

UNDER THE RESOURCE MANAGEMENT ACT 1991

IN THE ENVIRONMENT COURT AT WELLINGTON



IN THE MATTER of a reference to the Environment Court
under Clause 14 of the First Schedule to the
Resource Management Act 1991

AND

IN THE MATTER of the Proposed Plan Change 60 (Rural Land
use and subdivision) to the Tasman
Resource Management Plan

BETWEEN Horticulture New Zealand

Applicant

AND

Tasman District Council

Respondent

TO:

The Registrar
Environment Court
PO Box 5027
WELLINGTON

1. Name of applicant:

Horticulture New Zealand
P.O. Box 10 232
Wellington

2. Name of authority issuing the proposed policy or plan or making a decision on submissions:

Tasman District Council

3. Name of Plan Appealed:

Proposed Plan Change 60 (Rural Land Use and Subdivision) to the Tasman
Resource Management Plan

4. Horticulture NZ made submissions and further submissions on the Proposed Plan Change 60 (Rural Land Use and Subdivision).

5. Horticulture NZ received notice of the decision on 13 December 2016.

6. Horticulture NZ is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.

7. **Decisions appealed against:**

1. Decision 606.2 Definition of artificial shelter, definition building, Definition shelter
2. Decision 606.2 Rules 17.5.3.1.l), 17.6.3.1 p), 17.7.3.1 k)
3. Decision 606.2 Definition rural character
4. Decision 606.2 Definition of rural residential character
5. Decision 601.1 Policy 7.1.3.6F
6. Decision 601.1 Policy 7.2.3.1F
7. Decision 606.1 Policy 7.2.3.2 d)
8. Decision 606.2 Schedule 16.3A
9. Decision 606.2 Rules 17.5.3.1, 17.6.3.1, 17.7.3.1.

The reasons for the appeals and relief sought are detailed in the table below.

8. General Relief Sought:

- 8.1 That consequential amendments be made as a result of the relief sought from the specific appeal points above.



Angela Halliday
Manager – Natural Resources and Environment
Horticulture New Zealand

Dated: 13 February 2017

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Decisions of Tasman District Council on the Proposed Plan Change 60 (Rural Land Use and Subdivision) which are appealed by Horticulture NZ

| Appeal Point | Provision or decision | Decision reference | Submission reference | Reason | Relief sought |
|--------------|--|--------------------|---|---|--|
| 1. | <p>Definition of artificial shelter</p> <p>Definition building</p> <p>Definition shelter</p> | 606.2 | <p>C60.2864.9 (Sub 1.8)</p> <p>C60.2864.8 Sub</p> <p>C60.2864.7</p> | <p>Horticulture NZ sought that a definition and provisions be included for artificial crop protection structures or artificial shelter as follows: <i>Artificial Crop Protection means structures with material used to protect crops and/or enhance growth, but does not include greenhouses.</i></p> <p>The decision includes a new definition for artificial shelter as follows: <i>Means a structure used to protect crops or enhance growth, including shade cloth and greenhouses.</i></p> <p>The Plan also includes a definition of greenhouse: Greenhouse – <i>includes shadehouses, glasshouses, and buildings covered in translucent material, plastic, or glass and which are used for growing plants.</i></p> <p>The term ‘artificial shelter’ is then used in a number of rules including relating to building coverage.</p> <p>Horticulture NZ considers that there are distinct differences between open structures such as artificial crop protection structures which are constructed of permeable materials and greenhouses which are made of impermeable materials. While it is appropriate that both</p> | <p>Amend the definition of artificial shelter as follows: means structures with material used to protect crops and/or enhance growth, but does not include greenhouses.</p> <p>Amend the definition of greenhouse to: A totally enclosed structure of impermeable material where plants are grown in a controlled environment.</p> <p>Amend the definition of building by adding to the end of the definition: But does not include crop support structures and artificial crop protection structure or artificial shelters.</p> |

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| | | | | <p>structures are exempt from building coverage provisions Horticulture NZ considers that for other purposes the structures should be separate. This will be particularly relevant when a Plan Change is undertaken to implement the NPSET and the provisions that Transpower may seek regarding structures within the National Grid yard.</p> <p>There needs to be a clear distinction between the different types of structures as the effects are different. Greenhouses are totally enclosed structures and grow crops in a controlled environment which is distinct from artificial crop protection where the cloth does not fully enclose a crop and the material is permeable.</p> <p>In addition Horticulture NZ sought that the definition of building be amended to exclude artificial crop protection structures and crop support structures.</p> <p>The definition of building in the Plan has a number of exclusions and the addition of artificial crop protection structures and crop support structures is consistent with that approach. Schedule 1 of the Building Act enables TA's to exempt buildings from consent requirements if they consider that the building work is unlikely to endanger people or other buildings.</p> <p>Given the open nature of artificial crop protection structures it is considered that the potential to</p> | |

