

**BEFORE THE COMMISSIONERS
AT DUNEDIN**

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

AND

IN THE MATTER **of Proposed Otago Regional Policy
Statement – Freshwater Planning
Instrument Provisions**

LEGAL SUBMISSIONS FOR HORTICULTURE NEW ZEALAND

6 SEPTEMBER 2023



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INTRODUCTION AND OVERVIEW

1. These legal submissions are made on behalf of Horticulture New Zealand (**HortNZ**) in relation to the Freshwater Planning Instrument (**FPI**) provisions of the proposed Otago Regional Policy Statement (**pORPS**).
2. I will provide an overview of HortNZ and its general position, comments on the relevant legal frameworks, and detail on the key issues for HortNZ. The Panel will also hear from each of HortNZ's experts, Leanne Roberts (Industry), Stuart Ford (Economics), and Vance Hodgson (Planning) and three local growers - Kris Robb, Earnscy Weaver, and Simon Webb.

SUMMARY

3. Many of HortNZ's initial concerns were addressed in the Otago Regional Council Section 42A report (**s42A Report**). The recognition afforded to the importance of food production and relationship to freshwater quality and quantity throughout the freshwater provisions of the pORPS is particularly positive.
4. HortNZ respectfully seek that the Commissioner give particular attention to the following matters in the freshwater provisions:
 - (a) Retaining the long-term visions as notified and informed by community consultation;
 - (b) Wording to appropriately recognise food production values in the context of freshwater management;
 - (c) Recognition of land based primary production in water allocation; and
 - (d) The appropriate place of horticulture for domestic consumption within tier two of the Te Mana o Te Wai hierarchy.
5. These submissions comment on various national policy statements, the Natural and Built Environment Act 2023 and wider horticultural concerns, including water consent lengths.
6. As it is the Regional Policy Statement (**RPS**) which sets the policy platform that the lower order planning documents give effect to, this RPS must be crafted carefully and correctly to ensure functional horticultural activity is not curtailed in Otago.
7. HortNZ is focused on getting the RPS right.

HORTICULTURE NEW ZEALAND

8. HortNZ is an industry good body representing the interests of horticultural growers. Its mission is to:
 - (a) provide a unifying vision for the horticulture sector which increases collaboration between product, sector, regional and district groups and enhances the sector's ability to respond to and influence decisions that affect it; and
 - (b) develop and encourage industry-wide projects which benefit all growers.
9. HortNZ has been engaged at all stages of the pORPS process, including presenting on several topics at the non-Freshwater hearing of pORPS. The first stage of the pORPS was a positive and productive process, and HortNZ is grateful for the Panel's engagement on key horticultural matters.

Current position

10. The national food system operates as a whole.¹ The Otago Region plays a critical role in the system due to its unique production capability. The Otago Region is relied upon for both domestic and export crops and is particularly important during the summer fruits season.² Recently local vegetable production has declined, and therefore integration with other regions is vital for the availability of fresh produce for the Otago population.³
11. Food production systems are coming under increased pressure from population growth, competing resource use and climate change. Food is essential to human health and wellbeing,⁴ and food production plays an important part in New Zealand's regional and national economies.⁵ In this context the role of the Otago Region within the national food production system must be maintained and protected, and with flexibility provided to change into the future.
12. Throughout the pORPS process, HortNZ has sought greater recognition for the role and importance of food production within the Otago Region, as well as protections relating to food supply and food security. HortNZ seeks to ensure that

¹ Horticulture New Zealand Submission on Proposed Otago Regional Policy Statement – Freshwater (29 November 2022) pages 10-11.

² Statement of Evidence of Leanne Roberts (28 June 2023) at [33].

³ Horticulture New Zealand Submission on Proposed Otago Regional Policy Statement – Freshwater (29 November 2022) pages 10-11.

⁴ Statement of Evidence of Leanne Roberts (28 June 2023) at [89]-[93].

⁵ Statement of evidence of Stuart Ford (28 June 2023) at [29]-[31].

food production exists with the appropriate recognition of its importance and protections required for its continuity.

LEGAL FRAMEWORK

13. Section 62(3) of the Resource Management Act (**RMA**) requires that a regional policy statement must give effect to national policy statements. While the National Policy Statement on Freshwater Management (**NPSFM**) is clearly key, there are several other national policy statements which must also be considered by the Panel to ensure there is integrated management.

