is filed in response to the minute and directions of the Court dated 5 November 2018. It also responds to the memorandum of Counsel for Waihopai Rūnaka, Hokonui Rūnaka, Te Rūnanga o Awarua, Te Rūnanga o Oraka Aparima, and Te Rūnanga o Ngāi Tahu (**Ngā Rūnanga**) dated 9 November 2018 and the memorandum of Counsel for Southland Regional Council dated 14 November 2018.
2. As noted in both memoranda from the parties HortNZ's appeal sought amendments to the definitions of 'wetland' and 'natural wetland'. Ngā Rūnanga and others¹ are section 274 parties to this appeal point.
3. Counsel for HortNZ notes that the Court has directed that the definitions of wetland and natural wetland be included in the Topic A. Further, it is noted that the direction in the same minute on this matter was only seeking a response from Ngā Rūnanga as to whether it wished to seek amendments to the definitions and whether there were any scope issues².
4. HortNZ notes that Ngā Rūnanga have correctly stated they have no scope to propose amendments to the definitions³. Further, it is noted that the Council considers that there is scope to consider changes to the definitions provided these are within scope of HortNZ's appeal⁴. HortNZ take no issue with either of these positions.

¹ Federated Farmers, Ravensdown, Forest & Bird and the Department of Conservation

² Minute of the Environment Court dated 5 November 2018 at paragraph [19]

³ Ngā Rūnanga Memorandum dated 9 November 2018, paragraph [4]

⁴ Southland Regional Council Memorandum dated 14 November 2018, paragraph [8]

5. This is HortNZ's first opportunity to submit on the inclusion of these definitions within Topic A in response to the request to do so by Ngā Rūnanga in their memorandum of 26 September 2018.
6. HortNZ's position is that its appeal on these definitions is very discrete in that it seeks to have two additional matters (sediment traps and artificial wetlands) included in the list of exclusions.
7. HortNZ notes that the reasons stated by Ngā Rūnanga for having the definitions in Topic A were:

Defining what constitutes a wetland is considered important to guide how the provisions (in particular the rules) of the proposed plan are interpreted – ie what is a natural wetland and what are Regionally Significant Wetlands. The scope of the appeals and 274 Parties attached to this appeal point would suggest that mediation of these matters in Topic B will be difficult. It also raises similar issues to those identified regarding ephemeral water bodies.⁵
8. HortNZ respectfully submits that the limited nature of its relief does not, have any bearing on the higher order matters that are going to be the subject of Topic A. HortNZ has not appealed the definition or identification of regionally significant wetland. In addition, it is submitted that 'sediment traps' or 'artificial wetlands' would not meet the criteria of regionally significant wetlands.
9. Given the very limited nature of its appeal on these definitions, HortNZ was of the view that its appeal was amenable to mediation hence its desire to retain them in Topic B as Topic B allows time for mediation to occur whereas Topic A does not.

⁵ Memorandum of Ngā Rūnanga dated 26 September 2018, paragraph [11]

In this regard HortNZ notes that this was the view of Council in its memorandum of 31 October 2018⁶.

10. As the Court has now directed that these definitions are part of Topic A Hort NZ respectfully seeks that there is a discrete consideration of the definitions that sits outside but alongside the Topic A process.
11. HortNZ, therefore, strongly supports the approach Ngā Rūnanga suggests, namely, that the definitions be the subject of mediation or expert caucusing⁷. However, HortNZ is extremely concerned that the now truncated timetable for Topic A leaves no time for consideration of these definitions through a mediation process.
12. HortNZ therefore respectfully requests that these definitions are not included within the Topic A timetable but are set down for Court assisted mediation concurrently with that timetable so that any outcome of mediation can be appropriately considered in the Topic A hearings.

DATE: 15 November 2018



Helen Atkins

Legal Counsel for **Horticulture New Zealand**

⁶ Paragraphs [60] to [64]

⁷ Memorandum of Ngā Rūnanga dated 9 November 2018, paragraph [10]