

MEMORANDUM

TO: Chris Keenan, Horticulture New Zealand

FROM: Helen Atkins, Phoebe Mason and Vance Hodgson

DATE: 29 July 2016

SUBJECT: **INITIAL OVERVIEW OF PANEL RECOMMENDATIONS ON THE PROPOSED AUCKLAND UNITARY PLAN**

INTRODUCTION

1. This document provides a high level overview of recommendations on the Proposed Auckland Unitary Plan (“**PAUP**”) relevant to Horticulture New Zealand. This is a preliminary overview from a legal perspective, and will be developed as detailed planning reviews of the provisions are undertaken and the picture becomes clearer. This memorandum focusses on the high-level objectives and policies related to:
 - (a) Recognition of horticulture in the Regional Policy Statement:
 - i. Food Supply;
 - ii. Elite and Prime Soils;
 - iii. Rural Subdivision;
 - iv. Urban Growth;
 - v. Reverse Sensitivity;
 - vi. Rural Character.
 - (b) Horticulture NZ's submission seeking an overlay for Land with High Productive Potential, which related to water quantity and allocation;
 - (c) Future Urban Zoning;
 - (d) Discrete topics:
 - i. Rural Subdivision rules;
 - ii. Earthworks;
 - iii. Post-Harvest Facilities;
 - iv. Greenhouses;
 - v. Noise.

RECOGNITION OF HORTICULTURE

2. Horticulture NZ achieved recognition of horticultural and rural productive activities in the Regional Policy Statement, which is a key direction-setting document for the PAUP.

Food Supply

3. Horticulture NZ's submissions seeking protection of food supply have been accepted:

"The Panel recommends that the regional policy statement provisions recognise that rural areas make a considerable contribution to the wider economic productivity of, and food supply for, Auckland and New Zealand. This is a vital function and accordingly rural production activities need to be enabled. The regional policy statement provisions make this clear."

4. Addition to RPS as follows:

"Rural areas are a significant contributor to the wider economic productivity of, and security of food supply for, Auckland and New Zealand."

Elite and Prime Soils

5. The Panel has accepted the importance of elite soils, but has recommended lowering the protection of prime soils, in recognition of the lesser productive qualities of this resource:

"A significant policy direction in the proposed Auckland Unitary Plan was the protection of elite and prime soils. The Panel heard a considerable amount of evidence on this matter, and it is addressed in more detail below. In summary the Panel recommends the protection of land containing elite soils from inappropriate subdivision, use and development, but that land containing prime soils not be treated in the same way. Due to the broad definition of prime soils in the proposed Auckland Unitary Plan and their wide geographic distribution across the region, the Panel does not find the level of protection as notified is justified or appropriate. The Panel, in accepting the versatility of this soil type, recommends that it be protected where it is practicable to do so."

Rural Subdivision

6. Horticulture NZ's position on rural subdivision is nuanced, and whether the Panel's recommended Plan delivers the outcome which Horticulture NZ seeks will not be clear until a detailed review of the provisions can take place. Tensions exist which need to be carefully balanced, between:

- (a) Enabling flexibility of the Rural-Urban Boundary ("**RUB**") and ensuring urbanisation does not creep across rural productive land, causing land loss and reverse sensitivity concerns;
- (b) Enabling flexibility of land holdings (which farmers also benefit from) and transferable rural site subdivision, and avoiding the carving up of productive land;

(c) Managing urban growth (dealt with in a separate section below).

7. The Panel's summary of the regional policy framework is below, and this is covered in more detail later in this memorandum in respect of the regional and district plan provisions:

"Probably the most controversial aspect of the rural provisions was subdivision. In terms of the proposed Auckland Unitary Plan as notified subdivision was very restrictive, with many submitters saying it was tantamount to a prohibition. In response to hearing the rural subdivision provisions, the Panel issued interim guidance stating that subdivision needed to be provided for to a greater extent than in the proposed Auckland Unitary Plan. The Panel recommends that the regional policy statement set out the purposes for which subdivision is to be enabled. The Panel's recommended rural subdivision provisions (objectives, policies and rules) are set out in the Panel's Report to Auckland Council – Hearing topic 064 Rural subdivision July 2016.

