

IN THE MATTER

of the Resource Management Act 1991
(the Act)

AND

IN THE MATTER

of the Resource Management Act 1991
and the Environment Canterbury
(Temporary Commissioners and
Improved Water Management) Act 2010

AND

IN THE MATTER

of the hearing of submissions on the
Proposed Land and Water Regional Plan

**LEGAL SUBMISSIONS IN RELATION TO GROUP 2 HEARINGS FOR
HORTICULTURE NEW ZEALAND**

23 MAY 2013



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INTRODUCTION

1. These submissions are made of behalf of Horticulture New Zealand (“**Horticulture NZ**”) in relation to the matters covered in Group 2 of the Hearings Schedule.
2. In Group 1 hearings contextual information about Horticulture NZ and its role and relationship in the Canterbury region was presented.
3. The structure of these submissions and the case presented today for Horticulture NZ is as follows:
 - (a) A brief overview of key Group 2 matters that are of interest to Horticulture NZ (noting the detail in terms of provisions and the changes recommended in the Group 2 Section 42A report are covered in the evidence of Ms Wharfe);
 - (b) Introduction to the statements from Mr Keenan and Mr Williams and the six grower case studies;
 - (c) Submissions in relation to the approach taken by Fish & Game.

OVERVIEW OF GROUP 2 MATTERS

4. The evidence both lay and technical presented by Horticulture NZ in this round of hearings is a continuum of that presented in Group 1. This evidence specifically addresses the manner in which horticultural activities operate in the Canterbury region.
5. As noted in Ms Wharfe’s evidence in chief the provisions of particular interest to Horticulture NZ are those relating to nutrient management. For ease of reference the primary matters addressed are summarised in the table attached as Appendix 1 to these submissions.
6. The essence of Horticulture NZ’s position is that changes to the suite of definitions of concern (**Changed; Property; Farm Environment Plan Auditor; Nutrient discharge; Advanced mitigation measures; High nutrient risk farming activity** (those in bold being of the greater importance)) and to Schedule 7, will ensure that the rule framework (as recommended to be

amended in the Section 42A report) is appropriate and practical for horticultural operations¹.

7. If the changes Horticulture NZ are seeking, on behalf of its members, are made to the definitions and the Schedule 7 then the policy and rule framework is considered to be workable and appropriate for horticultural activities.

OVERVIEW OF HORTICULTURE NZ'S CASE AT TODAY'S HEARING

8. You will hear from eight witnesses today. In addition Ms Wharfe is present to answer questions. Mr Lasham and Mr McLeod are here (though we do note that you have no questions of them). They are here because they provide expert assistance to the various growers you will hear from and there may be issues arising during the grower case studies that are best answered by them in the course of those presentations.
9. There are six case studies from a range of growers across the region as follows:
 - (a) **Case Study 1** : Andrew Crozier, Killinchy (Rakaia/Selwyn zone) – various crops grown, currently onions, potatoes, carrots, maize and sweetcorn (historically pumpkins, squash, lettuce, yams, peas, wheat, barley, grass for silage and for dairy grazing).
 - (b) **Case Study 2** : Allen Lim, Lincoln/Rolleston (Selwyn – Te Waihora zone) – newly established business various crops grown currently brassica, leafy, spring opinion, pumpkin, wheat, onions and sweetcorn.
 - (c) **Case Study 3** : Lederbrand Produce (South Island) Ltd, Chertsey (Ashburton zone) - various crops grown rotation generally wheat, squash, carrots or red beets, seed peas, broad beans, broccoli, cereals or grass.
 - (d) **Case Study 4** : Turley Farms Ltd, mid and south Canterbury (Ashburton and Orari, Opihi and Pareora zones) – various crops, cereals, ryegrass for seed, potatoes, hybrid vegetable for seeds, clover for seed, onions, brassica for seed.

