

**BEFORE THE ENVIRONMENT COURT  
AT WELLINGTON  
I MUA I TE KOOTI TAIAO O AOTEAROA**

**ENV**

**IN THE MATTER** of the Resource Management Act 1991

**AND**

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

**BETWEEN** **BEEF+LAMB NEW ZEALAND LIMITED**

Appellant

**AND** **WELLINGTON REGIONAL COUNCIL**

Respondent

---

**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST DECISION  
ON PROPOSED PLAN**

---

---

FLETCHER VAUTIER MOORE  
LAWYERS  
PO BOX 3029  
RICHMOND 7050

Telephone: (03) 543 8301  
Facsimile: (03) 543 8302  
Email: cthomsen@fvm.co.nz  
Solicitor: CP Thomsen

**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST  
DECISION ON PROPOSED PLAN**

**TO** The Registrar  
Environment Court  
Wellington

1. Beef+Lamb New Zealand Limited appeal against part of a decision of the Wellington Regional Council on the following proposed plan:

Proposed Natural Resources Plan for the Wellington Region.

2. The Appellant made a submission on that proposed plan.
3. The Appellant is not a trade competitor for the purposes of s 308D Resource Management Act 1991.
4. The Appellant received notice of the decision on or about 31 July 2019.
5. The decision was made by the Wellington Regional Council.
6. The parts of the decision that the Appellant is appealing include those identified below together with all necessary consequential amendments to those parts of the Proposed Plan necessary to grant the relief sought:
  - (a) Definition of Livestock and Stock exclusion rules R97, R98, and R98;
  - (b) Definition of erosion prone land;
  - (c) Table 3.4 (O25);
  - (d) Decision not to include a new policy applying principles for nutrient allocation;
  - (e) Rule 97.
7. The general reasons for the Appeal are that the decision being appealed:

- (a) Will not promote the sustainable management of resources and is contrary to the relevant provisions of part 2 RMA;
- (b) Does not represent the most appropriate way to achieve the objectives of the Proposed Plan;
- (c) Is not in accordance with Council's functions under s 30 and relevant national policy statements, including, inter alia, the National Policy Statement for Freshwater Management (NPSFM);
- (d) Does not give effect to relevant national policy statements including, inter alia, the NPSFM;
- (e) Does not give effect to the Regional Policy Statement;
- (f) Does not provide for the social and economic wellbeing of the Wellington region's community, particularly the sheep and beef sector;
- (g) Will have significant economic and social costs for the community, in particular the sheep and beef sector;
- (h) Does not provide for the efficient use and development of natural and physical resources.

8. Without limiting the generality of the grounds pleaded in the preceding paragraph the specific reasons for the appeal and the relief sought are as follows:

- (a) Definition of erosion prone land – The pre-existing slope of the land exceeds 20 degrees.

Defining whether land is erosion prone based on slope angle is simplistic and fails to properly account for the variables, such as soil type and vegetative cover, that determine the effects based risk of land's susceptibility to erosion.

Erosion prone land needs to be identified on a finer scale by mapping areas where the soil conditions and other factors lead to susceptibility to erosion.

The existing land use capability classification system provides an established and well known system for classification of erosion prone land at a 1:50,000 (national) scale that can be applied at a 1:10,000 (farm) scale.

*Relief Sought*

Redraft definition as follows:

*Land that has an erosion risk classification under the Land Use Capability soil classification system, specific to the Greater Wellington Region.*

- (b) Table 3.4 – Aquatic ecosystem health and mahinga kai objectives

Table 3.4 sets out freshwater objectives as defined and required by the NPSFM.

The periphyton or/ and MCI objectives are set at levels above the current state of waterbodies within the catchment and above the national environmental bottom line of periphyton >120 and ≤200 mg chl-a/m<sup>2</sup> (milligrams chlorophyll-a per square metre), or/and MCI 80.

The freshwater objectives should seek to maintain current state where appropriate and to improve water quality where the water quality requires it, as identified in the whitua process.

There is an insufficient evidentiary basis for the freshwater objectives and it is unclear whether or not the systems can achieve these objectives, given catchment geology and river form and function.

The Respondent erred in accepting the recommendation of the Independent Hearing Panel to retain the objectives in Table 3.4 for MCI in the absence of evidence other than the technical aquatic ecosystem health evidence it heard and referred to in the Decisions Report (Part 2 from 4.392).

*Relief Sought*

Amend the numeric freshwater objectives to reflect the natural character of waterbodies and their life supporting capacity, in the context of geology, catchment characteristics and surrounding land uses.

(c) New Policy – nutrient allocation framework

The nutrient allocation framework in the decisions version of the Proposed Plan (dNRP) is unclear.

The dNRP should include clear principles for nutrient allocation that contemplate, inter alia, the land's inherent capacity for certain land uses depending on the effects of that land use, obligations on resource users to follow best practice and decision-making based on the best available scientific information.

*Relief Sought*

Insert new policy or policies incorporating the Appellant's 14 nutrient allocation principles:

Principle 1 Like land should be treated the same

Principle 2 Those undertaking activities that have caused water quality problems should be required to improve their management to meet water quality limits.

