

**IN THE ENVIRONMENT COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY**

**I TE KŌTI TAIAO O AOTEAROA
ŌTAUTAHI ROHE**

EnvC

IN THE MATTER of the Resource Management Act 1991 (RMA)

AND

IN THE MATTER of an appeal under Clause 14, Schedule 1 of the RMA

BETWEEN **TALLEY'S GROUP LIMITED** a duly incorporated company having
its registered office at Port Motueka, Motueka, New Zealand

Appellant

AND **MARLBOROUGH DISTRICT COUNCIL**

Respondent

NOTICE OF APPEAL
Dated this 5th day of May 2020

GASCOIGNE WICKS
LAWYERS
BLLENHEIM

Solicitor: Quentin A M Davies and Joshua S
Marshall
(jmarshall@gwlaw.co.nz | qdavies@gwlaw.co.nz)

Appellant's Solicitor
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Notice of Appeal to Environment Court against decision on a proposed Plan

Clause 14(1) of Schedule 1, Resource Management Act 1991

To: The Registrar
Environment Court
Christchurch

Name of Appellant and Decision Maker

- 1 Talley's Group Limited ("Talley's"), of Motueka, appeals against part of the decision of the Marlborough District Council ("MDC") on the proposed Marlborough Environment Plan ("MEP").¹
- 2 Talley's made a submission on the MEP.

Trade Competition

- 3 Talley's is not a trade competitor for the purposes of s 308D of the Act.

Date of Decision appealed against

- 4 The reasons for the decision were released from 21 February 2020 and the tracked changes decision version of the Plan was released on 3 March 2020.

Date on which Notice of Decision was received by Appellant

- 5 Talley's received notice of the decision on 21 February and 3 March 2020.

The Decision

- 6 The parts of the decision that Talley's is appealing is:

Extent of Scheduled Site

- (a) The extent of scheduled site 6 over part of Lot 1 DP 4415 now shown in map 158 of the 40,000 scale maps in Volume 4 ("Scheduled Site 6").

Permitted activity standards – building height and site coverage

- (b) The permitted activity standards applicable to activities within Scheduled Site 6.

¹ Talley's is lodging a concurrent appeal jointly with Clearwater Mussels Limited. That appeal relates to provisions of the MEP concerning the marine environment whereas this appeal relates exclusively to land based activities.

Technical matter – discretionary activity list

- (c) The list of discretionary activities in rule 3.6, Chapter 3, Volume 2: specifically the lack of reference to discretionary activities in Schedule 6, Appendix 16, Volume 3.

Reasons for the Appeal

7 The reasons for the appeal are as follows:

Extent of Scheduled Site

- (a) Talley's owns all of Lot 1 DP 4415. The lot is currently contained in one title. The lot is divided into two zones: most is zoned Rural Environment but part of the land (mainly located in a panhandle) is zoned Floodway.
- (b) The extent of the scheduled site 6 corresponds roughly with the current extent of the factory on the site. This is between one third and one half of the total lot area within the Rural Environment Zone. The balance of the lot area within the Rural Environment Zone is currently pasture fields.
- (c) The extent of the scheduled site currently constrains future expansion of the factory. Talley's is likely to expand its factory operations in the future. It is more efficient for future expansions to be contiguous with the currently factory, particularly since this land is already owned by the Talley's.
- (d) The schedule site should be expanded to cover the remainder of the lot within the Rural Environment Zone.
- (e) Note that Talley's is not proposing to extend the scheduled site into the part of the lot in the Floodway Zone.

Permitted activity standards – building height and site coverage

- (f) Talley's has resource consents for its current factory at this site.
- (g) The requirement for Talley's to obtain a resource consent is unnecessary and inefficient. It doesn't reflect the character of the current environment at that site. It also may lead to the inefficient use of land resources as it may drive future expansions of the factory activity to other sites.
- (h) The height restrictions and site coverage standards at Scheduled Site 6 should be amended to more closely reflect the standards in the

Industrial 2 Zone. In particular, the height restriction for Industrial 2 should be adopted and the maximum site coverage should be increased from 15% to 25%.

Technical matter – discretionary activity list

- 8 This is a technical amendment.
- 9 Rule 3.1.63 expressly includes as permitted activities those activities listed in Schedule 6 of Appendix 16. Schedule 6 of Appendix 16 includes discretionary activities as well as permitted activities.
- 10 For drafting consistency, a reference to Schedule 6 of Appendix 16 should be included in the list of discretionary activities at rule 3.6.

