

**BEFORE THE COMMISSIONERS
AT HAMILTON**

IN THE MATTER

of the Resource Management Act 1991
(**"the Act"**)

AND

IN THE MATTER

of the hearing of submissions on The
Proposed Waikato Regional Plan Change
1 – Waikato and Waipa River
Catchments: Block 3

LEGAL SUBMISSIONS FOR HORTICULTURE NEW ZEALAND

11 SEPTEMBER 2019



ATKINS | HOLM | MAJUREY

Helen Atkins
PO Box 1585
Shortland Street
AUCKLAND 1140

INTRODUCTION

1. The purpose of these submissions is to provide a high level overview of the evidence of Horticulture New Zealand (**HortNZ**) in relation to the Section 42A report for Block 3. In addition, these submissions will introduce a refinement of the approach being promoted by HortNZ as a result of discussions with the Waikato Regional Council (**Council**) officers.
2. In essence the position is that PC1 as amended by the s42A report recommendations in Blocks 1, 2 and 3 does not provide an appropriate regulatory pathway for commercial vegetable production (**CVP**) in the region. There are also refinements sought to the regulatory framework to ensure low intensity horticulture production systems are adequately provided for.
3. HortNZ has proposed amendments to the framework in all the Blocks to ensure the framework explicitly recognises the food production values associated with horticulture and would provide for the continuation of existing horticultural activity and provide for appropriate further growth. The particular focus is on CVP because, as noted in Block 2, with the amendments sought (see the evidence in particular from Ms Sands and Mr Keenan) the low intensity provisions can adequately provide for other horticulture activities.

EVIDENCE

4. Horticulture NZ has filed evidence from the following experts in this block:
 - (a) Michelle Sands, Manager Natural Resources and Environment which focuses on the case for the framework being promoted by HortNZ from a policy and practical perspective;
 - (b) Chris Keenan, Environmental Consultant which focuses in more detail on the policy rationale for the changes sought by HortNZ and comments on the other matters of interest and concern (ie low intensity production) beyond the CVP framework;
 - (c) Damien Farrelly, NZGAP Manager at HortNZ who generally supports the approach taken in revised Schedule 1 : Requirements for Farm Environment Plans

(FEP) with a few refinements which he recommends in his evidence;

- (d) Andrew Barber, Agricultural Engineering Consultant who, like Mr Farrelly, generally supports Schedule 1 (FEP) with some refinements and explains how this will work in practice particularly in relation to erosion and sediment control;
- (e) Stuart Ford, Agricultural and Resource Economist, who provides the economic basis for the case for a specific framework for CVP;
- (f) Tim Baker, an expert in water resource science who provides the technical and scientific underpinning with regards to water quality matters with relation to the framework being proposed by HortNZ. Mr Baker has also produced a statement of rebuttal evidence in relation to the evidence of Mr Ian Mayhew for the Council;
- (g) Stuart Easton, an expert in water resource science. Mr Easton has calculated the additional land area required for CVP to account for population growth, the current CVP land lost to urban expansion, and the resulting change in nitrogen, sediment, phosphorus and *E. coli* loading estimate for the relevant catchments;
- (h) Vance Hodgson, planner, who addresses the policy and planning framework proposed by CVP and how it fits into the bigger policy picture.

CONTEXT AND UPDATE

2. In their statements of evidence the HortNZ witnesses attached various sections of PC1 with their respective amendments to the section 42A version. For the purposes of discussion with officers Mr Hodgson produced a consolidated version of these changes which is **attached** here for ease of reference and to assist in the discussions at the hearing of the evidence (**Attachment 1**).
3. The discussions with officers held a couple of weeks ago identified a number of areas that they continued to be concerned about that have resulted in a re-think by the HortNZ team.

