

**IN THE ENVIRONMENT COURT
AUCKLAND REGISTRY**

ENV-2016-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 decisions
on Plan Changes 85, 85A 85D, 114 and
Consequential Amendments to the
Whangarei District Plan

BETWEEN **Horticulture New Zealand**

Appellant

AND **Whangarei District Council**

Respondent

**NOTICE OF APPEAL
ON PLAN CHANGES 85, 85A, 85D, 114 AND CONSEQUENTIAL
AMENDMENTS TO THE WHANGAREI DISTRICT PLAN**

To: The Registrar

Environment Court

Auckland

1. Horticulture New Zealand (“**HortNZ**”) appeals part of the decisions of the Whangarei District Council on Plan Changes 85, 85A, 85D and 114 and Consequential Amendments to the Whangarei District Plan
2. HortNZ made a submission and further submissions on Plan Changes 85, 85A, 85D and 114 and Consequential Amendments to the Whangarei District Plan (submissions 423 and 424 and 425).
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 2018.
5. The decisions were made by the Whangarei District Council.
6. Decisions appealed against:
 - (a) PC85 and PC85A Renaming of Rural Production Environment to Rural Countryside Environment
 - (b) PC85 RA.1.2.4
 - (c) PC85 RA.1.2.9
 - (d) PC85 RA.1.3.2
 - (e) PC85 RA.1.3.4
 - (f) PC85A REC.1.1
 - (g) PC85A RCE.1.2.4
 - (h) PC85A RPE.1.3.7
 - (i) PC85D RLE.1.1
 - (j) PC85D.RLE.1.2.1
 - (k) PC85D RLE.2.3.4

- (l) PC114 LAN.1.3.3
 - (m) PC114 LAN. 1.3.5
 - (n) PC114 LAN 5.1.3
 - (o) PC114 LAN.8.4
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



Angela Halliday
Manager, Natural Resources and Environment
Horticulture New Zealand

28 February 2018

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Decisions of Whangarei District Council on Plan Changes 85, 85A, 85D, 114 and Consequential Amendments to the Whangarei District Plan which are appealed by HortNZ:

Appeal Point	Provision or Decision	Scope	Reason	Relief sought
1.	<p>PC85 and PC85A</p> <p>Renaming of Rural Production Environment to Rural Countryside Environment</p> <p>Refer Decision Pt 7 J</p>	<p>HortNZ made a further submission opposing submissions 195/1, 195/2 that sought changes to the strategic direction of the Plan Changes.</p>	<p>The submitter fundamentally opposed the introduction of the Rural Production Environment (RPE) and sought substantive changes. In particular the submitter opposed the focus on rural production in the RPE as there are other activities that are undertaken in the zone that are not production based.</p> <p>The decision renames the zone Rural Countryside Environment (RCE). HortNZ opposes the renaming of the zone as it removes the focus from rural production which is identified in the objectives and policies as a matter to be protected in that environment. While a range of other activities are also provided for the key focus is on rural production. Rural Countryside is a term that is more akin to rural living or rural lifestyle and does not adequately reflect the key activities undertaken in the zone.</p> <p>HortNZ seeks that the zone is either renamed Rural Production Zone or an alternative such as Rural Environment which is more neutral terminology.</p>	<p>Amend the 'Rural Countryside Environment' to either 'Rural Production Environment' or 'Rural Environment' or neutral alternative and amend all references throughout the Plan.</p>
2.	PC85	HortNZ made further submissions	The decisions include provision for industrial and commercial activities that support rural	<p>Amend RA.1.2.4 as follows:</p> <p>Provide for a range of appropriate</p>

