

**IN THE ENVIRONMENT COURT
CHRISTCHURCH REGISTRY**

ENV-2018-CHC-

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 Southland Water and Land Plan

BETWEEN **Horticulture New Zealand**

Appellant

AND **Southland Regional Council**

Respondent

**NOTICE OF APPEAL
ON THE PROPOSED SOUTHLAND WATER AND LAND PLAN**

To: The Registrar
Environment Court
Christchurch

1. Horticulture New Zealand (“**HortNZ**”) appeals part of the decisions of the Southland Regional Council on the Southland Water and Land Plan.
2. HortNZ made a submission and further submissions on the Southland Water and Land Plan (submission number 390 and further submission number 390).
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 4 April 2018.
5. The decisions were made by the Southland Regional Council Council.
6. Decisions appealed against:
 - (a) Policy 39A
 - (b) Rule 14 - Fertiliser
 - (c) Rule 25 - Cultivation on sloping ground
 - (d) Definition cultivation
 - (e) Definition natural wetland
 - (f) Definition wetland
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 and further submissions

- (b) a copy of the relevant parts of the decision
- (c) a list of names and addresses of persons to be served with a copy of this notice



Rachel McClung

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16 May 2018

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Decisions of Southland Regional Council on the Proposed Southland Water and Land Plan which are appealed by HortNZ:

Appeal Point	Provision or Decision	Scope	Reason	Relief sought
1.	Policy 39A Integrated Management	HortNZ made a submission (390.18) on Policy 39A seeking that the policy be deleted.	<p>The HortNZ submission stated that providing for integrated management in the development of the Plan was supported. However Policy 39A lists integrated management as a consideration for resource consent applications. This is considered to be inappropriate consideration of integrated management as it requires consideration of factors beyond the individual consent application and will unreasonably burden applicants. Integrated management is appropriate at a plan level which is implemented through methods in the Plan. This should not be a consideration in individual resource consent applications without a substantial information being publicly available on catchment dynamics, identified resource management issues, identified catchment specific outcomes and appropriate identified catchment limits.</p> <p>The decision states that the amendments sought by HortNZ would unjustifiably weaken the plan and reduce its effectiveness in achieving its objectives and for giving effect to the superior instruments.</p> <p>The decision amends Policy 39A to include consideration of the cumulative effects of land</p>	Move Policy 39A Integrated Management from 'Consideration of Resource Consent Applications' to follow Policy 47 under 'Freshwater Management Unit Process Policies'

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			<p>use and discharge activities within whole catchments, including through the Freshwater Management Unit (FMU) process.</p> <p>The changes made to the policy make it more aligned with the Freshwater Management Unit Process than resource consent applications.</p> <p>Section 30 a) of the RMA lists the establishment, implementation and review of objectives, policies and methods to achieve integrated management of natural and physical resources of the region as a function of the regional council.</p> <p>Providing for integrated management should be intrinsic within the planning framework, against which a consent application can be considered.</p> <p>The amendments to Policy 39A in the decision including the Freshwater Management Unit process align with the direction in provided to the FMU process to facilitate the collective management of nutrient losses and also the interactions between freshwater, land and associated ecosystems.</p> <p>Therefore, rather than delete Policy 39A as sought in the HortNZ submission it is sought that the policy is moved into the policy section relating to the Freshwater Management Unit</p>	

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			<p>process. This would ensure that integrated management is considered as part of the FMU processes, including establishment and implementation of appropriate objectives, polices and methods to achieve integrated management within the FMU's without placing an unreasonable burden on resource consent applicants.</p>	
2.	Rule 14 Discharge of fertiliser	HortNZ made a submission (390.28) seeking that Rule 14 be amended.	<p>HortNZ sought a number of changes to Rule 14 so that it was more effects based rather than setting arbitrary setback distances as a single mechanism to manage risks. The changes sought were based on best management practice as set out in the Code of Practice for Nutrient Management (Fertiliser Association 2013).</p> <p>HortNZ also sought that the default rule be a restricted discretionary rule, rather than non-complying.</p> <p>The decision amends Rule 14, but not in the manner sought by HortNZ, as the amendments would not be more effects based and reasonably practicable options for achieving the objectives of the pSWLP.</p> <p>Some of the amendments to the rule assist in better providing for discharge of fertiliser.</p>	<p>Amend Rule 14 a) iv) as follows:</p> <p>Where any lake, river (excluding ephemeral rivers) artificial water course, modified water course, or <u>natural</u> wetland:</p> <ol style="list-style-type: none"> 1) As per decisions 2) Does not have riparian planting from which stock is excluded, fertiliser is not discharged directly into or within 3 metres of the bed or which 3 metres of a <u>natural</u> wetland. <p>Amend Rule 14 b) to Restricted Discretionary activity and include matters of discretion:</p> <p>The standards in Rule 14 that cannot be met.</p>