- *Subdivision in rural zones should be provided for to a greater extent. It may be discouraged or constrained but should not be effectively prevented. There should be no requirement to use existing rural sites rather than create new ones.*
- *The productive potential of elite land [soil] should not be undermined.*
- *Restrictions on subdivision include avoiding elite land when subdividing for rural lifestyle purposes and avoiding the potential for reverse sensitivity effects that could hinder the continued operation or growth of existing rural activities, or the establishment of new rural activities.*
- *The provisions provide for the transfer of the residential development potential of rural sites from one place to another, as well as the rearrangement of site boundaries."*

Urban Growth

8. Horticulture NZ supports the intensification of urban land use to contain urban sprawl and protect our valuable rural land resources. The Panel has agreed with the interrelationship of urban growth and impacts on rural resources:

*In addition to rural productive purposes, the Panel notes that there is a clear interrelationship between the provisions in this chapter and the regional policy statement provisions relating to enabling quality urban growth (Chapter B2 in the Plan and Topic 13 –Urban Growth). In this regard the Panel has recommended **strengthening the notified provisions to avoid urbanisation of the rural areas**. In this respect the Rural Urban Boundary, together with the proposed Auckland Unitary Plan provisions to avoid urbanisation outside of the Rural Urban Boundary, will provide certainty for landowners both inside and outside of the Rural Urban Boundary as to which land can be urbanised in the future and which land will remain available for rural production activities.*

9. The detail of how the flexibility of the RUB plays out in context will be investigated in the coming days.

Reverse Sensitivity

10. The Panel has acknowledged the key issue of reverse sensitivity:

"To enable rural production, while at the same time enabling a wider range of activities without unduly affecting those rural production activities, the issue of reverse sensitivity needs to be addressed. The Panel has addressed this in its recommended provisions."

11. The recommended provisions include requirements on newly established rural activities such as:

- (a) preventing sensitive activities such as countryside living from establishing in areas where rural production activities could be adversely affected; and
- (b) requiring sensitive activities (such as countryside living) to adopt onsite methods to avoid reverse sensitivity effects on rural production activities.

Rural Character

12. Rural character has been protected alongside rural productive activities:

"While rural productive activities are enabled, they should be undertaken in a way that maintains rural character and amenity values, as well as landscape, ecosystem services and biodiversity values. Landscape and biodiversity values were not explicitly addressed in the proposed Auckland Unitary Plan rural provisions, and the Panel agrees with those submitters, notably the Environmental Defence Society and the Royal Forest and Bird Protection Society, that they should be. The objectives and policies have been amended accordingly."

OVERLAY: LAND WITH HIGH PRODUCTIVE POTENTIAL

13. Horticulture NZ sought an overlay which would identify Land with High Productive Potential and enable prioritised water supply to these land parcels.

14. Horticulture NZ commissioned a detailed mapping series identifying this land, with parameters including soil quality, LUC class, proximity to transport, energy and other resources, current land use, etc. The maps were proposed to form the basis of the overlay, with a detailed set of provisions proposed to apply to the overlay area.

15. This overlay was rejected by the Panel, with fairly brief reasoning:

"Horticulture New Zealand and the Pukekohe Vegetable Growers Association raised a number of significant issues at the hearing, as they had done throughout all of the hearings they attended. They sought a suite of interconnected provisions but due to the structure of the hearing topics presented their evidence in a more 'piecemeal' way but sought to 'pull it all together' in this topic. To reflect this they presented a document with extensive tracked changes."