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	RA.1.2.4 Rural Area Objective	opposing in part the addition of commercial and industrial activities into the Rural Area. (309/1 327/1 336/1) Decision Report PC 85 Pt 5 L	production activities and rural communities. (Pt 5 L Para 200) HortNZ is concerned that the Objective RA1.2.4 provides for commercial and industrial activities but does not specify that they are limited to those that support rural production activities and rural communities. This is important because it could be taken that all commercial and industrial activities as defined in the Plan are provided for in the Rural Area. The relief sought is consistent with the description of the Rural Area and objectives and policies in other parts of PC85 and 85A.	land uses in the Rural Area, including rural production activities, residential, rural residential, rural lifestyle, commercial <u>and</u> industrial activities <u>that support rural production activities and rural communities</u> , and mineral extraction activities in appropriate areas.
3.	PC85 RA.1.2.9 Rural Area Objective	HortNZ made a submission seeking that Objective RA.1.2.6 (now 1.2.9) be amended. Decision Report Pt 5 I	HortNZ sought that the objective relating to rural living subdivision and development did not refer to areas 'that have already been compromised' for rural production activities. The descriptor of the Rural Living Environment in RA.1.1 describes the zone as 'locations that have an existing rural living density of development.' It does not refer to rural production activities already being compromised. HortNZ presented evidence that many of the identified rural living areas are still able to	Amend RA.1.2.9 as follows: Consolidate rural living subdivision and development in areas <u>that will not compromise existing</u> rural production activities or on less productive land without significant adverse effects on the environment

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			<p>sustain rural production activities, therefore they are not 'already compromised'.</p> <p>Rural production activities are a permitted activity in the RLE, therefore the focus should be ensuring that the existing rural production activities in the Rural Living Environment are not compromised</p> <p>The descriptor in RA.1 of the Rural Living Environment describes the zone as locations that have an existing rural living density of development.</p>	
4	PC85 RA.1.3.2 Rural Area Policy	<p>HortNZ sought that a new policy be included to recognise the importance of soils in the district and to rural production activities.</p> <p>Decision Report Pt 5 I</p>	<p>HortNZ sought that a new policy be added as follows:</p> <p>To recognise and identify the district's highly productive and versatile land for its productive capacity and the value to the district's economy and to protect from urban and rural residential development.</p> <p>The decision accepts the submission in part by adding a new policy as RA.1.3.2. However the wording is different to that sought by HortNZ and focuses on 'highly versatile' soils. Rural production activities can be undertaken on a range of soil types and the focus should be on ensuring that such soils are retained for productive use.</p>	<p>Amend RA.1.3.2 as follows</p> <p>To protect highly versatile <u>high quality soils and productive land</u> from activities which would materially reduce the <u>productive</u> potential for rural production activities.</p>

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5.	PC85 RA.1.3.4 Rural Area Policy	HortNZ made a submission on RA.1.3.3 (now RA.1.3.4) seeking additional criteria of the Rural Living Environment in the policy. Decision Report Pt 10 M	HortNZ sought that RLE did not include areas of existing established horticultural activities or areas which contained components for rural production such as high quality soils. In response to the s42A Report a provision was sought that RLE not include areas of highly versatile land, land with high production potential or established rural production activities. The decision adds a new clause to RA.1.3.4 to recognise the importance of soils as a criteria in identification of appropriate RLE areas. HortNZ supports the inclusion in part but seeks that it is not limited to specific soil types listed as high value production can occur on soils other than those listed and such areas should be retained for rural production activities.	Amend RA.1.3.4 i) as follows: Do not materially reduce the potential for rural production activities on highly versatile land, land with high production potential or land with established rural production activities.
6.	PC85A RCE.1.1 Description and Expectations	HortNZ made submissions and further submissions on RPE.1.1 Decision report Pt 7 B Amenity, character and landscapes	HortNZ sought changes to RCE.1.1 to better reflect the intent of the zone. As a result of submissions the decisions amend the description that present a lack of certainty. In particular paragraph 8 states: The RCE will not support an increased level of <u>clustered</u> rural living development. HortNZ agrees that it will not support an increase in rural living development but is concerned that such development is limited to	Amend RCE.1.1 Para 8 by deleting 'clustered.'

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			‘clustered’ development. There are limited opportunities for rural living development in the RCE and the description should be clear of that intent.	
7	PC85A RCE.1.2.4 (was RPE.1.2.3) Decision report Pt 7 A	HortNZ sought that objective RPE.1.2.3 be retained and made further submissions opposing changes to the objective	Objective RCE.1.2.4 is important for horticulture because it establishes a framework for addressing reverse sensitivity which is a key issue for horticulture. The decisions generally seek to use the term ‘rural production activities’ to be consistent and rely on the defined term. However it is not used in RCE.1.2.4. HortNZ considers that it is important that ‘rural living’ is retained in the objective along with ‘residential, subdivision and development’. In addition the use of the term ‘ad hoc’ implies that adverse effects on rural production activities from activities that are not ‘ad hoc’ are appropriate. This presents a degree of uncertainty in the objective.	Amend RCE.1.2.4 as follows: Avoid adverse effects on rural production activities and rural land resources from rural living, residential, subdivision and development in the RCE.
8	PC85A RPE.1.3.7 Decision Report Pt 7 B	HortNZ sought changes to RPE.1.3.7.	Policy RPE.1.3.7 in Proposed PC85A described the character and amenity of the Rural Production Zone. HortNZ supported inclusion of the policy but sought changes to clarify the description. HortNZ had also sought a definition of rural character but advised at the hearing that	Reinstate Policy RPE 1.3.7 as follows: To protect the distinctive rural character and amenity of the RPE including but not limited to: a. A working rural production