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			<p>However HortNZ is concerned that:</p> <ul style="list-style-type: none"> i) Rule 14 a) iv) relates to ‘wetlands’ rather than natural wetlands, which are more precisely defined in the Plan. ii) Rule 14 b) requires a non-complying activity if the permitted activity standards are not met. <p>HortNZ has appealed the definitions of both natural wetland and ‘wetland’ and seeks clarity as to how the definitions will be applied through the rules in the Plan. Rule 14 is one such example. The definition of natural wetland provides greater clarity for plan users as to where discharge of fertiliser would be excluded in terms of Rule 14 a) iv) 2).</p> <p>In addition, a default non-complying activity rule would indicate that such an activity is not anticipated in the Plan. HortNZ considers applying a non-complying blanket provision is a significant step from the permitted activity rule. If there are specific areas in Southland where a non-complying activity rule for discharge of fertiliser is necessary then a more targeted approach should be included in the Plan, rather than application of the broad ‘catch-all’ provision in Rule 14 b).</p> <p>It is noted that the default rules for Rule 20</p>	

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			<p>Farming are either restricted discretionary or discretionary and the default for Rule 25 Cultivation is restricted discretionary. There appears little justification for the discharge of fertiliser rule to be more stringent than the default rules for Rule 20 or Rule 25.</p> <p>The s42A Report states that ‘the ultimate purpose of the rule is to ensure fertiliser does not enter waterways.’ It is not considered necessary to have a non-complying activity rule to achieve that outcome where the permitted activity standards are not met as effects can be managed through conditions.</p>	
3.	Rule 25 Cultivation on sloping ground	<p>HortNZ made a submission (390.30) seeking that Rule 14 be amended.</p> <p>HortNZ also made further submissions relating to Rule 25 opposing in part submissions 190.14, 265.88, 279.71, and 752.118.</p>	<p>HortNZ sought to ensure that cultivation activities are undertaken according to best practice to minimise the risk of sediment discharges to water and set out a range of amendments sought to the provisions in Rule 25.</p> <p>The decision makes amendments to Rule 25, but not specifically as sought by HortNZ.</p> <p>It is noted that submission 390.30a) is accepted in part but there is no reference to the remaining part of the submission in the decisions table, so it is unclear why parts of the HortNZ submission are not accepted.</p> <p>It is noted that there is no specific reference to</p>	<p>Amend Rule 25 b) as follows:</p> <p>The use of land for cultivation and associated sediment control mechanism, that does not meet the setback distances of Rule 25(a)(ii), is a permitted activity provided the following conditions are met:</p> <p>(i) cultivation does not take place within the bed of a lake, river, (excluding ephemeral rivers where cultivation is permitted under Rule 20aa)), artificial water course, modified watercourse, or natural wetland, and a distance of 3 metres from</p>

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			<p>the HortNZ submission in either the s42A Report or the decision report. It is recognised that the concern of HortNZ is a more discreet cultivation activity than that for intensive winter grazing or on sloped areas. However it is an activity that should be provided for within the Southland Region.</p> <p>HortNZ considers that Rule 25 a) is a more efficient provision but consider that Rule 25 b) does not give adequate consideration to where provisions in clause a) are not able to be met. In particular is the limitation of cultivation not taking place more than once in any 5- year period. Such a provision is impractical for horticulture growers.</p> <p>HortNZ seeks provisions that will enable cultivation based on best management practice.</p> <p>Best practice for cultivation is set out in the 'Erosion and Sediment Control Guidelines for vegetable production (Horticulture NZ 2014)' which take a risk based approach to assessing potential effects from the activity and selection of appropriate mechanisms to address such potential effects.</p> <p>It is noted that the Hearing Panel has accepted the HortNZ COP for Vegetable Washwater in Rule 36 as a means of compliance with the</p>	<p>the outer edge of the bed; and</p> <p><u>EITHER</u></p> <p>(ii) cultivation does not take place more than once in any 5 year period; and</p> <p>(iii) cultivation is for the purpose of renewing or establishing pasture and is not undertaken to establish a crop used for intensive winter grazing, even as part of a pasture renewal cycle;; and</p> <p>(iv) cultivation does not occur at an altitude greater than 800 metres above mean sea level.</p> <p><u>OR</u></p> <p><u>v) the cultivation is undertaken in accordance with the 'Erosion and Sediment Control Guidelines for vegetable production (Horticulture NZ 2014)'</u></p>