4. Of particular note is the relevance of the nitrogen reference point (**NRP**) to CVP and whether the proposed proxy rotations are the most appropriate way of assessing the effects of CVP.
5. The HortNZ team has been informed by very recent discussions and work undertaken in relation to Plan Change 7 in Canterbury and work at the national level HortNZ has been involved in related to the changes to the freshwater management regime signalled by the Minister for the Environment on 5 September.
6. It is the position of the HortNZ team that changes are necessary to provide a simpler approach than using the NRP and the use of proxies. This approach relies on what is, in essence, a land area cap for both existing and new CVP. The calculation of the NRP using the default (Overseer) option or using an alternative method as approved by the CEO of the Council can still be used as a tool for nutrient budgeting and accounting in the sense that this is used in the NPSFM (Objective CC1 and Policy CC1).
7. As noted in the evidence of Mr Keenan (paragraph [40]) in the section 42A Report for Block 3 that officers acknowledge that there is justification for the removal of the Overseer based NRP requirement but to do this requires there to be a need for confidence that this would not compromise the achievement of the Vision and Strategy, the NPSFM and the objectives of PC1.
8. In its evidence the HortNZ experts supported using a range of proxy farm systems as a measured nitrogen benchmark. Officers have never been comfortable with these proxies and this has made the development of them difficult. This together with the other changes made, as noted above, has resulted in a re-think of the approach that HortNZ is proposing.
9. The refined approach is not a fundamental shift in to what HortNZ has been seeking since making its original submission on PC1. It is submitted that the Commissioners can be satisfied that the refined approach is within scope of the submissions and evidence presented by HortNZ throughout this plan change process. The NRP is still there as a tool for accounting purposes but is no longer a limit against which CVP will be assessed.
10. The details will be further discussed by the HortNZ witness team when they present to the Commissioners on Wednesday 11th

September. To assist the Commissioners in the understanding of how the framework operates at the paddock level, the team will present a mock consent of a typical CVP system to demonstrate that the approach is fit for purpose. It is acknowledged that the framework is not without some complexity and that it will require the Council to have an accounting system in place. However, as this is required by the NPSFM in any event it is difficult to see that this is an impediment to adopting the framework proposed by HortNZ.

11. Mr Hodgson will take you through the consolidated version – Attachment 1 - and explain what the amendments are in the evidence version together with the additional amendments necessary to reflect the refined approach. Assuming the Commissioners are comfortable to entertain this approach Mr Hodgson can then produce an amended version of Attachment 1 shortly after the hearing.
12. This submission now provides:
 - (a) An overview of the policy and methods framework that HortNZ is seeking;
 - (b) A summary of the scientific / technical support for the framework – in the sense that the framework will meet the objectives of PC1 and the higher order policies;
 - (c) A summary of the way in which the framework is supported by and consistent with the objectives of PC1 and the higher order policies.

POLICY FRAMEWORK OVERVIEW

13. Policy 3 is a CVP specific policy to achieve the objectives of PC1 which aim for improvements in water quality while maintaining social, economic and cultural well-being and protecting and restoring tangata whenua freshwater values.
14. Policy 3 of the Plan will guide all CVP resource consents. A suggested framework would then determine which rules may apply depending on criteria such as whether land is currently being used for CVP; the size of the land area used; whether the land area is within an already existing footprint; whether growth can be accommodated in the FMU or sub-catchment; and whether there is an increase or decrease across the four contaminants. Mr Hodgson will set out the

changes needed to the proposed Policy 3 to reflect the refinements which will alter the way the NRP is used for CVP.

15. HortNZ particularly seek pathways for existing CVP under a controlled activity rule, and for appropriate growth for new commercial vegetable production under a restricted discretionary activity rule. There is also a discretionary and non-complying pathway.
16. Continuation of existing CVP and the availability for provisional growth of CVP are essential to keep up with the demand for vegetables in the country. This is a nationally significant industry which has been recognised most recently by the discussion document detailing the proposed National Policy Statement to prevent the loss of more productive land and promote its sustainable management.
17. The NPS will require councils to put more weight on the value of highly productive land in their land-use planning and decision-making and seeks to improve the way highly-productive land is managed under the RMA.
18. This comes as a response to the growing challenge to feed an increasing population which HortNZ is acutely aware and has been working at a national level with government to address the challenges ahead.
19. It is not exaggeration to say that if the decline in land available for productive purposes, vegetables in particular, is not halted New Zealand will have to look off shore to meet its community's needs.
20. In addition, the challenges of achieving a fit for purpose freshwater management regime for vegetable growing cannot be under-estimated. As noted by Ms Sands in Block 2 vegetable growers in all relevant parts of the country are facing regimes that simply do not work for horticultural systems such that many growers in these areas are currently operating in a state of non-compliance.

