

**BEFORE THE HEARING COMMISSIONERS**

**IN THE MATTER**

of the Resource Management Act 1991  
(the Act)

**AND**

**IN THE MATTER**

of the proposed Canterbury Land and  
Water Regional Plan

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**MEMORANDUM OF COUNSEL FOR HORTICULTURE NEW ZEALAND  
RESPONDING TO MATTERS RAISED IN THE GROUP 1 HEARINGS**

**10 MAY 2013**

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**MAY IT PLEASE THE COMMISSIONERS:**

1. This memorandum is filed on behalf of Horticulture New Zealand a submitter (submitter ID number 326) on the proposed Land and Water Regional Plan for the Canterbury region ("pLWRP").

**INTRODUCTION**

2. At the Group 1 hearings matters arose during the presentation of Horticulture New Zealand case that the Commissioners asked for more information and assistance on, as follows:
  - (a) Further information on the inclusion of food production as a value in the Horizons One Plan Appeals (as referred to at paragraph 45 of the Evidence in Chief of Ms Wharfe);
  - (b) The NPS citation that supports the statement in the Evidence in Chief of Ms Wharfe at paragraph 30 that "*The NPSFM requires that freshwater objectives are developed based on values that the community hold*";
  - (c) Further consideration of the proposed section 42A amendments to Policy 4.1 inserting a date by which the values in Table 1 must be met; and
  - (d) Further consideration of what other changes may be required if Rules 5.97 and 5.98 were amended to refer to discretionary and non-complying activities respectively.
3. This memorandum deals with each of these points in the order above.

**FOOD PRODUCTION VALUE**

4. In the Horizons One Plan appeals Horticulture New Zealand specifically sought the inclusion of a food production value in relation to relation to specific crops and specific catchments. Agreement on the inclusion of such a value was reached with the Manawatu-Wanganui Regional Council prior to the Court hearings but not with the section 274 parties – The Minister of Conservation and Wellington Fish and Game. As a result Horticulture New Zealand gave

evidence supporting the inclusion of this value at the Environment Court hearings.

5. Prior to the Environment Court issuing its first interim decision on the Horizons One Plan agreement with the Minister and Wellington Fish and Game was reached and consent order documentation was filed. As a result the Environment Court did not need to formally rule on the matter and had this to say in its decision:

[5-19] ... [Horticulture New Zealand's] proposed addition of Domestic Food Supply as a value to Schedule AB has been agreed with the Council in the course of mediation, and the Minister and Fish and Game have since accepted that also.

6. The reference to this matter in Ms Wharfe's evidence was not intended to imply that the inclusion of this value was as a result of any formal direction of the Court.

#### **NPSFM**

7. The NPSFM does not specifically state that the freshwater objectives that are set must be developed based on the values a community holds. What the NPSFM does say in the Preamble is:

Water quality and quantity limits must reflect local and national values. The process for setting limits should be informed by the best available information and scientific and socio-economic knowledge (Preamble page 1)

...

Given the vital importance of freshwater resources to New Zealand and New Zealanders, and in order to achieve the purpose of the Resource Management Act 1991 (the Act), the Crown recognises there is a particular need for clear central government policy to set a national direction, though the management of the resource needs to reflect the catchment-level variation between water bodies and different demands on the resource across regions. This includes managing land use and development activities that affect water so that growth is achieved with a lower environmental footprint (Preamble page 2).

8. The values listed on page 2 of the preamble include generally accepted values that communities have with regard to freshwater.

9. It is noted that the Preamble is not a mandatory part of the NPSFM but it is clearly stated as follows:

This preamble may assist the interpretation of the national policy statement. (Review page 3)

10. With the exception of the clauses relating to tangata whenua roles and interests (Objective D1 and Policy D1 on page 10) there is nothing in the NPSFM that specifically directs a regional council on how they are to set freshwater objectives.
11. The reference in Ms Wharfe's evidence is based on the Implementation Guide for the NPSFM which is not a statutory document and does not have any statutory weight.
12. This Guide is a lengthy document and has been commented on by other witnesses to these hearings in particular Mr Willis for Fonterra whose evidence Horticulture New Zealand has already endorsed and adopted<sup>1</sup>. It is submitted that the following sample statement from the Guide supports the comment from Ms Wharfe that freshwater objectives are intended to be set taking into account community views:

The national values are not prioritised. At a national level it is not possible to prioritise individual activities and values, given the range of local circumstances and considerations that might apply. It is for regional communities, facilitated by regional councils, to consider values and priorities locally and determine how to respond to those values at a local level in implementing the policies of the NPSFM. (Section 2.1, page 8)

#### **POLICY 4.1**

13. As noted at the hearing Horticulture New Zealand supports the proposed amendment by the Officers that would see an insertion of a date into Policy 4.1. In addition Horticulture New Zealand sought words be inserted to make it clear that both Policy 4.1 and Table 1 were only interim targets.
14. The Commissioners have expressed a concern that they have evidence that clearly indicates some catchments will never be able to meet the Table 1 targets and to insert a

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<sup>1</sup> Evidence in Chief of Gerard Willis for Fonterra to Group 1 hearings paragraphs 3.9 - 3.35 in particular paragraph 3.32

date into the Policy knowing this would be contrary to the undisputed evidence received by the Commissioners.

15. Horticulture New Zealand notes the dilemma that this issue causes for the Commissioners. It is Horticulture New Zealand's position that the insertion of both the word "interim" and the date provide sufficient certainty and clarity as to what Policy 4.1 and Table 1 are seeking to achieve. As stated at the hearing the date also provides an incentive to ensure that Table 1 is amended through the sub-regional zone committee process in a timely fashion to meet both the policy intent and the intent of the NPSFM.
16. Horticulture New Zealand has considered the options available to the Commissioners and acknowledges these are limited to either:
  - (a) Accepting the Officer's recommendation and Ms Wharfe's recommendation of insert the reference to interim in both the policy and table. The decision could then record that it is accepted that for some catchments evidence has been presented that the targets are not able to be met and that urgent work at the sub-regional zone committee stage is required to ensure that proper and reasonable targets are set; or
  - (b) Insert different dates on a catchment by catchment basis that recognise and provide for consistency with the timetable for sub-regional work and are cognisant of the evidence regarding non-compliance with Table 1 for some catchments. In other words, Table 1 still includes dates but not simply one date for all catchments.

#### **RULES 5.97 AND 5.98**

17. The submission of Horticulture New Zealand is that more flexibility in these rules is required while the sub-regional zone committees go about setting new targets for the various catchments. Horticulture New Zealand is not seeking extensive amendment and on reflection does not consider extensive amendment is required.
18. The rule framework that currently exists in the Plan essentially (and somewhat crudely) provides:

- (a) For the current consents in catchments that have limits set, to be rolled over to allow for the continued taking and use of surface water as a restricted discretionary activity (Rule 5.96).
  - (b) For current consents in catchments that have not got limits set and cannot meet the flow regime in condition 2, or the take is from a natural wetland etc in condition 3 of Rule 5.96 as a non-complying activity (Rule 5.97).
  - (c) For all new applications for consents as a prohibited activity (Rule 5.98).
19. Horticulture New Zealand acknowledges that stringent controls are required to manage water takes where there is clear evidence of over allocation. The problem with the proposed rule framework is that it is a one-size fits all approach and applies across all catchments including those where there is no clear evidence of over allocation.
20. Having said this Horticulture New Zealand accepts there is a good evidential basis for the non-complying activity status for renewal consents in natural wetlands, hapua or a high naturalness river as listed in Sections 6-15.
21. In relation to Rule 5.97 Horticulture New Zealand seeks a change from non-complying to discretionary whereby the consent authority can have regard to the extent to which the existing consented take complies with the flow regime in conditions 2(a) and (b) and any other matter that the consent authority considers material to the consideration.
22. In relation to Rule 5.98 the change from prohibited to non-complying can be achieved by simply changing the status of the activity. With the policy framework in the Plan non-complying activity status will provide sufficient control and protection and will inevitably include a consideration of the extent to which the existing consented take complies with the limits set in Section 6-15. In simple terms the consent authority has complete latitude to reduce the take or refuse to grant the consent.
23. At the Group 2 hearing Horticulture New Zealand will provide case study evidence to illustrate practical issues that arise with such a restrictive rule framework.

**CONCLUSION**

24. Horticulture New Zealand thanks the Commissioners for this opportunity to comment and trusts that these matters have been of assistance and if necessary we can elaborate further during the Group 2 hearings.

**DATE:** 10 May 2013



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**Helen Atkins**

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