Principle 3 Flexibility of land use must be maintained

Principle 4 The allocation system should be technically feasible, simple to operate and understandable

Principle 5 The natural capital of soils should be the primary consideration when establishing an allocation mechanism for nutrient loss

Principle 6 Allocation approaches should provide for adaptive management and new information

Principle 7 Appropriate timeframes must be set to allow for transition from current state to one where allocation of nutrients applies

Principle 8 Long term investment certainty is a critical feature of a viable nutrient management system

Principle 9 Improvement in water quality must remain the primary objective of adopting any nutrient allocation regime

Principle 10 In under-allocated catchments, where property based nutrient allocation has not been adopted in setting water quality limits, the system for allocating nutrients must be determined well before the limit is reached, be clear and easy to understand, and designed to avoid over-allocation

Principle 11 In designing the allocation system the benefits of a nutrient transfer system within the catchment or water management unit should be considered

Principle 12 Regulation, monitoring, auditing and reporting of nutrients within an allocation regime needs to relate to the degree of environmental impact and pressure

Principle 13 As a minimum expectation, in all catchments, all land users should be at or moving towards (industry defined) Good Management Practice (GMP), recognising that GMP is constantly evolving and continuous improvement is inherent in GMP

Principle 14 Nutrient allocation must be informed by sound science and stable and reliable catchment and farm system modelling and measurement

(d) R97 – Livestock access to surface water or the coastal marine area – permitted activity:

(i) The Decision amended the rule by deleting the reference to “*access by cattle, farmed deer and farmed pigs within Category 2 surface water bodies*” and replacing it with “*livestock*”.

The Decision stated at paragraph 6.7 “*The definition of livestock is amended, as sought by Federated Farmers*”. That definition explicitly excluded sheep from the definition of livestock for the purpose of R97, however that is not reflected in the dNRP.

R97 is a s 9 and s 15 rule. The changes made to the dNRP and/or the possible error pleaded above mean there is no permitted activity rule for sheep accessing surface water bodies and any associated discharges.

The economic and social cost of requiring stock exclusion from surface water bodies in the region will have a significant impact on the sheep and beef sector, particularly on sheep farmers.

The exclusion of sheep does not implement P99, particularly the effects-based approach in P99(b) that recognises the difference in effect between types of livestock.

The rule is not effective and efficient.

#### *Relief Sought*

Amend R97 or the livestock definition to remove sheep from the animals excluded from surface water bodies and the coastal marine area.

- (ii) Sheep are low risk to water quality when crossing or drinking from water bodies.

The economic and social cost of requiring stock exclusion from surface water bodies in the region will have a significant impact on the sheep and beef sector, particularly on sheep farmers.

The exclusion of sheep does not implement P99, particularly the effects-based approach in P99(b) that recognises the difference in effect between types of livestock.

*Relief Sought*

Amend R97 or the livestock definition to control access to Category 2 surface water bodies for livestock, excluding sheep.

- (iii) R97(c)(ii) is a permitted activity condition that provides livestock access (including sheep) to surface water bodies (including Category 1 and 2 surface water bodies) shall not result in “pugging or de-vegetation that exposes bare earth”.

That condition was amended (substantively<sup>1</sup>) in the dNRP by adding the underlined words in the preceding paragraph and deleting the requirement that any pugging be “*significant*”.

It is not clear from the Decisions Report the reasons for the amendments to R97(c)(ii). The Respondent therefore erred in making this change.

Discharges (particularly faecal coliform indicators and P) from overland flow is a recognised issue for the sheep and beef sector.

---

<sup>1</sup> The structure and layout of the rule was also changed in the dNRP.



When livestock (including sheep) access water for drinking water and crossing some pugging occurs. The pugging does not necessarily result in discharges that are more than de minimus. Issues from discharges arise when that pugging is significant.

The condition does not implement P99, particularly the effects-based approach in P99(b) that recognises the differences in effects between types of livestock.

*Relief Sought*

Amend R97 by deleting the words “*or de-vegetation that exposes bare earth*” and reinstate the drafting providing for “*significant pugging*” as a condition of the permitted activity rule.

9. The Appellant seeks the following further general relief:
  - (a) That the appeal be allowed.
  - (b) Such other consequential or alternative relief by way of amendments to the provisions of the Proposed Plan that address the grounds pleaded above;
  - (c) Costs.
10. The Appellant attaches the following documents to this notice:
  - (a) A copy of its submission.
  - (b) A copy of its further submission.
  - (c) A list of the names and addresses of persons to be served with a copy of this notice.
11. In accordance with the Environment Court’s directions in *Re Wellington Regional Council* [2019] NZEnvC 126 no copy of the relevant decision has been filed.



---

CP Thomsen  
Counsel for the Appellant  
18 September 2019

This notice of appeal was filed by **CHRISTOPHER PAUL THOMSEN**, solicitor for the Appellant of the firm Fletcher Vautier Moore. The address for service of the above-named Appellant is at the offices of Fletcher Vautier Moore, Solicitors, 265A Queen Street, Richmond, Nelson.

Documents for service on the Appellant may be:

- (a) Posted to the solicitor at Fletcher Vautier Moore, Solicitors, P O Box 3029, Richmond, Nelson; or
- (b) Left for the solicitor at a document exchange for direction to DX WC71017, Richmond, Nelson; or
- (c) Transmitted to the solicitor by facsimile to (03) 543 8302 provided original documents are then posted to the solicitor; or
- (e) Sent by email to [cthomsen@fvm.co.nz](mailto:cthomsen@fvm.co.nz) provided original documents are then posted to the solicitor.

## **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 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 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 attach a copy of the Appellant's submission, further submission, decision appealed or list of names and addresses of persons to be served with a copy of this notice. These documents may be obtained, on request from the Appellant at its address for service.

### *Advice*

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