

SUBMISSION ON THE RESOURCE LEGISLATION AMENDMENT BILL 2015

Clause 6 of First Schedule, Resource Management Act 1991

TO: SELECT COMMITTEE

SUBMITTER: HORTICULTURE NEW ZEALAND LIMITED

1. This is a submission on the Resource Legislation Amendment Bill 2015 ("**RLA**").

Horticulture New Zealand

2. Horticulture New Zealand ("**Horticulture NZ**") was established on 1 December 2005, combining the New Zealand Vegetable and Potato Growers' and New Zealand Fruitgrowers' and New Zealand Berryfruit Growers Federations, and now also includes Olives New Zealand.
3. On behalf of its 5,600 active grower members Horticulture NZ undertakes detailed involvement in resource management planning processes as part of its National Environmental Policy. Horticulture NZ also works to raise growers' awareness of the Resource Management Act 1991 ("**RMA**") to ensure effective grower involvement in planning processes and resource consent applications. The principles that Horticulture NZ considers in assessing the implementation of the RMA include:
 - (a) Science should underpin the basis of all advocacy;
 - (b) The effects based purpose of the RMA;
 - (c) Non-regulatory methods should also be employed by councils;
 - (d) Regulation should impact fairly on the whole community, make sense in practice, and be developed in full consultation with those affected by it;
 - (e) Early consultation of land users in plan preparation;
 - (f) Ensuring that RMA plans work in the growers interests both in an environmental and "right to farm" sense.
4. Since 1997 Horticulture NZ has been, and continues to be, an active participant in the regional and district planning processes since 1998 and has emphasised expert based involvement since 2005. Horticulture NZ's investment in this activity is significant. For example, in 2015 between \$1m and \$2m was expended by Horticulture NZ on resource management and environment advocacy work. This included evidence preparation and

submissions on more than 48 plans and variations, more than 20 council hearings on decisions, 30 appeal discussions or mediations and one Environment Court hearing.

5. Horticulture New Zealand has also participated in and supported grower involvement in collaborative planning processes at the regional and national level, and now has a science investment programme focussed on delivering better understanding and stewardship of natural resources. As part of this programme we have been involved in 9 regional planning processes and administer science contracts over a yearly value of \$1million.
6. Horticulture in NZ is a growth industry (see Figure 1 below). Total horticulture merchandise exports in 2014 were over \$3.9 billion, an increase in value of nearly 7 percent on 2013 horticultural produce exports. Four horticulture crops – wine; kiwifruit; apples (fresh & processed); and potatoes (fresh, frozen & processed); were collectively 76% of the value of New Zealand’s horticultural produce exports in 2014, with wine dominating at close to 34% of the 2014 total.

Horticultural exports – Years to June (\$ million, fob)

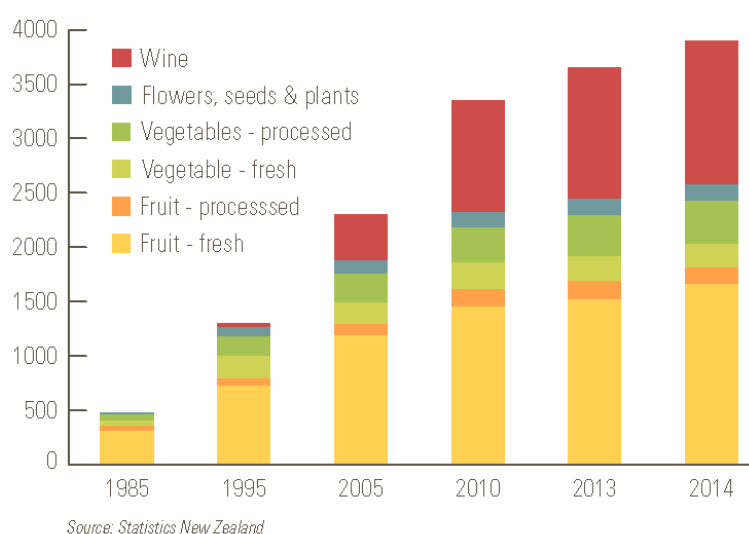


Figure 1 Exports in NZ horticulture over time

7. Increased export values of greater than \$10m were in:
 - Apples (\$61m/+13% on 2013);
 - Avocados (\$59m/+176%);
 - Wine (\$119m/+10%);
 - Other processed fruit (\$13m/+17%); and
 - Potatoes (\$11m/+12%).

8. Other major export crops were onions at \$97m and processed peas (\$80m). Vegetable seed exports, dominated by radish seed and carrot seed, fell \$14m (18%), but at \$66m vegetable seeds are significant exports.
9. Land under horticultural crop cultivation in New Zealand is calculated to be approximately 123,000 hectares.
10. Combined domestic sales value of horticulture products are calculated to exceed \$3.2 billion and exports of \$3.9 billion has the value of New Zealand's horticultural outputs exceeding \$7 billion for the first time.
11. In addition to fruit, vegetables, flowers, seeds and bulbs exported the New Zealand horticultural sector also exported:
 - Natural honey exports of \$187m was an increase of \$42m (29%) on 2013 (2008 \$62.6m). Bees and pollination are an integral part of New Zealand's horticulture.
 - Export of horticultural machinery and components, valued at \$75m (free-on-board), primarily for cleaning, sorting and grading fresh and dried fruit and vegetables were exported in 2014 (\$47.2m in 2008).
 - Income to New Zealand companies in the form of royalties and licence agreements are in addition to these component exports.
12. The key constraints to growth in horticultural production, which are the basis for this submission, remain access to the factors of production - in particular, land and water. Of the 5.5% of land available for production in New Zealand roughly 1/10th was subdivided for lifestyle blocks in the last 15 years. Access to water and land is becoming a key constraint to growth because of competition for versatile land for housing, the availability of water at high reliability, and water quality constraints.
13. Horticulture is a very efficient high value industry. For a comparison, ~50,000 people are employed in the >\$7Bn industry, operating off ~123,000ha. Dairy returns around \$18Bn, employs 30,000 people off a footprint of ~2.5million hectares. Increasingly, iwi based agribusiness is looking to expand into horticulture and Horticulture NZ has supported these groups to do so.