¹ Paragraph 142 Evidence in Chief of Lynette Wharfe 2 April 2013

- (e) **Case Study 5** : David Hadfield, operates in various areas and water zones – a number of crops including winter and spring barley, broad beans, triticale, oats seed peas, blue peas, process peas, maize, grass seed, grass for dairy grazing, linseed, process green beans, tick beans, white clover, wheat, radish seed, lucerne, coriander red beet and carrot for seed.
 - (f) **Case Study 6** : Leighton Pye, has an extensive operations over approximately 4,000 hectares in Mid and South Canterbury. The case study specifically relates to the cropping operation in the Rakaia area (Ashburton water zone). A number of crops including potatoes winter and spring wheat, process carrots, spring barley, grass seed or clover, and vining peas.
10. What these case studies illustrate is the range and nature of the crops grown, the rotation undertaken and the land holdings and interests that are held, in some cases, across multiple water zones.
 11. In addition, there are two presentations from the relevant industry associations:
 - (a) Dr Roger Williams, the Director of Research Development at the Foundation of Arable Research (FAR); and
 - (b) Mr Chris Keenan, Manager Natural Resources and Environment Horticulture NZ.
 12. Both these presentations are made as PowerPoint to provide a concise contextual overview of the cropping and horticulture sectors in Canterbury.
 13. The purpose of bringing these case studies and the industry presentations to your attention is to support the evidence of the experts that a specific tailored approach to horticulture is needed to ensure it remains a viable and important component of both the region and the country's horticulture and cropping production system.

OTHER SUBMISSIONS / MATTERS

14. In terms of matters that have arisen in the course of the hearings the key one we wish to comment on today is the

case for Fish & Game and the scope and effect of the changes sought.

15. In essence Fish & Game are telling us that the notified Plan is too little too late to resolve the degraded and degrading water bodies in the region. Therefore, the regime proposed by Fish & Game is seeking a tougher line in relation to land use and nitrogen loss.
16. The Commissioners have heard from Fonterra and Dairy NZ in relation to this regime, the hi-lights from their case relevant to the case for Horticulture NZ are:
 - (a) Nitrogen is not the only limiting nutrient for all the zones²; and
 - (b) The justification for the 20kg N/ha/yr threshold is not immediately obvious not is it backed up by uncontested evidence³.
17. In addition, there are some specifics for horticulture. Horticulture does not even rate a mention in the case for Fish & Game. The primary focus for Fish & Game is the intensification of dairy farming in the region and resultant effects that this will have. As a result there is no consideration of how horticulture will fit into the framework proposed. This is exactly what happened in the Environment Court hearing for the Horizons One Plan and exactly why that decision is the subject of an appeal to the High Court.
18. Also, as noted by Counsel for Fonterra/NZ Dairy, it is not clear whether Fish & Game intend for its approach to be an interim position until such time as the sub-regional plans are devised or whether Fish & Game are advocating for a final position⁴. This is important because if it is the latter then this is a fundamental change from the approach adopted in the Plan as notified.
19. In terms of the scope for the changes being sought by Fish & Game this has been addressed in their legal submissions⁵.
20. The law on scope in relation to plan reviews is well established and suffice to say there is a certain amount of

² Fonterra / Dairy NZ Legal Submissions paragraph 6.2

³ Ibid paragraph 6.3

⁴ Ibid paragraph 6.4

⁵ Appendix 1

latitude given in relation to scope, particularly when full plan reviews are under consideration⁶.

21. As noted in the rationale for scope in its own legal submissions, much of Fish & Game's reasoning is that the submission it made "gives it broad scope to incorporate the recommended changes".
22. Certainly, it would be difficult to argue that Fish & Game have not provided sufficient scope both general and specific in its submission for the changes it now seeks.
23. The difficulty for Horticulture NZ and the other 'farming sector' parties is the late arrival of the detailed changes in the form of what is essentially a replacement plan. In addition, as noted, it is unclear if the Fish & Game approach still envisages a sub-regional stage. This stage is fundamental to the position that Horticulture NZ took and continues to take in relation to the Plan.
24. Suffice to say, at the very least, from the perspective of Horticulture NZ, there is no specific consideration of horticultural activities and operations in the Fish & Game evidence and proposal. Likewise there is no response to the specific changes requested by Horticulture NZ, many of which the Section 42A report has accepted.
25. If the Commissioners were minded to accept a regime along the lines of the Fish & Game proposal then it is Horticulture NZ's position that a place in that regime needs to be made for horticulture.
26. In this regard we note that the Environment Court's Horizons One Plan decision has been referred to on a number of occasions, particularly by Fish & Game. It is important to remind ourselves of the context of this decision particularly for horticulture (which in the Plan was specifically defined as being commercial vegetable growing).
27. The case for a specific regime for horticultural operations is the direct subject of an appeal to the High Court specifically on some of the matters that Fish & Game are asking the Commissioners to decide upon.
28. It is therefore, our submission that it would be unwise for the Commissioners to base their decision on one made by

