



**SUBMISSION ON THE PROPOSED AMENDMENTS TO THE
NATIONAL POLICY STATEMENT FOR FRESHWATER
MANAGEMENT**

TO: MINISTRY FOR THE ENVIRONMENT

SUBMITTER: HORTICULTURE NEW ZEALAND

**WITH SUPPORT FROM DISTRICT ASSOCIATIONS AND PRODUCT
GROUPS:**

**HAWKE'S BAY FRUITGROWERS' ASSOCIATION INCORPORATED, KATIKATI
FRUITGROWERS' ASSOCIATION INCORPORATED, MAORI KIWIFRUIT
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GROWERS LIMITED, TRINITY LANDS LIMITED, UNDER GLASS (BOMBAY)
LIMITED, UNDER GLASS (KARAKA) LIMITED, ZESPRI GROUP LIMITED.**

Background

Horticulture New Zealand (HortNZ) was established on 1 December 2005, combining the New Zealand Vegetable and Potato Growers' and New Zealand Fruitgrowers' and New Zealand Berryfruit Growers Federations.

On behalf of its 5,500 active grower members HortNZ takes a detailed involvement in resource management planning processes and national legislative consultations. HortNZ advocates for growers across the key industry areas of national regulatory reform, regional and district planning, biosecurity, research and development, access to labour, education, and readiness and response to adverse events. This advocacy includes topics such as protecting essential natural resources, property rights, water access and quality, and high profile environmental issues.

Horticulture is a growth industry. Total horticulture merchandise exports in 2014 were over \$3.9 billion, an increase in value of nearly 7 percent on 2013 horticultural produce exports. The value of the horticulture industry in 2015 rose to \$5 billion. The sector employs approximately 60,000 people.

HortNZ's mission is to create an enduring environment where growers prosper. This is done through enabling, promoting and advocating for growers in New Zealand to achieve the industry goal (currently a \$10 billion industry by 2020).

The key constraints to growth in horticultural production, remain access to the factors of production - in particular, land and water. Access to land and water is a key constraint to growth in horticulture largely because of competition for versatile land, the availability of water at high reliability, and water quality constraints. Horticultural production in all regions of New Zealand is reliant on reliable supplies of fresh water that are suitable for sustained crop production and post-harvest washing and processing. Water is essential for the production of food.

Freshwater quality is equally important to food producers because the value communities place on food include the nutritional and health related aspects of food as well as food security. While much of the food New Zealand produces from agriculture is for export, the significant proportion of annual vegetable production and a high proportion of annual fruit production is for domestic market.

As a founding member of the Land and Water Forum Small Group, HortNZ has played an active role as a submitter and in consultation with Central and Regional government reform of freshwater management. The submission is informed by HortNZ staff and contractors currently engaged in most aspects of Central and Regional management of freshwater across New Zealand.

Policy and science advisers to HortNZ are current members of The Land and Water Forum, the National Objectives Framework Reference Group (NOF) and Government's Technical Advisory Group on freshwater allocation. These policy advisers also support the involvement of the grower community in regional processes to set limits and manage within them. But many of the changes proposed to the National Policy Statement for Freshwater Management (NPS) in this public consultation document have not been discussed prior to the release of the document.

There are elements of the proposed amendments to the NPS that are supported within this submission. There are also elements that cause deep concern. These elements must be addressed by Central Government through the public process. HortNZ has made suggestions to improve the proposed amendments where it sees fit to do so.

This submission is primarily based on HortNZ's Freshwater Policy¹ and the subsidiary HortNZ Nutrient Allocation Principles².

Thank you for the opportunity to submit on the proposed amendments to the NPS.



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¹ <http://www.hortnz.co.nz/assets/Natural-Resources-Documents/HortNZ-Fresh-Water-Policy.pdf>

² <http://www.hortnz.co.nz/assets/Natural-Resources-Documents/HortNZ-Nutrient-Allocation-Principles-July-16.pdf>