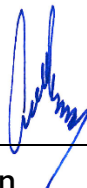
The Submission

14. The specific submissions and decisions sought by Horticulture NZ are detailed in the attached schedule.
15. Horticulture NZ will continue to devote considerable resources to resource management advocacy. The specific comments on the Bill are based on the day-to-day experience in processes across the whole of the country.

Request to be Heard

16. Horticulture NZ wishes to be heard in support of this submission.

DATE: 14 March 2016



Chris Keenan

on behalf of **Horticulture New Zealand
Limited**

Address for service of submitter:

C/- Chris Keenan
Manager, Resource Management and Environment
Horticulture NZ
PO Box 10-232
WELLINGTON

Telephone:

(04) 472 3795

DDI:

(04) 470 5669

Facsimile:

(04) 4712861

Email:

chris.keenan@hortnz.co.nz

SCHEDULE: HORTICULTURE NEW ZEALAND'S SUBMISSION

1. Horticulture NZ represents an industry sector which is closely and directly intertwined with the use, protection and good management of natural resources and as a body is a strong advocate for best practice resource management with a long-term outlook.
2. The RLA is intended to deliver substantive system-wide improvements to the resource management system. Horticulture NZ supports the goals of robust and durable resource management decisions, proportional and adaptable processes, and alignment and integration across the system, but considers that the Bill as currently drafted does not achieve these goals as well as it could.
3. Horticulture NZ's submissions on the RLA fall into five categories:
 - (a) Protecting versatile land, which in New Zealand is a scarce resource - particularly in light of the pressures of urban development of rural land;
 - (b) Ensuring simple, effective and efficient decision-making processes:
 - i. Limiting the range of decision-making processes available;
 - ii. Managing the "override" powers of Ministers;
 - iii. Establishing quality "collaborative processes";
 - (c) Managing the interface between the RMA and other management instruments, particularly in respect of:
 - i. Freshwater (the National Policy Statement for Freshwater Management 2014 ("**NPSFM**")); and
 - ii. Agrichemicals, fertilisers and genetically modified organisms (the Hazardous Substances and New Organisms Act 1996 ("**HSNO**")).
 - (d) Supporting regulation making powers for stock exclusion; and
 - (e) Stock drinking water.
4. These categories are addressed in turn.

SECTION ONE: PROTECTING VERSATILE LAND IN LIGHT OF THE URBAN DEVELOPMENT OF RURAL LAND

5. Being able to grow in New Zealand is essential both for food security, and for the maintenance of the industry, which is a significant contributor to regional and national economies.
6. 'Versatile land' is land with a high capacity for productive use, generally Class 1, 2, or 3 under the Land Use Capability ("**LUC**") classification. Productive

capacity largely depends on the physical qualities of the land, soil and the environment, and reduces as limitations increase such as susceptibility to erosion or flooding, steepness, liability to wetness or drought, salinity, depth of soil, soil texture, structure and nutrient supply, and climate.

7. Using versatile land for horticulture requires a range of factors other than soil quality, including favourable climate for the crop, access to water, a lack of reverse sensitivity constraints, access to energy for hothouses, and access to post-harvest processing facilities and transport routes.

Problem

8. The elite and prime soils are a finite resource, and are also scarce in New Zealand. Once such soils are taken out of productive use, and developed for other urban type uses, they are effectively lost to rural production forever.
9. Avoiding this 'sterilisation' of productive land is Horticulture NZ's key policy focus, and as such its primary planning issues are:
 - (a) Recognising nationally significant rural land;
 - (b) Providing for regionally significant rural production;
 - (c) Achieving economic development targets;
 - (d) Protecting food supply; and
 - (e) Providing for post-harvest production.
10. Currently, Horticulture NZ's policy work largely seeks to protect rural production land by way of policy and rule recognition in regional and district planning processes. However, protecting versatile land on a district by district basis through plan review processes is not sustainable.
11. In Horticulture NZ's experience, councils are not identifying areas of versatile land in the development of plans, and in some cases are zoning these areas for intensive residential or commercial development. Often Horticulture NZ's participation in planning processes acts as education for local authorities and other parties as to the finite nature of productive land and the importance of the horticultural economy to New Zealand, despite these being well-proven in publicly available economic and scientific reports.
12. The problem with the way in which councils undertake their plan reviews and the lateness of Horticulture NZ's involvement can result in the loss of valuable, scarce and finite versatile land resources - without sufficient appreciation of the consequences. This will continue to occur unless national guidance identifying and protecting that land is provided. This is particularly timely now given the added pressures in some parts of the country to 'free-up' land for urban development, in particularly residential development.