Existing CVP

21. Amendments are proposed to Rule 3.11.5.5 under Policy 3. These amendments would see a pathway for the use of land for CVP as a permitted activity until September 2021 or 6 months after the PC1 becomes operative. From this point, the activity will be a controlled activity subject to a set of conditions. Existing CVP enterprises must be provided a pathway to continue operating at the same or smaller scale.

Due to the way vegetable growing operates on a nation-wide basis, a restriction on existing CVP in the Waikato would see significant strain put on other productive areas around the country to keep up with demand.

22. The rule proposed in the evidence allows for the quantification of nitrogen benchmarks to be done utilising a model or the most representative proxy farm system identified in the Farm Environment Plan Schedule aggregated at a sub-catchment and FMU scale. As noted above changes to this are required and Mr Hodgson will explain these further.
23. The proposed conditions restrict CVP enterprises to their existing footprint as at 30 June 2016, providing for existing growers to continue their enterprises at the same or smaller scale and preventing any increases in contaminants over the entire enterprise. By treating the land area of the entire property as a whole, growers can share nitrogen allocations across their paddocks which allows the practice of crop rotations across their land area to continue.
24. Compliance and monitoring are aided through audited FEPs developed with certified farm planners.
25. The amendments proposed to the rules under Policy 3 would provide a framework for achieving high quality farm environment plans and provide a pathway for independent auditing for FEPs. These FEPs, at a minimum, will show Good Farming Practice, relevant minimum standards, and compliance with nitrogen, phosphorus and sediment loss limits. The mock consent application the HortNZ team have produced will illustrate this.

New CVP

26. An additional rule for new CVP is also proposed under Policy 3. This new rule would see a pathway for the appropriate provisional growth in the use of land for CVP as a restricted discretionary activity, subject to a set of conditions.
27. An increasing population with an increasing demand for vegetable products requires an increase in commercial vegetable production. Near-future demand will see vegetable products put out of reach for many New Zealanders without an increase in production.

28. The total area of land for new CVP would be limited to the maximum land area calculated as additional sub-catchment nitrogen load not exceeding 1%. As noted in the evidence, while this may see an increase in nitrogen loss, the loss would be negligible and appropriate given the national importance of CVP. In addition, as the evidence shows, CVP is also far more efficient in the use of nitrogen in terms of the food produced on a per hectare basis and should not be as strictly limited as other nitrogen users under the Plan.¹
29. In addition, there is a discretionary activity pathway for new CVP that does to meet the standards for the RDA pathway. The non-complying activity overall default is also amended to specifically refer to CVP.

SCIENTIFIC SUPPORT FOR THE NEW FRAMEWORK

30. The evidence of Mr Baker and Mr Easton references back to the work done by Jacobs that was included in the HortNZ submissions and further submissions and in earlier evidence. This evidence is clear that from a scientific perspective the regime proposed for existing CVP (as amended by the officers in the s42A report with further amendments proposed by the HortNZ expert team) would have no overall impact on the sub-catchment nitrogen load.
31. With regards to the proposals for growth in CVP the effects of this have been assessed as being negligible with an overall increase in nitrogen being 0.23% of the total catchment load, with sediment and *E. coli* loads decreasing slightly².

¹ As noted in Mr Easton's evidence the 1% increase at the subcatchment scale gives 1129 ha total. This is sufficient for the modelled Waikato growth but not for Waikato and Auckland). The 1% nitrogen increase at the FMU scale gives 2047 ha, which is sufficient for both Waikato and Auckland. These figures do not include the 5% reduction for BMP nor do they account for the changes in relation to reduction in dairy (the so-called 'dairy clawback').

