

MEMORANDUM

TO: Chris Keenan
FROM: Helen Atkins
DATE: 22 March 2016
SUBJECT: PLAN CHANGE 15 TO FAR NORTH DISTRICT PLAN – COURT DECISION

INTRODUCTION

1. The Court has issued its decision on the Plan Change 15 appeals and has declined both appeals (from Horticulture NZ and Turners & Growers).
2. The appeal from Horticulture New Zealand sought to increase setbacks for residential building in the Rural Production Zone in order to require resource consent applications for any breaches to consider potential reverse sensitivity effects. The appeal from Turners & Growers seeks increased setbacks for outdoor activities and buildings for non-rural industrial and commercial activities in the Rural Production Zone so that resource consent applications for any breaches can consider incompatible effects between neighbouring uses.
3. The essence of the Court's reasoning was that it did not consider that a 30m setback would achieve the outcomes that the horticulture sector was seeking. The Court was of the view that a more focussed approach that provided appropriate recognition of important horticulture values and investments (for example around the irrigated area in Kerikeri) would be more appropriate.

OVERVIEW OF KEY FINDINGS

4. In terms of the key findings and other important comments of note, the Court noted that the issue in the case (which was both the case for Turners & Growers and Hort NZ) is whether further standards on setbacks are the most appropriate method to deal with potential adverse effects from certain buildings and/or activities.
5. The Court considered that the Turners & Growers position was unclear and confusing. The Hort NZ appeal was clear and was not changed from the submission. Clarification about the setback applying from side boundaries was acknowledged by the Court

6. The Court spent some time focusing on the provisions that deal with incompatible activities noting that these had been inserted through the Plan Change 15 process.
7. The Court found that there was little evidence of the setbacks being a district wide issue with the focus being on Kerikeri. In terms of Kerikeri the Court concluded that the irrigation of this area constitutes an infrastructural element of significant value that would be virtually irreplaceable in today's market. The Court went on to say:

Surprisingly the Far North District Plan does not have any specific recognition of this irrigated land, and we acknowledge this is a finite resource. Accordingly, we understand the frustration of the horticulturalists in seeing this resource fragmented into residential housing and lifestyle blocks. The areas that can be irrigated are quite clearly demarcated on Appendix C. For example, Waipapa Road North is irrigated, while land to the south is not. [para 62]
8. The Court understood the concern but did not understand why we were seeking a 30m setback for residential dwellings in the Rural Production Zone. The Court noted that it heard that there were complainants from people who were already within 30m of an orchard boundary. The Court also found that we had acknowledged that complaints did not always correspond with linear distance; and in particular in relation to sprays and odour, these issues seemed to depend more significantly on the relationship of the parties and sensitivity of the individual involved.
9. The Court referred to the evidence from growers that a 30m setback would enable them to sit down with the intending owner of a new dwelling and have a focussed conversation on the type of activities horticulturalists conduct. The Court found this 'significantly optimistic' and noted that it suspected that those intending to erect dwellings would see this control as a significant constraint on their use of land and more likely to lead to a source of irritation and complaint.
10. The Court concluded that:

... the appropriate course in respect of the irrigated areas that are particularly of interest to horticulture is for them to be recognised in the Plan and in the zoning and other mechanisms utilised to ensure that the irrigated land is available for future use. In relation to any further subdivision, irrigation is a matter that can be considered by the Council at the time they consider an application. In respect of those sites already subdivided (and there appear to be many within the RPZ in the environs of Kerikeri that have not been built on) this would effectively impose a post-subdivision constraint which is almost inevitably going to lead to significant adverse impact on those landowners. [para 65]

Quite simply, we have concluded that there is no proper justification for a 30m setback for residential activities as sought by Horticulture NZ. We conclude that the issue of the irrigable lands, particularly around Kerikeri, needs to be considered in the next round of Plan change(s) or Plan review by the Council and some appropriate zoning or other protections put in place to control further subdivision within that area. [para 67]

CONCLUDING COMMENTS

11. While disappointing not to be successful the Court has made a number of useful and forceful comments that support the position for the sector in the Far North moving forward.
12. In terms of the plan review that the Council is undertaking there will be an opportunity to more appropriately recognise and provide for horticulture. It will also be an opportunity to refine the Rural Production Zone and horticultures place in it. The current Zone is too big and fragmented that a more fine-grained approach is clearly what needs to occur.
13. In terms of what happens in the meantime, one avenue to explore is to be more active with the Council consents team to ensure they are applying the incompatibility provisions correctly.
14. In terms of the broader implications there may be somewhere we have the same Court sitting on other plan appeals (such as Whakatane). The key issue was the Court not being satisfied that an increased setback would result in resolving the issues that growers said they have. More evidence focussed on this may get the Court over the line in terms of the issue.