WRITTEN FEEDBACK ON

Resource Management Reform Package 2 National Direction

10 December 2024

To: Ministry for Primary Industries, Ministry for the Environment

Name of Submitter: Horticulture New Zealand

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Ahumāra Kai Aotearoa

OVERVIEW

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Our submission

Horticulture New Zealand (HortNZ) thanks the Ministry for Primary Industries (MPI) and Ministry for the Environment (MfE) for the opportunity to comment on RM2 following industry engagement and welcomes any opportunity to continue to work with MPI and MfE and to discuss our submission.

The details of HortNZ's submission and decisions we are seeking are set out in our submission below.

PART 1

HortNZ's Role

Background to HortNZ

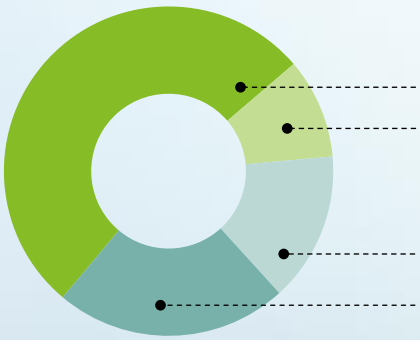
HortNZ represents the interests of approximately 4,500 commercial fruit and vegetable growers in New Zealand who grow around 100 different fruits and vegetables. The horticultural sector provides over 40,000 jobs.

There are approximately 80,000 hectares of land in New Zealand producing fruit and vegetables for domestic consumers and supplying our global trading partners with high quality food.

It is not just the direct economic benefits associated with horticultural production that are important. Horticulture production provides a platform for long term prosperity for communities, supports the growth of knowledge-intensive agri-tech and suppliers along the supply chain, and plays a key role in helping to achieve New Zealand's climate change objectives.

The horticulture sector plays an important role in food security for New Zealanders. Over 80% of vegetables grown are for the domestic market and many varieties of fruits are grown to serve the domestic market.

HortNZ's purpose is to create an enduring environment where growers prosper. This is done through enabling, promoting and advocating for growers in New Zealand.



Export value

Fruit $3.94bn

Vegetables $0.73bn

Domestic spend

Fruit $1.10bn

Vegetables $1.71bn

Industry value $7.48bn

Total exports $4.67bn

Total domestic $2.81bn

Source: Stats NZ and MPI

HortNZ's Resource Management Act 1991 Involvement

On behalf of its grower members HortNZ takes a detailed involvement in resource management planning processes around New Zealand. HortNZ works to raise growers' awareness of the Resource Management Act 1991 (RMA) to ensure effective grower involvement under the Act.

PART 2

Executive Summary

Enabling the supply of fruit and vegetables is nationally significant for the health of the nation. A domestic supply of fresh produce contributes to nutrition and food security outcomes. Horticulture is New Zealand's third largest primary sector export, providing low emissions, high value products. Resource management provisions which enable horticulture are needed to allow for the productive use of highly productive land. Unworkable regional rules are currently constraining commercial vegetable production, so the need for change is urgent.

As such, enabling the supply of fruits and vegetables should be recognised within the resource management framework by including:

- A matter that all RMA practitioners should have particular regard to under Section 7 of the Resource Management Act 1991 (RMA). This wording is precedented in Section 129 of the repealed Natural and Built Environment Act 2023[1] and Section 3.33 of the National Policy Statement for Freshwater Management (NPSFM) 2020[2];
- A compulsory freshwater use value in the NPSFM that recognises the national importance of enabling the supply of fruit and vegetables;
- An enabling provision within the NES Freshwater that makes existing commercial vegetable production, expansion and crop rotation a permitted activity with a freshwater farm plan;
- Recognition of the importance of fresh fruit and vegetables for human health under Te Mana o Te Wai; and
- Flexibility for the efficient and sustainable use of freshwater within the NPSFM.

