

**IN THE ENVIRONMENT COURT  
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA  
KI TĀMAKI MAKĀURAU**

**Decision [2023] NZEnvC 246**

IN THE MATTER OF an appeal under clause 14 of the First  
Schedule of the Resource Management  
Act 1991

BETWEEN HORTICULTURE NEW ZEALAND  
(ENV-2022-AKL-000043)

Appellant

AND WAIKATO DISTRICT COUNCIL

Respondent

Court: Environment Judge S M Tepania sitting alone under s 279 of the  
Act

Last case event: 19 October 2023

Date of Order: 14 November 2023

Date of Issue: 14 November 2023

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**CONSENT ORDER**

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A: Under section 279(1)(b) of the Resource Management Act 1991, the  
Environment Court, by consent, orders that:



- (1) the appeal is allowed subject to the agreed amendments to the Natural Hazard chapter in the Proposed Waikato District Plan as set out in **Appendix B** to this order; and
- (2) the appeal with respect to Topic 17: Natural Hazards and Climate Change is otherwise dismissed.

B: Under section 285 of the Resource Management Act 1991, there is no order as to costs.

## REASONS

### Introduction

[1] This consent order concerns an appeal by Horticulture New Zealand (**HNZ**) against part of the decisions of the Waikato District Council (**the Council**) on the Proposed Waikato District Plan (**PDP**) in relation to HNZ's submissions on rule NH-R9 of the Natural Hazards and Climate Change (**NH**) chapter seeking various amendments to definitions, objectives, policies and rules relating to rural activities.

### Background

#### *Original Submissions and PDP Decision*

[2] HNZ made submissions on the PDP on behalf of commercial fruit and vegetable growers in New Zealand seeking amendments to objectives, policies and rules in relation to provisions for 'ancillary rural earthworks' and 'earthworks', including the inclusion of land preparation in volume-based thresholds for earthworks.<sup>1</sup>

[3] HNZ also supported Federated Farmers of New Zealand's submission seeking the exclusion of ancillary rural earthworks from minimum setbacks from stopbanks in defended areas.<sup>2</sup>

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<sup>1</sup> Submission number 419 and further submission number FS1168 for Stage 1, submission number 2149 and further submission number FS3027 for Stage 2

<sup>2</sup> FS3027.14.

[4] In Decision Report 29B: Natural Hazards and Climate Change – Flood Hazards, and Defended Areas, the Independent Hearing Panel (**IHP**) on the Council's behalf rejected the relief sought in HNZ's submissions.

### ***Appeal***

[5] HNZ subsequently filed this appeal seeking various amendments to Topic 17, including amending rule NH-R9 in the NH chapter to include provision for ancillary rural earthworks.

[6] Pukekohe Vegetable Growers Association (**PVGA**) has given notice of an intention to become a party to the appeal under section 274 of the Act.

### **Agreement reached**

[7] Since the appeal was filed, HNZ and the Council have engaged in direct discussions and have reached an agreement on changes that will fully resolve HNZ's appeal in Topic 17.

[8] The agreed amendments to PDP on rule NH-R9 are set out in **Appendix A** (track change version) and **Appendix B** (clean version) to this order.

[9] HNZ's remaining interest in Topic 17 is as a section 274 party to the Council's appeal on the topic.

### **Section 32AA assessment**

[10] Section 32AA of the Act requires a further evaluation for any changes to a proposal since the initial section 32 evaluation report and the decision.

[11] The parties provided a section 32AA evaluation of the appropriateness of the agreed amendments. In summary, the parties consider that these amendments are the most appropriate option for achieving the purpose of the Act on the following basis:

- (a) the change to rule NH-R9 provides the following benefits for the horticulture industry in Waikato by reducing the consenting burden for farmers undertaking the specific ancillary rural earthworks:

- (i) management and mitigation of soil erosion is a matter of significant consequence for horticulture in protecting high quality agricultural soil. Streamlining the process for undertaking erosion and sediment control works aids the efficiency of this process;
  - (ii) earthworks for maintenance of on-farm land drainage networks, farm tracks, water pipes, tanks and troughs, helipads, and fencing are minor in nature and removing the requirement for restricted discretionary assessment for the matters provides for greater efficiency in undertaking these works; and
  - (iii) burial works undertaken under the Biosecurity Act are likely to be urgent in nature and removal of the requirement for restricted discretionary assessment supports such work being carried out most efficiently.
- (b) the amendment to rule NH-R9 is consistent with Objective HAZ-O1, Policy HAZ-P1 and Policy HAZ-P2 of the Waikato Regional Policy Statement. The amendments remain part of an integrated approach to natural hazard management and the risks from natural hazards are not raised beyond an acceptable level. New erosion or sediment control structures are to be developed in accordance with the specified guidelines;
- (c) the risks of acting are low as the agreed amendments exempt only a specific set of new activities from existing controls. Permitting earthworks for erosion or sediment control activities in flood plain management areas and flood ponding areas requires the work to be done in accordance with the specified guideline and does not create a significant increase in risk. Permitting earthworks for maintenance of specified on-farm assets simplifies upkeep of existing assets and does not significantly increase risk in the flood plain management and flood ponding areas;

- (d) the risk of not acting is that new erosion and sediment control works will be delayed or not undertaken due to the time and cost implications of requiring restricted discretionary assessment and this may lead to the loss of soil from cultivated areas and increased sediment in waterways. The risk of not acting in relation to earthworks for maintenance of on-farm assets, creates an administrative burden for farms in undertaking required maintenance and consequential difficulties in farm management. The risk of not acting in relation to the burial of material infected by unwanted organisms could be delays or confusion in responding to directions under the Biosecurity Act 1993.

### **Consideration**

[12] In making this order the Court has read and considered the notice of appeal dated 1 March 2022 and the joint memorandum of the parties dated 19 October 2023.

[13] The Court is making this order under section 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits. The Court understands for present purposes that:

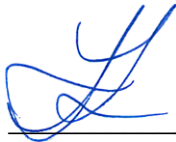
- (a) all parties to the proceedings have executed the memorandum requesting this order; and
- (b) all parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to the relevant requirements and objectives of the Act including, in particular, Part 2.

[14] The Court is satisfied that the changes sought are within the scope of the Appellant's submission and appeal.

### **Order**

[15] The Court orders, by consent, that:

- (a) the appeal is allowed subject to the agreed amendments to the NH chapter in the PDP as set out in **Appendix B** to this order;
- (b) the appeal with respect to Topic 17: Natural Hazards and Climate Change is otherwise dismissed; and
- (c) there is no order as to costs.



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**S M Tepania**  
**Environment Judge**



**Appendix A – Tracked change version of the agreed changes to the NH – Natural hazards and climate change chapter of the PDP decisions version**

**NH – Natural hazards and climate change**

*The relevant area specific zone chapter provisions apply in addition to this chapter.*

<b>NH-R9</b>	Earthworks not provided for under Rules NH-R7 or NH-R8	
Flood plain management area and Flood ponding area across all zones	<p><b>(1) Activity status: PER</b></p> <p><b>Activity-specific standards:</b></p> <p>(a) In the GRZ – General residential zone, MRZ – Medium density residential zone, LLRZ – Large lot residential zone, SETZ – Settlement zone and RLZ – Rural lifestyle zone, a maximum volume of filling above natural ground level of 10m<sup>3</sup> per site, and a maximum cumulative volume of filling and excavation of 20m<sup>3</sup>; or</p> <p>(b) In the GRUZ – General rural zone – a maximum volume of filling above natural ground level of 100m<sup>3</sup> per site, and a maximum cumulative volume of filling and excavation of 200m<sup>3</sup> per site; or</p> <p>(c) All other zones – a maximum volume of filling above natural ground level of 20m<sup>3</sup> per site, and a maximum cumulative volume of filling and excavation of 50m<sup>3</sup> per site; and</p> <p>(d) Height and depth of earthworks in all zones:</p> <p>(i) A maximum height of 0.2m of filling above natural ground level; and</p> <p>(ii) a maximum depth of excavation of 0.5m below natural ground level.</p> <p><u>(e) Ancillary rural earthworks for the following activities in the GRUZ- General Rural Zone are not subject to 1 b) or 1 d):</u></p> <p><u>(i) establishment and maintenance of sediment and erosion control measures in accordance with the 2014 publication of the</u></p>	<p><b>(2) Activity status where compliance not achieved: RDIS</b></p> <p><b>Council’s discretion is restricted to the following matters:</b></p> <p>(a) Timing, location and scale of earthworks;</p> <p>(b) Adverse effects on:</p> <p>(i) Existing overland flow paths and surface drainage patterns;</p> <p>(ii) Flood storage capacity;</p> <p>(iii) Runoff volumes;</p> <p>(iv) Adjoining properties, including the transfer of risk;</p> <p>(v) Infrastructure and flood protection works;</p> <p>(vi) Consideration of soil types and potential for erosion; and</p> <p>(c) Mitigation including compensatory storage, or other flood management measures proposed.</p>