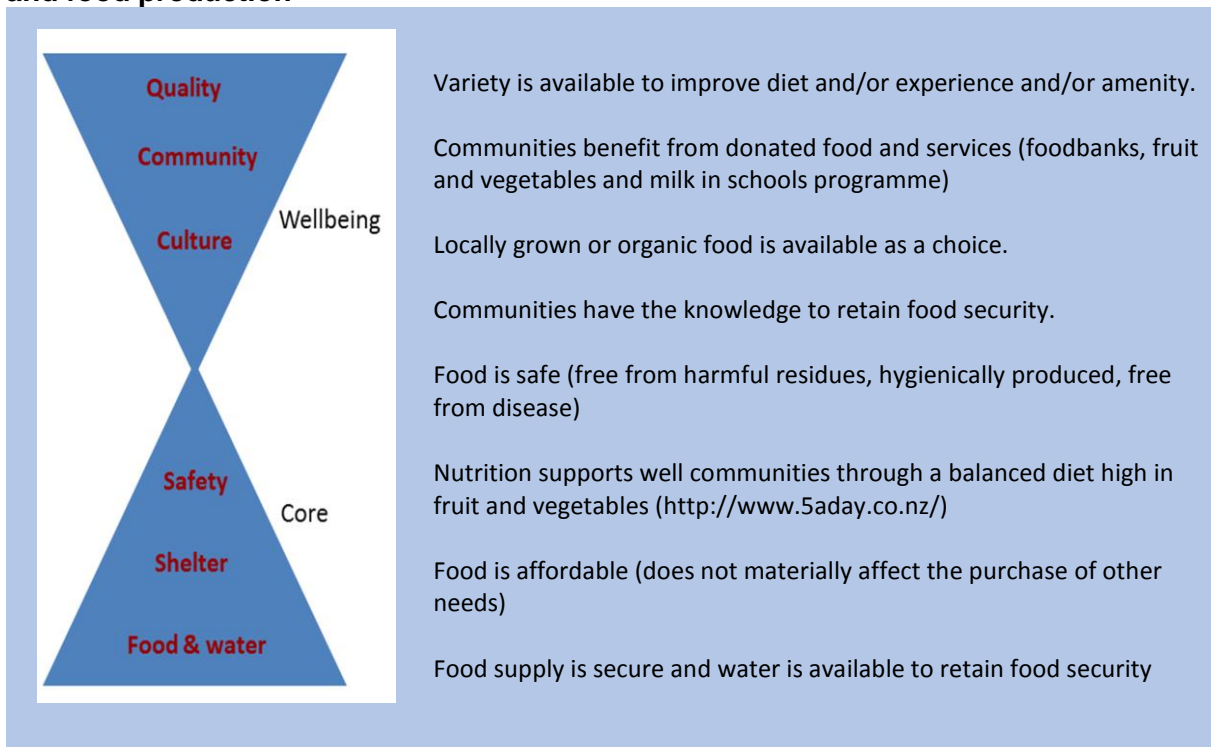
Connected values of land and freshwater

1. The considerable redrafting undertaken in the proposed amendment to the National Policy Statement for Freshwater unbalance the policy statement by:
 - a. Providing greater weight to the values contained within freshwater (Ecosystem Health, Contact Recreation, Mahinga kai and Fishing) through new Objective and Policy AAA1.
 - b. Removing values for freshwater that support our capacity to maintain life and communities from the framework for freshwater values (Te Mana o te Wai). The removed values include commercial and industrial use, domestic, municipal and animal drinking water, hydroelectric power generation and cultivation / food production.
 - c. Developing new terminology not currently within the ambit of New Zealand resource management case law that will require litigation to resolve, furthering the potential costs and risks to the community.
2. HortNZ recognises iwi rights and interests in freshwater have not been resolved, and must be resolved. HortNZ consider that the resolution of iwi rights and interests must be resolved by the Crown with iwi, and that the resolution of these matters need not be at the expense of current right holders. HortNZ is concerned that any proposal to devolve responsibility for settling iwi rights and interest in freshwater to regional councils needs careful consideration as to how other rights and interests in freshwater established lawfully can be retained or compensated.

Cultivation and Food Production

3. The proposed NPS removes Mahi mara / cultivation from the values listed under Te Mana o Te Wai and places them in a list of other “extractive uses” that *may* be considered after the values of Te Mana o Te Wai have been prioritised.
4. Food and water, along with shelter, form the base of human needs. They are the basis of what humans need to realise their ambitions. They are the prime motivators for direct human action. The way these basic needs translate into all aspects of community can be demonstrated diagrammatically (see Fig 1 below):

Fig 1. Social, cultural and environmental attributes associated with cultivation and food production