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| | | | | <p>endanger people is low and that an exemption would be appropriate.</p> <p>It is noted that the decision report states: “Staff consider it appropriate that ‘artificial shelter’ complies with the permitted conditions for buildings in the Plan.” It does not appear to be a decision of the committee.</p> | |
| 2. | Rules 17.5.3.1.l) 17.6.3.1 p) 17.7.3.1 k) | 606.2 | C60.2864.52 C60.2864.61 C60/2864.68 | <p>The rules 17.5.3.1.l), 17.6.3.1 p), and 17.7.3.1 k) are the building coverage provisions in Rural 1, Rural 2 and Rural 3. Horticulture NZ sought that they be amended by adding ‘and artificial crop protection structures’ after ‘greenhouses’ or amend definition of building as sought in this submission.</p> <p>Rather than amend the rules as sought the decisions include a definition of ‘artificial shelter’ that includes greenhouses, so combines the structures.</p> <p>As stated in respect of Appeal point 1 there should be differentiation between artificial crop protection structures and greenhouses. Therefore they should be listed separately in the rules.</p> | <p>Amend Rules as follows: 17.5.3.1.l) Except as provided for in Schedule 17.5A (Hope Depot) the total area of all buildings, excluding artificial shelters, greenhouses and poultry sheds or enclosures is:</p> <p>17.6.3.1 p) The total area of all buildings, excluding artificial shelters, greenhouses and poultry sheds:</p> <p>17.7.3.1 k) The total area of all buildings on any site excluding artificial shelters, greenhouses and poultry sheds or enclosures is...</p> |
| 3. | Definition rural character | 606.2 | C60.2864.4 | Horticulture NZ sought that the definition of rural character be amended to include artificial crop protection structures and crop support structures in clause c) based on the definition sought for artificial crop protection structures. | Amend definition of rural character clause c as follows) c) built structures usually associated with productive rural land uses including artificial shelter and crop support structures. |

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| | | | | However the decisions add a definition for artificial shelter, rather than artificial crop protection structures. If the term artificial shelter is to be used then the definition of rural character should be amended to refer to the defined term. | |
| 4. | Definition rural residential character | 606.2 | C60.2864.5 (1.5) | <p>The definition of <i>rural residential character</i> is to be used as a descriptor for rural residential character where it is provided for in the Plan. However the definition states: <i>means the character of land as shown by the predominance of low density residential activity in a rural areas at locations that may be close to rural production activities and includes:</i></p> <p>Horticulture NZ sought that the definition be specifically linked to Rural Residential Zones as it would be inappropriate for 'rural residential character' to be applied in rural zones where the dominant activity is rural production activities.</p> <p>Chapter 7 for the Rural Zones specifically refers to rural character as distinct from rural residential character.</p> <p>The decision states: "The proposed definition of 'rural residential character' forms part of the proposals to provide a better policy framework for rural residential development that is specifically provided for in the Rural Residential Zone and in the Rural 3 Zone – land that is not of high</p> | Amend definition of rural residential character: Means the character of land as shown by the predominance of low density residential activity in <u>Rural Residential Zones</u> and <u>Rural 3 Zone rural areas</u> at locations that may be close to rural production activities and includes: |

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| | | | | productive value.” Given this statement the definition for rural residential character should apply specifically to the zones where it is intended to provide the policy framework and not across the rural area generally. | |
| 5. | Policy 7.1.3.6F | 601.1 | C60.2864.23 | <p>Horticulture NZ sought that Policy 7.1.3.6F be amended as follows: To enable rural living opportunities in the Rural 1 and Rural 2 Zones where the actual or potential productive value of the land <u>and rural character</u> is retained and further subdivision <u>and potential reverse sensitivity effects</u> are avoided.</p> <p>The decision states that the submission is allowed but no changes are included as sought in the submission.</p> <p>It is important that the potential for reverse sensitivity effects are avoided is part of ensuring that the productive potential of land is not compromised. It is within Section 7.1.3 of the Plan which provides for the policy framework for reverse sensitivity.</p> | That Policy 7.1.3.6F be amended as follows: To enable rural living opportunities in the Rural 1 and Rural 2 Zones where the actual or potential productive value of the land <u>and rural character</u> is retained and further subdivision <u>and potential reverse sensitivity effects</u> are avoided. |
| 6. | Policy 7.2.3.1F | 601.1 | C60.2864.32 | Policy 7.2.3.1F is in Section 7.2 ‘Provision for activities other than plant and animal production’. Policy 7.2.3.1F specifically seeks ‘To discourage residential activity in rural locations outside the Rural Residential Zone and the Rural 3 Zone on land having high productive value in the Rural 1 and Rural 2 zones. | Amend Policy 7.2.3.1F as follows: ‘To <u>avoid discourage</u> residential activity in rural locations outside the Rural Residential Zone and the Rural 3 Zone on land having high productive value in the Rural 1 and Rural 2 zones. |