Relief Sought

- 11 The Appellant seeks the following relief:
- (a) With respect to the extent of the scheduled site
 - (i) Amend the extent of scheduled site 6 so it covers all of Lot 1 DP 4415 not in the Floodway Zone.
 - (b) With respect to the permitted activity standards:
 - (i) Amend the MEP as set out in Part 1 of Schedule A
 - (c) With respect to the discretionary activity list:
 - (i) Amend the MEP as set out in Part 2 of Schedule A
 - (d) Other equivalent relief.

Attached Documents

- 12 The following documents are **attached** to this notice:
- (a) A copy of Talley's submission (at Schedule B);
 - (b) A copy of the relevant parts of the decision (at Schedule C); and
 - (c) A list of names and addresses of persons to be served with a copy of this notice (at Schedule D).

Joshua Marshall

Quentin A M Davies and Joshua S Marshall
Solicitor for the Appellant

Address for service of the Appellant

Gascoigne Wicks, 79 High Street, Blenheim 7201.

Telephone: 03 578 4229

E-mail: jmarshall@gwlaw.co.nz and qdavies@gwlaw.co.nz

Contact person: Josh Marshall and Quentin Davies, Solicitors

Note to appellant

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.

Your right to appeal may be limited by the trade competition provisions in Part 11A of the Resource Management Act 1991.

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

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 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003.

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 Resource Management Act 1991 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 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

If this appeal is being served on you in hardcopy, the copy of this notice served on you does not attach a copy of the appellant's submission or part of the decision appealed. These documents may be obtained, on request, from the appellant.

Advice

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

SCHEDULE A

PART 1: PROPOSED AMENDMENTS TO APPENDIX 16 OF VOLUME 3

Schedule 6 – Talleys Site on land described as Lot 1 DP 4415

Where not otherwise provided for by, or limited by, the rules in Schedule 6 of Appendix 16, the rules of the Rural Environment Zone apply to all activities on the Talleys scheduled site.

6.1 Permitted Activities

Unless expressly limited elsewhere by a rule in the Marlborough Environment Plan (the Plan), the following activities shall be permitted without resource consent where they comply with the applicable standards in 6.2 below and [\(unless inconsistent with the standards in 6.2 below\) standards 3.2 and 3.3 of the Rural Environment Zone.](#)

[D]

6.1.1. Food production or processing (excluding red meat, deer, pig or poultry based food production or processing).

[D]

6.1.2. Activities ancillary to food production and processing (excluding red meat, deer, pig or poultry based food production or processing); including warehousing and the fabrication and maintenance of plant and machinery.

[R]

6.1.3. Permitted Activities 12.1.11, 12.1.12, 12.1.19, 12.1.20 and 12.1.28 of Chapter 12

6.2. Standards that apply to all permitted activities

6.2.1. Standards [12.2.1.1 \(as the standard applies to activities in the Industrial 2 Zone\)](#), 12.3.2, 12.3.9, 12.3.10 and 12.3.17 of Chapter 12.

[6.2.2 Permanent buildings must not cover more than 25% of the net site area within a Record of Title. For the purposes of this Standard, the net site area does not include a greenhouse utilising the soils of the site.](#)

6.3 Discretionary Activities

Application must be made for a Discretionary Activity for the following:

[R, D]

6.3.1 Any activity provided for as a Permitted Activity that does not meet the applicable standards.

PART 2: PROPOSED AMENDMENTS TO CHAPTER 3 OF VOLUME 2

3.6. Discretionary Activities

Application must be made for a Discretionary Activity for the following:

...

[R]

3.6.14 Woodlot forestry planting outside the coastal environment, on land identified as Steep Erosion-Prone Land, that has not previously been planted in lawfully established woodlot forestry.

[R,D]

[3.6.15 Specifically identified activities listed as discretionary on sites contained in Schedule 6 of Appendix 16](#)

Schedule B

**SUBMISSION ON PUBLICLY NOTIFIED PROPOSAL FOR
POLICY STATEMENT OR PLAN, CHANGE OR VARIATION**

Clause 6 of First Schedule, Resource Management Act 1991



To MARLBOROUGH DISTRICT COUNCIL

Name of submitter: TALLEY'S GROUP LIMITED (Land Operations)

1. This is a submission on the Proposed Marlborough Environment Plan.
2. We could not gain an advantage in trade competition through this submission.