⁶ *Campbell v Christchurch CC* [2002] NZRMA 352

another body in totally different contextual circumstances
and one which is subject to legal challenge.



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23 May 2013

APPENDIX 1 HORTICULTURE NEW ZEALAND LEGAL SUBMISSIONS TO GROUP 2 : 23 MAY 2013

Topic	Horticulture NZ's submissions and evidence	Further comment
Pest control	In general the pLWRP ought not to duplicate controls under HSNO (ie there is no need to include condition that states the application technique or method is approved under HSNO Act); that adequate training in the application of VTAs ought to be included (retained) in the rule framework. Glyphosate?	The Section 42A report is recommending changes that do not distract from the submission except the condition regarding compliance with HSNO is retained
Fertiliser use	Do not make the Spreadmark Certificate the tool to amend the setback distance rather require the condition to be no discharge into water bodies.	Section 42A does not recommend any amendments in relation to this submissions on basis that the approach is that adopted in the NRRP
Nutrient Management – General	The approach adopted by Council (and largely still reflected in the Section 42A report) is generally supported (including audited self management into the regulatory framework; acknowledgement that OVERSEER may need to be treated as an interim tool or not the only tool; a regime is needed for the horticulture sector that takes account of the rotational nature of that land use	
Nutrient Definitions "Changed" Property/Site	A specific provision sought for arable and horticultural operations : Greater than 20% increase in the annual horticultural or arable yield <u>for the operation</u> , compared with the annual horticultural or arable yield <u>for the operation</u> averaged over the <u>length of the rotation based on records to verify the length of the rotation and average yield</u> . Covered in Group 1 – evidence on how property / site is used in practice in the case studies to this hearing.	The Section 42A recommended wording to address the issue shown as a track change.

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<p>Farm Environment Plan Auditor</p> <p>Nutrient discharges</p> <p>Advanced mitigation measures</p> <p>High risk nutrient risk farming activity</p>	<p>Support for the notified version of the definition. Concern with the requirement to have at least 5 years professional experience as this may cause considerable practical capacity issues. Support the ability for other qualifications to be approved but needs some flexibility around the 5 year requirement.</p> <p>Changes recommended in the Section 42A report are supported subject to the definition of property</p> <p>This is a new definition. Generally support intent but definition is limiting needs to not be exhaustive</p> <p>This is a new definition. The inclusion of fruit and berry growing by reference to the term "horticulture" which is undefined needs to be rectified. Could replace "horticulture" with "commercial vegetable growing" (same as was done in the Horizons One Plan)</p>	<p>See evidence of Mr McLeod</p> <p>See evidence of Mr Roberts (Ravensdown)</p>
<p>Farm Environment Plans</p>	<p>Horticulture NZ sought specific changes to Schedule 7 to better accommodate the requirements of the sector. The Section 42A report recommends substantial changes. Horticultural NZ recommends:</p> <ul style="list-style-type: none"> that for those plans that are in the first category (ie approved as meeting the criteria by Council CEO) then a transitional farm plan is needed to ensure horticulture activities can continue as a permitted activity; 	<p>Details in the evidence of Ms Wharfe and Mr McLeod</p>

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	<ul style="list-style-type: none">• that for the content of the Plans in relation to property details this is very dependent on the definition of property which has been covered;• that the audit requirements are aligned to the issue of how the auditor is defined;• that the interrelationship between and rationale for the various information requirements is clearly understood and justified.	