5. Food and fibre production are significant contributors to cultural identity. In many regions the “foodbowl” concept is actively employed. Food production values of freshwater have been identified in regional policy statements and plans in many parts of New Zealand.³ The values of scarce food production land are inseparable from connected freshwater. Freshwater is a necessary component of food production land because:
 - Freshwater processes formed our most productive land through erosion and deposition creating plains of arable soil in the lowlands. These make up the 5% of New Zealand that is available for high value horticultural production (versatile soils).
 - The value of this finite and precious resource is compromised without clean fresh water to cultivate crops, to wash and prepare food.
 - High value, high quality food crops increase value to New Zealanders in an economic sense but increasingly are part of our domestic and international tourism. Strong associations with regional identity are linked to key freshwater resources such as the Heretaunga Plains aquifers. Many consider these nationally outstanding because they provision land and allow the development of “food bowls”.
 - Much of the high value production of horticultural goods is situated around or over identified freshwater bodies that growers identify as critical to production.

The NPS is a subsidiary instrument to the RMA 1991

6. HortNZ does not consider that the redrafted NPS gives effect to section 5 of the Resource Management Act 1991, because in the way it has been redrafted, it weakens the links between land and water too significantly: section 5 is the

³ Including Auckland, Northland, Waikato, Bay of Plenty, Gisborne, Hawkes Bay, Horizons, Wellington, Tasman.

purpose of the Act and is copied here:

5 Purpose

(1) *The purpose of this Act is to promote the sustainable management of natural and physical resources.*

(2) *In this Act, **sustainable management** 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 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. The life supporting capacity of air, water, soil and ecosystems must by definition include food production services. The principles of integrated management are also well detailed in the NPS and in the Act. Separation of land and water values in the changes proposed to the NPS are neither consistent with the purpose of the Act or with the principles of integrated management. The freshwater values of land are devalued, because the negative aspects are still connected to water, while the ability to assess the positive aspects of these values in an integrated way has been compromised by the wording in the proposed NPS.
8. This will not only affect the freshwater objectives and limits that are to be set; it will also affect the way water and discharges will be managed following the setting of limits. The redrafted policy statement will affect the ability of communities to maintain access to water for key land and water values, and reduce the ability to provide for the life supporting capacity maintained through recognition of these values. Figure 2 below from the Regulatory Impact Statement demonstrates this:

Figure 2 Demonstrating how recognition of values affects the whole water management process (Extracted from RIS, paragraph 34).



9. Recent court decisions continue to express reservation that the NPS is in line with the Purpose and Principles of the RMA 1991:⁴

“We conclude that the provisions of a statute cannot be undermined by a national policy statement without very express language. Indeed the NPSFM 2014 itself does not expressly restrict consideration of its objectives to implementation through regional plans. Sections 104 and 104C require that the objectives and policies of the NPSFM 2014 are seen as relevant insofar as they relate to matters over which discretion has been restricted.”

10. There are three main problems with the way cultivation and food production values have been devalued in the proposed changes to the NPS:
1. They have had their links to the framework for Te Mana o Te Wai removed, by changing their location and removing the cultural name of the value (Mahi mara).
 2. They have been re-categorised as “extractive uses”; no longer values at all. They are no longer supported by the need to assess the national values when making decisions under Objective CA.⁵
 3. They have not been expressed in a way that allows for future population of the value with attributes.
11. In and around August 2013 the NOF was expressing the need for a comprehensive list of national values for freshwater. Iwi advisers to both the Land and Water Forum and the NOF were keen on introducing this through a new framework that would resonate with iwi and the wider community. There was wide endorsement of this approach and it led to the development of the framework for values incorporated in the NPS 2014. This was named “Te Mana o Te Wai”.
12. As part of the new framework the cultural associations with iwi and food production were examined. The relationship with Maori atua is clear: Rongomatane is the God of cultivated plants including kumara and other species. Archaeological sites of Maori horticultural gardens occur in locations throughout the North Island⁶ that are proximate to locations currently growing horticultural crops. The NOF endorsed the inclusion of Mahi mara / Cultivation into the national values framework for freshwater.

The values of freshwater for cultivation are national values important to all New Zealanders

13. The redrafting of the NPS in relation to values cannot be supported. It is acceptable to reframe values into the three proposed divisions:
- Te Hauora o te Taiao (health of the environment),
 - Te Hauora o te Wai (health of the waterbody) and
 - Te Hauora o te Tangata (the health of the people).
14. But significant redrafting would be required to ensure that:
1. Mahi mara is reinstated as a value concerning the health of people (Te

⁴ *Wellington Fish and Game Council v Manawatu-Wanganui Regional Council* [2017] NZEnvC 37 at [107].