13. Horticulture New Zealand supports land being made available for residential use, but seeks balance through preservation of the most productive and finite land.
14. A recent and live example is in relation to the proposed Auckland Unitary Plan ("PAUP"). The PAUP process is underpinned by the Auckland Plan (Auckland's strategic plan), which sets down strong, clear direction for protecting rural production land. Strategic Direction 9 is to "*Keep rural Auckland productive, protected and environmentally sound.*" This is supported by targets, priorities and directives as follows:

Targets:

Between 2013 and 2020, no more than 10% of all rural subdivision will be in the rural production, rural coastal and islands activity areas.

Increase the value added to the Auckland economy by rural sectors (including rural production, complementary rural enterprises, tourism and visitor experiences in rural areas) by 50% by 2040.

Priority 1: *Create a sustainable balance between environmental protection, rural production and activities connected to the rural environment.*

Priority 2: *Support rural settlements, living and communities.*

Directive 9.1: *Ensure that the resources and production systems that underpin working rural land are protected, maintained and improved.*

Directive 9.2: *Develop a regulatory framework that accommodates and encourages productive rural uses, changing activities and associated enterprises.*

15. However despite these clear directives in the Auckland Plan, 175 hectares of Class 1 soil on Pukekohe Hill, largely currently in rural production, was proposed to be zoned 'Future Urban Zone' in the PAUP, a zoning intended to enable intensive residential development in the mid- to long-term. Pukekohe in south Auckland is one of the nation's best growing areas, with rich volcanic soil and an ideal largely frost-free climate.
16. Auckland Council has now agreed not to rezone the land Future Urban on the basis of the need to protect valuable rural production land. However this decision followed the production of substantial (and expensive) expert evidence by Horticulture NZ even though the overarching principle of protecting rural production land had already been debated and agreed to at the higher level of the Auckland Plan.
17. In other regions, short-sighted land use choices have resulted in a loss of rural production land. For example the Far North district's expansive rural production zone (including prime and elite soils) has been developed extensively for residential use, and sensitive commercial uses such as kindergartens and rest homes. Not only have these uses taken versatile land

out of productive use, but they constrain neighbouring rural production activities by way of reverse sensitivity effects.

Concerns with the statutory framework

18. Horticulture NZ's experience shows that at all levels of the regional and district planning process, it is possible for elite and prime land to be inappropriately zoned, and thus lost. Explicit recognition at the statutory level will ensure that local authorities plan for the most appropriate use of land resources in the area – including whether the resource is scarce and could be lost through inappropriate use. Such provision would support local authorities engaging in mapping exercises to identify and protect valuable soils.
19. Section 7(g) RMA requires that particular regard be had to the finite nature of natural and physical resources. Implicitly, subsection (g) includes the finite nature of versatile land. However as noted above, in Horticulture NZ's extensive experience as a submitter and appellant in plan processes, section 7(g) has not been interpreted as requiring councils to have particular regard to how their plans, including plans for development, impact upon versatile land.
20. Several amendments in the RLA seek to strengthen the requirements on councils to improve housing and provide for development capacity (in particular changes to sections 30 and 31). Relevant clauses of the RLA are:
 - (a) Clause 4 – a new definition of 'development capacity':

"development capacity has the meaning given in section 30(5)";
 - (b) Clause 11 – amends section 30 to provide for measures relating to development capacity in regional planning, with new subsections as follow:

"s30(1) Every regional council shall have the following functions for the purpose of giving effect to this Act in its region: ...

(ba) the establishment, implementation, and review of objectives, policies, and methods to ensure that there is sufficient development capacity in relation to residential and business land to meet the expected long-term demands of the region:"

and

"s30(5) In this section and section 31, development capacity, in relation to residential and business land, means the capacity of the land for development, taking into account the following factors:

 - (a) the zoning of the land; and*
 - (b) the provision of adequate infrastructure, existing or likely to exist, to support the development of the land, having regard to—*
 - (i) the relevant proposed and operative policy statements and plans for the region; and*

(ii) the relevant proposed and operative plans for the district; and

(iii) any relevant management plans and strategies prepared under other Acts; and

(c) the rules and methods in the operative plans that govern the capacity of the land for development; and

(d) other constraints on the development of the land, including natural and physical constraints."

- (c) Clause 12 – amends section 31 to provide for measures relating to development capacity in district planning, with a new subsection:

"(aa) the establishment, implementation, and review of objectives, policies, and methods to ensure that there is sufficient development capacity in respect of residential and business land to meet the expected long-term demands of the district:"

- (d) Clause 105 – inserts new sections 360D and 360E which create regulation making powers.

21. Horticulture NZ is concerned that these additions will act to elevate 'development capacity' above other land uses, and most pertinently, above the productive use of the finite versatile soil resource. Horticulture NZ supports the need for spatial planning as to where urban growth ought to occur, but submits that it is essential that this spatial planning also take account of the most appropriate use of the land resource. The benefits afforded in the RLA to the zoning and consenting of residential development should not result in the loss of finite versatile soils.
22. Under the RLA's proposed s30(5) definition, a local authority's determination of whether it has 'sufficient development capacity' and where this is to be accommodated does not recognise or protect versatile land:
- (a) It is not clear at which point a piece of land is deemed 'residential or business land' to which the definition applies. The zoning of land as residential or business land in a plan process effectively identifies it as having 'development capacity', so it is not clear how versatile land would be protected.
- (b) The definition does not require consideration of whether 'development' is the most appropriate use of the land. Constraints on development are taken into account, but 'constraints' are quite different from 'more efficient and appropriate uses'.
23. The zoning of land at the district plan stage is particularly important in light of the consenting benefits which the RLA provides to residential activities (as well as boundary activities and subdivision activities). Restricted discretionary or discretionary residential activities are able to be processed non-notified under new s95A; and rights of appeal are restricted to points of law in respect of residential activities under new s120(1A). The establishment of these activities

on or near productive land will be harder for growers for example to object to at the consenting stage, meaning zoning provisions and processes are all the more important.