One of the more significant changes sought was the introduction of a High Productive Potential Overlay. This set out a range of activities with assigned activity statuses. This has been addressed in the Panel's Report to Auckland Council - Hearing topic 011 Rural Environment July 2016. The Panel notes that it has not recommended its inclusion in the Plan and has also not recommended issues relating to managed aquifer recharge. Extensive evidence was presented by Horticulture New Zealand and the Pukekohe Vegetable Growers Association and the Council. The Panel notes here it agrees with the evidence of the Council."

Water Allocation

16. Horticulture NZ made other submissions in relation to water use, and the key outcomes are set out below.

National Policy Statement for Freshwater Management 2014

17. The Panel have taken a sensible approach to the NPS, both practical and aspirational:

"Reflecting on all of the evidence relating to water quality in terms of the regional policy statement and the regional plan the Panel has recommended a consistent approach. That approach is one which is not taking an 'overall' approach but one that requires coastal and fresh water quality to be maintained where it is excellent or good and progressively improved over time."

Priority for water takes

18. Horticulture NZ sought (in part through the proposed overlay) some priority for horticultural activities, and for capital root stock.
19. No priority for food production takes has been recommended by the Panel.
20. The Panel also did not recommend the prioritisation of existing lawful takes over other takes, as was sought by geothermal water users, nor did the Panel recommend a higher permitted take level for farming, as was sought by Federated Farmers.
21. The priorities are: domestic and municipal, existing lawful takes, and uses of water for which alternative water sources are unavailable/unsuitable.

Intermittent Streams

22. Horticulture NZ sought that 'intermittent streams' (broadly defined as those streams which are sometimes, or regularly dry) be excluded from the definition of 'streams'. This impacts rules in relation to water quality management, such as stormwater management, bunding, riparian margins etc.
23. The Panel has recommended that intermittent streams be treated the same as permanent streams:

The Council stated in its closing statement that it was not persuaded to resile from the position it advanced for intermittent streams. The Panel agrees. It is the Panel's position that in section 32 and 32AA terms the further loss or degradation of intermittent streams should be protected and further loss avoided where this is practicable. The

continued loss of intermittent rivers and streams would not give effect to either the National Policy Statement for Freshwater Management (objectives A1 and A2 and objective B1) or the regional policy statement.

Stormwater and Wastewater

24. The Panel has recommended removing the distinction between private and public stormwater and wastewater networks.
25. This means that both are enabled and restricted to the same extent. Horticulture NZ supports this as the past, urban/public networks have been enabled (more than private networks), but have caused problems for rural/private networks, flooding in Franklin for example.
26. The Panel is also supportive of the Stormwater Bylaw¹ being put to good use.

FUTURE URBAN ZONING

27. A large portion of elite production land on Pukekohe Hill was zoned Future Urban in the notified Plan, Horticulture NZ sought that this zoning be removed, given the importance of the land.
28. This submission was supported by Council, and the Panel have supporting this rezoning also, as follows:

“The Panel recommends the removal of about 170 hectares of land on Pukekohe Hill (southeast Pukekohe) from within the Rural Urban Boundary and its rezoning from Future Urban Zone to Rural - Rural Production Zone. Horticulture New Zealand and the Pukekohe Vegetable Growers' Association sought this area of land be excluded from the Rural Urban Boundary as notified in the notified Plan. The land contains elite and prime soils. The Council supported this change and the Panel agrees.

The Panel recommends about 230 hectares of land between Grace James Drive and Runciman Road in north-east Pukekohe be included within the Rural Urban Boundary and be rezoned from Rural - Countryside Living Zone to Future Urban Zone.

P L and R M Reidy, A J and P M Kloeten and Ruatotara Limited (the Reidys) sought that this land be included in the Rural Urban Boundary and be rezoned from Rural - Countryside Living Zone to Future Urban Zone. Horticulture New Zealand supported the relief sought by the Reidys. The Grace James Road residents did not support this change. The Council did not support the relief sought by the Reidys on the basis of the lack of need for the development capacity and perceived issues with the future servicing of the land.