⁵ This is the process outlined that must be used to set Freshwater Objectives in waterbodies under the NPS. The setting of Freshwater Objectives automatically links to the setting of load limits and restrictions on discharges from land, as well as water quantity allocation.

⁶ <http://www.doc.govt.nz/documents/science-and-technical/sap235.pdf>

- Hauora o te Tangata).
2. That the values of freshwater to land and people are considered equally within the NPS to the point that they do not compromise the state of the compulsory national values for freshwater.
15. In giving effect to the relief sought, attention is drawn to the recommendations of the Land and Water Forum regarding Iwi Rights and Interests. The following points are noted for recommendations:
1. The responsibility of resolving Treaty related claims with iwi sit with the Crown.
 2. Iwi rights and interests in water should be described and recognised.
 3. Existing rights should not be compromised, and costs relating to Crown-iwi resolutions should not be transferred on to other parties.
 4. The Fourth report expanded on the priority that should be afforded to iwi rights and interests but noted that any reduction in the rights and interests of others as a result of Crown settlement should be compensated for.
16. HortNZ supports these recommendations. We note with considerable concern that recent changes to the Resource Management Act compound on the redrafting of the NPS. In our view (should the changes proposed be accepted) there would be considerable risk that existing lawfully established horticultural activities will face an inequitable derogation, without an appropriate consideration of impacts on the wider community or compensation.
17. Those wider rights and interests have been lawfully established by permit and authorisation in plans and legislation. In our view, a wider public conversation is required before Government makes these changes.

The Regulatory Impact Statement has not assessed the effect of these changes appropriately

18. The draft Regulatory Impact Statement supporting these proposed changes make an analysis of the impact of proposed changes to the Te Mana o Te Wai framework in paragraphs 156-162. Parts of this impact have been underlined below for emphasis:

“156. The proposed amendments build on the existing approach directed by the Freshwater NPS – to base freshwater objective setting on community discussions about the values held for the water. For this reason, they impose minimal new impacts on what is already required.

157. There is a risk that changing the value descriptions to help make Te Mana o te Wai a platform for community discussions may elevate the values more closely associated with Te Mana o te Wai over other non-compulsory values. This may lead to conflict in communities, but the extent of this as a realistic risk is unknown and will be tested during consultation.

158. Increased clarity will reduce uncertainty costs for regional councils and stakeholders.

159. Highlighting the expectation that Te Mana o te Wai involves engagement with tāngata whenua on the values they hold for fresh water will help support compliance with Part D of the Freshwater NPS: Tāngata whenua roles and interests. This may decrease litigation costs arising from inadequate recognition of Part D.

160. Option B emphasises engagement with tāngata whenua as well as the wider community, this may increase wider community buy in for the eventual plan changes which again may decrease litigation costs.

161. No unintended consequences have yet been identified but may be uncovered through further consultation and analysis.

162. Further analysis and consultation is required to assess the impacts of either option.”

19. We agree that further analysis and consultation is required before making these changes. We have attempted to identify the unintended consequences that have not been costed in this statement of impact. The changes made do not build on the existing approach to allow communities to base freshwater objectives on community values, because many important values are no longer considered as values.

20. We consider the changes will not decrease the extent of litigation, rather they will increase it – particularly because redrafted policies and objectives contain new phrases untested by case law. For example:

1. “extractive use” for all values of freshwater the IAG decided did not fit with the Te Mana o Te Wai framework, despite them being significant and important for more than economic value to New Zealand communities.
2. “Consider and recognise” as a new weighting term for new Objective and Policy AAA1 on Te Mana o Te Wai.
3. New terms in Policy CA2 (f) iaaab “including community understandings of the health and well-being of the freshwater management unit” needs to be less ambiguous – there will be multiple community understandings not necessarily based on scientific analysis.
4. New terms (“give effect in particular to”) in Policy CA2 (f) vii “give effect to the objectives and policies in this national policy statement, in particular Objective AAA1 and Objective A2.” has the effect of prioritising 2 Objectives and providing higher rank for them although the clause iaaab is about providing for economic opportunities within the context of environmental limits.

