BEFORE THE ENVIRONMENT COURT **ENV-2024-AKL-**
AUCKLAND REGISTRY

I TE KŌTI TAIAO O AOTEAROA
TĀMAKI MAKAURAU ROHE

IN THE MATTER	of the Resource Management Act 1991 (Act)
AND	
IN THE MATTER	of an appeal under clause 14 of the First Schedule of the Act with respect to decisions on Plan Change 9 of the Hamilton District Plan
BETWEEN	**TE AWA LAKES UNINCORPORATED JOINT VENTURE** AND **HOROTIU FARMS LIMITED**
	Appellant
A N D	**HAMILTON CITY COUNCIL**
	Respondent

NOTICE OF APPEAL AGAINST DECISIONS ON PLAN CHANGE 9
BY TE AWA LAKES UNINCORPORATED JOINT VENTURE AND HOROTIU FARMS LIMITED

Dated 17 JUNE 2024

To: The Registrar, Environment Court, Auckland

Background

1. Te Awa Lakes is a regionally significant master-planned development in North Hamilton. Broadly, Te Awa Lakes comprises three main land blocks: Horotiu East North (HEN), Horotiu East South (HES), and Horotiu West (HW). HW is in the Waikato District and is not part of this appeal. Both HEN and HES are within Hamilton City boundaries.

2. Land within HES and HEN is owned by Te Awa Lakes Unincorporated Joint Venture (TALUJV, comprising HFL Investment Limited, PPD TAL Limited & E&I TAL Limited), Horotiu Farms Limited (HFL), and Te Rapa Service Centre Limited Partnership. Only TALUJV and HFL are appellants.

Appeal

3. TALUJV and HFL appeal against the Third Decision of the Hearing Panel of Hamilton City Council (HCC) on Plan Change 9 (PC9).

Submission

4. TALUJV and HFL made submissions on PC9 in relation to HES and HEN (described as submission number #454 in the Decision; described as responses 173171996 and 4709925786 in HCC information).

5. TALUJV and HFL are not trade competitors for the purposes of section 308D of the Resource Management Act 1991 (RMA).

Notice

6. TALUJV and HFL received notice of HCC's decision on PC9 on 3 May 2024.

7. The decision was made by Hamilton City Council (HCC), through its independent commissioners.

Parts of Decision Being Appealed

8. The parts of the decision that TALUJV and HFL are appealing are (in summary):

a. The size and scale of SNAs C59 and C76, particularly as these relate to HES and HEN; and

b. The purpose provisions and objectives, policies, rules, and standards in PC9.

Reasons

9. The reasons for the appeal are:

a. The size and scale of SNAs C59 and C76 (applied to HES and HEN land) is larger than appropriate, and does not reflect:

(i) a correct application of appropriate methodology;

(ii) the ecological features present on the site;

(iii) that the site does not comprise current or significant bat habitat;

(iv) the reality of consented activities on or in the proximity of the site, including that HEN holds consents that provide for vegetation removal and for lizard relocation;

(v) that C59 should not be considered of regional significance;

(vi) sound resource management practice.

b. The plan provisions relating to SNAs, particularly corridor SNAs, are overly restrictive, and do not appropriately provide for:

(i) effective and efficient land use;

(ii) removal, maintenance, and pruning, especially where necessary for health and safety or ecological reasons;

(iii) adjacent or nearby land uses;

(iv) permitted or anticipated land uses;

(v) the reality that some SNAs do not comprise current or significant bat habitat, and should not be subject to the same restrictions as those that do;

(vi) impacts on connectivity or buffering because of the impact of adjacent or nearby land uses;

(vii) the desirability of indigenous over non-indigenous species.

c. There will be consequential impacts on land use, including under Hamilton's Plan Change 12, if the SNAs remain as they are.

Relief Sought

10. TALUJV and HFL seek the following relief:

    a. Reduction of Area 1 of SNA C59 to a 20m wide strip either side of the stream corridor, as shown in Figure 4 of the appellant's submission.

    b. Removal of areas 2, 3, 4, and 5 from SNAs C59 and C76, as described in the appellant's submission.

    c. Relief under section 85 of the RMA.

    d. Amendment of plan provisions to allow for:

        (i) Removal of vegetation for health and safety reasons.

        (ii) Recognition of the desirability of indigenous vegetation over non-indigenous vegetation, and that removal of non-indigenous vegetation and its replacement with appropriate indigenous vegetation has ecological benefits.

        (iii) Recognition that appropriate development of areas within or near corridor SNAs will in some cases have ecological and social benefits, including through restoration and improved ecological outcomes.

        (iv) Removal of vegetation where a suitable ecological rehabilitation plan is in place.

        (v) Relocation of lizards where a suitable lizard management plan is in place.

        (vi) Correction of the notion that C59 is a regionally significant SNA, while C76 which is river edge land is not.