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			<p>inclusion in the policy is the preferable approach.</p> <p>As a result of other submissions the decision deletes the policy and relies on the description and expectations in RCE.1.1.</p> <p>However by deleting Policy RPE.1.3.7 the description of rural character is not included within the regulatory framework of the plan. Given the extent that rural character is referred to in the Plan it is important that it is clear what it is and a policy framework that is considered as part of any consent applications.</p> <p>It is noted that a policy providing a description of the character of the Rural Living Environment is included as RLE.1.3.1. It would be consistent for such a policy to be included in the RCE provisions.</p>	<p>environment.</p> <p>b. Some activities are seasonal in nature</p> <p>c. Intensity of development reflecting the rural production environment, such as buildings and structures for rural production and domestic purposes.</p> <p>d. Varying levels of noise associated with seasonal and intermittent rural production activities.</p> <p>e. Relatively open space and low density of development</p> <p>f. Odours, noise and dust typical of rural activities.</p> <p>g. Generally low levels of vehicle traffic with seasonal fluctuations.</p> <p>h. the presence of large numbers of farmed animals and extensive areas of plant vine or fruit crops and areas of forestry</p> <p>i. accessory buildings and structures (including crop support and artificial crop protections structures) across</p>

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				the landscape.
9.	PC85D RLE.1.1 Decision Report Pt 10 C	HortNZ made further submissions supporting Submission 250/20 seeking changes to RLE.1.1	HortNZ generally supported RLE.1.1 but made further submissions on the provision. As a result of submissions the decision amends the description but does not given due consideration of the rural production activities that currently exist in the Rural Living Environment. The first sentence uses the term 'hobby farms'. This is not an accurate description of the horticultural activities that are legitimate and permitted within the zone.	Amend RLE.1.1 by deleting 'hobby' from the first sentence.
10.	PC85D RLE.1.2.1 (was RLE.1.2.5) Decision report Pt 10 C	HortNZ made a submission and further submissions on RLE.1.2.5.	HortNZ sought that Objective RLE.1.2.5 be amended to better reflect the nature of existing horticultural activities in the Rural Living Environment. The decision amends and relocates the objective but not as sought by HortNZ. The objective includes areas 'where rural production activities are already compromised'. HortNZ presented evidence that rural production activities can be undertaken on small parcels of land and that the issue of when an activity is compromised is subjective. The description of the RLE in RA.1.1 is that the RLE is in locations that have an existing rural living density of development. HortNZ	Amend RLE.1.2.1 as follows: Consolidate rural living development in appropriate locations where the existing subdivision pattern reflects a rural living environment and adverse effects (including reverse sensitivity effects) can be avoided.

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			considers that this should be the basis of the objective RLE.1.2.1.	
11.	PC85D RLE.1.3.1 Decision report Pt 10 F	HortNZ made a submission seeking changes to RLE.1.3.1.	<p>The decision amends Policy 1.3.1 including by deleting i) 'presence of rural production activities'.</p> <p>HortNZ considers that it is important that the presence of rural production activities is included in the policy describing the character of the Rural Living Environment.</p> <p>It is noted that the HortNZ submission was incorrectly stated in the s42A Report and the decision Report (Para 83) so the submission may not have been correctly assessed.</p> <p>HortNZ seeks to ensure that rural production activities that currently exist, are permitted and legitimately established within the RLE are adequately provided for.</p>	<p>Amend RLE.1.3.1 by reinstating clause i)</p> <p>Presence of rural production activities and associated activities (such as odour, noise from machinery and livestock and buildings for production activities).</p>
12.	PC85D RLE 2.3.4 Decision Report Pt 10 H	HortNZ made submissions seeking provision for artificial crop protection structures in the RLE.	The decision includes specific provision for artificial crop protection structures and crop support structures in 2.3.11 which are supported. However the definition of building does not exclude artificial crop protection structures in the RLE (only RCE). Therefore the building provisions in 2.3.4 will also apply as well as 2.3.11 which is specific to the structures. Any structure over 500m ² would be	<p>Amend 2.3.4 d) as follows:</p> <p>That results in site coverage exceeding 500m², <u>except for artificial crop protection structures with black or green cloth used on boundaries which are permitted.</u></p> <p>Or Exclude artificial crop protection structures and crop support structures from the definition of</p>