Overriding statutory purpose of the RMA

14. The purpose of the Act is to promote the sustainable management of natural and physical resources, which means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety.⁶ This purpose does not contemplate environmental protection at the expense of preventing sustainable management.
15. Section 45A of the RMA states:
- A national policy statement must state objectives and policies for matters of national significance that are relevant to achieving the purpose of this Act.
16. Further, the purpose of a RPS is “to achieve the purpose of the Act by providing an overview of the resource management issues of the region and policies and methods to achieve integrated management of the natural and physical resources of the whole region.”⁷
17. We submit that it is not open to a territorial authority to implement a national policy statement in a way which is inconsistent with, or does not achieve, the purpose of the RMA.

⁶ Resource Management Act 1991, section 5 cont.: “...while;
 (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
 (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
 (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment”

⁷ Resource Management Act 1991 s59.

National Policy Statement for Freshwater Management

18. Key provisions in the NPSFM include the requirement that every regional council must give effect to Te Mana o te Wai,⁸ and develop long-term visions for freshwater.⁹
19. Te Mana o Te Wai, as it is given effect to by the pORPS, must still focus on achieving the purpose of the RMA, including promoting sustainable management.
20. Clause 3.3 sets out the requirement for regional councils to develop long-term visions for freshwater, which may be set at Freshwater Management Unit (**FMU**), part of an FMU, or catchment level. Sub-clause 3.3(3)(a) specifies that:
 - (3) Every long-term vision must:
 - (a) be developed through engagement with communities and tangata whenua about their long-term wishes for the water bodies and freshwater ecosystems in the region; and
 - (b) be informed by an understanding of the history of, and environmental pressures on, the FMU, part of the FMU, or catchment; and
 - (c) express what communities and tangata whenua want the FMU, part of the FMU, or catchment to be like in the future.
21. There is a clear direction that community and tangata whenua engagement must inform the long-term visions.

National Policy Statement for Highly Productive Land

22. Throughout the pORPS process, HortNZ has been focused on the appropriate implementation of the National Policy Statement on Highly Productive Land (**NPSHPL**).¹⁰
23. The consideration of Highly Productive Land (**HPL**) remains relevant during the FPI process because soils other than Land Use Capability (**LUC**) classifications 1, 2, and 3 are highly productive in the Otago Region provided that there is the provision of freshwater to enable the use of that productive land.¹¹

⁸ National Policy Statement on Freshwater Management, Clause 3.2(2).

⁹ Ibid, Clause 3.3.

¹⁰ The NPSHPL provides for highly productive land and requires its protection from inappropriate development and reverse sensitivity effects. This protection is in recognition of the importance of land-based primary production, and the need for appropriate land to be available for such activities.

¹¹ Statement of Evidence of Leanne Roberts, HortNZ, (28 June 2023) at [139]: "protecting highly productive land for production, also requires the provision of freshwater to enable the use of that productive land."; Statement of Evidence of Stuart Ford (28 June 2023) at [43].

24. At the non-Freshwater hearing, HortNZ's submissions were that LUC 4 and 5 should be considered to be HPL in the Otago context. In response to evidence from HortNZ, OWRUG, and others in the non-freshwater hearings, Council's planner Ms Boyd recommended the protection of land suitable for horticulture and viticulture, at least on an interim basis.¹²
25. The acceptance by ORC was heartening for HortNZ, and the recognition of LUC 4 and 5 as HPL for horticulture provides a strong foundation for the freshwater process.
26. The s42A Report recommends a new policy LF-FW-P7A on water allocation and use which would recognise an allocation need (within limits) for 'land-based primary production'. This is strongly supported by HortNZ as necessary to enable use of HPL in a suitable manner for horticulture.¹³

Interaction of the NPSHPL with freshwater management and the NPSFM

27. The NPSHPL specifically details interaction with freshwater management and requires that HPL protection is undertaken in a manner which integrates with freshwater management.¹⁴
28. We submit that the s42A Report recommendations are consistent with these directions for integration.

Interaction of the NPSHPL and the National Policy Statement on Renewable Energy Generation

29. The evidence of Manawa Energy considers the application of the National Policy Statement on Renewable Energy

¹² Reply Report, Proposed Otago Regional Policy Statement (23 May 2023) Chapter 9 LF – Land and Freshwater, at [56-60].