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			<p>rule, yet such a provision is not included in respect of the Erosion and Sediment Control Guidelines for Vegetable Production’.</p> <p>It is recognised that the focus of the rule is on managing cultivation on sloping ground where there is a risk of sediment run off, even though some of the slope categories have been removed in the decision. However vegetable growers are not undertaking cultivation on steep ground and are able to manage the potential effects through application of best practice.</p> <p>The rule as currently written would require resource consents for cultivation for vegetable growing even if the activity is undertaking best management practice for the activity. Use of best management practice is sought in Objective 18 and this is a clear instance where efficient resource use and environmental outcomes can be implemented through the use of best practice.</p>	
4.	Definition cultivation	HortNZ made a submission (390.42) seeking that the definition of cultivation be amended.	<p>HortNZ sought that the definition of cultivation be amended to:</p> <p><i>Preparing land for the growing and harvesting of pasture of crop by mechanical tillage and includes sediment control measures, but does not include direct drilling.</i></p>	<p>Amend the definition of cultivation as follows:</p> <p>Preparing land for the growing <u>and harvesting</u> of pasture of crop by mechanical tillage, direct drilling, herbicide spraying or herbicide</p>

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			<p>The decision amends the definition of cultivation, but not as sought by HortNZ. In particular the definition does not include harvesting or sediment control measures.</p> <p>The s42A Report and decision report do not appear to consider the HortNZ submission points relating to harvesting or sediment control measures.</p> <p>It is noted that the decision includes a new definition for sediment trap, which are an important tool for managing potential sediment runoff from cultivation. Therefore, it is important that sediment traps are included as part of the cultivation activity.</p> <p>In addition the harvesting of root crops involves disturbance of soil akin to cultivation and HortNZ seeks that it is included as part of the cultivation activity. Given that the soil has been disturbed to plant a crop there should be the ability to remove the crop when it is mature. Inclusion of harvesting in the definition of cultivation would ensure that such crops could be harvested.</p>	<p>spraying followed by over-sowing for pasture or forage crops (colloquially referred to as 'spray and pray') <u>and includes sediment traps</u>, but excluding any spraying undertaken solely for the control of pest plant species.</p>
5	Definition Natural wetland	HortNZ made a submission (390.44) seeking that the definition of natural	<p>The definition of natural wetland includes a list of exclusions.</p> <p>HortNZ sought that sediment control measures and artificial wetlands be included in the list of</p>	Amend the definition of natural wetland to add to the exclusions: sediment traps or artificial wetlands

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		wetland be amended.	<p>exclusion in the definition of natural wetlands.</p> <p>The decision states that the definition already adequately addresses these matters.</p> <p>However, the decisions include the addition of a new definition for sediment trap. While sediment traps may possibly be 'detention dams' it is appropriate that sediment traps are listed as a specific item in the definition of natural wetlands given that they are specifically defined in the Plan.</p> <p>HortNZ was also concerned that artificial wetlands are not included in the list of exclusions. Where a wetland has been created for specific purposes, such as filtration, then such wetlands should not be regarded as a natural wetland. It is not clear what exclusion artificial wetlands would be classed as, given that the decisions consider that they are adequately provided for. Therefore, for clarity HortNZ seeks that artificial wetlands are added to the list of exclusions for natural wetlands.</p>	
6	Definition wetland	HortNZ made a submission (390.49) seeking that the definition of wetland be amended.	<p>The Plan includes a definition for both wetland and natural wetlands and applies the definitions to a range of rules in the Plan.</p> <p>The definition of wetland is the RMA definition.</p> <p>The definition of natural wetland includes a list</p>	<p>Either</p> <p>Include the list of exclusions in the definition of natural wetland in the definition of wetland</p> <p>OR</p>

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			<p>of areas which are not regarded as natural wetlands, but such exclusions are not included in the definition of wetland.</p> <p>HortNZ sought that the definition of natural wetland provide greater clarity in the Plan as it identifies areas which may be wet areas that are not regarded as a natural wetland.</p> <p>The decision does not accept the submission as it would 'unnecessarily complicate that Plan'. However, HortNZ considers that having a definition of natural wetland and wetland complicates that plan and that there should be greater alignment between the definitions to reduce potential confusion.</p> <p>The threshold for being a wetland is 'supporting a natural ecosystem of plants and animals'. The exceptions in the definition of natural wetlands are not intended to support such natural ecosystems so it is appropriate that the exceptions apply to the definition of wetlands.</p> <p>Alternatively, reference to wetlands are amended to natural wetlands to reduce potential confusion in application of the Plan.</p>	<p>Amend references to 'wetlands' in the rules to 'natural wetlands' so that the list of exclusions apply for all wetlands.</p>

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 Christchurch.

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

APPENDIX B - Copy of the Respondent's decision on submissions.

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

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