	<p><u>Horticulture NZ Sediment and Erosion Control Guidelines for Vegetable Growers Good Management Practices Version 1.1</u>; or</p> <p>(ii) <u>maintenance of on-farm land drainage networks, farm tracks, water pipes, tanks and troughs, helipads, <del>potholes</del> and fencing</u>; or</p> <p>(iii) <u>burying of material infected by unwanted organisms as declared by the Ministry for Primary Industries Chief Technical Officer or an emergency declared by the Minister under the Biosecurity Act 1993.</u></p> <p>Advice note: where a site is located partly within the flood plain management area or flood ponding area this rule only applies to that part of the site within the flood plain management area or flood ponding area.</p>	
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**Appendix B – Clean version of the agreed changes to the NH – Natural hazards and climate change chapter of the PDP decisions version**

**NH – Natural hazards and climate change**

*The relevant area specific zone chapter provisions apply in addition to this chapter.*

<b>NH-R9</b>	Earthworks not provided for under Rules NH-R7 or NH-R8	
Flood plain management area and Flood ponding area across all zones	<p><b>(1) Activity status: PER</b></p> <p><b>Activity-specific standards:</b></p> <p>(a) In the GRZ – General residential zone, MRZ – Medium density residential zone, LLRZ – Large lot residential zone, SETZ – Settlement zone and RLZ – Rural lifestyle zone, a maximum volume of filling above natural ground level of 10m<sup>3</sup> per site, and a maximum cumulative volume of filling and excavation of 20m<sup>3</sup>; or</p> <p>(b) In the GRUZ – General rural zone – a maximum volume of filling above natural ground level of 100m<sup>3</sup> per site, and a maximum cumulative volume of filling and excavation of 200m<sup>3</sup> per site; or</p> <p>(c) All other zones – a maximum volume of filling above natural ground level of 20m<sup>3</sup> per site, and a maximum cumulative volume of filling and excavation of 50m<sup>3</sup> per site; and</p> <p>(d) Height and depth of earthworks in all zones:</p> <p>(i) A maximum height of 0.2m of filling above natural ground level; and</p> <p>(ii) a maximum depth of excavation of 0.5m below natural ground level.</p> <p>(e) Ancillary rural earthworks for the following activities in the GRUZ- General Rural Zone are not subject to 1b) or 1 d):</p> <p>(i) establishment and maintenance of sediment and erosion control measures in accordance with the 2014 publication of the</p>	<p><b>(2) Activity status where compliance not achieved: RDIS</b></p> <p><b>Council’s discretion is restricted to the following matters:</b></p> <p>(a) Timing, location and scale of earthworks;</p> <p>(b) Adverse effects on:</p> <p>(i) Existing overland flow paths and surface drainage patterns;</p> <p>(ii) Flood storage capacity;</p> <p>(iii) Runoff volumes;</p> <p>(iv) Adjoining properties, including the transfer of risk;</p> <p>(v) Infrastructure and flood protection works;</p> <p>(vi) Consideration of soil types and potential for erosion; and</p> <p>(c) Mitigation including compensatory storage, or other flood management measures proposed.</p>

	<p>Horticulture NZ Sediment and Erosion Control Guidelines for Vegetable Growers Good Management Practices Version 1.1; or</p> <p>(ii) maintenance of on-farm land drainage networks, farm tracks, water pipes, tanks and troughs, helipads, <del>postholes</del> and fencing; or</p> <p>(iii) burying of material infected by unwanted organisms as declared by the Ministry for Primary Industries Chief Technical Officer or an emergency declared by the Minister under the Biosecurity Act 1993.</p> <p>Advice note: where a site is located partly within the flood plain management area or flood ponding area this rule only applies to that part of the site within the flood plain management area or flood ponding area.</p>	
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