

IN THE MATTER of the Resource Management Act 1991  
AND

IN THE MATTER of an appeal under clause 14 of  
Schedule 1 to the Act

BETWEEN HORTICULTURE NEW ZEALAND  
LIMITED

(ENV-2015-WLG-000076)

Appellant

AND HASTINGS DISTRICT COUNCIL

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge C J Thompson sitting alone pursuant to section 279 of the Act.

IN CHAMBERS

#### CONSENT ORDER

##### *Introduction*

[1] The Court has read and considered the appeal and the parties' draft consent order received 15 September 2016.

[2] Federated Farmers of New Zealand Hawke's Bay Province, Hawke's Bay Fruitgrowers' Association, Meridian Energy Limited, Ngati Kahungunu Iwi Incorporated PowerCo Limited and Transpower New Zealand Limited each gave notice of an intention to become a party under s 274 of the Act to the sections of the appeal resolved by this consent order, and have signed the memorandum setting out the relief sought.

[3] The Court is making this order under s 279(1)(b) of the Act, such an order being by consent, rather than representing a decision or determination on the merits pursuant to s 297. The Court understands for the 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 relevant requirements and objectives of the Act, including in particular Part 2.



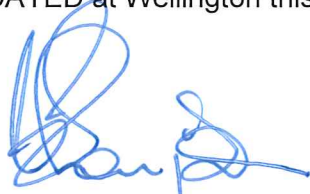
*Order*

[4] The Court orders, by consent, that the proposed Hastings District Plan is amended as set out in Annexure A to this order, with additions shown in underline and deletions shown in strike-through.

[5] The appeal is otherwise dismissed.

[6] There is no order as to costs.

DATED at Wellington this 1<sup>st</sup> day of November 2016



C J Thompson  
Environment Judge



## **Annexure A – Changes to Hastings District Plan required by Consent Order**

### *Section 2.3 – Plan Philosophy and Integrated Management*

- (a) Amend Section 2.3.2.1 as follows:

#### **Greater Living for a Sustainable Future**

...

The sustainability of the primary production industry within the District could be severely compromised by a biosecurity incursion of an unwanted organism ~~a phytosanitary pest~~. Council will adopt an integrated management approach to reduce the risk of this type biosecurity incursion and to enable an appropriate response in the event of any such incursion.

### *Section 2.4 – Urban Strategy*

- (b) Amend Objective UDO6 as follows:

To minimise the risk of biosecurity incursions of ~~a phytosanitary pest~~ an unwanted organism in the district and enable response to any such biosecurity incursions.

- (c) Amend Policy UDP13 as follows:

To participate in an integrated approach towards the management of biosecurity issues by assessing potential risks from new activities and adopting methods to enable the response to any biosecurity incursions.

#### Explanation

The sustainability of the primary production industry within the District could be severely compromised by a biosecurity incursion of a ~~phytosanitary pest~~ an unwanted organism. Council will work with other agencies to manage the risk of such ~~a~~ an incursion and to enable an appropriate level of response this may require response mechanisms within the urban environment

### *Section 2.5 – Transportation Strategy*

- (d) Amend Objective TSO9 as follows:

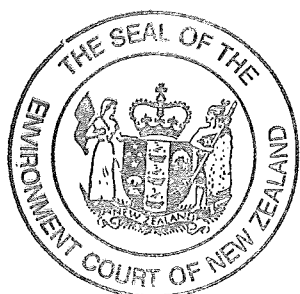
To minimise the risk of biosecurity incursions of an unwanted organism ~~a phytosanitary pest~~ in the district and enable response to any such biosecurity incursions.

- (e) Amend Policy TSP11 as follows:

To participate in an integrated approach towards the management of biosecurity issues by assessing potential risks from new activities and adopting methods to enable the response to any biosecurity incursions.

#### Explanation

The sustainability of the primary production industry within the District could be severely compromised by a biosecurity incursion of an unwanted



~~organism a phytosanitary pest.~~ Council will work with other agencies to manage the risk of such an incursion and to enable an appropriate level of response this may require response mechanisms affecting the operation of the transport network.

### *Section 2.8 – Rural Resource Strategy*

(f) Amend Section 2.8.2.2 as follows:

#### **Managing Reverse Sensitivity Effects (Enabling “The Right to Farm”)**

Where there is a greater range of land uses the potential for conflict between the land uses increases. This conflict is the vulnerability of an existing lawfully established activity to complaint from other nearby activities which are sensitive to adverse environmental effects that may be lawfully generated by the existing activity, thereby creating the potential for the operation of the existing activity to be constrained. This has been witnessed with the significant increase in the number of residential lifestyle sites that have been created in the rural area since the time that the previous District Plan was made operative in 2003.

