

ENV 2010 WLG 000016
ENV 2010 WLG 000017

IN THE MATTER of two appeals under clause 14 of the First
Schedule to the Resource Management
Act 1991

AND

IN THE MATTER of The Tasman Resource Management
Plan

BETWEEN **Ngatahi Horticulture & Others (“the
Tangata Whenua Appellants”)**

Appellant
(ENV 2010 WLG 00016)

AND **Motueka Community Board**

Appellant
(ENV 2010 WLG 000017)

AND **Tasman District Council**

Respondent

AND **Horticulture New Zealand**

Section 274 Party

BEFORE THE ENVIRONMENT COURT

Environment Judge BP Dwyer sitting alone pursuant to section 279 of the Act

IN CHAMBERS at Wellington

CONSENT ORDER

Introduction

1. The Court has read and considered the appeals, the Respondent's reply and the Consent Memorandum dated [December 2010].
2. Horticulture New Zealand has given notice of an intention to become a party to both appeals under s274 and has signed the Consent Memorandum setting out the relief sought.

3. The Court is making this order under s279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The Court understands for present purposes that:
- (a) All parties to the proceedings have executed the consent 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 Resource Management Act, including in particular Part 2.

Order

4. Therefore the Court orders, by consent, that the proposed Tasman Resource Management Plan be amended as set out in the Schedule attached.
5. On the basis of this Order, the appeal is resolved accordingly.
6. There shall be no order as to costs.

DATED this day of 2010

Judge BP Dwyer
Environment Judge

Schedule of Plan Amendments

Rule 31.1.3

- (a) The applicant for the water taking and use is the holder of a water permit that is due for renewal and section 124 applies except
- (ii) where the permit has been issued for taking and use of water that has been reserved for the purposes set out in Schedule 31.1D under the provisions of Policy 20.2.5(b)

Policy 30.2.9

"When assessing any application to take use dam or divert water, to take into account; :

.....

- (h) for any application to take water for community water supplies,
- (i) the area to be serviced
- (ii) and relevant data used in predicting likely urban growth water demand based on existing and likely residential, non-residential (schools, hospitals, commercial and industrial) demand within the reticulation area, including allowance for meeting demand at peak times and network water losses.
- (iii) measures to manage demand including water meters, restricted supplies and pressure control, and water saving technology and processes, for both residential, non-residential (schools, hospitals, commercial and industrial) end uses.
- (iv) provisions to manage reduced availability during periods of drought or low flow
- (v) provisions for demand management

Policy 30.2.3

"To recognise and provide for the existing and potential future water needs of communities by:

...

- (c) reserving water within any allocation limit for future expected community growth taking into account;
- (i) long term population growth projections for the area, including both medium and high growth estimates;
- (ii) water demand based on existing and likely residential, non-residential (schools, hospitals, commercial and industrial) demand within the reticulation area, including allowance for meeting demand at peak times and network water losses.

Section 31.1.7 – Explanatory Text

Calculation of the amount of water reserved for community water supply shall be based on a long term planning view that seeks to provide for the foreseeable future water supply needs of communities. Demand calculations shall take into account population growth projections which are updated periodically. This may result in amendments to plan provisions (by change or variation) if significant differences occur between actual and projected growth.

shall be calculated in general accordance with the New Zealand Standard for Subdivision NZS4404 and will take into account the security of supply for the relevant water management zone. Water demand for non-residential (schools, hospitals, commercial and industrial) supply will be based on known water use where information exists, rational estimates of expected needs and forecasts of potential future developments.

For larger urban areas, the reserved quantity is for existing and likely future large water uses including industries, schools, camp grounds, hospitals, and rest homes, taking into account relevant population and economic growth and commercial and industrial zoning.

Not all of the reserved water will necessarily be allocated via a water permit for community use at any time. The unallocated water remains available for the identified use in the future, and in the meantime can be used on a temporary or interim basis by other users.

Applications to take water for community supplies will be considered on the basis of the relevant projections for population and business growth and the resulting increase in water demand within the term of the permit for the applicable supply area. Water allocation will be staged during the term of the consent so that amount allocated closely reflects this growth in demand. Applications for water for community supply will need to address measures to ensure efficient use of water within the reticulated area.

