

**BEFORE THE ENVIRONMENT COURT**

**IN THE MATTER** of the Resource Management Act 1991 ("the Act")

**AND**

**IN THE MATTER** of an appeal under clause 14 of the Act against the decision of the Manawatū-Whanganui Regional Council on Proposed Plan Change 2 to the Horizons One Plan

**BETWEEN** **WELLINGTON FISH AND GAME COUNCIL**

Appellant

**AND** **MANAWATŪ-WHANGANUI REGIONAL COUNCIL**

Respondent

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**NOTICE OF APPEAL**

Dated: 2 June 2021

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Mr P Teal  
Regional Manager  
Wellington Fish and Game Council  
P O Box 1325  
Palmerston North 4440  
pteal@fishandgame.org.nz

**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST DECISION OF  
MANAWATŪ-WHANGANUI REGIONAL COUNCIL**

**TO:** The Registrar  
Environment Court  
WELLINGTON

1. The **WELLINGTON FISH AND GAME COUNCIL** ("Fish & Game") appeals against a decision of the Manawatū-Whanganui Regional Council on the following plan:

Proposed Plan Change 2 to the Horizons One Plan ("PC 2")

2. Fish & Game made a submission on PC 2.<sup>1</sup>
3. Fish & Game is not a trade competitor for the purposes of Section 308D of the Resource Management Act 1991.
4. Fish & Game received notice of the Decision on 21 April 2021.
5. The Decision was made the by the Manawatū-Whanganui Regional Council.
6. The part of the Decision that Fish & Game is appealing is:

All of the Proposed Plan Change except the changes proposed to Table 14.2 ("*Cumulative nitrogen leaching maximum by Land Use Capability Class*").

7. The reasons for Fish & Game's appeal are:

- 7.1. In the targeted catchments of the One Plan (in Table 14.1) intensive farming land use activities individually or collectively make a significant contribution to nutrient contaminant levels.

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<sup>1</sup> The submission stated (at [9]): "*With the exception of the technical changes to Table 14.2, Wellington Fish and Game Council is opposed to all changes proposed in PC2.*"

- 7.2. The provisions of the One Plan that would be altered by PC 2 have been scrutinised in the Environment and High Courts and have been the subject of Environment Court Declarations.<sup>2</sup>
- 7.3. The Environment and High Courts confirmed the ‘natural capital’ approach to regulating nitrogen leaching from intensive farming land uses in the Region - the leaching of nitrogen being regulated on the basis of eight “Land Use Capability classes” or LUC classes in the rule framework.
- 7.4. Changes in the intervening period to facts or law (*RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316) do not warrant the wholesale changes to the provisions for existing farms that are reflected in the Decision.
- 7.5. While Fish & Game agrees with updating the Cumulative Nitrogen Leaching Maxima (by Land Use Capability Class) in Table 14.2 to take into account OVERSEER Version changes, the balance of the provisions in PC 2 do not provide confidence that the Region’s water quality will be maintained or improved.
- 7.6. PC 2 will create a legacy issue for a future freshwater instrument that fully implements the NPSFM 2020, because:
- 7.6.1. there is a lack of guidance in PC 2 on the appropriate basis for granting consents (what is “*good management*”/“*best management*”, the BPO, “[f]easibility, practicality and financial implications”, off-site mitigations);
- 7.6.2. longer term consents are available based upon this loose policy framework<sup>3</sup>;

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<sup>2</sup> *Day v Manawatu Wanganui Regional Council* [2012] NZENVC 285; [2013] NZENVC 45; [2013] NZENVC 98 and *Horticultural New Zealand v Manawatu Wanganui Regional Council* [2013] NZHC 2492 September 2013; [2017] NZEnvC 37 (Declarations).

<sup>3</sup> 10 years is too long and a longer duration of consent remains a matter of discretion guided by Policy 14-6(e)(vii) - *a have particular regard to policy*.

- 7.6.3. nitrogen reductions ultimately required under a fully-compliant freshwater instrument may be beyond what adoption of good/ best management practices can deliver;
- 7.6.4. some farms may require expensive mitigations creating unrealistic expectations as to consent duration and 'roll overs' - for example where stranded capital issues arise.
- 7.7. Without further guidance on minimum farming standards, Council/farmer interactions will require extensive resourcing for relatively little benefit (if consents *are* short term), with high potential for inequities across farms.
- 7.8. The alternative consenting pathway in Rule 14-1(d)(ii) includes 'grandparenting' - a system rejected by the Environment Court in *Day v Manawatu Wanganui Regional Council* [2012] NZENVC 285.<sup>4</sup>
- 7.9. It was never the intent of the One Plan that *all* farms would necessarily be granted consent, even on an interim basis.<sup>5</sup>
- 7.10. Cognisance of the "*fortunes of established individual farming families*" is not a good reason for rejecting the submissions seeking non-complying activity status for land use activities that cannot meet the LUC limits.<sup>6</sup>
- 7.11. Plan Change 2 fails to manage cumulative adverse effects on water quality through limits that are certain.
- 7.12. PC 2 is contrary to the higher level Objectives and Policies of the One Plan, including Objective 5-1 and Policy 5-1, the provisions of

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<sup>4</sup> At page 5-78 at [Q] "Grandparenting in the sense of allowing existing operations to continue to leach nutrients at rates based on their own historic performance should not form part of the rules regime".

<sup>5</sup> *Day v Manawatu Wanganui Regional Council* [2012] NZENVC 285 at [5-176]: "What the questions were attempting to elicit was the opinion of expert witnesses about the possible outcome of a situation where, say, N loss limits are put in place and a given farm/farmer simply cannot meet them. Should that farmer be given some sort of exemption from a regime that his or her colleagues can comply with? Or, at the other end of the spectrum, should he or she be told that the category of farming, or the management regime, or the intensity of the operation being conducted on that particular type or class of land, is simply unsustainable because of the quantity of apparently irreducible nutrient loss? If the latter, the farmer will have decisions to make: " to seek a resource consent for a more stringent activity status; to change the category of farming or the management regime or intensity; or to move somewhere else. Those are the same options that might face the operator of any business in a changing rules regime, and there is nothing that gives farmers a privileged place in the scheme of things."

<sup>6</sup> At [3.152] of the Decision.

the NPSFM 2020, the NZCPS and the Resource Management Act 1991 (including section 30 functions).

8. Fish & Game seeks the following relief:

8.1. Reject the proposed changes in Plan Change 2 with the exception of changes to Table 14.2 "*Cumulative nitrogen leaching maximum by Land Use Capability Class*"; and

8.2. Such further or other relief as the Court considers appropriate or is otherwise consequential on the relief generally sought within this appeal and may address the concerns expressed in the submission, or reasons for the appeal, otherwise raised.

9. I **attach** the following documents to this notice:

9.1. A copy of my submission;

9.2. A copy of the decision;

9.3. A list of the names and addresses of persons to be served with a copy of this notice.



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**ON BEHALF OF THE WELLINGTON FISH AND GAME COUNCIL**