        (vii) Compensation where land use is affected by SNAs, in a manner comparable to section 15A of Hamilton's District Plan.

    e. Objective 20.2.1. Add "where appropriate" (to recognise that not all SNAs may be "protected, maintained, restored and enhanced" in all cases).

    f. Policy 20.2.1h. Add (v) "For health and safety reasons".

    g. Policy 20.2.1l. Add "or other regionally significant activities" (as City strategies are not necessarily permanent).

    h. Objective 20.2.2 and policies 20.2.2a and 20.2.2b. Add "current" before the word "habitat" in each case.

    i. Objective 20.2.3ai. Add "or enhanced".

    j. Rules (Activity Status Table) 20.3aa. Add (ia) "That part of cSNAs C59 and C76 within the Te Awa Lakes site."

k. Rules (Activity Status Table) 20.3a. Revise to: "The tree has failed and/or there is an unacceptable or imminent risk to health, safety, or property …."

l. Rules (Activity Status Table) 20.3e. Delete the words: "where: i. This is not provided for by either 20.3(a) or 20.3(b); and ii. Standard 20.5.6 is complied with in a cSNA".

m. Rules (Activity Status Table) 20.3jc. Change "20m" to "5m, where the SNA is not current bat habitat".

n. Rules (Specific Standards) 20.5.1a-b. Add "indigenous" before "tree" and before "branch or root".

o. Rules (Specific Standards) 20.5.6. Remove "or exotic" in heading, and:

(i) In 20.5.6aii, add "indigenous" before "vegetation".

(ii) In 20.5.6bi, add "indigenous" before "tree".

(iii) In 20.5.6bii, add "indigenous" before "tree".

p. Rules (Specific Standards) 20.5.7A. Remove "or exotic" in heading, and:

(i) In 20.5.7Aci, add "indigenous" before "tree".

(ii) In 20.5.7Acii, add "indigenous" before "tree".

q. Such consequential relief as is necessary to give effect to the above.

11. TALUJV and HFL attach:

a. A copy of our submission.

b. A copy of the relevant decision.

c. A list of names and addresses of persons to be served with a copy of this notice.

Dated at Hamilton this 17th day of June 2024

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Thomas Gibbons
Solicitor for Te Awa Lakes Unincorporated Joint Venture and Horotiu Farms Limited, Appellants

Address for service of Appellant: C/- Thomas Gibbons Law, Panama Square (Level 2 East), 14 Garden Place, Hamilton
Telephone: 022 171 5178
Email: Ben.Tyson@teawalakes.co.nz
Contact person: Ben Tyson

Documents for service may be left at the address for service, or may be emailed to Ben.Tyson@teawalakes.co.nz

Note to appellant

Appeals other than in relation to freshwater planning instruments

You may appeal only if—

- you referred in your submission or further submission to the provision or matter that is the subject of your appeal; and
- in the case of a decision relating to a proposed policy statement or plan (as opposed to a variation or change), your appeal does not seek withdrawal of the proposed policy statement or plan as a whole.

The Environment Court, when hearing an appeal relating to a matter included in a document under section 55(2B) of the Act, may consider only the question of law raised.

~~*Appeals in relation to freshwater planning instruments*~~

~~You may appeal only if—~~

- ~~you addressed in your submission or further submission the provision or matter that is the subject of your appeal; and~~
- ~~the relevant regional council rejected a recommendation of the freshwater hearings panel and decided an alternative solution which resulted in—~~
  ~~(a) the provision or matter being included in the freshwater planning instrument; or~~
  ~~(b) the provision or matter being excluded from the freshwater planning instrument.~~

~~If a regional council decides to reject a recommendation of the freshwater hearings panel that is outside the scope of submissions, you may appeal to the Environment Court in respect of that decision or the alternative solution proposed by the council if you made a submission.~~

Notes for all appeals

Your right to appeal may be limited by the trade competition provisions in Part 11A of the Act.

You must lodge the original and 1 copy of this notice with the Environment Court within 30 working days of being served with notice of the decision to be appealed. The notice must be signed by you or on your behalf. You must pay the filing fee required by regulation 35.

You must serve a copy of this notice on the local authority that made the decision and on the Minister of Conservation (if the appeal is on a regional coastal plan), within 30 working days of being served with a notice of the decision.

You must also serve a copy of this notice on every person who made a submission to which the appeal relates within 5 working days after the notice is lodged with the Environment Court.

Within 10 working days after lodging this notice, you must give written notice to the Registrar of the Environment Court of the name, address, and date of service for each person served with this notice.

However, you may apply to the Environment Court under section 281 of the Act for a waiver of the above timing or service requirements (see form 38).

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, 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; and

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 Act.

You may apply to the Environment Court under section 281 of the Act for a waiver of the above timing or service requirements (see form 38).

**How to obtain copies of documents relating to appeal*

The copy of this notice served on you does not have attached a copy of the appellant's submission and (or or) the decision (or part of the decision) appealed. These documents may be obtained, on request, from the appellant.

*Delete if these documents are attached to copies of the notice of appeal served on other persons.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

Attachment One: Copy of Submissions (annexed)

Attachment Two: Copy of Decision (annexed)

Attachment Three: Names and addresses of persons to be served (annexed)