Rule 31.1.6 (restricted discretionary) a new standard as follows:

"(h) For an application to take water reserved in Table 2 of schedule 31.1D for a purpose other than community water supply, the amount does not exceed the amount specified in Table 2 on its own or in combination with other takes."

Rule 31.1.6 (restricted discretionary) inset a new matter as follows:

"For applications to take water reserved in Table 2 of Schedule 31.1D for a purpose other than community water supply, the quantity and duration of the permit is subject to the nature and timing of likely future demand for the water for the reserved purpose."

Chapter 32 Information Required with Permit Applications for Taking Water

32.1.3 (dd) For applications to take water for community water supply information about ;

- (i) the likely increase in demand as a result of projected population growth during the term of the permit being sought,
- (ii) how the projected demand for water is to be provided over time,
- (iii) measures to manage demand including water meters, water saving technology and processes for both domestic and any industrial or commercial end uses, restricted supplies and pressure control,
- (iv) provisions to manage reduced availability during periods of drought or low flow,
- (v) provisions for leakage control.

Before the Environment Court

**ENV 2010 WLG 000016
ENV 2010 WLG 000017**

In the Matter of two appeals under clause 14 of the First Schedule to the Resource Management Act 1991

And

In the matter of The Tasman Resource Management Plan

Between **Ngatahi Horticulture & Others (“the Tangata Whenua Appellants”)**

**Appellant
ENV 2010 WLG 000016**

And **Motueka Community Board**

**Appellant
ENV 2010 WLG 000017**

And **Tasman District Council**

Respondent

And **Horticulture New Zealand**

Section 274 Party

Draft Memorandum of Consent

MAY IT PLEASE THE COURT

I Background

The background to this Memorandum is:

1. The Tasman District Council notified variation 66 to the Tasman Resource Management Plan. Variation 66 relates to water management and allocation limits in the Motueka Central Plains and Middle Motueka Zones. The Motueka Community Board and the Tangata Whenua Appellants lodged submissions on the variation. The Council heard submissions on the variations and issued decisions on those submissions.
2. The Motueka Community Board lodged an appeal against three items in the Council decisions. Specifically the appeal by the Community Board related to the effects of an increased water take on the environment including the existing users of the aquifer and the Motueka River.
3. Ngatahi Horticulture and others (referred to as "the Tangata Whenua appellants") lodged an appeal on various matters concerning decisions made in respect of Variation 66 (as well as aspects of Variation 65).
4. Some of the items in the appeal by the tangata whenua appellants relate to issues concerning allocation for community supply, which are related to the appeal by the Motueka Community Board. For this reason, the Tangata Whenua appellants are a party to this Consent Memorandum.
5. Horticulture New Zealand lodged section 274 notices in response to both appeals.
6. The parties engaged in Court assisted mediation in respect of the appeals.

FLETCHER VAUTIER MOORE
LAWYERS
PO BOX 3029
DX WC71017
RICHMOND, NELSON

Telephone: (03) 543 8301
Facsimile: (03) 543 8302
Email: kmitchell@fvm.co.nz
Counsel: KE Mitchell

7. As a result the parties have agreed that the appeal by the Motueka Community Board can be resolved in its entirety on the basis of the agreements set out below. The agreements set out below will also address some aspects of the appeal by the Tangata Whenua appellants (provided that the Court grants the orders sought).

II Agreement – Specific Issues Related to Tangata Whenua Appeal

8. Policy 30.2.5 of the Tasman Resource Management Plan allows for taking water that has been reserved for future community water supply on an interim or temporary basis for some other use. Clause (a)(ii) of Rule 31.1.3 prevents renewal applications for the (temporary) use of this reserved water from being considered as a controlled activity. (The clause is to prevent assigning protection for continuing access to the reserved water).
9. Water is also reserved for future irrigation use by iwi landowners. This water is not available for temporary or interim use. The parties agree that Rule 31.1.3(a)(ii) should be amended as set out in the attached Schedule to be more specific so that it applies only to water reserved for community water supply. This is linked to addressing item (ii)16(a) of the appeal by the Tangata Whenua appellants (discussed in more detail at clause [13] of this Consent Memorandum).

III Agreement - Community Water Supply – Allocation Efficiency

10. The appeal by the Motueka Community Board included issues concerning the effects of an increased water take and export of this water on existing users of the aquifer. In particular the appeal referred to the Council's final Decisions 539.5, 538.1 and 541.5.
11. The appeal also referred to the reliance of households and major industry in and around Motueka on the Central Plains Water and the need to ensure sustainable use.
12. The parties have agreed the amendments to the TRMP which, if granted, would resolve the whole of the appeal by the Motueka Community Board.