[1] Natural and Built Environment Act 2023 No 46 (as at 23 December 2023), Public Act 129 National planning framework must provide direction on certain matters

[2] This section was quashed only due to deficiencies in the consultation process, not due to the content of the policy. National Policy Statement for Freshwater Management 2020

PART 3

Submission

1. Enabling the supply of fruit and vegetables is of strategic national importance

Enabling the supply of fruit and vegetables is nationally significant for the health of the nation. A domestic supply of fresh produce contributes to nutrition and food security outcomes. Horticulture is the third largest primary sector export, [3] providing low emissions, high value products.

Enabling the supply of fruit and vegetables aligns with the Government's target to double export value in the next ten years [4] and coalition agreements to lift New Zealand's productivity and economic growth to increase opportunities and prosperity for all New Zealanders and "grow the economy to ease the cost of living" [5].

As such, enabling the supply of fruits and vegetables should be recognised within the resource management (RM) framework by including:

- A matter that all RMA practitioners should have particular regard to under Section 7 of the Resource Management Act 1991 (RMA). This wording is precedented in Section 129 of the repealed Natural and Built Environment Act 2023 [6] and Section 3.33 of the National Policy Statement for Freshwater Management (NPSFM) 2020 [7];
- A compulsory freshwater use value in the NPSFM that recognises the national importance of enabling the supply of fruit and vegetables; and
- An enabling provision within the NES Freshwater that makes existing commercial vegetable production, expansion and crop rotation a permitted activity with a freshwater farm plan.

2. Transitioning to lower emissions land use and adapting to climate change is of strategic national importance

Enabling the transition to low emissions land uses is critical for New Zealand to achieve its international and domestic climate change targets. For instance, the Climate Change Commission's modelling of how New Zealand could meet its international climate change commitments with domestic action relied on a vast transition to horticulture. [8] As New

[3] MPI. Situation and Outlook for Primary Industries. June 2024.
[4] National sets bold target for export growth
[5] National_ACT_Agreement.pdf (nationbuilder.com), NZFirst_Agreement_2.pdf (nationbuilder.com)
[6] Natural and Built Environment Act 2023 No 46 (as at 23 December 2023), Public Act 129 National planning framework must provide direction on certain matters – New Zealand Legislation
[7] This section was quashed only due to deficiencies in the consultation process, not due to the content of the policy. National-Policy-Statement-for-Freshwater-Management-2020.pdf (environment.govt.nz)
[8] Climate Change Commission. Report on the potential domestic contribution to Aotearoa New Zealand's second nationally determined contribution. October 2024.

Zealand transitions to a lower emissions economy, we need to adapt to a changing climate.

As such, emissions reduction and climate change adaptation should be recognised within the resource management framework:

- **RMA:** Retain reference to the Emissions Reduction Plan and the National Adaptation Plan in sections 44 ,61, 66 and 79 of the RMA.

- The **Emissions Reduction Plan** and the **National Adaptation Plans** should be strengthened. They should have sections that speak directly to the Resource Management Act and provide greater direction to Regional Councils on how to enable lower emissions activities and support climate change adaptation through their policies and plans.

- **Regional planning responses** to climate change mitigation and adaptation should focus on enabling alternative activities to support the transition to a low emissions economy in an economically and socially just manner. This will complement the Emissions Trading Scheme (ETS) and other emission pricing.

- **NPSFM:** Create an objective in the NPSFM, so that freshwater is managed as part of New Zealand's integrated response to climate change. Supporting policies for lower emissions activities and climate change adaptation should be included. The NPSFM climate change policies should be clear that resource use and take limits alone cannot be expected to mitigate the effects of climate change, and an action plan approach is likely to be required if mitigating the effects of climate change is needed to achieve or maintain target attribute states, target flow regimes and target water levels.

3. Managing highly productive land is of strategic national importance

Highly productive land is recognised in the National Policy Statement of Highly Productive Land (NPS HPL) as a resource with finite characteristics and long-term values for primary production.

Highly productive land is a limited resource of strategic importance for New Zealand's food production, for both domestic supply and export, and it is the land most able to support transition to lower emissions food production.

