

**IN THE ENVIRONMENT COURT
AUCKLAND REGISTRY**

ENV-2022-AKL-

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of appeals under Clause 14(1) of the First
Schedule of the Act in relation to the
Proposed Waikato District Plan Decisions
Version

BETWEEN **Horticulture New Zealand**

Appellant

AND **Waikato District Council**

Respondent

**NOTICE OF APPEAL
ON THE PROPOSED WAIKATO DISTRICT PLAN**

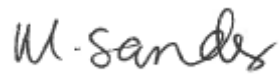
To: The Registrar

Environment Court

Auckland

1. Horticulture New Zealand (“**HortNZ**”) appeals part of the decisions of the Waikato District Council on the Proposed Waikato District Plan.
2. HortNZ made a submission and further submissions on the Proposed Waikato District Plan (submission number 419 and further submission number FS1168 for Stage 1, submission number 2149 and further submission number FS3027 for Stage 2).
3. HortNZ is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. HortNZ received notice of the decisions on 17 January 2022.
5. The decisions were made by the Waikato District Council.
6. Decisions appealed against:
 - (a) GRUZ-P14(1)(a), GRUZ-S1(1)(c) and (3)(b) in respect to the requirement limiting Seasonal Worker Accommodation to a Record of Title with an area of at least 20 ha.
 - (b) GRUZ-S8, GRUZ-S9 and GRUZ-S12 in respect to the framework that applies to Artificial Crop Protection Structures.
 - (c) GRUZ-P5
 - (d) GRUZ-P16
 - (e) NH-R9
 - (f) Definition of ‘farming’ limiting *loading areas for helicopters and airstrips* to only activities on the ‘same site’,
7. The reasons for the appeals and relief sought are detailed in the table below.
8. General relief sought:

- (a) That consequential amendments be made as a result of the relief sought from the specific appeal points above.
9. The following documents are attached to this notice:
- (a) a copy of HortNZ's submission and further submissions
 - (b) a copy of the relevant parts of the decision
 - (c) a list of names and addresses of persons to be served with a copy of this notice



Michelle Sands
Strategy and Policy Manager,
Horticulture New Zealand

1 March 2022

Address for service of the Appellant:

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Contact person: Jordyn Landers

Decisions of Waikato District Council on the Proposed Waikato District Plan which are appealed by HortNZ:

	Provision or Decision	Scope	Reason(s) for the appeal	Relief sought
1.	GRUZ-P14(1)(d)	HortNZ submission seeking provisions for Seasonal Worker accommodation	<p>HortNZ is appealing the requirement that seasonal worker accommodation may only be established on a Record of Title that has an area of at least 20ha.</p> <p>HortNZ’s submission sought provisions be added to the rural zone for worker’s accommodation (or seasonal worker accommodation) – specifically a permitted activity rule and a restricted discretionary rule if proposed standards relating to XX were not met. A minimum site area threshold was not sought.</p>	<p>Delete (1)(d) of GRUZ-P14</p> <p>(1)(d) Limiting seasonal worker accommodation to no more than one facility per Record of Title that is at least 20ha in area.</p>
2.	GRUZ-S1(1)(c)		<p>The decision report records that a 20ha minimum requirement was included by the Hearing Panel for the following reason: <i>“We consider that whilst there is a need for this type of accommodation to meet specific needs, such facilities should be located on sites that are at least 20ha in area to enable reasonable separation from neighbouring sites and to prevent a proliferation of this type of activity on smaller lifestyle sites where workers accommodation is not required.”</i></p>	<p>Delete (1)(c) of GRUZ-S1</p> <p>GRUZ-S1 (1) Activity status: PER Where: ... (c) One seasonal worker accommodation shall be located within a Record of Title containing an area of 20ha or more (this is in addition to the residential unit in GRUZ-S1(1)(a));</p>
3.	GRUZ-S1(3)(b)		<p>HortNZ supports the inclusion of SWA provision – however consider the 20ha is problematic in practice and not effects based for the following reasons:</p>	<p>Consequential to the relief sought above, delete (3)(b) of GRUZ-S1.</p> <p>GRUZ-S1 (3) Activity status: NC Where: ...</p>

	Provision or Decision	Scope	Reason(s) for the appeal	Relief sought
			<ul style="list-style-type: none"> GRUZ-R18 (Seasonal worker accommodation) includes activity specific standards, which include that it is used 'solely for part of the year to meet labour requirements for primary production' – which links this very clearly to the intended purpose of primary purpose of SWA. There are building setbacks in the GRUZ which would apply to SWA (providing separation from neighboring sites). It is not uncommon for horticultural operations to operate across a number of sites as one operation, which could inadvertently not meet this requirement (or if there is a 20ha parcel, directing SWA to that site where there might be a more suitable location within their operations). This does not cater well for orchards which do not always require a large area (but do require a seasonal workforce) – for example the average kiwifruit orchard size is 3.5 hectares. 	<p>(b) Seasonal worker accommodation that does not comply with GRUZ-S1(1)(c).</p>
4.	GRUZ-S8 Height in relation to boundary	HortNZ submission relating to provisions for Artificial Crop Protection Structures	<p>HortNZ's submission sought exclusion of artificial crop protection structures from the definition of building, and a rule specific to Artificial Crop Protection Structures.</p> <p>The Decision recognise that such structures are an important and increasingly common</p>	<p>Amend GRUZ-S8 to include an exemption for ACPS:</p> <p><i>Where: A building or structure (excluding <u>artificial crop protection structures, poles or aerals</u>) must not protrude through the height in relation</i></p>