24. In new Section 360D, regulations may be made to prohibit a local authority from making specified rules or types of rules, (new s360D(1)(b)) or to specify rules or types of rules that are overridden by the regulations and must be withdrawn (new s360D(1)(c)), but only if "in the *Minister's opinion, the rules would restrict land use for residential development in a way that is not reasonably required to achieve the purpose of the Act*" (new s360D(3)(a)). This enables the Minister to intervene more intensively in respect of residential development than in respect of any other matter. A rule protecting versatile soils for productive use could currently be prohibited or overridden under this power. However, with the clarifying changes, the level of 'reasonableness' of such a rule would be clarified in light of the finite nature of versatile soils.
25. In order to address the above concerns, Horticulture NZ considers that providing guidance on spatial planning for land use by way of a National Policy Statement ("**NPS**") would be a significant step toward ensuring that rural production land is protected and New Zealand's food security is ensured, as the pace of uptake of rural land for urban development only increases. The Regulatory Impact Statement ("**RIS**") suggests that the RLA's proposed changes to sections 30 and 31 (discussed below) will be supported by a phased programme of national direction and guidance, including in respect of assessing demand and development capacity and monitoring the take up of capacity. Expanding this NPS programme to spatial planning for rural productive activities would ensure more sustainable, efficient and effective land use choices.
26. The National Planning Template ("**NPT**") as proposed in the RLA appears to envisage providing guidance on substantive issues. As discussed under the heading 'Override Powers of Ministers' below, Horticulture NZ does not support the level of power provided to the Minister to dictate local government matters through the NPT. Parliamentary direction by way of a Part 2 amendment or an NPS would be preferable. However, if the NPT is envisaged to act as a guide on substantive matters, the protection and spatial identification of rural production land is a matter which should be included.
27. The processes contained in the RMA are the main route by which policy and planning decisions in respect of production land are made. The essential importance of production land to New Zealand, for food security and economic development reasons, means that getting these processes right is crucial.
28. Horticulture NZ also intends to raise the issue of the interface between urban and rural planning systems through the Productivity Commission's Urban Planning Discussion Paper.

Changes sought

29. Horticulture NZ considers that the solution is four-fold:
- (a) Recognising and protecting versatile land in the RMA by way of an amendment to section 7(g) or the introduction of a new sub-section 7(ga);
 - (b) Introducing a new definition for “versatile soil”;
 - (c) Ensuring that ‘development capacity’ is not identified on versatile soils by an amendment to section 30; and by
 - (d) Introducing a new national policy statement on rural production.
30. Horticulture NZ seeks the following amendments:
- (a) To section 7, either an amendment to (g) or a new subsection (ga):

7 Other matters

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to— ...

(g) any finite characteristics of natural and physical resources, such as the finite and scarce nature of versatile soil: ...

OR

(ga) the finite and scarce nature of versatile soil:
 - (b) Inclusion in section 2 of a new definition of ‘versatile soil’:

Versatile soil is land which has high capability for productive use, whether primary production, arable cropping, production forestry or pastoral grazing, and few limitations on its use.
 - (c) The introduction of a new subsection in section 30 to protect and recognise appropriate use of versatile soils:

(e) the most appropriate use of the land, having regard to any finite and/or scarce characteristics, such as the productive use of finite and scarce versatile soils.
 - (d) The introduction of a new national policy statement on rural productive land.

SECTION TWO: SIMPLIFYING THE PROCESSES AVAILABLE

31. Horticulture NZ is concerned that there are increasingly too many parallel processes – Local Government (Auckland Council) Act 2009, Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014, the Environmental Protection Authority Act 2011, the NPSFM limit-setting processes,

as well as the new National Template, SPP, and National Direction processes. This multitude of processes creates confusion, duplication and inefficiency.

32. Horticulture NZ considers that:

- (a) The Streamlined Planning Process (“**SPP**”) is unnecessary;
- (b) The “override” powers provided to the Minister need to be managed to ensure they are appropriate;
- (c) Local authorities need to be incentivised to use the Collaborative Planning Process (“**CPP**”).

Streamlined Planning Process

33. The SPP is set out in clause 52 and amends Parts 4 and 5 of Schedule 1 of the RMA.

34. Horticulture NZ accepts that there may be a role for a truncated planning process for administrative amendments. However, these need to be tightly circumscribed by clear criteria. Horticulture NZ notes that the RLA provides for a limited notification option where the persons identified by the proposed change to an instrument can be identified (new clause 5A). Such a provision enables more efficient processes for minor or discrete changes without introducing a wide reaching new process. Horticulture NZ supports this option, but does not support the SPP.