¹³ Statement of Evidence of Vance Hodgson (28 June 2023) at [69-70].

¹⁴ Policy 2: The identification and management of highly productive land is undertaken **in an integrated way that considers the interactions with freshwater management and urban development**;

Clause 3.2 Integrated management

(1) Regional councils and territorial authorities must identify highly productive land, and **manage the effects of subdivision, use, and development of highly productive land, in an integrated way**, which means:

(a) considering how land-based primary production, including supporting activities, **interact with freshwater management at a catchment level**;

Clause 3.12(b)(v)

(1) Territorial authorities must include objectives, policies, and rules in their district plans that:...

(b) **encourage opportunities that maintain or increase the productive capacity of highly productive land, but only where those opportunities are not inconsistent with:...**

(v) any **environmental outcomes identified in accordance with the National Policy Statement for Freshwater Management 2020**.

Generation (**NPSREG**),¹⁵ and asserts that the NPSREG requires greater recognition within the pORPS.¹⁶

30. HortNZ does not comment on whether the NPSREG has been sufficiently recognised in the pORPS. However, it is important for HortNZ that the various policy statements are reconciled in a balanced manner. Though the content of the NPSHPL is of specific importance to HortNZ's interests, it does not seek to elevate the NPSHPL above other national policy statements, or to the disadvantage of other industries. HortNZ's priority is ensuring the NPSHPL and its directives are appropriately implemented. HortNZ seeks that the same approach should be taken to other national policy statements, such that the recognition of one does not come at the detriment of others.

Comment on National Policy Statement for Indigenous Biodiversity

31. HortNZ did not submit evidence in response to the ORC on the implications of the National Policy Statement for Indigenous Biodiversity (**NPSIB**) as it relates to the FPI provisions of the pORPS. HortNZ may produce evidence on the NPSIB as it relates to the non-freshwater planning instrument provisions.
32. We briefly comment on the legal implications of Ms Boyd's evidence for the ORC.
33. Ms Boyd states concern that issues arise with the implementation of Clause 3.21(2)(d) of the NPSIB (which requires that local authorities include objectives, policies and methods in policy statements prioritising natural inland wetlands whose ecological integrity is degraded or lost) due to the definition of 'natural inland wetland' in the NPSFM.¹⁷
34. Ms Boyd raises concern that the exclusions in the NPSFM definition of natural inland wetland relating to pasture used for grazing with vegetation cover of more than 50% exotic pasture species does not prioritise the mauri, intrinsic value, and well-being of indigenous biodiversity, and in doing so does not achieve the decision making principles in the NPSIB.¹⁸
35. Ms Boyd's proposed solution to this is to amend the notified definition of 'natural wetland' so it does not contain the pasture exclusion in the NPSFM definition of 'natural inland wetland'.¹⁹

¹⁵ Statement of Evidence of Stephanie Styles (28 June 2023) at [5.4-5.8].

¹⁶ Statement of Evidence of Stephanie Styles (28 June 2023) at [5.10].

¹⁷ Supplementary Evidence of Felicity Boyd (11 August 2023) at [61].

¹⁸ Ibid at [73].

¹⁹ Ibid at [81].

36. The Government elected to amend the definition of 'natural inland wetland' on the basis of consultation and technical input.²⁰ The NPSFM and NPSIB must be given effect to as they are. It is not open to selectively apply parts which are deemed to be preferable, nor to ignore intentional changes enacted by Government.

Resource management reform

37. The Natural and Built Environment Act (**NBEA**) and the Spatial Planning Act (**SPA**) have now received royal assent. While these do not have immediate effect for this process, we consider the direction of travel in the NBEA important to consider.
38. The NBEA recognises the importance of enabling the supply of fresh fruit and vegetables in the national planning framework.²¹ Mr Hodgson sets out the changing of legislation and policy instruments to recognise the importance of production, supply, and security of food.²²
39. I submit the recognition of the importance of fruit and vegetable supply within the NBEA is indicative of the future direction of resource management within New Zealand. Numerous submitters have called the Panel's attention to the need to recognise food production as important within the Otago region, and several communities have identified food production as an important value within their long-term visions. HortNZ submits it would be appropriate for the Panel to adopt a forward-thinking process by recognising food production, as supported by community consultation and legislative direction.

