



McFADDEN McMEEKEN PHILLIPS
LAWYERS

10 February 2017

Tasman District Council
189 Queen Street
Richmond

By email: info@tasman.govt.nz

Dear Sir/Madam

RE: Notice of Appeal to Environment Court Against Decision on Proposed Plan Change

We attach Notice of Appeal to Environment Court against Decision on Proposed Plan Change.

Yours faithfully

McFADDEN McMEEKEN PHILLIPS

Nigel McFadden
Partner

nigel@mmp.co.nz

BEFORE THE ENVIRONMENT COURT
AT WELLINGTON

ENV-W2017-

IN THE MATTER of the Resource Management
Act 1991

AND

IN THE MATTER of an Appeal under the Resource
Management Act 1991

BETWEEN **FULTON HOGAN LIMITED** a
duly Incorporated Company at
Nelson

Appellant

AND

TASMAN DISTRICT COUNCIL
a Local Authority duly
constituted under the provisions
of the Local Government Act
2002

Respondent

**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST DECISION ON PROPOSED PLAN
CHANGE 60**

McFadden McMeeken Phillips
Barristers & Solicitors
187 Bridge Street
Nelson 7010
Telephone 03 548 2154
Facsimile 03 548 2157

Solicitor Acting: Nigel McFadden

To: The Registrar
Environment Court
Wellington

1. **FULTON HOGAN LIMITED**, a duly incorporated company having its registered office at Dunedin Hereby Appeals against part of a decision of Tasman District Council on the following proposed plan:
 2. The Appellant made a submission on Proposed Plan Change 60.
 3. The Appellant is not a trade competitor for the purposes of Section 308D of the Resource Management Act 1991.
 4. The Appellant received notice of the decision on the 12th day of December 2016.
 5. The decision was made by Tasman District Council.
 6. The part of the decision the Appellant is appealing is:
 - (i) That part of proposed Plan Change 60 making change to Rule 17.5.2.1(a)(xiv) (Rural 1 Zone) which reads:

“The maintenance, repair, storing or parking of more than two heavy vehicles with a gross laden weight of 3500 kilograms or more (except those heavy vehicle that are directly associated with plant and animal production (that are being used for or in connection with any commercial, industrial or rural industrial activity.”
 - (ii) That part of proposed Plan Change 60 making change to Rule 17.6.2.1(a)(xii) (Rural 2 Zone) which reads:

“The maintenance, repair, storing or parking of more than two heavy vehicles with a gross laden weight of 3500 kilograms or more (except those heavy vehicles that are directly associated with plant and animal production) that are being used for or in connection with any commercial, industrial or rural industrial activity.”
 - (iii) That part of proposed Plan Change 60 making change to Rule 17.7.2.2(b)(xii) (Rural 3 Zone) which reads:

“The maintenance, repair, storing or parking of more than two heavy vehicles with a gross laden weight of 3500 kilograms or more (except those heavy vehicles that are directly associated with plant and animal production) that are being used for or in connection with any commercial, industrial or rural industrial activity.”

- (iv) That part of proposed Plan Change 60 making change to Rule 17.8.2.1(a)(vi) (Rural Residential Zone) which reads:

“The maintenance, repair, storing or parking of more than one heavy vehicle with a gross laden weight of 3500 kilograms or more (except those heavy vehicles that are directly associated with plant and animal production (that are being used for or in connection with any commercial, industrial or rural industrial activity.”

- (v) And that part of the decision on Change 60 Rule 16.8.2.1A which reads:

“Temporary activity that is construction, maintenance or demolition work is a permitted activity if it complies with the following conditions:

- (a) *The activity meets the noise limits provided for in NZS6803 : 1999 Acoustics – Construction Noise”.*

7. Reasons for Appeal as to Rule 17.5.2.1(a)(xiv), Rule 17.6.2.1(a)(xii), Rule 17.7.2.2(b)(xii), Rule 17.8.2.1(a)(vii) (“together “the Provisions”):

- (a) The provisions limits the number of heavy vehicles which can be stored, and fixed, the use of vehicles which can be stored.

