

BEFORE THE ENVIRONMENT COURT

IN THE MATTER of the Resource Management  
Act 1991

AND of an appeal under clause 14 of  
the First Schedule to the Act

BETWEEN HORTICULTURE NEW ZEALAND  
AND NEW ZEALAND KIWIFRUIT  
GROWERS INCORPORATED

(ENV-2016-AKL-000024)

Appellants

AND WHAKATANE DISTRICT COUNCIL

Respondent

Environment Judge D A Kirkpatrick sitting alone under s 279 of the Act  
In Chambers at Auckland

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CONSENT ORDER

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[A] Under s 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

(1) the appeal is allowed in part subject to the amendments set out in **Appendix A** and **Appendix B** to this order.

[B] Under s 285 of the Resource Management Act 1991, there is no order as to costs.

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## REASONS

### Introduction

[1] This appeal relates to the proposed Whakatane District Plan. This consent order resolves the appellants' relief, as set out below, as it relates to the rural noise topic:

- (a) The definition of audible bird scaring devices;
- (b) The hours of operation of audible bird scaring devices; and
- (c) Amendments to Rule 11.2.7 (Notes to Table 11.1 and Table 11.2).

[2] In making this order the Court has read and considered the appeal of Horticulture New Zealand and New Zealand Kiwifruit Growers Incorporated and the joint memorandum of the parties dated 16 September 2016.

[3] The following parties have joined the appeal under s 274 of the Act, and have signed the memorandum of the parties setting out the relief sought.

- (a) Royal Forest and Bird Protection Society of New Zealand Incorporated;
- (b) Mark Fort;
- (c) Federated Farmers of New Zealand; and
- (d) Awakeri Quarries Limited.

[4] The Court is making this order under s 279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to s 297 of the Act. The Court understands for present purposes that:

- (a) The parties whose signatures are endorsed on the accompanying memorandum are requesting this order;
- (b) Those parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction and conform to relevant requirements and objectives of the Act, including in particular Part 2 of the Act; and



- (c) The order settles the appeal of Horticulture New Zealand and New Zealand Kiwifruit Growers Incorporated in part.

**Order**

- [5] The Court directs Whakatane District Council to amend the proposed Whakatane District Plan in accordance with **Appendix A** to this order (with additions underlined and deletions shown as ~~struck through~~ in **Appendix B**).
- [6] This order resolves the appeal of Horticulture New Zealand and New Zealand Kiwifruit Growers Incorporated (ENV-2016-AKL-000024) in part. It also resolves the relief in relation to the 'Rural – Noise' (ENV-2016-348-000013) topic in part.
- [7] There is no order as to costs in relation to this order.

DATED at AUCKLAND this *23rd* day of *September* 2016



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D A Kirkpatrick  
Environment Judge



## APPENDIX A

### (Clean version of the amended text)

1. Amend Table 11.2 as follows:

#### General requirements

Audible bird scaring devices shall only be operated from half an hour before sunrise to a half an hour after sunset.

2. Amend Rule 11.2.7 as follows:

#### 11.2.7 Table 11:1 and Table 11:2

11.2.7.1 Assessment positions vary according to the assessment method cited. The following notes specify where an assessment position may be found in a cited reference, or where an assessment position is for a zone or activity:

...

- h. At any point within the notional boundary of any rural zoned site, or within the site boundary of any other site used for a noise sensitive activity excluding any dwelling/s located on the same site as that on which the device is being operated.

3. Replace the definition of "audible bird scaring device" in Chapter 21 with the following:

Audible Bird Scaring Device means a noise emitting device being used for the purposes of disturbing or scaring birds including a gas gun, avian distress alarm and firearm, when being used specifically for bird scaring.



## APPENDIX B

(Amendments shown as ~~struck through~~ and underlined text)

1. Amend Table 11.2 as follows:

### General requirements

Audible bird scaring devices shall only be operated ~~between~~ from half an hour before sunrise and to a half an hour after sunset.

2. Amend Rule 11.2.7 as follows:

### 11.2.7 ~~Notes to~~ Table 11:1 and Table 11:2

11.2.7.1 Assessment positions vary according to the assessment method cited. The following notes specify where an assessment position may be found in a cited reference, or where an assessment position is for a zone or activity:

...

- h. At any point within the notional boundary of any rural zoned site, or within the site boundary of any other site used for a noise sensitive activity excluding any dwelling/s located on the same site as that on which the device is being operated.

3. Replace the definition of “audible bird scaring device” in Chapter 21 with the following:

Audible Bird Scaring Device means a noise emitting device being used for the purposes of disturbing or scaring birds including a gas gun, avian distress alarm and firearm, when being used specifically for bird scaring.



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