OUTCOMES SOUGHT FROM FRESHWATER PROVISIONS

40. Many of HortNZ's submissions on the pORPS FPI Provisions were considered and accepted by the s42A report authors.
41. The following points are outstanding issues for HortNZ and specific outcomes sought by HortNZ.

²⁰ Ministry for the Environment (8 December 2022) Amendments made to freshwater regulations < <https://environment.govt.nz/news/amendments-made-to-freshwater-regulations/>>

²¹ Natural and Built Environment Act 2023, s58(g).

²² Statement of Evidence of Vance Hodgson (28 June 2023) at [18].

Long-Term Visions

42. The notified vision statements for FMU's were developed through community liaison and feedback process,²³ as required under the NPSFM.²⁴
43. The s42A report author recommends changes to these vision statements including the removal of references to food production from the Dunstan, Manuherekiā and Roxburgh rohe, the North Otago area, and the Taiari area FMU vision statements, and their replacement with an overarching regional objective.²⁵
44. HortNZ opposes the deletion of references to food production in the context of a long-term vision for freshwater. The freshwater process has been dictated by legislation, and clause 3.3 of the NPSFM very clearly requires engagement with the community to ensure that the local voice is considered in management of freshwater resources.
45. The proposed region-wide objective which rewords that community consultation, is not a long-term vision in accordance with clause 3.3 of the NPSFM.²⁶ All consultation which was undertaken for the long-term visions is now being subverted into a different instrument within the pORPS.
46. HortNZ recognises the desire of the s42A author to remove duplication,²⁷ however submits that such a drafting objective must not prevail over genuine consultation with community.
47. HortNZ also recognises the submissions of Kāi Tahu ki Otago seeking that duplication across the long-term visions should be removed, in favour of an overarching, region-wide objective, with specific visions for each FMU where needed to recognise unique characteristics.²⁸ HortNZ considers that where communities have identified food production as a community value for freshwater management, this should be taken as a unique characteristic of that region, and hence should be retained in specific vision statements.

²³ Statement of Evidence of Kristen Robb (28 June 2023) at [24]; Statement of Evidence of Earnscy Weaver (28 June 2023) at [38-39]; Statement of Evidence of Simon Webb (28 June 2023) at [24].

²⁴ National Policy Statement on Freshwater Management 2020, Clause 3.3.

²⁵ Section 42A Report Proposed Otago Regional Policy Statement (2 June 2023) at [893(b)]

²⁶ As clause 3.3 specifies that long-term visions must be set at a FMU, part of an FMU, or catchment level

²⁷ Section 42A Report Proposed Otago Regional Policy Statement (2 June 2023) at [877].

²⁸ Kāi Tahu ki Otago Submission on Proposed Otago Regional Policy Statement 2021, Freshwater Provisions, submission point FPI030.019.

48. We submit that the reference to food production values in the context of visions for freshwater should be reinstated as per the as-notified versions, to ensure the retention of local voice, and to reflect the desires of the community which were developed through extensive consultation. This retention would be in line with what is contemplated in clause 3.3 for long-term visions.
49. Retention of the original drafting of the visions is supported by both Vance Hodgson,²⁹ and Leanne Roberts³⁰ in evidence, and is referenced by growers.³¹
50. If the Commissioners are however comfortable with the new proposed provision LF-FW-O1A, we submit that it must be amended to ensure that food production values are accounted for across the region.³² We understand that this inclusion was supported by Ms Boyd in her opening statement, and we welcome this recognition as appropriate and necessary.³³

Recognition of Food Production Values in the Context of Freshwater Management in Issue Statements

51. Food production values and associated issues in the context of freshwater management are expressed in SRMR-I1, SRMR-I4, SRMR-I6, SRMR-I8 and SRMR-I10A.
52. HortNZ submitted that the issue statements should include reference to food production values.³⁴ Such a reference recognises the unique landscape of the Otago Region, where food production plays a vital role in the economic and social makeup of communities. However, the s42A author considered that changes to the issue statement with specific detailed references to horticulture were not preferred.³⁵
53. HortNZ accepts this position, however seeks that food production needs to be clearly recognised in the context and impact snapshots, specifically for SRMR-I5 and SMRM-I6.³⁶

²⁹ Statement of Evidence of Vance Hodgson (28 June 2023) at [52].