35. Currently, the SPP makes it too appealing for Councils to make significant planning changes without consultation, and with unclear appeal rights:

- (a) The local authority’s request to use the SPP and the Minister’s approval are both broadly prescribed in new clauses 74 and 75, and by RLA clause 52 in new section 80C(2). Matters such as urgency and implementing national direction understandably attract a truncated process, as they are either urgent or administrative. However the other categories – meeting a significant community need, correcting unintended consequences, creating a combined document, or comparable circumstances in which expeditious preparation is required, are broad and undefined. Iwi participation obligations must be taken into account in using the SPP, which Horticulture NZ supports, however there is no reference to the use of the SPP being appropriate for implementing the purposes of the local authority, or Part 2 of the RMA. This runs the risk of the SPP being selected for reasons which run counter to fundamental RMA principles.
- (b) The ability to limited notify an instrument, and not hold a hearing into submissions, tightly restricts the level of public participation in the development of the instrument. For administrative changes, this could be acceptable, but for plans “addressing a significant community

need" this could seriously impinge upon the community's ability to have its say, which is essential in achieving quality planning and environmental outcomes.

- (c) The Minister has final review of the proposed planning instrument under new clauses 83-88. The Minister may approve the instrument, decline to approve the instrument, recommend specific changes (which the local authority must adopt, per new clause 87(4)). The Minister's view at this stage is binding, which is a significant power of intervention into local government affairs on the basis of enabling a truncated process. Horticulture NZ is concerned that this trade-off is not warranted. If a streamlined process is required for efficiency, it does not follow that the relevant instrument need automatically be subject to Ministerial intervention.
 - (d) Once the Ministerial feedback has been received and acted upon, the local authority notifies the instrument and it is operative from the date of notification. There is no provision for further public submission on the Minister's changes.
 - (e) There is no right of appeal. Judicial review is the only means of seeking relief against an instrument made under the SPP. Horticulture NZ considers that the broad categories under which the SPP may be used, and the wide discretion by which the Minister may set the directions for the SPP would significantly restrict the possibility of a successful judicial review.
- 36. Horticulture NZ is concerned that the SPP if used would significantly limit the ability of the public to participate in the production of instruments which directly affect their lives and environments.
 - 37. The level of Ministerial involvement is likely to limit local authorities' desire to use the SPP, reducing the benefit of a truncated process for minor and administrative changes.
 - 38. Horticulture NZ does not support the SPP, and considers that the limited notification option introduced by the RLA strikes an appropriate balance between increasing efficiency for minor changes, and retaining local government autonomy.

Changes sought

- 39. Horticulture NZ seeks the deletion of the SPP from the RLA.

"Override" Powers of Ministers

- 40. Horticulture NZ is concerned that the RLA will result in increased ministerial intervention at the local authority level. This is particularly in respect of the SPP (discussed above) and the NPT.

National Planning Template

41. Horticulture NZ considers that there is benefit in the concept of a NPT, to increase efficiency and ease of plan use, however it is crucial that such a template gives effect to national direction documents such as National Policy Statements ("**NPSs**") and National Environmental Standards ("**NESs**"), and will not prevail over them.
42. Currently, the NPT is able to prescribe objectives, policies and other substantive matters which go beyond consistency matters and effectively usurp the role of a local authority. This is particularly concerning as local authorities are required to amend a planning document to give effect to the NPT without proceeding through the Schedule 1 process (new section 58H).

Changes sought

43. Horticulture NZ seeks that the NPT is limited to consistency matters, not substantive matters. Other forms of national guidance such as NPSs, the New Zealand Coastal Policy Statement ("**NZCPS**"), and NESs provide substantive guidance. Horticulture NZ thus seeks the deletion of:
 - (a) The words "or content" in new section 58B(b);
 - (b) New sections 58C(1)(c), (d), and (f), 58C(2), 58C(6), and 58D(2)(b);
 - (c) The words "content or" in new section 58D(4);
 - (d) The words "or content" in new sections 58E(2)(a) and (b), 58E(3), and 58G(4).
44. Horticulture NZ also seeks that the NPT should not be able to override other national guidance instruments – e.g. NPSs, NZCPS, and NESs, but rather the NPT must give effect to these instruments. This could be effected by the addition of a new s58(c)(1A):

(1A) The national planning template must give effect to any national environmental standard, national policy statement, or New Zealand coastal policy statement.

Collaborative Planning Process

45. The CPP is intended to encourage greater front-end public engagement, to produce plans that better reflect community values and thereby reduce litigation costs and lengthy delays. Horticulture NZ does not consider that the CPP is efficient and effective as currently proposed.
46. The relevant provisions of the RLA include:
 - (a) Clause 4 – definition of 'collaborative planning process';
 - (b) Clause 8 – procedural principles, including collaboration between and amongst local authorities;

- (c) Clause 52 –gives an overview of the CPP;
 - (d) Clause 93 - inserts new section 277A, which modifies the powers of the Environment Court in relation to evidence heard on appeal by way of rehearing. The new section applies to an appeal brought under new clause 59 of Schedule 1 (inserted by clause 108) in the context of the CPP, and enables the Environment Court to rehear evidence received by the local authority or panel whose decision is the subject of the appeal.
 - (e) New Part 4 of Schedule 1 of the RMA - comprising new clauses 36 to 73, sets out the CPP's procedures applying to a change to a policy statement or plan.
47. Horticulture NZ strongly supports the use of collaborative processes in determining plan and policy directions for *public* resources. 'Public resources' refers to any resources which are not privately owned or widely-owned resources, like freshwater and air. Collaboration between key stakeholders in the community ensures that priorities are managed to achieve a balance between competing interests in these resources, both consumptive and protective. Collaborative freshwater planning processes under the NPSFM have been trialled and have proven effective.
48. *Private* resources, and in particular land, do not fit so appropriately within a collaborative decision-making process, nor have collaborative processes been trialled on these matters. The zoning and regulation of private land holdings are discrete issues which are often best negotiated between the landowner, affected parties, and the local authority, rather than involving the community at large.