	Provision or Decision	Scope	Reason(s) for the appeal	Relief sought
			component of horticultural activities, and decided to provide for these not via a specific permitted activity (instead as a 'farming activity') that remain subject to controls on internal boundary and daylight admission rules.	<i>to boundary rising at an angle of 45 degrees commencing at an elevation of 2.5m above ground level at every point of the site boundary</i>
5.	GRUZ-S9 Building Coverage		<p><u>GRUZ-S8</u> HortNZ's submission and hearing evidence sought that ACPS be exempt from this standard, as is the case in a number of other district plan approaches.</p> <p><u>GRUZ-S9</u> HortNZ's submission (seeking provisions specific to ACPS) proposed a control relating to cloth colour within 30m of a site boundary. However, HortNZ consider that this control has been interpreted incorrectly, as a condition of an exemption from site coverage standards (and is more appropriate in relation to site boundary setbacks).</p> <p>The phrasing of the standard also confuses whether ACPS are considered as buildings (which HortNZ does not consider to be the case).</p>	<p>Amend GRUZ-S9 Building coverage, to delete (1)(c)(i) and (ii)</p> <p><i>GRUZ-S9 Building coverage (1) Activity status: PER Where:</i></p> <p>...</p> <p><i>(c) No site coverage limit applies to Artificial Crop Protection Structures that meet the following standards:</i></p> <p><i>(i) Green or black cloth shall be used on vertical faces within 30m of the site boundary;</i></p> <p><i>(ii) Green, black or white cloth shall be used on horizontal surfaces</i></p> <p>AND instead include cloth colour standard in respect to setbacks (refer to relief sought below).</p>
6.	GRUZ-S12 Building setbacks – all boundaries		<p><u>GRUZ-S12 Building setbacks – all boundaries</u></p> <p>A setback of this magnitude (12m from 'other boundaries') restricts productive use of a significant portion of an orchard site, with respect to a permeable structure. HortNZ</p>	<p>Amend GRUZ-S12 Building setbacks – all boundaries (to address ACPS specifically):</p> <p><i>(h) For Artificial Crop Protection Structures, the setbacks do not apply provided:</i></p>

	Provision or Decision	Scope	Reason(s) for the appeal	Relief sought
			consider that a more nuanced approach is required.	<u>(i) Green or black cloth is used on vertical faces within 30m of the site boundary, except as provided in (ii);</u> <u>(ii) Within 30 metres of property boundaries a different colour cloth may be used where the written approval of the owner(s) of the immediately adjoining property, or roading authority is obtained and provided to the Council.</u>
7.	GRUZ-P5		A 'provide for' direction more appropriate than enable – due to their potential to be inappropriate in some circumstances and requiring case-by-case assessment.	Amend GRUZ-P5, <i>Enable Provide for activities that provide for the rural community's social, cultural, and recreational needs, subject to such activities being of a scale, intensity, and location that are in keeping with rural character and amenity values.</i>
8.	GRUZ-P16	No clear scope from S42A rather 'through submissions on rural character and amenity outcomes' – of which HortNZ was a submitter.	There were no submissions that indicated that a new policy of this nature and there is no need for the policy.	Delete GRUZ-P16.
9.	NH-R9	HortNZ submission	In the context of Decision Report ZZ – Hearing Panel , 'Regarding HortNZ's concerns, ancillary farm earthworks are confirmed to be excluded from the definition of earthworks as the NPS	Amend NH-R9 to provide for ancillary rural earthworks. (1) Activity status: PER

	Provision or Decision	Scope	Reason(s) for the appeal	Relief sought
			<p><i>definition of earthworks is being applied which excludes cultivation. Ancillary rural earthworks are a permitted activity in the Rural Zone ...</i></p> <p>However the relationship between 'earthworks' and 'ancillary rural earthworks' is unclear in the Natural Hazards chapter.</p> <p>HortNZ considers that ancillary rural earthworks should be permitted in the Flood plain management area and Flood ponding area overlays.</p>	<p><i>Activity-specific standards:</i></p> <p>...</p> <p><u><i>(x) Ancillary rural earthworks In the GRUZ – General rural zone is not subject to (1)(b) or (1)(d)</i></u></p>
10.	Definition - farming	HortNZ submission	<p>The definition of farming includes a limitation on the use of a landing area only for rural production activities undertaken on the same site, is impractical, especially for fixed wing aircraft. Airstrips used by fixed wing aircraft for rural production activities usually serve a number of properties in the district</p> <p>'Site' is defined in the plan using the National Planning Standards definition, including being a single title, and could limit a grower to only using the aircraft or helicopter for the 'site' on which the airstrip or landing area is located, rather than servicing the entire property which may be made up of a number of 'sites'</p>	<p>Amend the definition of farming,</p> <p><i>Means:</i></p> <p><i>(a) Any agricultural, pastoral, horticultural, aquacultural, or apicultural activity having as its primary purpose the production of any livestock, fish, poultry, or crop using the in-situ soil, water and air as the medium for production; and includes:</i></p> <p>...</p> <p><i>(d) Loading areas for helicopters and airstrips for top dressing and spraying the same site; and</i></p>

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

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in [section 274\(1\)](#) and [Part 11A](#) of the Resource Management Act 1991.

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 Auckland.