³⁰ Statement of Evidence of Leanne Roberts (28 June 2023) at [73-74].

³¹ Statement of Evidence of Kristen Robb (28 June 2023) at [24]; Statement of Evidence of Earnscy Weaver (28 June 2023) at [40]; Statement of Evidence of Simon Webb (28 June 2023) at [24].

³² Statement of Evidence of Vance Hodgson (28 June 2023) at [61].

³³ This change is detailed and supported by Vance Hodgson in his summary statement of evidence.

³⁴ Horticulture New Zealand Submission on Proposed Otago Regional Policy Statement – Freshwater (29 November 2022) pages 17-18.

³⁵ Section 42A Report Proposed Otago Regional Policy Statement (2 June 2023) at [543].

³⁶ Statement of Evidence of Vance Hodgson (28 June 2023) at [22-40]

54. Mr Hodgson provides additional recommendations on the wording of these issue statements, which would further improve and clarify the recognition of food production values as they relate to freshwater.³⁷

Proposed provision LF-FW-O1A

55. HortNZ sought the inclusion of 'well-being' alongside the health of people within clause LF-FW-O8. The s42A report author has since recommended that this clause is deleted, as a result of proposed new clause LF-FW-O1A.
56. LF-FW-O1A is an objective for freshwater. HortNZ seeks that 'well-being' should be incorporated into this new clause.³⁸ HortNZ considers taking a holistic approach to freshwater outcomes is required. The wellbeing of people is not separate from the health of freshwater bodies, and in fact the two are intertwined and should be considered together. It follows that wellbeing should be accounted for in the regionwide statement.
57. This position is supported by Mr Hodgson in his evidence.³⁹

LF-FW-M6 – recognition of efficient users in water allocation

58. As notified, LF-FW-M6 – Regional Plans stated that ORC must publicly notify a Land and Water Regional Plan no later than 31 December 2023, and must maintain that plan to include environmental flow and level regimes for water bodies that give effect to Te Mana o Te Wai and provide for a range of uses and needs. In its submission HortNZ sought changes to LF-FW-M6 that would ensure recognition of domestic food security in freshwater allocation and use decisions.⁴⁰
59. The s42A report author has recommended new policy LF-FW-P7A on water allocation and use, which expressly recognises "land-based primary production".⁴¹
60. HortNZ strongly supports the proposed new policy and welcomes this recognition of land-based primary production in water allocation and use going forward.

³⁷ Ibid at [75(a)-(b)].

³⁸ Ibid at [65-66].

³⁹ Statement of Evidence of Vance Hodgson (28 June 2023) at [75(d)]. "(6) the health of the water supports the health and wellbeing of people and their connections with water bodies,..."

⁴⁰ Horticulture New Zealand Submission on Proposed Otago Regional Policy Statement – Freshwater (29 November 2022) page 31.

⁴¹ Section 42A Report Proposed Otago Regional Policy Statement (2 June 2023) at [1407-1409].

61. The evidence of Manawa Energy asserts that food production should not be prioritised above other uses, and that renewable energy generation should be elevated above land-based primary production.⁴² HortNZ does not comment on whether renewable energy generation is or is not appropriate for prioritisation. However the evidence for Manawa Energy asserts that 'there is no national direction that states that primary production in itself is nationally significant'.⁴³ HortNZ submits that the recognition of, and protection afforded, in the NPSHPL, is itself a recognition of the need to protect HPL for primary production nationally.⁴⁴

Future Allocation and Limit Setting Decisions

62. The proposed wording by the s42A author recognises an allocation need for 'land-based primary production',⁴⁵ which is defined in the NPSHPL as:⁴⁶

land-based primary production means production, from agricultural, pastoral, horticultural, or forestry activities, that is reliant on the soil resource of the land

63. Future allocation and limit setting decisions will need to recognise food production systems which do not meet the descriptor of 'land-based primary production'. Mr Hodgson brings the Commissioners' attention to recent guidance from the Ministry for the Environment prompting local authorities to ensure there is sufficient non-HPL land available for primary production activities which do not directly rely on the soil but still need to locate in a rural environment.⁴⁷ Consideration will need to be given to other resources those activities require (including freshwater), and their effects on the environment.
64. While this recognition is not sought in the pORPS, HortNZ wishes to highlight this as a factor for future planning decisions, and to signal that this is an issue which HortNZ will pursue in the Land and Water Regional Plan.