Clause 8 – New Section 18A

49. Horticulture NZ supports the inclusion of the proposed new procedural principles in new section 18A via clause 8 and in particular sub-section 18A(c). Effectively addressing cross-boundary issues is essential to efficient resource management, particularly in respect of rural land use and freshwater allocation.
50. Horticulture NZ considers that a worthwhile addition to new section 18A would be promotion of collaboration with the community also. This could be achieved by the addition of a new procedural principle as follows:
- (d) promote collaboration between key stakeholders, the community and local authorities in identifying and responding to resource management issues.*
51. 'Collaboration' is a form of public participation which will always be a useful goal in achieving the public participation goals of the RMA, even where a formal collaborative process is not appropriate.

Clause 52 – New Section 80C

52. New section 80C(3)(b) implies that a local authority may apply to the Minister for the Environment for a direction as to the use of the CPP. However, it is noted that the remainder of section 80C only refers to situations in which a local authority determines that it would be appropriate to use the SPP. This is confusing and uncertain.
53. Horticulture NZ does not consider that the CPP is an appropriate way to achieve the objectives of the SPP as set out in s80C(2), and seeks that subsection (b) be deleted.

Schedule 1 – New Parts 4 and 5

54. Horticulture NZ has five key concerns with the CPP process set out in new parts 4 and 5 of Schedule 1.

New Collaborative Process not required

55. Firstly, it is unclear that an entirely new collaborative process is appropriate. The existing Schedule 1 process is predicated on public participation, and is heavily used by industry groups, advocacy groups and members of the public. Horticulture NZ agrees that the existing Schedule 1 process is not perfect, but considers that amendment of the existing process to strengthen collaborative input would be more efficient and effective than introducing a brand new, unfamiliar and untested process.
56. The RLA proposes strengthened recognition of iwi participation arrangements (new Schedule 1 clauses 1A, 1B, 4A) - although no other collaborative additions to the existing Schedule 1 process are proposed. A collaborative option could be added to clause 3 'Consultation' in order to strengthen general collaboration, as could Horticulture NZ's suggested addition to new section 18A above.

Need to limit use of the CPP to natural resources

57. Secondly, the assumption at the heart of collaboration is that those best suited to decision making are the individuals or groups who will be most impacted by the planning outcome.¹ The benefits of collaborative processes for public resources include:
 - (a) Being able to identify the parties or groups affected by the resource and engaging with these parties from the outset enabling more buy-in from affected parties and the community;
 - (b) Encouraging innovative problem-solving;

¹ Cradock-Henry et al, *Setting up a Collaborative Process: Stakeholder Participation* (Landcare Research, Policy Brief No. 4 (ISSN: 2357-1713, October 2013).

- (c) Enhancing the ability to resolve competition for those resources between parties by engaging in a mediation-type process; and
 - (d) Enabling planners to work towards the identified outcomes in drafting the plan.
58. While collaborative processes have been trialled in the freshwater space with success, it is not clear that such a process would be appropriate, efficient or cost effective for the regulation of private resources. Collaboration over more detailed, site-specific issues such as district land use rules for example are unlikely to have the same level of focus and success.
59. It is unclear what perceived benefit the CPP is proposed to have over the Schedule 1 process which already encourages and provide for public participation. While new clause 37 provides mandatory considerations for regional councils determining whether to use the CPP, there is no guidance on how these considerations will weigh in a Council's decision. The factors are very broad, with wide discretion as to their implementation.
60. Accordingly, Horticulture NZ considers that the CPP should be limited to natural resource issues at a regional level; particularly as processes like collaborative freshwater limit-setting are already underway, and proving useful, for natural resource matters.

Composition of the Collaborative Group

61. Thirdly, Horticulture NZ is concerned about the composition of any collaborative group.
62. The group is appointed by the local authority. Freshwater collaborative processes have often involved a 'who is not here' question at the outset to ensure that all relevant parties are involved, before whittling down a core group with decision-making mandate. The concern with a local authority appointing members is the inability for excluded parties to participate if left out, potentially producing a non-representative result. Horticulture NZ considers more thought ought to be given to whether there should be a right to challenge the parties selected by a council.
63. New clause 40 sets out guidance for appointments to the 'collaborative group' which would carry out the CPP. New section 40(5) requires that the appointments:
- "must result in a collaborative group whose membership, collectively, reflects a balanced range of the community's interests, values, and investments in the relevant area as they relate to the resource management issues to be considered by the group."*
64. Such a group in the case of an entire district or regional plan would be so disparate, and the issues to be managed so wide-ranging, that progress would likely be very slow. The benefit of the current public resource-focussed

processes is their specific consideration of one resource in one spatial area. This limits the issues raised and the parties involved; and so focusses the process and reduces time and money spent.