The specific provisions of the proposal that our submission relates to are	Our submission is	We seek the following decision from the local authority
Policy 5.7.2 and 5.7.3. (Irrigation water quantities)	Support this approach based on the IrriCalc formula as it exists at present. If the IrriCalc model is intended to change, this may not be possible due to Schedule 1 Part 3 Resource Management Act 1991. Non-irrigation uses, such as line flushing and testing, need to be provided for.	Amend accordingly.
Threatened environments: indigenous vegetation sites – Maps 3 to 8 and associated policies, methods and rules.	Oppose identifying farmland as threatened environments: indigenous vegetation sites. Specific sites for protection should be identified. The approach accords with s32.	Remove farmland from threatened environments: indigenous vegetation sites.
Zoning Map 6 and associated policies and rules. (Coolstore).	Support.	Retain.
Zoning Map 85. (Factory).	Rezone 742 Old Renwick Road, Raupara as industrial. Consistent with longstanding use of the site	Rezone

3. Consequential amendments to the commentary or other provisions are sought. Reasons for submissions include the proposed provisions are more appropriate, comply with s 32 and accord with the purpose of the Act.
4. We wish to be heard in support of this submission.
5. If others make a similar submission, we will consider presenting a joint case with them at a hearing.

.....
Quentin A M Davies

Solicitor for Submitter

Date: 1 September 2016

Address for service of Submitter:

Gascoigne Wicks

P O Box 2

Blenheim 7240

79 High Street,

Blenheim 7201

Telephone: (03) 578-4229

Email: gdavies@gwlaw.co.nz

Fax: (03) 578-4080

Contact person: Quentin A M Davies

Note to person making submission

If you are making a submission to the Environmental Protection Authority, you should use form 16B. If you are a person who could gain an advantage in trade competition through the submission, your right to make a submission may be limited by clause 6(4) of Part 1 of Schedule 1 of the Resource Management Act 1991.

33. In his response to the minute, Mr Rene reiterated some of his concerns that a zoning dilemma still exists for Māori and should be noted for future Māori/Crown relationships not yet having a 'home' in any areas of Marlborough.
34. As a way forward, the only tenable option is his response to 'leave unchanged' the Open Space 3 Zone as the islands are currently zoned.¹⁵

Decision

35. As alternative relief, amend 9.M.1 by adding to the third sentence of the explanation for the Open Space 3 Zone:

... The zone for conservation purposes (Open Space 3 Zone) applies to open space intended to be retained largely in its natural state. Included in this zone are areas of native vegetation, natural ecosystems and important habitats, riparian margins and areas of outstanding landscape value that are in public ownership. An important aim for this zone is also the promotion of public access to and along the coast, lakes and rivers with the exception of the privately owned islands off Rangitoto/D'Urville Island. The Zone will therefore be applied to areas identified as Sounds Foreshore Reserve, esplanade reserve or unformed road reserve that abuts the coastline.

Zoning Map 85 – Talleys Site, Old Renwick Road

36. Talleys Group Limited Land (Operations)¹⁶ seek to rezone 747 Old Renwick Road, Rapaura (19.51 ha) shown on Figures 31 and 32 in its submission as Industrial (the type of industrial zoning and its extent is not identified). Part of the site is in the Floodway Zone.
37. Currently 747 Old Renwick Road is used for mussel shell and vegetable processing. This operation dates back to 1976 when an application was made in respect of a canning factory and since this time a number of resource consents relating to new buildings, operations, discharge of processing waters to land, and discharge to air from coal boilers and water take have been granted.

Section 42A Report

38. The report writer identifies a rural industry in a Rural Zone as a discretionary activity so any further activities on the site will require resource consent if further developments are outside the terms of existing consents. Rezoning to Industrial would enable light and heavy industrial

¹⁵ P Rene, Response to Minute 42 of the Hearing Panel, 30 November 2018, page 2.

¹⁶ Talleys Group Limited (374.1).

activity, service industry, warehousing and permitted activities subject to standards which are more permissive in terms of bulk and location and noise than Rural zoning.¹⁷

39. The report writer called in aid Policies 12.5.6 and 14.1.3 and Objectives 4.1 and 4.4 as indications that the proposed industrial zoning might not be advantageous to the submitter. He concludes that the submitter is essentially requesting a 'spot zone' given the predominance of the surrounding rural zoned land. Zoning at such a micro level may not be encouraged - in the context of sustainable management under the RMA as well as producing the complexities of a multiplicity of interacting effects if Industrial zoning is recommended. In a case before the Environment Court, the Court had declined this spot type of zone because of the potential for reverse sensitivity adverse effects from future possible activities in a Business Zone.¹⁸
40. The report writer recommended rejecting the submission on grounds of:
- the site's relative isolation in a rural area;
 - the lack of strategic support for such zoning in the PMEP and the Growing Marlborough – A Strategy for the Future (GMSF);
 - the number and nature of potential adverse effects that could be generated on the site;
 - the impact on the amenity of the surrounding rural areas.
41. The report writer concluded that the activity should remain under the control of the resource consent process rather than allow a wider range of activities potentially available if the site is zoned Industrial.