The Appellant is a national roading and construction contractor and involved in road, river, and infrastructure maintenance often in remote areas of the Tasman District – the effect of the change is to

- (i) preclude the temporary storage of vehicles when undertaking works. The impact on the company, the community, and in terms of cost is unrealistic, and impracticable as it would mean that vehicles would have to be transported to yards daily and back the next day.

- (ii) If a resource consent was required to be obtained to store equipment every time during works programmes it would hinder maintenance and constructions works, delay their implementation, and render them cost prohibitive.
- (iii) The provisions extend it appears to storage on roads, which carry zonings of the land adjacent to them.
- (iv) The provisions are ponderous, inefficient, and ill considered.
- (v) There is no valid resource management reason for the provisions.
- (vi) There is no resource management reason to enable storage and parking of only vehicle in the rural residential zone as compared to the other rural zones.
- (vii) The provisions offend against Part 2 of the Resource Management Act 1991.

Reasons for Appeal as to Rule 16.8.2.1.A

- (a) This Rule authorises temporary activities, but is specific only to "*construction maintenance or demolition work*" – parking or storage during those activities is not included in the Rule. It is impracticable to have to remove vehicles potentially back to base, when a work is ongoing.

8. The Appellant seeks the following relief to the provisions:

- (a) The decision be cancelled and that part of proposed Plan Change 60 making change to Rule 17.5.2.1(a)(xiv) Rural Zone 1 be amended to read:

"The maintenance, repair, storing or parking of more than two heavy vehicles with a gross laden weight of 3500 kilograms or more (except those heavy vehicles that are directly associated with plant and animal production or any temporary construction, maintenance or demolition work), that are being used for or in connection with any commercial, industrial or rural industrial activity";

- (b) The decision be cancelled and that part of proposed Plan Change 60 making change to Rule 17.6.2.1(a)(xii) Rural Zone 2 be amended to read

“The maintenance, repair, storing or parking of more than two heavy vehicles with a gross laden weight of 3500 kilograms or more (except those heavy vehicles that are directly associated with plant and animal production or any temporary construction, maintenance or demolition work), that are being used for or in connection with any commercial, industrial or rural industrial activity”;

- (c) The decision be cancelled and that part of proposed Plan Change 60 making change to Rule 17.7.2.2(b)(xii) Rural Zone 3 be amended to read

“The maintenance, repair, storing or parking of more than two heavy vehicles with a gross laden weight of 3500 kilograms or more (except those heavy vehicles that are directly associated with plant and animal production or any temporary construction, maintenance or demolition work), that are being used for or in connection with any commercial, industrial or rural industrial activity”;

- (d) The decision be cancelled and that part of proposed Plan Change 60 making change to Rule 17.8.2.1(a)(vi) Rural Residential be amended to read:

“The maintenance, repair, storing or parking of more than two heavy vehicles with a gross laden weight of 3500 kilograms or more (except those heavy vehicles that are directly associated with temporary construction, maintenance, or demolition work) that are being used for or in connection with any commercial, industrial or rural industrial activity”

- (e) As to Rule 16.8.2.1.A – to amend to read:

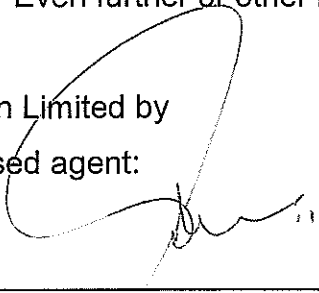
“Temporary activity that is construction, maintenance or demolition work and associated overnight parking, storage, repair or maintenance is a permitted activity if it complies with the following condition:

- (a) The activity meets the noise limits provided for in NZS 6803:1999
Acoustics – Construction Noise.

- (f) Such further or other consequential amendments to the Change by the grant or any of the above relief.