Lack of incentive to use the CPP

65. Fourthly, it is not clear that there is any incentive for councils to select the process. The Schedule 1 process is well known and councils are set up to facilitate it. The CPP does not appear any faster than the existing process, no more cost effective (in fact arguably it is more costly), it is unknown and untested, and the existing planning processes already encourage and provide for public participation.

Limited weight assigned to recommendations of the Collaborative Group

66. Fifthly, the recommendations reached by the collaborative group do not hold enough weight in the final decisions version of the plan to ensure (or reward) buy-in from collaborators and the community. While a proposed policy statement or plan must give effect to the consensus position reached by a collaborative group (new clause 45(2)(a)), the process from there chips away at the work done by the collaborative group:

Proposed Plan or Policy Statement

- (a) The proposed instrument need not give effect to the consensus position if it would be noncompliant with the RMA, or any other enactment which applies (new clause 45(3)). While any outcome will need to be in accordance with legal requirements, the limited rights of appeal (discussed below) make the council's interpretation of 'compliance' difficult or impossible to test.

Local Authority Evaluation Report

- (b) An evaluation report must explain the extent to which, and give reasons why, the proposed instrument does not give effect to the consensus position (new clause 47).

Public Submissions

- (c) Although the collaborative group is required to have "obtained and considered the views of the community of the relevant area" (new clause 43(2)(e)), there is no explicit provision for a submissions process to inform the collaborative group. This undermines the 'collaborative' goal of the CPP.
- (d) Similarly, the input of iwi authorities is sought in the local authority's preparation of the proposed policy statement or plan (new clause 46), but not during the collaborative process. This also undermines the 'collaborative' goal of the CPP.

Review Panel

- (e) The review panel has legislated abilities to commission reports on any matter and call conferences of experts (new clauses 71, 72). However, a collaborative group does not have either of these powers legislated to it, and so automatically has fewer resources by which to reach an enduring consensus position at the initial 'collaborative' stage.
- (f) While a member of the collaborative group is able to provide comment on any issues (new clauses 51, 52), the panel need not heed the group member's input.
- (g) The review panel must make a statement about the extent to which the proposed document as notified is inconsistent with the consensus (new clause 53(2)). The review panel could recommend a change to give effect to the consensus position, but need not do so.

Decision of Local Authority

- (h) If the local authority rejects any of the review panel's recommendations, it must develop an alternative and while it must "ascertain whether" the alternative is inconsistent with the consensus position, it may implement the alternative regardless of whether it is inconsistent (new clause 54(4)).

Appeal

- (i) The collaborative group, an iwi authority, or a submitter may bring an appeal (by way of rehearing) on the basis that the local authority's decision is inconsistent with the decision of the Review Panel - except that no appeal may be brought in respect of changes made by the local authority to ensure consistency with:
 - i. Parts 4 and 5 of the RMA or
 - ii. Any enactment which requires consideration to be given to a document prepared under any other enactment.

These exceptions to appeal are very broad, including compliance with the functions of local and regional councils, which are wide provisions, open to interpretation in particular circumstances.

- (j) An appeal on a question of law may be made only in respect of changes made by the local authority to ensure consistency with Parts 4 and 5 of the RMA or other relevant legislation (new clause 60).

67. To illustrate the shortcomings of the above process it is helpful to consider a consensus position reached by a theoretical collaborative group: if a local authority considered the collaborative group's recommendations to be inconsistent with Part 2 (for example), and the review panel had not chosen

to make changes to align the proposed instrument with the collaborative group's recommendations, the collaborative group's only appeal from the local authority's final decision is on a point of law - rather than on the merits of its recommendations.

68. The CPP appears to be a tack on to the beginning of a standard Schedule 1 process, rather than a meaningful and determinative collaborative stakeholder process.

Changes sought

69. Horticulture NZ does not support the CPP as proposed and seeks significant amendment or deletion if unaltered. If the CPP is introduced, Horticulture NZ seeks that:
- (a) The RLA should be amended to provide parameters around when the CPP may be used, for example limiting the process to natural resources; and
 - (b) The CPP itself be amended to align with the collaborative processes currently used for freshwater planning.

SECTION THREE: OVERLAP BETWEEN MANAGEMENT REGIMES

Water Classes and NPSFM

70. Horticulture NZ supports clause 44 of the RLA which provides that Schedule 3: Water Classes ceases to apply to freshwater. The interaction between this Schedule and the NPSFM is unclear. Schedule 3 is an old scheme, having rolled over from the previous Town and Country Planning legislation. The NPSFM is the most up to date legislative instrument addressing water quality and quantity, and ought to take precedence.

Changes sought

71. Horticulture NZ seeks for clarity and completeness that the RLA repeals Schedule 3 in its entirety.

HSNO

72. Horticulture NZ also supports the deletion of functions and duties regarding hazardous substances.
73. Horticulture NZ is routinely involved in plan review and change processes in which the management of the storage, use, disposal or transportation of hazardous substances is a contentious issue. Horticulture NZ produces evidence on a regular basis as to the regulation provided by HSNO, and its companion regulations, particularly in respect of agrichemicals and fertilisers. There are rarely resource management issues to be addressed over and above the matters regulated by HSNO, and plans tend to duplicate the HSNO controls, making compliance costly and inefficient for users.