As such, enabling the use of highly productive land for primary production should be recognised as follows:

- **RMA:** "Highly productive land is protected for use in primary production, both now and for future generations" should be a matter of national importance under Section 6 of the RMA. This wording is precedented as a system outcome in Section 6 of the repealed Natural and Built Environment Act 2023[9].

[9] https://www.legislation.govt.nz/act/public/2023/0046/latest/LMS846032.html

- **NPS HPL:**
    - The purpose of the NPS HPL objective should be broadened to include all primary production, not just "land-based" primary production.
    - The definition of highly productive land should be refined to relate to productive capacity and consider all of the factors that make land productive (soil, climate, water and supporting infrastructure), rather than just soil classification.
    - Primary production should be prioritised on highly productive land through enabling policy. If land is to be protected for primary production, it must be enabled for use in primary production.
- **NPSFM:** A compulsory freshwater use value in the NPSFM should recognise that primary production on highly productive land should be prioritised and supported. This national freshwater use value is designed to provide balance for allocative decisions where other nationally recognised values, such as drinking water, need to be planned for in a manner that does not inadvertently reduce the productivity of highly productive land.

These amendments align with the government's priority to "Allow normal rural activities on Highly Productive Land."[10]

[10] "Getting Back to Farming" policy

Discussion Questions – NPSFM

This section and those following respond directly to the consultation questions provided by officials from the Ministry for Primary Industries and the Ministry for the Environment at horticulture freshwater workshops on 26 November 2024.

Q. 1	What objectives or policies are needed to improve freshwater health and provide for management of freshwater at the catchment scale?

There are three matters that should be more clearly articulated in the objectives and policies.

WATER RESOURCE USE TO SUPPORT HUMAN HEALTH

Water resource use that supports essential human health must be provided for and planned for in the limit setting process. It should be clearly supported by objectives and policies. The matters that we consider part of this category are:

- drinking water and sanitation,
- food for New Zealanders, in particular fruit and vegetables,
- shelter including housing and electricity, and
- infrastructure lifelines and flood protection.

There is an opportunity to create a clear link with other national direction and legislation and provide more logical direction for exceptions, such as those included in the 2020 NPSFM. In our view, the hierarchy of Te Mana o te Wai does provide this signal, but it is not clear how the second hierarchy of Te Mana o te Wai applies to water allocation decisions for abstractions and discharges.

HEALTH OF THE NATURAL ENVIRONMENT

There is a strong link between the way water is managed, the wider health of the natural environment and the ecosystem services the natural world provides. Optimising across these domains should be clearly supported by objectives and policies. The matters we consider important are:

- climate change mitigation and adaptation,
- biodiversity,
- soil productive capacity and health, and
- the coastal environment.

There is an opportunity create a clear link with other national direction. In our view, the way Te Mana o te Wai is described in the 2014 NPSFM provides direction that the health of water, people and the wider environment are all connected. This concept of integrated planning

is included objectives and policies, but it would benefit from elevation and a very clear and objective and policy framework to better support integrated decision making.

FLEXIBILITY IN WATER USE

Providing flexibility for water use is critical to drive the improved efficiency needed to support the achievement of freshwater outcomes, while also supporting a healthy and safe population and thriving economy. Flexibility and efficiency should be clearly supported by objectives and policies. The matters we consider important for overall efficiency are:

- improved flexibility to abstract water from different parts of the flow regime,
- providing greater flexibility for activities that are aligned with activities that support human health (including food for New Zealanders, in particular fruit and vegetables),
- driving greater collective use of abstracted water through transfers and global consents at a meaningful hydrological scale, and
- driving efficient individual use.

Efficiency is recognised in policies and methods, but the focus is less about the overall design of the limits. There are several policies and methods which introduce a degree of rigidity around the spatial scale and temporal scale of the "maintain and improve" concept and hinder the ability of decision makers to support overall efficiency. These provisions also impede the ability of water users to adapt to freshwater limits and use freshwater to optimise water use values within limits.