...

(g) Amend Section 2.8.2.4 as follows:

#### **Changing Traditional Expectations on the Use of Rural Land**

Sections 6, 7 and 8 of the Resource Management Act 1991 (the Act) require Council to address in its Plan a range of matters, including the protection of Outstanding Landscapes and Natural Features, the preservation of significant indigenous native vegetation, heritage and to have regard to the provisions of the Treaty of Waitangi. Many of these features and elements occur in the rural area of the Hastings District, and have the potential to affect the use of the land resource. The District Plan must endeavour to address these requirements comprehensively without undermining the ability of landowners to continue with the effective use and development of the resources of the area. However, there may be instances where matters of National Importance, Other Matters, or Treaty of Waitangi obligations as described in Sections 6, 7 or 8 of the Act, dictate that specific controls need to be imposed.

Rural character may vary across the district but generally includes the following key elements:

- (a) The dominance in the landscape of natural vegetation and dynamic primary production regimes, including pasture, crops and forestry;
- (b) The absence or subservience of manmade structures other than those related to rural production activities;
- (c) A high ratio of open space relative to the built environment;
- (d) Significant areas of land in pasture, crops, forestry and/or indigenous vegetation;
- (e) A rural working production environment;
- (f) Noises, smells, dust and effects such as from use of agrichemical sprays and fertilisers associated with the use of rural land for a wide



range of agricultural, horticultural, forestry and mineral extraction and processing purposes;

(g) Low population densities relative to urban areas;

(h) General lack of urban infrastructure;

(i) Infrastructure that has a functional, technical or operational requirement to be based in the rural environment.

(h) Amend Objective RRSO9 as follows:

To minimise the risk of biosecurity incursions of an unwanted organism a ~~phytosanitary pest~~ in the district and enable response to any such biosecurity incursions.

(i) Amend Policy RRSP6 as follows:

To participate in an integrated approach towards the management of biosecurity issues by assessing potential risks from new activities and adopting methods to enable the response to any biosecurity incursions.

Explanation

The sustainability of the primary production industry within the District could be severely compromised by a biosecurity incursion of an unwanted organism a ~~phytosanitary pest~~. Council will work with other agencies to manage the risk of such an incursion and to enable an appropriate level of response this may require response mechanisms within the rural environment.

#### *Section 2.9 - Industrial Strategy*

(j) Amend Objective ISO4 as follows:

To minimise the risk of biosecurity incursions of an unwanted organism a ~~phytosanitary pest~~ in the district and enable response to any such biosecurity incursions.

(k) Amend Policy ISP9 as follows:

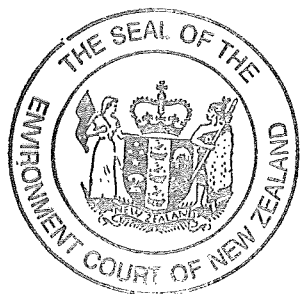
To participate in an integrated approach towards the management of biosecurity issues by assessing potential risks from new activities and adopting methods to enable the response to any biosecurity incursions.

Explanation

The sustainability of the primary production industry within the District could be severely compromised by a biosecurity incursion of an unwanted organism a ~~phytosanitary pest~~. Council will work with other agencies to manage the risk of such an incursion and to enable an appropriate level of response this may require response mechanisms within the industrial environment.

#### *Section 2.10 - Commercial Strategy*

(l) Amend Objective CSO5 as follows:



To minimise the risk of biosecurity incursions of an unwanted organism a ~~phytosanitary pest~~ in the district and enable response to any such biosecurity incursions.

(m) Amend Policy CSP7 as follows:

To participate in an integrated approach towards the management of biosecurity issues by assessing potential risks from new activities and adopting methods to enable the response to any biosecurity incursions.

Explanation

The sustainability of the primary production industry within the District could be severely compromised by a biosecurity incursion of an unwanted organism a ~~phytosanitary pest~~. Council will work with other agencies to manage the risk of such an incursion and to enable an appropriate level of response this may require response mechanisms within the commercial environment.

*Section 5.2 – Rural Zone*

(n) Amend Outcome RZ4 as follows:

Avoidance or mitigation of adverse effects on adjoining activities, including reverse sensitivity effects.

(o) Amend Objective RZO2 as follows:

Retention of the ~~existing~~ natural and rural character and amenity values of the Rural Zone.