⁴² Statement of Evidence of Stephanie Styles (28 June 2023) at [8.8],[8.15], [8.27].

⁴³ Ibid at [8.15].

⁴⁴ The NPSHPL emphasises the need to protect HPL to enable land-based primary production: Policy 4 in the NPSHPL requires "the use of highly productive land for land-based primary production is prioritised and supported", and policy 8 requires "highly productive land is protected from inappropriate use and development".

The NBEA contains direction recognising the importance of enabling a supply of fresh fruit and vegetables: Natural and Built Environments Act 2023 s129.

⁴⁵ Section 42A Report Proposed Otago Regional Policy Statement (2 June 2023) at [1407].

⁴⁶ National Policy Statement on Highly Productive Land 2023, clause 1.3.

⁴⁷ Statement of Evidence of Vance Hodgson (28 June 2023) at [73].

TE MANA O TE WAI

65. The concept of Te Mana o Te Wai in the NPSFM sets out a hierarchy of obligations:

(5) There is a hierarchy of obligations in Te Mana o te Wai that prioritises:

(a) first, the health and well-being of water bodies and freshwater ecosystems (**Tier one**)

(b) second, the health needs of people (such as drinking water) (**Tier two**)

(c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future. (**Tier three**)⁴⁸

Statutory interpretation

66. It is my submission that on a statutory interpretation basis the hierarchy of Te Mana o Te Wai includes:

(a) **Tier two:** fruit and vegetables for domestic consumption enable the health needs of people; and

(b) **Tier three:** fruit and vegetables for export purposes enable people and communities to provide for their social, economic, and cultural well-being.⁴⁹

67. I submit that the term “such as” in the framework of Te Mana o te Wai does not limit the health needs of people to only considerations of drinking water. The Merriam-Webster dictionary defines “such as” as a phrase which is “used to introduce an example or series of examples”. Tier two is not limited to just drinking water, and recognition needs to be provided that other aspects of people’s health, including the fresh produce for domestic consumption as grown in the Otago region⁵⁰, fits within tier two of the hierarchy.

68. Fresh fruits and vegetables play a vital role in human health and wellbeing.⁵¹ A failure to prioritise freshwater use to produce fruits and vegetables for domestic consumption may result in reduced supplies of fresh fruits and vegetables, to the detriment of community health, and thus contrary to the intent of tier two.⁵²

⁴⁸ National Policy Statement on Freshwater Management 2020, Clause 1.3(5).

⁴⁹ Horticulture New Zealand Submission on Proposed Otago Regional Policy Statement – Freshwater (29 November 2022) pages 14-16.

⁵⁰ Statement of Evidence of Leanne Roberts (28 June 2023) at [34] and [36].

⁵¹ Statement of Evidence of Stuart Ford (28 June 2023) at [89-93].

⁵² Statement of Evidence of Leanne Roberts (28 June 2023) at [85].

69. The s42A Report appears to take issue with food production for export sitting in at tier two⁵³ – this is not the outcome sought by HortNZ. HortNZ submits that the situating of horticulture for purposes other than domestic consumption properly falls under tier three.
70. The inclusion of horticulture for domestic consumption within tier two of the NPSFM hierarchy ensures that this priority sits in the minds of decision makers when assessing how to give effect to Te Mana o te Wai.
71. Particularly relevant to this Hearing is the placement of fruit and vegetables for domestic consumption within tier two, as this must be reflected in the long-term visions, when developing the National Objectives Framework, and when developing objectives, policies, methods, and criteria for water allocation.⁵⁴