Q. 2	What are your suggestions to better reflect the interests of all water users in applying Te Mana o te Wai provisions?

Recent court decisions provide insight to answer this question. In the Northland Decision,[11] Judge Smith noted the expanded principles and introduction of the hierarchy of Te Mana o te Wai when comparing the 2014 and 2020 versions. Judge Smith concluded that no witness suggested there was any difference of substance but noted the concept had not yet been the subject of much analysis.

In the Otago decision,[12] the panel discussed the Regional Council interpretation of Te Mana o te Wai and concluded that the planner had placed too much weight on the first sentence of the concept of Te Mana o te Wai and overlooked aspects of the spectrum of balance identified in the last sentence.

In the National objectives framework guidance,[13] MfE suggested that the changes to the NPSFM 2020 are profound, and unlike the 2014 NPSFM, which provided for some degree

[11] Decision of the Environment Court of Judge J A Smith. Decision No. [2021] NZEnvC 001. 25 January 2021.
[12] Otago Regional Council. Report and recommendations of the Non-Freshwater and Freshwater Hearings Panels to the Otago Regional Council. March 2024. (s. 2.1.1, para 7-8)
[13] Ministry for the Environment. Guidance on the National Objectives Framework of the NPS-FM. Policy 5 and the direction to 'maintain or improve'. 29 July 2022.

of "overs and unders", this approach is not consistent with the requirement to give effect to Te Mana o te Wai in all water bodies.[14]

HortNZ argued the relevance of the 2014 version of Te Mana o te Wai, and Te Ture Whaimana in the PC1 hearings in 2019,[15] supporting vegetable production because of the human health benefits of vegetable supply. HortNZ also argued that the interlinked relationship described in the 2014 version of Te Mana o te Wai recognises the link between the health of water, people and the environment and supports integrated management, including designing freshwater limits to support transition to lower emissions land use in the Northland Regional Plan hearings in 2019.[16]

HortNZ argued in Waikato PC1, Horizons PC2 and Otago RPS hearings of the relevance of the second hierarchy of Te Mana o Te Wai, and the principles of Care and Respect and Mannakitanga, to guide freshwater decisions that prioritise fruit and vegetable supply within FMU limits, because of the importance of fruit and vegetables in supporting the health of the nation.

From HortNZ's perspective, there is some flexibility within the NPSFM 2020, and with more freshwater panel and court of appeal decisions, Te Mana o te Wai may have been interpreted in a more balanced manner. We agree with the Otago Decision,[17] that the restoration and protection of freshwater is not an absolute requirement and that the NPSFM recognises freshwater use is beneficial and takes a pragmatic approach including relaxing bottom lines in the case of nationally significant activities in clauses 3.31 and 3.33.

If the intention was to achieve balance, however, the drafting of the NPSFM 2020 is not clear enough. We propose that if the NPSFM 2020 definition of Te Mana o te Wai is retained, it is made clear that an overall judgment approach is applied to the hierarchy and that activities that support human health, including domestic food supply, should be prioritised within environmental limits.[18]

If the 2014 version of Te Mana o te Wai is preferred, then policies should be added to include elements of the NPSFM 2020. A policy describing a balanced approach to the application of the hierarchy of obligations and the principles of kaitiakitanga, stewardship, manaakitanga and care and respect should be included as policies.

One of the changes between the NPSFM 2014 and NPSFM 2020 is that the concept of mana whakahaere is included as a principle of Te Mana o te Wai. This provides a co-governance approach to freshwater decisions, which was not as clearly provided for in the NPSFM 2014.

[14] Ministry for the Environment. Guidance on the National Objectives Framework of the NPS-FM. Policy 5 and the direction to 'maintain or improve'. 29 July 2022.
[15] Michelle Sands 2019, Block 2 Waikato PC1. Industry evidence for HortNZ
[16] Michelle Sands 2019, Northland Regional Plan. Industry Evidence for HortNZ
[17] Otago Regional Council. Report and recommendations of the Non-Freshwater and Freshwater Hearings Panels to the Otago Regional Council. March 2024. (s. 2.1.1, para 11, 12)
[18] Sands, Michelle. Submission on Targeted changes to the RMA. HortNZ. 5 April 2024.