- (g) The costs of this Appeal.
- (h) Even further or other relief as the Environment Court deems just.

Fulton Hogan Limited by
their authorised agent:



Date: 10 / 1 / 2 / 2017

The Address for Service of
the Appellant is at the Offices
of:

McFadden McMeeken Phillips
Solicitors
187 Bridge Street
Nelson 7010
Telephone: (03) 548 2154
Facsimile: (03) 548 2157

Attached are the following:

1. A copy of the Appellants submission;
 2. A copy of the Decision;
 3. The persons to be served with a copy of this notice are:
 - a. The Registrar
Environment Court
PO Box 5027
Wellington 6145
(By email EnvironmentCourt@justice.govt.nz and post)
 - b. The Chief Executive
Tasman District Council
Private Bag 4
Richmond 7020
(By email info@tasman.govt.nz and post)
 - c. Ravensdown Fertiliser Co-operative Ltd
C/- CHC Ltd
PO Box 51-282
Tawa
Wellington 5249
(By post)
- New Zealand Transport Agency
PO Box 5084
Wellington 6145
(By post)
- Federated Farmers of NZ (Inc)
PO Box 5242
Dunedin 9048
(By post)
- Boomerang Farms Ltd/M Wratten
C/- McFadden McMeeken Phillips
PO Box 656
Nelson 7040
(By post)
- Horticulture New Zealand
PO Box 10232
The Terrace
Wellington 6143
(By post)

Fulton Hogan Ltd
C/- Landmark Lile Ltd
PO Box 343
Nelson 7040
(By post)

Aggregate and Quarry Assn Of NZ (AQA)
C/- Environmental Management
PO Box 97431
Manukau 2241
(By post)

Nelson Forests Ltd
Private Bag 5
Richmond 7050
(By post)

Waimea Rural Fire Authority
C/- Ian Reade
PO Box 3578
Richmond 7050
(By post)

New Zealand Defence Force
C/- Tonkin & Taylor
PO Box 2083
Wellington 6140
(By post)

Egg Producers Federation
C/- Harrison Grierson
PO Box 2313
Wellington 6140
(By post)

Peter Hall
PO Box 196
Takaka 7142
(By post)

Golden Bay Community
C/- Golden Bay TDC Services
PO Box 74
Takaka 7142
(By post)

Thora Blithe
80 Onekaka
Iron Works
Takaka 7182
(By post)

J Cousins & C Anstev
C/- Peter Hall
170 Springfield Road
Christchurch 8014
(By post)

Hancock Forest Management
C/- Tony Dwane
PO Box 1860
Whangarei 0140
(By post)

M L Harwood
17 Packard Road
R D 1
Takaka 7183
(By post)

Shane Harwood
18 Edinburgh Street
Takaka 7110
(By post)

Antony Hodgson
1197 Onekaka Road
R D 2
Takaka 7182
(By post)

Julie Jacobson
93 Trewavas Street
Motueka 7120
(By post)

John Kebbell
PO Box 219
Takaka 7142
(By post)

Robert Lewis
607 Takaka-Collingwood Road
Puramahoi
Takaka 7182
(By post)

Beth McCarthy
PO Box 265
Takaka 7142
(By post)

Amira Mudwood
255 Parapara Valley Road

R D 2
Takaka 7182
(By post)

Jannine Pope
Nelson Motorcycle Club
PO Box 93
Nelson 7040
(By post)

Debbie and Mark Pearson
PO Box 275
Takaka 7142
(By post)

Shanti Smith
6 Falconer Road
Takaka 7183
(By post)

Bronwyn, Mason and Peter Waters
19 Matariki Place
Nelson 7025
(By post)

NZ Transport Agency
PO Box 5084
Wellington 6145
(By post)

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 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 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 (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**

Copies of the Annexures to this appeal may be obtained on request to the Appellant at the Appellants above address for service.

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.

*Delete if these documents are attached to copies of the notice of appeal served on other persons.

Advice

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