74. Some further amendments are required to complete the removal of duplication however.
75. In particular, the cross-over between contaminated land and hazardous substances needs careful attention.
76. Land is a resource management matter, and as such, there will be a point at which the remediation of contaminated land is a resource management issue. To an extent HSNO addresses contamination. The Stockholm Convention annexed in Schedule 1 to HSNO requires parties to “endeavour to develop appropriate strategies for identifying sites contaminated by chemicals listed in Annex A, B or C; if remediation of those sites is undertaken it shall be performed in an environmentally sound manner.”² Yet the use and development of contaminated land will include RMA regulation also.
77. The RLA does not remove the term ‘hazardous substances’ completely because the definition of contaminated land relies on it. Horticulture NZ seeks to ensure that management of hazardous substances does not creep in this ‘back door’. In particular, this may become an issue in sections 68(11) and 76(5) regarding regional and district rules. Horticulture NZ suggests some changes below to ensure this does not occur.³
78. It is noted that clause 105 inserts new section 360D, which enables the Governor-General (by way of Order in Council on the recommendation of the Minister), among other things, to make regulations which prohibit or override rules or types of rules which would duplicate, overlap with, or deal with the same subject matter included in other legislation, and that duplication, overlap or repetition would be undesirable (s360D(3)(d)).
79. The interface between the RMA and the HSNO would benefit from such a regulation, even in light of the deletion of the hazardous substances provisions. Due to the RMA’s wide focus on the “sustainable management of natural and physical resources” matters of public interest are sometimes raised in planning processes when they do not raise resource management issues as they are regulated under other regimes. In Horticulture NZ’s experience, this occurs often in relation to use, storage and transport of hazardous substances, use and development of genetically modified organisms (“**GMOs**”) and to a lesser extent the fluoridation of drinking water. Regulation to explicitly clarify that HSNO wholly manages and regulates hazardous substances and GMOs would remove the unnecessary regulation of these matters in plan processes, and educate the community on how they are regulated.

² Article 6, Schedule 1AA, Hazardous Substances and New Organisms Act 1996.

³ For completeness it is noted that Horticulture NZ does not have concerns about the retention of provisions which refer to hazardous waste (sections 15C and 360(1)(hc)).

Changes sought

80. To address its concerns, Horticulture NZ seeks:

- (a) Amalgamation of the definitions of contaminated land and hazardous substances, and amendment of sections 68(11) and 76(5) to refer to contaminated land rather than the hazardous substances as follows:

Section 2 ...

contaminated land means land that has a hazardous substance, including, but not limited to, any substance defined in section 2 of the Hazardous Substances and New Organisms Act 1996 as a hazardous substance, in or on it that—

(a) has significant adverse effects on the environment; or

(b) is reasonably likely to have significant adverse effects on the environment

...

Section 68(11)

...

(11) A rule may exempt from its coverage an area or class of contaminated land if the rule—

(a) provides how the significant adverse effects on the environment that the ~~hazardous substance~~ contaminated land has are to be remedied or mitigated; or

(b) provides how the significant adverse effects on the environment that the ~~hazardous substance~~ contaminated land is reasonably likely to have are to be avoided; or

(c) treats the land as not contaminated for purposes stated in the rule.

Section 76(5)

...

(5) A rule may exempt from its coverage an area or class of contaminated land if the rule—

(a) provides how the significant adverse effects on the environment that the ~~hazardous substance~~ contaminated land has are to be remedied or mitigated; or

(b) provides how the significant adverse effects on the environment that the ~~hazardous substance~~ contaminated land is reasonably likely to have are to be avoided; or

(c) treats the land as not contaminated for purposes stated in the rule.

- (b) That the power to enact regulations to remove duplication be retained, and consideration be given to issuing a regulation

confirming that hazardous substances and GMOs are entirely regulated under HSNO.

SECTION FOUR: STOCK EXCLUSION

81. Horticulture NZ supports the new regulation-making power to exclude stock from water bodies, as contained in clause 103 of the RLA, inserting new section 360(1)(hn).
82. Intensive stock farming is a contributor to poor water quality, and stock exclusion is known to be effective in improving water quality. Providing the power to prescribe regulations in this respect is a simple but effective way to immediately improve water quality, and support initiatives like the Clean Streams Accord and the work of other industries in reducing the overall impact on waterways.
83. Horticulture NZ will also be participating in the feedback round on the *Next Steps for Freshwater* consultation document.

SECTION FIVE: STOCK DRINKING WATER

84. Horticulture NZ supports the clarifying change to section 14(3)(b)(ii) in clause 7 of the RLA.
85. Horticulture NZ notes that a common issue across the country is securing capital root stock water for established rooted crops such as fruit orchards. The investment in these crops is significant, and they die during droughts if they do not receive water. Stock are able to be watered in a number of ways, including through feed and through moving to other areas, but plants rely solely on water and cannot be transported to other areas.
86. At present Horticulture NZ has sought the provision for root stock as the opportunity arises through changes to regional plans. This has meant submitting on various regional plan changes throughout the country on the same issue which is not an effective use of time or resource. Further, while some regions have adopted provisions for root stock, not all have, and the provision has differed from region to region (and has not been linked to reasonable needs). As this is a national issue, Horticulture NZ considers it needs to be dealt with at a national level.

Changes sought

87. To address its concerns Horticulture NZ seeks that a new section 14(3)(b)(iii) is inserted:

"(iii) the reasonable needs of a person's capital root stock for maintaining the crops;"

Horticulture New Zealand

14 March 2016