(p) Amend Section 5.2.5 General Performance Standards and Terms as follows:

5.2.5B YARDS

1. Residential Activities

(a) All Residential Buildings on Rural Sites

Front yard 7.5 metres

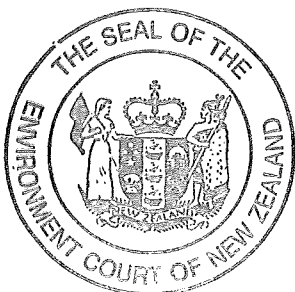
All other boundaries 15.0 metres

...

5.2.5C SCREENING

...

3. Outdoor storage and parking areas of seasonal workers accommodation shall be fully screened from adjacent residential activities in different ownership by fencing and/or planting, ~~from adjacent residential activities~~



*Section 6.2 – Plains Production Zone*

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(q) Amend Outcome PPAO1 as follows:

The sustainable management of the versatile land and water resources of the Heretaunga Plains.

(r) Amend Outcome PPAO3 as follows:

Avoidance or mitigation of adverse effects on adjoining activities, including reverse sensitivity effects.

(s) Insert new Policy PPP3A as follows (immediately after the explanation to Policy PPP2 and before Policy PPP3):

To enable land based primary production, including by providing for directly associated accessory buildings where they are not of such a scale as to adversely affect the life-supporting capacity of the versatile land resource and which are consistent with the rural character of the Zone.

Explanation

The primary focus of the Plains Production Zone is land based primary production, which is provided for as a permitted activity within the Zone. The definition of land based primary production includes "directly associated accessory buildings, structures and activities" and these are permitted subject to compliance with performance standards, including standards relating to building coverage to ensure that the availability of the land for food production purposes is not undermined.

(t) Amend Policy PPP3 as follows:

Limit the number and scale of buildings (other than those covered by Policy PPP3A) impacting on the versatile soils of the District.

Explanation

There have been a number of instances where buildings have impacted on the versatile land of the Plains Production Zone as a result of their scale. Some of these buildings are still associated with food production such as those used for intensive rural production activities. These are subject to resource consent with assessment of the effects on the soil resource. While it is beneficial to allow for industrial or commercial activities that add value to the produce coming off the land it is important that these activities are not allowed to reach such a scale as to impact on the versatile soils that the activity originally relied on at its inception.

Note that this policy does not apply to buildings accessory to land based primary production, which are covered by Policy PPP3A.



~~While the policy does not apply to~~ It is relevant that buildings accessory to land based primary production ~~these buildings~~ can become an issue if their use becomes redundant. While there is value in providing for the re-use of these buildings, the situation should not be allowed where farm buildings are constructed and then their uses change within a relatively short time period.

(u) Amend Policy PPP7 as follows:

Provide for industrial and commercial activities in the Plains Production Zone where they are linked to the use of the land and with limits on the scale and intensity to protect soil values and rural character.

(v) Amend Section 6.2.5 General Performance Standards and Terms as follows:

#### 6.2.5B YARDS

##### 1. Residential Activities

(a) Residential Buildings (including supplementary units) on Plains Sites

Front yard 7.5 metres

All other boundaries 15.0 metres

#### Section 27.1 – Earthworks, Mineral, Aggregate and Hydrocarbon

(w) Amend Rule Table 27.1.5, Rule EM5 as follows:

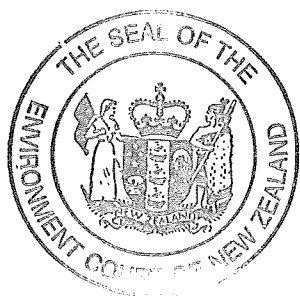
| Rule            | Activities  | Activity Status |
|-----------------|---|-----------------|
| <b>RULE EM5</b> | The burial of material from biosecurity incursions of <u>an unwanted organism</u> <del>a phytosanitary pest</del> | <b>P</b>        |

#### Section 33.1 Definitions

(x) Amend the definition of “Land Based Primary Production” as follows:

Land Based Primary Production: means:

- (a) livestock rearing which is primarily reliant on the underlying land (excludes farming of mustelids); and
- (b) horticulture (including, viticulture, orcharding, cropping, market gardening, commercial vegetable production, berry fruit growing, nurseries and glasshouses greenhouses not falling within the definition of Intensive Rural Production ~~accessory to any of the foregoing activities,~~ but not garden centres); and
- (c) trees, plants and crops grown in the ground but under cover;
- (d) forestry; and





- (e) viticulture; and
- (f) directly associated accessory buildings, structures and activities.

(y) Add new definition as follows:

**Unwanted Organism:** means an unwanted organism as defined in section 2 of the Biosecurity Act 1993.