Q. 3	Do you have any suggestions on how the direction to "maintain and improve" could be clearer?

The spatial scale at which the NPSFM "maintain and improve" policy operates is not clear in the NPSFM. Some planners have interpreted the "maintain and enhance" and the first priority obligation in Te Mana o te Wai to mean that the concept of "maintain" does not apply to the freshwater value. Instead, they interpret that the concept applies to the discharge load or abstraction of volume at the sub-tributary or farm scale, rather than the waterbody or FMU scale. The MfE guidance states, "It is not appropriate to maintain or restore one tributary of a water body while degrading another or allow a water body to degrade and then improve it later".[19] The word "degraded" is defined in the NPSFM and includes the result of something that means an FMU or part-FMU is "less able to provide for any value".

WATER QUALITY

The approach of maintaining discharge loads at a small spatial scale, has been used to argue in PC1 Waikato that crop rotation at the FMU scale is inconsistent with Policy 5 of the NPSFM.[20] This planning assessment was undertaken without reference to water quality evidence.

In PC1 Waikato, HortNZ's expert water quality scientist argued that land use change to commercial vegetable production (CVP) and crop rotation are acceptable. While they may result in minor increases in nitrate at the farm scale, they also result in minor improvements in *E. coli* at the farm scale. At the scale of catchment or FMU, these small changes in quantity and or the location of the discharge loads would have a negligible impact on freshwater values.[21]

From a legal perspective, our view is that this flexibility is provided for in the NPSFM because the NPSFM allows outcomes at the FMU scale and refers to the national scale in the care and respect principle of Te Mana o te Wai. The national scale is relevant to vegetable production because of its importance for national food supply.

The tributary or smaller spatial scale for "maintain and improve" does not appear to provide for catchment scale mitigation, and it is inconsistent with an action plan approach.

From an administration perspective, the approach of achieving "maintain" at a small spatial scale is only consistent with a first-in-first-served allocation approach. The smallest scale at which limits are generally applied is the farm. A concern for the horticulture sector is that small farms have much less flexibility than large farms under this policy.

CVP has fewer impacts than intensive winter grazing, but intensive winter grazing is subject to much less regulatory control because it occurs within farms boundaries. For example, not one vegetable can be grown commercially without a consent under Waikato PC1. Meanwhile, intensive winter grazing and dairy farming can be permitted activities. CVP cannot rotate beyond the sub-catchment, and it's unclear the degree to which rotation is provided for at all.

[19] https://environment.govt.nz/publications/guidance-on-the-national-objectives-framework-of-the-nps-fm/policy-5/

[20] Helen Marr for Fish and Game PC1 August 2023.
[21] Holmes, G. 28 July 2023. PC 1 Environment Court Evidence. Accessed 30 July 2024.

For pastoral farms that span sub-catchments, there is no equivalent limitation on changes of intensity over time within their farm spatial unit.

WATER QUALITY DISCHARGE ALLOCATION

While values, outcomes and target attribute states occur at the waterbody scale, it may be difficult to guard against cumulative increases in contaminant load if there is not a clear way of accounting for changes in contaminant load at the catchment or FMU scale. In time, there may be reliable and dynamic discharge allocation tools that mean there can be less reliance on farm level limits.

For now, an approach where farm level resource use limits are used for most activities to manage intensification against a baseline must be supplemented with an administrative allocation framework that identifies nationally important activities, such as vegetable production or storm water discharges. Nationally important activities should be enabled within the cumulative waterbody or FMU scale limits without subjecting these activities to activity-level intensification resource use limits.

Resource use limits should be supplemented with action plans to drive water quality improvement and provide a fairer vehicle for managing the localised effects of activities with national benefit.

WATER QUANTITY AND STORAGE

There is an issue of the spatial scale at which the "maintain and improve" policy applies to the building of storage, in particular in-stream or in-groundwater storage, where there may be localised effects.