Mr Hodgson provided planning evidence for the Reidys as to why the area is suitable for urban development. His reasons included that the area does not contain the same high quality land values as Pukekohe Hill, is currently used for countryside living but not of sufficient lot sizes to enable urbanisation, is well served by roads and has linkages to arterials, has linkages to the Rural - Countryside Living Zone and a school, contains contours and natural features that would be attractive in an urban setting, and avoids the Pukekohe Tuff Ring. Mr Hodgson also provided an assessment of the proposed Rural Urban Boundary extension against the Panel's interim guidance on best practice approaches to changes to the Rural Urban Boundary.

¹ Horticulture NZ made submissions on this Bylaw which were largely accepted

The Panel was persuaded that the area requested to be included within the Rural Urban Boundary satisfies the regional policy statement criteria regarding shifts to the Rural Urban Boundary and meets the Panel's best practice approaches. The Panel recommends its inclusion within the Rural Urban Boundary."

DISCRETE MATTERS

29. The following are the high-level outcomes regarding key land use activities for horticulture.

Rural Subdivision

30. The Panel has enabled rural subdivision, while seeking to ensure it does not threaten rural values. This involves use of transferable rural site subdivision, and protection of productive land.

31. The Panel's summary:

In summary the Panel has recommended greater opportunity for rural subdivision in relation to enablement for the protection, rehabilitation and enhancement of significant indigenous biodiversity, i.e. indigenous vegetation, wetland and native re-vegetative planting. These lots may either be created in-situ or transferred.

The transferable rural site subdivision option is enabled from donor lots within the incentivised land amalgamation area, and in the circumstances where indigenous vegetation, wetland and native re-vegetative planting subdivision is provided for. These lots are transferred to sites identified on the planning maps by the subdivision variation control as receiver sites in the Rural - Countryside Living Zone.

While the transferable rural site subdivision option is similar to the proposed Auckland Unitary Plan, the Panel considers there is considerable opportunity for this technique to achieve better environmental, social, economic and cultural outcomes. However the policy shift required to achieve this has not been well enough established in section 32 terms to justify such a change at this time. This would need to be progressed through a plan change process.

...

The Panel has recommended the minimum site size subdivision be as set out in the table below (as proposed by the Council following the Panel's interim guidance and presented in evidence for topics 011 and 056 and 057). This is largely based on the expert evidence of the Council's witnesses and supported by a number of submitters including Horticulture New Zealand and the Pukekohe Vegetable Growers Association:

Zone	Minimum Average site size (ha)	Minimum site size (ha)
Rural Production	100	80
Mixed Rural	50	40
Rural Coastal	50	40
Rural Conservation	20	10

32. In relation to managing subdivision to maintain and enhance productive potential, the Panel accepted the evidence of Council expert Dr Fiona

Curran-Cournane, which was supported by Horticulture NZ. The Panel have quoted this passage from Dr Curran-Cournane's evidence:

Thirty-five percent of the best agricultural land in the Auckland region is occupied by lifestyle blocks and this trend will increase into the future if stricter objectives and policies about rural subdivision and development are not included in Chapter B8 'Sustainably managing our rural environment' in the proposed Auckland Unitary Plan (proposed Auckland Unitary Plan). The development of elite and prime land is therefore not primarily attributable to urbanisation and future urban zoning as suggested in the evidence on behalf of the following submitters: the Smithies Family Trust and others, and Better Living Landscapes Limited. Research indicates that the development of elite and prime land by rural lifestyle blocks pose an even bigger threat than that from urbanisation and this has been a long standing land use issue in rural Auckland.

There is very little scientifically robust and defensible research indicating the productive value of small-scale, lifestyle block production other than to say it is largely being used for consumptive purposes. This raises concerns that a large proportion of elite and prime land is being occupied for non-commercial primary production and the adverse accumulative effects of rural subdivision will continue to limit large scale operations that for economic purposes require large areas of land to operate.