Consideration

42. The legal submissions of counsel and the evidence of Mr Ron Sutherland disagreed with the Section 42A Report's recommendation not to rezone the Talleys Group site. Both were persuasive that there is an alternative to rezoning – scheduling the site, described in relation to Appendix 16 as a suitable 'handbrake' on future activities. Significantly, the submitter suggested limiting activities to food processing (excluding meat which would have signified freezing works-type activities).
43. In his Summary of Evidence in Reply to the suggested restriction of the proposal to food processing only, the report writer identified he was comfortable with that approach as the suggested restriction addresses concerns about other activities on such a large site. It was

¹⁷ Section 42A Report, paragraph 197.

¹⁸ Section 42A Report, paragraph 200. *Kamo Veterinary Holdings Ltd v Whangarei DC A/161/03*).

identified that Talleys' processing lines currently produce 5000 tonnes of product a day, but will be expanded to 8000 tonnes in 3-4 years. He noted the site is one of a few left of its kind for processing plants as well as the ability to sustain waste water disposal on site because of the size of its land holdings.

44. The Panel in its consideration of the proposal concluded that the project is an uncomfortable zoning 'fit', being classed as a rural activity; equally it does not fit with heavy industrial also. The Panel is particularly concerned that the infrastructure services for industrial zoning such as industrial waste collection and treatment are not available at this location.
45. We concluded scheduling the activity in Appendix 16 with Industrial 2 standards to apply was the most appropriate solution as it recognises an existing use. Consent will still be required for waste disposal which requires significant areas of land. For this reason it is not appropriate to schedule all of the submitters land. Nor is it appropriate to be rezoned Industrial 1.

Decision

46. Insert in Appendix 16 the following:
 - Schedule 6 – Talleys Group Ltd Site on land described as Lot 1 DP 4415
 - Insert site on Planning Map 85 Scheduled Activity relating to Lot 1 DP 4415.
 - The permitted activity rules and standards set out below
 - Where not otherwise provided for by, or limited by, the rules in Schedule 6 of Appendix 16, the rules of the Rural Environment Zone apply to all activities on the Talleys scheduled site.

6.1 Permitted Activities

Unless expressly limited elsewhere by a rule in the Marlborough Environment Plan (the Plan), the following activities shall be permitted without resource consent where they comply with the applicable standards in 6.2 below and 3.2 and 3.3 of the Rural Environment Zone.

[D]

6.1.1 Food production or processing (excluding red meat, deer, pig or poultry based food production or processing);

[D]

6.1.2 Activities ancillary to food production and processing (excluding red meat, deer, pig or poultry based food production or processing); including warehousing and the fabrication and maintenance of plant and machinery.

[R]

6.1.3 Permitted Activities 12.1.11, 12.1.12, 12.1.19, 12.1.20 and 12.1.28 of Chapter 12

6.2 Standards that apply to all permitted activities

6.2.1 Standards 12.3.2, 12.3.9, 12.3.10 and 12.3.17 of Chapter 12

6.3 Discretionary Activities

Application must be made for a Discretionary Activity for the following:

[R]

6.3.1 Any activity provided for as a Permitted Activity that does not meet the applicable standards.

47. Insert a new Permitted Activity rule in the Rural Environment Zone as follows:

Xxx Specifically identified activities listed as permitted on sites scheduled in Schedule 6 Appendix 16.

Zoning Map 126 – Queen Charlotte Drive, Grove Arm

48. Beaver Ltd and Clouston Sounds Trust, and RJA Black, JE Black and JV Dallison oppose the zoning of Lot 1 DP 10803 (2900 m²) and Lot 2 DP 10803 (6600 m²) respectively in terms of their dual Coastal Living Zone and Coastal Environment Zone mapping (Figures 35 and 36). The submitters state that the current 'zone boundary is based on a historical error' and seek that the Coastal Living Zone should be extended over the whole of the two sites. At present the Coastal Living Zone appears to apply only to some of the existing dwellings and curtilages and the Coastal Environment Zone to the 'undeveloped' parts of the sites.¹⁹
49. David Dew, on behalf of the submitters, reiterated their submission that zoning should at least reflect the development on the current sites (which does not occur at present). Further development is unlikely on both sites because of the steepness of the terrain.

Section 42A Report

50. The Section 42A report writer notes the adjoining sites and others in the vicinity are zoned in a similar 'split' way with the Coastal Living Zone applying to existing dwellings and curtilages and the Coastal Environment Zone to the undeveloped part of the sites. The zoning also reflects the situation in the MSRMP. The current situation is therefore not unusual, and the report

¹⁹ Beaver Ltd and Clouston Sounds Trust (29.1) and RJA Black, JE Black and JV Dallison (28.1).

Schedule D: Address for Service of Persons to be Served

Name / Organisation	Contact	Address for Service
Marlborough District Council	Kaye Mcllveney	Kaye.Mcllveney@marlborough.govt.nz