

BEFORE THE ENVIRONMENT COURT

ENV-2016-

AT WELLINGTON

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an application for declarations under sections 310 and 311 of the Act

BETWEEN **WELLINGTON FISH AND GAME COUNCIL**

AND **ENVIRONMENTAL DEFENCE SOCIETY INC**

Applicants

AND **MANAWATU-WANGANUI REGIONAL COUNCIL**

Respondent

NOTICE OF APPLICATION FOR DECLARATIONS by WELLINGTON FISH AND GAME COUNCIL and ENVIRONMENTAL DEFENCE SOCIETY INC

16 September 2016

Counsel instructed

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Notice of Application for Declarations
Sections 310 and 311 of the Resource Management Act 1991

To: Manawatu Wanganui Regional Council

We, the Wellington Fish and Game Council and Environmental Defence Society Inc (**Applicants**) give notice that we have applied for the following declarations from the Environment Court on 16 September 2016, under section 310(a) and (c) of the Resource Management Act 1991 (**Act**):

1. That the Manawatu-Wanganui Regional Council's (**Respondent's**) Resolution dated 25 June 2013, relating to applications for resource consent for restricted discretionary activities under Rule 14.2 of Chapter 14 Discharges (Land and Water) of the Manawatu Wanganui Regional Policy Statement and Regional Plan (**One Plan**), and providing that *inter alia*:

“(iii) *Where an activity is considered as a restricted discretionary activity and the numbers in table 13.2 are no longer applicable then:*

- *An existing intensive farming activity that provides a trajectory of N reduction that is achievable on the farm or has a low N loss or the farm operating system is economically and environmentally efficient (no low cost options are available) will be given a consent term of 15 to 20 years.*
- *An existing intensive farming activity where there is no willingness to reduce N loss but mitigation is both possible and efficient will be given a consent term of 3 to 5 years. ...”*

was unlawful, invalid and in contravention of the Act.

2. That in considering applications for resource consents for restricted discretionary activities under Rules 14.2 and 14.4 of the One Plan (existing and future intensive land use activities), pursuant to sections 104 and 104C of the Act, the Respondent has a duty to have regard to each of the following matters:
 - (a) the environmental effects of allowing the activity, in particular, the cumulative effects in accordance with section 3 of the Act;
 - (b) all the matters over which discretion is reserved under Rules 14.2 and 14.4 respectively, including the extent of non-compliance with the cumulative nitrogen leaching maximum values set out in Table 14.2;

- (c) the objectives and policies of the One Plan in so far as they relate to matters over which discretion is reserved under Rules 14.2 and 14.4, in particular policies 14.5, 14.6 and 14.9;
 - (d) the objectives and policies of the National Policy Statement for Freshwater Management 2014 (**NPSFM**);
 - (e) required reductions of nitrogen in the water management zone or subzone in order to provide for the Schedule B values (for zones or subzones that are over-allocated);
 - (f) the nature of the discharge and the sensitivity of the receiving environment under section 105 of the Act; and
 - (g) the requirements of section 107 of the Act including, if required under section 113(2)(b), written reasons.
3. That in considering and granting applications for resource consents under Rules 14.1 to 14.4 of the One Plan, the Respondent must not grant consents contrary to the Resource Management (National Environmental Standards for Sources of Human Drinking Water) Regulations 2007.
 4. That, in respect to the resource consents set out in Annexures A and B to the affidavit of Ms Helen Marr in support of this application ("**Resource Consents**"), the Respondent has wrongly failed to have regard to some or all of the matters set out in paragraphs 2 and 3.
 5. That in considering and granting the **Resource Consents** the Respondent had a duty to return the applications under section 88 of the Act as being so deficient that they were patently incomplete, in that the application documents did not include:
 - (a) an application form complying with Form 9 of the Resource Management (Forms, Fees and Procedure) Regulations 2003; or
 - (b) an assessment of environmental effects meeting the criteria of Schedule 4 of the Act.
 6. That the **Resource Consents** do not authorise the discharges associated with the intensive land use pursuant to section 15 of the Act or, if such discharges are so authorised, that in considering and granting the **Resource Consents** the Respondent wrongly failed to:

- (a) have regard to section 105 of the Act; and
 - (b) consider whether the discharges would be likely to give rise to any of the adverse effects in receiving waters under section 107 of the Act.
7. That, in granting the **Resource Consents**, the Respondent has failed to adequately define the ambit and scope of the activity authorised, including that the consent conditions do not:
- (a) set the maximum nitrogen leaching allowed over the term of the consents;
 - (b) require the activity to be operated in compliance with a Nutrient Management Plan to be prepared by a person who has both a Certificate of Completion in Sustainable Nutrient Management in NZ Agriculture and a Certificate of Completion in Advanced Sustainable Nutrient Management from Massey University, showing that the activity is complying with the nitrogen leaching maximums allowed by the consent; and
 - (c) include conditions requiring environmental or performance standards for phosphorus or sediment loss, or for the matters listed in rules 14.5, 14.6, 14.7, 14.9 and 14.11 of the One Plan.
8. That the Advice Notes on the **Resource Consents** are either *ultra vires* the Act or render the **Resource Consents** unenforceable, including Advice Notes to the effect that:
- (a) It is not intended that there will be enforcement of any specific management practices;
 - (b) “Updates” to targeted nitrogen leaching or a Sustainable Management Plan or associated OVERSEER files may be approved by the Regulatory Manager from time to time; and
 - (c) Annual records showing compliance with Nutrient Management Plans will only be required if there are “discrepancies with the Nutrient Budget”.
9. If you wish to be heard at the hearing to determine this matter, you should notify the Environment Court Registrar within 15 working days after the date the application was made.

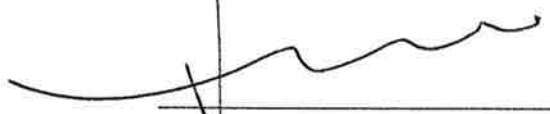
10. If you do not notify the Registrar of your wish to be heard, the case may proceed without further notice to you.

11. The following documents are attached:

- (a) Copy of the Application for Declarations;
- (b) Affidavit of Gary Vernon Taylor;
- (c) Affidavit of Helen Marie Marr;
- (d) Affidavit of Peter Harold Taylor; and
- (e) A list of the names and addresses of the persons to be served with the application.



Ms S Ongley on behalf of the Wellington
Fish and Game Council



Mr J Burns on behalf of the Environmental
Defence Society Incorporated

Address for Service of Applicants:

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Advice to recipient of notice of application

It is recommended that you consult a lawyer without delay, although it is not essential for you to have a lawyer for the purpose of these proceedings.

If you want a lawyer but think that you cannot afford one and wish to apply for legal aid, contact the Environment Court, a Citizen's Advice Bureau, a community law centre, or a lawyer for assistance.

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