Loss of land (especially 'versatile' or high quality' soils)' and 'reverse sensitivity effects' were identified as the major issues associated with land fragmentation in New Zealand. These were the key concerns raised by all regional and unitary councils across New Zealand and three district councils in relation to rural fragmentation.

Considering the above and what is detailed in my rebuttal evidence below, there is compelling scientific research indicating that adhoc, sporadic rural subdivision has been a long standing land use issue in rural Auckland and 35% of the best agricultural land in Auckland is occupied by lifestyle blocks. These trends will continue without intervention. To maintain the integrity and viability of this non-renewable and ever decreasing resource in Auckland I support stricter objectives and policies about the enabling of rural subdivision in the region (Paragraphs 1.1-1.5.)."

33. The Panel also recognised patterns of land use in horticulture:

"The Panel notes these submitters [largely developers] did not produce any expert evidence or a section 32 analysis. Also these submissions are contrary to the evidence of Horticulture New Zealand that land containing elite and prime soils is used by their growers in the southern part of the Auckland region interchangeably. The submissions also did not have regard to the evidence of Dr Curran-Cournane which addresses the importance of Auckland's land containing elite and prime soils for outdoor vegetable production in the regional and wider New Zealand context. As already addressed, Dr Curran-Courane's evidence outlines the effects that rural lifestyle subdivision has had on the availability of elite and prime soil for rural production activities."

Earthworks

34. The Panel have agreed to a new definition for Ancillary farming earthworks as a Permitted Activity in the rural zone subject to meeting standards.
35. The Panel states that it has reluctantly accepted that the Horticulture New Zealand and Pukekohe Vegetable Growers Association document: Erosion and Sediment Control Guidelines for Vegetable Production (June 2014) be

referred to in the Plan. This is because when witnesses were questioned by the Panel it was stated that it would take a lot of work to convert the Guideline into a workable standard in the Plan and that this would also be going beyond the scope of submissions. The Panel recommends that this issue is addressed by the Council and stakeholders in the near future to give effect to the National Policy Statement for Freshwater Management 2014.

Post-Harvest Facilities

36. In respect of activities ancillary to farming, for example post-harvest processing, the Panel have enabled these activities to occur:

"The Panel has retained but substantially redrafted the policies to be more enabling of a wider range of activities in the rural areas provided any adverse effects are avoided, remedied or mitigated. This is in response to a number of submissions seeking a more enabling rural regime including Hugh Green Limited, Better Living, Terra Nova and a number of other submitters representing rural interests and communities. However the Panel does not consider it is the role of the Auckland Unitary Plan to "provide for the economic development potential of rural areas to be realised" (as stated in policy 1 in the Council's closing statement) but it is appropriate for the Plan to enable economic development while addressing any adverse effects."

37. The RPS includes a policy to:

"(4) Provide for non-soil dependent rural enterprises (including post-harvest facilities) on land containing elite or prime soil where there are economic and operational benefits associated with concentrating such enterprises in specific rural localities."

Greenhouse Discharge

38. The Panel have agreed to provide a Permitted Activity status for discharge of greenhouse nutrient solution from greenhouses less than 1ha and a Controlled Activity status for those above 1ha.
39. The discharge of greenhouse nutrient solution must be in accordance with the A Code of Practice for The Management of Greenhouse Nutrient Discharges (June 2007).
40. This is a good outcome. There are more than 130 greenhouse operations in the Auckland region, with at least 43 greater than 1 hectare. The framework in the notified PAUP was that greenhouses greater than 1ha fell to be considered as discretionary activities with no guarantee that consent would be granted.

Noise

41. Noise standards in the rural zones have been applied. This is new for areas like Franklin that previously did not have noise limits specified in a plan. Exclusions which Horticulture NZ sought however have been included. The following activities are exempt from the noise standards:

- (a) the use of mobile agricultural horticultural or forestry vehicles or machinery, or other mobile or portable agricultural, horticultural or forestry equipment;
- (b) the use of post-harvest facilities including vehicle access ways set back at least 100m from a notional boundary.