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| | | | | <p>Horticulture NZ sought that the policy be amended to 'avoid' rather than discourage.</p> <p>The decision states that 'avoid' is too high a test.</p> <p>However Policy 7.1.3.6B in Section 7.1 Cumulative effects of land fragmentation of productive opportunities states: 'To protect land of high productive value from residential activity except for that directly associated with plant and animal production'.</p> <p>Therefore if the land is to be 'protected' a stronger policy than 'discourage' is required. Horticulture NZ considers that 'avoid' is appropriate to ensure that residential activity does not compromise rural production activities on high value land in Rural 1 and 2 zones.</p> | |
| 7. | Policy 7.2.3.2 d) | 606.1 | C60.2864.32 | <p>Policy 7.2.3.2 is about enabling sites to be used for rural industrial, tourist services and papakainga purposes having regard to a number of matters, including cross boundary effects of existing activities on such future activities.</p> <p>Horticulture NZ sought that Policy 7.2.3.2 d) be amended: Cross boundary effects, including any actual and potential adverse effects <u>and potential reverse sensitivity effects on</u> of existing <u>activities from new or</u> on such future activities.</p> | Amend Policy 7.2.3.2 d) as follows: Cross boundary effects, including any actual and potential adverse effects <u>and potential reverse sensitivity effects on</u> of existing <u>activities from new or</u> on such future activities. |

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| | | | | <p>The policy as notified only considered cross boundary effects from existing activities on future activities. Horticulture NZ considers that consideration of cross boundary effects needs to ensure that existing activities are not affected by future activities.</p> <p>The decision states that the risk of reverse sensitivity to existing plant and animal production activities within Rural 1 and Rural 2 is addressed generally in policy set 7.1.3 which provides for the protection of productive land for plant and animal production.</p> <p>While it is accepted that generally reverse sensitivity is addressed in 7.1.3, Policy 7.2.3.2 d) includes consideration of cross boundary effects (reverse sensitivity) within the 7.2 framework and it is appropriate that the new activities will not adversely affect existing activities.</p> | |
| 8. | Schedule 16.3A | 606.2 | C60.2864.42 | <p>Schedule 16.3A provides assessment criteria for subdivision applications. Matter 2 considers the potential effects of the subdivision on the amenity values and natural and physical character of the area. Horticulture NZ sought that rural character be added to the clause as it is a specific defined term that guides decisions in rural areas and is important that it be considered as part of a subdivision assessment.</p> | Amend Schedule 16.3A (2) by adding 'including rural character' after amenity values. |

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| | | | | <p>The decision states that the definition is a broad description of character but not in itself a method for regulating land use.</p> <p>Horticulture NZ considers that the description of rural character is important for consideration as part of Schedule 16.3A.</p> | |
| 9. | Rules 17.5.3.1 kb) 17.6.3.1 n) i) 17.7.3.1ga) | 606.1 | C60.2864.51 C60.2864.60 C60.2864.66 | <p>Horticulture NZ sought that Rules 17.5.3.1 kb) and 17.6.3.1 n) be retained and that Rule 17.7.3.1ga) be amended slightly. The decisions state that the submissions are allowed but the decisions amend the rules in a manner not anticipated by Horticulture NZ. In particular they provide for a 30 metre setback as notified but then adds: "except where the boundary is to the Residential, Rural Residential or Rural 3 Zone where the setback is 5 metres."</p> <p>In 17.7.3.1ga) the 5 metres applies where the building is on a site located in a subdivision that was consented before 30 January 2016 and where the setback is 5 metres.</p> <p>It is unclear why the 5 metres setback is included in Rules 17.5.3.1 kb) and 17.6.3.1 n).</p> | Clarify why a 5 metre setback is included in Rules 17.5.3.1 kb) and 17.6.3.1 n) and on what basis it is included. |

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

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 Wellington.

Contact details of Environment Court for lodging documents

Location: District Court Building
43-49 Ballance St
Wellington

Postal: PO Box 5027
Wellington

Telephone: 04 918 8300
Fax: 04 918 8303

Annexures:

- A) Copy of the applicant's submission further submission to which this appeal relates.
- B) Copy of the relevant sections from the respondent's decision on submissions.
- C) Names and Address of persons to be served with a copy of this notice.

Annex A

Copy of the applicant's submission and further submission to which this appeal relates.

Annex B

Copy of the relevant sections from the respondent's decision on submissions.

Annex C

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

Tasman District Council
Private Bag 4
Richmond 7031

| Submitter | Address | Email | |
|--------------------------------|--|--|--|
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