Te Mana o te Wai in the pORPS Land and Freshwater Policies

72. Te Mana o te Wai is incorporated into the pORPS in the objectives and policies of the Land and Freshwater section.
73. The NPSFM requires that every regional council “must engage with communities and tangata whenua to determine how Te Mana o te Wai applies to water bodies and freshwater ecosystems in the region”.⁵⁵ It is my submission that while engagement is required, that cannot result in the application of Te Mana o te Wai stretching outside the bounds of basic statutory interpretation, nor standing in contradiction to the purpose of the overriding Act.
74. Policy LF-WAI-P1 specifies that the second tier of priorities includes the health and well-being needs of people, as well as ‘interacting with water through interaction (such as drinking water and consuming harvested resources) and immersive activities (such as harvesting resources and bathing).
75. I submit that, similar to the statutory interpretation exercise conducted above, fresh produce for human consumption meets the ingestion test contained in this policy.⁵⁶

WIDER HORTICULTURAL PRESSURES IN THE OTAGO REGION

76. HortNZ’s interests in the pORPS freshwater provisions are not solely limited to the changes sought above. As in all plan processes, HortNZ aims to ensure the voices and needs of

⁵³ S42A Report at [809], [810].

⁵⁴ National Policy Statement for Freshwater Management 2020, Clause 3.2 (2).

⁵⁵ Ibid, Clause 3.2(1).

⁵⁶ Statement of Evidence of Leanne Roberts (28 June 2023) at [28].

growers are heard and understood by decisions makers and councils.

77. The pORPS is the policy platform that then determines the decisions to follow. As such, I provide the Commissioners with a brief summary of the key wider horticultural pressures in the Otago region.

Climate change

78. The evidence of Stuart Ford discusses how horticultural practices are relatively environmentally friendly compared to other rural uses, and hence can play a role in the national move towards long-term environmental goals.⁵⁷ The irrigation methods utilised within horticultural operations are highly efficient,⁵⁸ placing less pressure on a freshwater environment that is already under stress from climate change. This is echoed in the evidence of Vance Hodgson.⁵⁹
79. Leanne Roberts also discusses how changing climatic conditions within the Otago Region will drive different methods of production by necessity.⁶⁰ As an industry, horticulture is already adapting to these measures, with many new techniques that place even less pressure on the surrounding environment. This is discussed in the evidence of Kris Robb, who details the cutting-edge Cravo System which uses minimal water to its best effect to produce high yields.⁶¹

Consent length

80. The evidence for HortNZ highlights the need for longer duration water consents to enable business confidence and long-term development.⁶² Long term certainty enables investment, new systems, and increased efficiencies.⁶³
81. Longer term consents are required to provide the confidence to enable a move towards greater efficiencies in water use.

⁵⁷ Statement of Evidence of Stuart Ford (28 June 2023) at [44].

⁵⁸ Statement of Evidence of Stuart Ford (28 June 2023) at [61].

⁵⁹ Statement of Evidence of Vance Hodgson (28 June 2023) at [47].

⁶⁰ Statement of Evidence of Leanne Roberts (28 June 2023) at [122-125] and [133].

⁶¹ Statement of Evidence of Kristen Robb (28 June 2023) at [11-13], [17], and [20].

⁶² The evidence of Stuart Ford discusses the economic relationship between water and horticulture ([21 – 22]), and the impacts of reduction and uncertainty of water supply ([51 to 53]). Grower evidence from Earnsclay Weaver ([35-36]) and Simon Webb ([19-20]) discuss crop water requirements and impacts on business confidence resulting from regulatory uncertainty.

⁶³ Statement of Evidence of Leanne Roberts (28 June 2023) at [55–60].

Positive aspects of horticulture

82. Leanne Roberts comments that the tone of the s42A report in the SRMR section indicates that the use of the environment is always a negative relationship.⁶⁴
83. I consider it is incorrect to adopt this tone as the underlying approach to resource use. The RMA does not direct repudiation of resource use, nor does it imply that resource use inherently has negative environmental connotations.

CONCLUSION

84. In conclusion, HortNZ submits that:
- (a) The long-term visions need to be retained as notified and informed by community consultation;
 - (b) Food production values must be recognised in issue statements;
 - (c) Proposed provision LF-FW-01A (objective for freshwater) requires changing to recognise the wellbeing of people;
 - (d) It supports proposed provision LF-FW-P7 which deals with recognition of efficient users in water allocation, and specifically recognises “land-based primary production”; and
 - (e) Horticultural production for domestic consumption should be recognised under tier two of the Te Mana o te Wai hierarchy.

DATE: 6 September 2023



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⁶⁴ Statement of Evidence of Leanne Roberts (28 June 2023) at [71].