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			<p>a discretionary activity.</p> <p>HortNZ sought that there be permitted activity standards through the use of cloth colour to manage the potential effects of such structures. If such standards are not met then consent would be required.</p>	<p>building and amend 2.3.11 to include specific site coverage standards for artificial crop protection structures.</p>
13.	<p>PC114</p> <p>LAN.1.3.3</p> <p>(was LAN.1.3.4)</p> <p>Decision Report LAN I LAN.1.3 Policies</p>	<p>HortNZ made a submission and further submissions on LAN.1.3.4.</p>	<p>Policy LAN.1.3.3 establishes the framework for managing adverse effects of subdivision use and development on the characteristics and qualities of Outstanding Natural Features and Outstanding Natural Landscapes.</p> <p>Both Objective LAN.1.2.2 and Policy LAN.1.3.2 refer to 'inappropriate' subdivision use and development, which is consistent with the RMA. However LAN.1.3.3 does not include the word 'inappropriate'. It is important that the word 'inappropriate' is included as it is the effects of inappropriate development that the policy is seeking to address.</p>	<p>Amend LAN.1.3.3 by adding 'inappropriate' as follows:</p> <p>Outside of the Coastal Area to avoid significant adverse effects and avoid, remedy or mitigate other adverse effects (including cumulative adverse effects) of <u>inappropriate</u> subdivision use and development on the characteristics and qualities of Outstanding Natural Features and Outstanding Natural Landscapes.</p>
14.	<p>PC114</p> <p>LAN.1.3.5</p> <p>(was LAN.1.3.6)</p> <p>Decision Report LAN I LAN.1.3</p>	<p>HortNZ made a submission and further submissions on LAN.1.3.5.</p>	<p>HortNZ sought that an additional point be added to Policy LAN.1.3.5 to recognise the existing land use. This is consistent with the objective LAN.1.2.5 that recognises existing land use and development as forming part of the characteristics and qualities of the environment where they are located in or on an ONL or ONF.</p>	<p>Amend LAN.1.3.5 by adding an additional point:</p> <p>Recognising existing land use.</p>

Appeal Point	Provision or Decision	Scope	Reason	Relief sought
	Policies			
15.	LAN.5.1.3 Decision Report LAN M	HortNZ made submissions and further submissions on LAN.5.1	<p>The decision adds a new clause: Any activity not prohibited or requiring consent as a restricted discretionary, discretionary or non-complying activity shall be a permitted activity.</p> <p>The decision clarifies at Para 589 that the permitted activity status applies only for the ONF overlay but does not amend the provision to clarify the status.</p> <p>HortNZ considers that for clarity for plan users that it is clear that the permitted activity only applies to the ONF overlay and that the activity status in the underlying zone provisions may be different.</p>	Amend LAN.5.1.3 by adding 'in respect of the ONF overlay provisions. Refer to the underlying zone for other activity requirements'.
16.	LAN.8.4 Schedule ONF's Decision Report LAN M	HortNZ made submissions relating to Schedule 8.	<p>The decision determines that the Whatitiri shield volcano will be a special category of Large Landform A1.</p> <p>A description is included in LAN.8.3 A but the reference in Table 8.4 A large landforms for Whatitiri Shield volcano is not amended to A1.</p>	Amend LAN.8.4 A Large Landforms for Whatitiri shield volcano to A1.

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 appellant's 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.

APPENDIX A - Copy of the Appellant's submission and further submission to which this appeal relates.

APPENDIX B - Copy of the Respondent's decision on submissions.

APPENDIX C - Name and address of persons to be served with a copy of this notice.

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