

MEMORANDUM

Date: 7 April 2020
To: Lisa Jenkins
From: Philip Maw and Imogen Edwards

ADVICE REGARDING WITHDRAWAL OF ORIGINAL SUBMISSION POINTS

1. You have asked for our advice regarding the proposed withdrawal of a number of original submission points made by Horticulture NZ on proposed Plan Change 7 to the Canterbury Land and Water Regional Plan (**PC7**).

Executive summary

2. The Resource Management Act 1991 (**RMA** or **Act**) does not prescribe a process for the withdrawal of submission points.
3. Accordingly, should Horticulture NZ wish to withdraw any of its submission points, it should seek leave to do so from the Independent Hearing Panel (**Panel**) appointed to hear and make recommendations on PC7.
4. If such an application is made, the Panel will need to consider whether any further submitters would be prejudiced by the withdrawal of the original submission points, and as set out in our analysis below, we consider that there is prejudice to those further submitters.
5. Our detailed analysis follows.

Making of submissions under the Act

6. Clause 6 of Schedule 1 to the Act provides for the making of submissions and clause 8 of Schedule 1 provides for the making of further submissions.¹ However, there is no process prescribed under the RMA for the withdrawal of original submission points.
7. We understand that Horticulture NZ's submission sought, amongst other things, specific recognition of and provision for rootstock and crop survival water in the provisions of PC7. The relevant submission points relate to four policies and one rule in PC7.
8. Of those submission points, two are subject to further submissions in support of the decision requested, and all five points are subject to further submissions in opposition to the decision requested.
9. We understand that Horticulture NZ no longer intends to pursue those submission points, and has requested that these points be withdrawn by way of a letter to the Council dated 28 February 2020. Horticulture NZ has informed some, but not all, of the further submitters that had submitted on the relevant original submission points.
10. In the absence of a prescribed statutory process to withdraw original submission points, we recommend that Horticulture NZ seeks leave from the Panel to withdraw the relevant submission points.

¹ For completeness, section 2 of the Act defines 'submission' as meaning a written or electronic submission.

11. One of the matters that the Panel will need to consider upon receipt of such a request is whether any further submitters would be prejudiced by the withdrawal of the original submission points.
12. We now consider any potential prejudice to those further submitters.

Prejudice to further submitters

13. The Act does not distinguish between original submitters and further submitters; both have standing to heard on an original or further submission.
14. However, clause 8 of Schedule 1 to the Act provides that a further submission must be limited to a matter in support of or in opposition to the relevant submission made under clause 6 of Schedule 1. For further submitters to be heard, any further submissions must therefore be connected to original submissions and as a result of this, in our view, issues of prejudice to further submitters arise if original submission points are withdrawn.
15. For those submitters that have further submitted in support of the decision requested by Horticulture NZ, the withdrawal of that original submission point results in prejudice to the further submitter, given the decision requested no longer exists to be supported. This is particularly problematic if those further submitters did not lodge original submissions seeking a similar decision, or did not further submit on a similar original submission.
16. Likewise for those further submitters in opposition to the decision requested by Horticulture NZ, the same prejudice arises given the resultant inability to oppose that decision requested before the Panel through calling evidence (although, arguably those further submitters in opposition benefit from the relief requested being withdrawn).
17. In our view, this prejudice will weigh against any request to withdraw the original submissions points being granted.

Consideration of alternatives

18. Given our conclusion that further submitters, both in support of and in opposition to the relevant original submission points, would be prejudiced by the withdrawal of Horticulture NZ's original submission points, we have considered whether that prejudice can be mitigated.
19. If the Panel was so inclined to grant leave to withdraw the original submission points, we consider the Panel should only do so on the basis that those further submitters have standing to maintain the further submission points and be heard.
20. However, we are not aware of any case law on this point, so the Panel would need to satisfy itself that further submitters would retain jurisdiction in relation to the original submission points, notwithstanding the withdrawal of those points by the original submitter. In our initial view, this may be possible, given that further submitters do not need to have lodged original submissions to qualify as a person who may make a further submission.