² Note that this is correct for the 'Waikato' scenario at 716 ha increase). This does not account for 5% BMP mitigations. With GMP this is +0.09%, and GMP + 'dairy clawback' is -2.45%.

32. The question the Commissioners need to be satisfied on is, is allowing for this negligible increase consistent with the higher order policy framework that underpins PC1?
33. HortNZ's framework has been designed to ensure that the paramount objective of the Vision and Strategy – the restoration and protection of the Waikato River - is achieved. The framework is also to enable both the Waikato community and the wider national community to meet crucial health and wellbeing objectives.
34. HortNZ submits that these matters taken in the context of the importance of CVP both regionally and nationally means that the Commissioners can be satisfied that the higher order policy framework that underpins PC1 is not compromised.

CONSISTENCY ACROSS POLICY DOCUMENTS

35. As already submitted the proposed framework is consistent with the Waikato Vision and strategy, the objectives and policies of the National Policy Statement for Freshwater Management (**NPS-FM**), the Regional Policy Statement (**RPS**) and the objectives and policies of PC 1.
36. As noted above there is also consistency with the proposed National Policy Statement for Productive Soils and is consistent with the tenor of the Essential Freshwater announcements made on Thursday 5 September.
37. For a number of years HortNZ has:
 - (a) Acknowledged the importance of regulatory consenting frameworks as opposed to permitted activity regimes;
 - (b) Worked towards a framework that is not reliant on Overseer for horticultural production systems;
 - (c) Acknowledged the importance of compulsory FEP and the crucial role that GMP has to ensure the best environmental outcomes are able to be achieved and are able to be monitored as having been achieved.
38. In the context of PC1, supported by Mr Hodgson, Ms Sands provides a detailed analysis of how the CVP framework proposed is consistent with the higher order policy framework. In summary she notes that:

- (a) In terms of **water quality** the framework is consistent with Objectives 1 and 3 of PC1, because it seeks to achieve long-term a restoration and protection as well as short-term improvement of water quality for each sub-catchment and FMU to achieve the water quality states across all contaminants. It is also consistent with Objective 6, because it directs new CVP away from Whangamarino.
 - (b) In terms of the **life supporting capacity of the soil resource** (as provided for in the RPS Policy 14.1) the HortNZ pathway that provides for growers to operate their rotations across FMU's is consistent with the RPS because crop rotations maintain and enhance the biological, chemical and physical soil properties.
 - (c) In terms of **healthy communities** the Vision and Strategy envisages a future where a healthy Waikato River sustains abundant life and prosperous communities. The health of people is an intrinsic value. The CVP framework seeks to maintain peoples' access to healthy vegetables while achieving improvements to water quality. It is HortNZ's submission that this is consistent with and what is envisaged by Policy 17 of PC1 (as alluded to in Block 2).
39. For completeness Ms Sands also considers the low intensity horticulture framework using the same analysis topics. The issue of low intensity horticulture is covered in the evidence and there are no particular matters that need re-emphasising here.
40. Mr Hodgson sums the framework up where he notes in his evidence (paragraph [38]) that, while reasonable flexibility is sought by HortNZ, catchment improvements in water quality remain the bottom line outcome.

CONCLUSION - IMPORTANCE OF NEW FRAMEWORK

- 41. There is a need for a fit-for-purpose framework which will allow for existing, and appropriate growth of, CVP enterprises in the region. The proposed CVP framework seeks to maintain peoples' access to healthy vegetables.
- 42. The ability to continue existing CVP in the region allows a more stable production; reducing the ability to keep up with

demand would then increase the purchase cost of vegetables. As Ms Sands notes at paragraph [57] of her evidence, affordability is a key factor in why people eat less than the recommended intake of vegetables.

43. Further restraints on new growth of CVP will also see insufficient vegetables grown, with Stuart Easton estimating that 15% more CVP area would be required to meet the growing population of Auckland and Waikato.

DATE: 11 September 2019



Helen Atkins
Counsel for the Horticulture New Zealand