13. Aspects of the appeal by the Tangata Whenua appellants also related to issues concerning community water supply. In particular, item (ii)16(a) of the appeal states that the allocation of water in Schedule 31.1D – Table 2: Community Supply as a controlled activity is inappropriate where the rationale for the amounts of water reserved for Community Supply also includes speculative predictions of increased water use. Similarly, item (v)31(b) of the appeal relates to the reservation of water for Community Supply under Schedule 31.10 – Table 2, and refers to the controlled activity status for resource consent applications to take volumes of water the rationale for which includes speculative predictions of increased water use. The parties are agreed that the amendments set out below (in conjunction with the amendments set out earlier at paragraph [9] of this Consent Memorandum) will resolve these two items of the Tangata Whenua appeal.

14. The Tangata Whenua appellants had also sought under item (ii)(17) of the appeal that Rule 31.1.4 proposed new standard (h) be amended to make it clear that this provision does not apply to Table 2 in Schedule 31.1D. The new standard (h) is part of a controlled activity which allows takes within allocation limits and it states, *“Where the water is to be taken and used for the purposes specified in Schedule 31.1D, the amount of water taken on its own or in combination with other takes reserved for that purpose does not exceed the relevant limit specified in that Schedule”*. The Plan contains a rule that allows for takes of water that are within specified allocation limits to be made as controlled activities. The Council has already established the limits of water availability (allocation limits) for the Motueka aquifer and the amounts reserved for the specified uses are within these limits of availability. Within the specified constraints, it is appropriate therefore that water for the identified end uses be made available, when water is required to meet the needs of that specified use. The use of a controlled activity complements the policy approach by giving certainty that the water will be made available to that end use when necessary. The Tangata Whenua appellants accept this approach, and the parties are agreed that the relief sought at item 17 of the Tangata Whenua appeal can be withdrawn.

15. The agreed amendments in respect of the appeal by the Motueka Community Board and an accompanying brief explanation are set out below:
 - 15.1 Further specification and explanation about how Council ensures both efficient allocation of water for community supply and avoids 'speculative' reservation was sought. The parties agreed that this could be achieved by making amendments to existing Policies 30.2.9 and 30.2.3(c). These amendments are shown on the attached Schedule (with additions underlined and deleted text with strike-out).
 - 15.2 Additional explanatory text for the rules in Section 31.1.7 was also agreed by the parties to provide better transparency around decisions for community water supply consistent with changes made to the policies in [15.1] above. This explanatory text is set out in the attached Schedule.
 - 15.3 In addition to providing for future community needs for water, the Council allows temporary use of the reserved water. Policy 30.2.5b specifically states this. However, the Council accepts that the rule provisions are less clear in relation to the status of such an application and the parties concerns about the potential 'loss' of the water for productive uses in the meantime might be addressed by more explicit specification for temporary or interim use of the reserved water in the rules. As such, the parties are agreed that a new standard should be included in Rule 31.1.6 (restricted discretionary) and a new matter in that same rule, as detailed in the attached Schedule.
 - 15.4 An additional information requirement for any applications to take water for community supply was also previously suggested to clarify the link between reserved amount of water and allocated water. The parties are agreed that this is appropriate, and further text is now added in light on the amendments agreed above. This additional information requirement is detailed in the attached Schedule as Rule 32.1.3(dd) (information required with permit applications for taking water).

15.5 The Council considers that the existing rules and associated matters of control or discretion are sufficiently generic to address the policy framework and information requirements set out in the attached Schedule.

IV Orders Sought

16. The parties seek that the Environment Court order that the Council amend the relevant provisions of the Tasman Resource Management Plan as set out in the attached Schedule of Plan Amendments.

17. If the Orders sought are granted, they will resolve the following:

- the whole of the appeal by the Motueka Community Board;
- items (ii)16(a), (ii)17, (v)31(b) of the appeal by the Tangata Whenua appellants.

18. The parties agree that there are no issues as to costs which will lie where they fall.

Dated this day of November 2010

Signed by or on behalf of:

Motueka Community Board

Tangata Whenua Appellants

Tasman District Council

Horticulture New Zealand