Other changes required to the Preamble of the NPS

21. New paragraph 11 of the preamble states: “*Where changes in the way communities use water are required, the pace of those changes should take into account economic impacts. Improvements in freshwater quality may take generations depending on the characteristics of each freshwater management unit.*”

22. HortNZ requests changes to this statement to ensure that the wider environmental, social and cultural impacts of changes are considered alongside economic impacts. For example, the effect of water reductions on leafy green production in Pukekohe has wider social and cultural impacts not related to economy. Increase in bacterial contamination of surface water creates food safety risks for irrigation of the same crops.

23. HortNZ also requests that a section is developed in the preamble for the NPS that supports recognition of cultivation and food production as national values

for freshwater.

Other changes required to new section on Te Mana o Te Wai

24. The following changes are requested to the proposed text:

National significance of freshwater and Te Mana o te Wai

The matter of national significance to which this national policy statement applies is the management of fresh water through a framework that considers and recognises Te Mana o te Wai as an integral part of freshwater management.

The health and well-being of our freshwater bodies is vital for the health and well-being of our land, our resources (including fisheries, flora and fauna) and our communities.

Te Mana o te Wai is the integrated and holistic well-being of a freshwater body
and the connected values of freshwater to land.

Upholding Te Mana o te Wai acknowledges and protects the mauri of the water. This requires that in using water you must also provide for Te Hauora o te Taiao (health of the environment), Te Hauora o te Wai (health of the water body) and Te Hauora o te Tangata (the health of the people).

Te Mana o te Wai incorporates the values of tangata whenua and the wider community in relation to each water body.

The engagement promoted by Te Mana o te Wai will help the community, including tangata whenua, and regional councils develop tailored responses to freshwater management that work within their region.

*By recognising Te Mana o te Wai as an integral part of the freshwater management framework it is intended that the health and well-being of freshwater bodies is at the forefront of all discussions and decisions about freshwater, including the identification of freshwater values and objectives, setting limits and the development of policies and rules. **This is intended to ensure that the values of freshwater to land and people are protected; and that** water is available for the use and enjoyment of all New Zealanders, including tāngata whenua, now and for future generations.*

Other changes suggested to definitions

25. The definition for environmental flows and/or levels should be adjusted to include a similar requirement for groundwater bodies used for abstraction.
26. The definitions for accounting frameworks (quality and quantity) should be merged into one definition as the accounting framework should be the same for both. In the definition it should also be made clear that an accounting framework is the biophysical model that describes the mass balance and flow of water and contaminants within a catchment, subcatchment or FMU.

27. The definition for large rivers and lakes should be removed in its entirety.
28. The definition for “national value” and the related definition for “value” should be modified to ensure that the previously described national values that have now been termed “abstractive uses” are included as national values of people (Te Hauora o te Tangata).

Other changes required to new Objective A1

29. The Objective is reduced too greatly by deletion of the words “at least”. These words should be reinstated to allow a wider assessment of the health of people and communities more in line with the purpose of the Act.

Other changes required to new Objective A3

30. Ensure the objective applies to all waterbodies.

Changes suggested in the Land and Water Forum Submission

31. HortNZ supports the changes proposed in the submission of the land and water forum in general. Most specifically we agree with:
 - The proposals regarding incorporation of MCI.
 - The proposals related to DIN and DRP.
 - The proposals related to “swimming”.
 - The proposals related to stock exclusion.
 - The proposals related to freshwater funding.
 - The proposals related to economic wellbeing.
 - The proposals related to “maintain and improve”.
 - The proposals related to sediment, copper and zinc.
32. HortNZ has been involved in recent discussions with the Land and Water Forum over the issues raised in the submission relating to the prioritisation of values specific to a formulation proposed by the Iwi Advisers Group. Nothing has emerged from those discussions that alleviates our serious concerns, although we note a general agreement that:
 - a. the extractive uses should actually be referred to as values not uses
 - b. that all the values should be expressed bilingually.
33. We would also support these proposed changes relating to values being deferred back to the Land and Water Forum to allow for a wider level of engagement and a better informed community.

Exceptions proposals

34. HortNZ does not support an exceptions regime in general. We do not support a differentiation between infrastructure for hydroelectric generation and other nationally significant infrastructure such as drainage networks, flood protection schemes, water distribution networks and stormwater / sewage infrastructure. Taking an “effects based” approach would provide no distinction between these sorts of infrastructure and those required for electricity generation.
35. If we are to have an exceptions regime there will be few catchments in the

country that have not been substantively modified by these nationally significant forms of infrastructure. In our view providing for exceptions is impractical for this reason; because the requirement to maintain and or improve water quality will not be achieved in many catchments.