This also applies to the temporal and spatial scale of the effects of abstraction on flows and water levels, which, if assessed in an absolute manner, can impact on the ability to harvest and transfer water or operate global consents.

WATER QUANTITY ABSTRACTION ALLOCATION

While there are still some limitations with telemetry, accounting for the timing and volume of water abstractions is much simpler than accounting for the timing of the load of contaminant discharges.

We support the use of meaningful hydrological units as the spatial scale at which water quantity allocation occurs. Abstractions should be able to be transferred or consented in a global way to support efficient water use within meaningful hydrological units.

HortNZ does not support the permanent or long-term transfer of water allocation away from highly productive land. Maintaining access to water is essential to protect highly productive land for primary production, both now and for future generations.

SPATIAL SCALE LINKED TO THE FRESHWATER VALUE

The "maintain and improve" concept should be assessed and managed at the scale of the freshwater value. If the value is ecosystem health, then a minor impact on that value in one

location in a waterbody or FMU and a minor improvement in that value elsewhere in the waterbody or FMU must be provided for.

In some cases, a sub-catchment scale for assessing "maintain and improve" is appropriate if there is a special site (primary contact, threatened species, inland wetland, outstanding water body) where the value associated with that special site cannot be provided for at a larger waterbody or FMU scale.

TEMPORAL SCALE LINKED TO THE FRESHWATER VALUE

The temporal scale at which "overs and unders" are provided for should be the 10-year plan horizon. The resource use limits, take limits and action plans need to be assessed together. Plans should be able to anticipate and allow flexibility to re-allocate some of the headroom created by the resource use and take limits during the plan's timeframe to provide for use values and use values that support human health, in particular.

In PC1, HortNZ experts argued that CVP expansion should be provided for over the life of the plan to provide for vegetable production to meet the dietary needs of the population. The implementation of the plan would result in an overall improvement in water quality at the river and FMU scale but with minor "overs and unders" at the property or tributary scale.[22]

RESOURCE USE LIMITS, TAKE LIMITS, ACTION PLANS AND EXEMPTIONS

In our view, action plans are a critical tool for driving improvements in water quality and water quantity. Non-regulatory action plans should be used to supplement water use limits and water take limits in the following circumstances:

- The catchment is below the bottom line and is unlikely to meet the bottom line with the application of good management practices from all activities;
- The community seeks water quality or flow regime improvements that are unlikely to be achieved with the application of good management practices from all activities; or
- The catchment supports a nationally important activity, and providing for that activity as a priority could potentially reduce the flexibility for other activities within the catchment.

There should be clear direction for how the combination of improvements derived from action plans, resource use limits and take limits, should "add-up" to the target attribute state and target flow regime.

- Resource use and take limits at the activity scale may be greater than or less than the baseline abstraction or discharge. Activities that contribute to nationally important human health values should be provided priority in the design of limits, so the human health value[23] is provided for within resource use and take limits.

[22] Holmes, G. 28 July 2023. PC 1 Environment Court Evidence. Accessed 30 July 2024.

[23] And where human health value is defined to include: drinking water and sanitation, food for New Zealanders, in particular fruit and vegetables, shelter including housing and electricity, and infrastructure lifelines and flood protection.

- The resource use limits or take limits must, at a minimum, add up to the waterbody or FMU "maintain" state.

- The action plan may contribute additional improvements. The action plan improvements and the resource use and take limits must together add-up to the target attribute state, flow regime or water level regime.

- Where a catchment supports a nationally important health value, the target attribute state is below the bottom line, and the resource use or take limits cannot add-up to the "maintain" state without driving land use change, then an exception may be provided in these catchments. In this case, the resource use limits, take limits and action plans must at least add-up to the waterbody or FMU "maintain" state.

Q. 4	What are your views on the various attributes (and attribute tables), and whether these are optional or compulsory?

We support the concept of target attribute states and bottom lines for water quality. Consideration should be given to reducing the complexity of the suite of attributes to those that have the strongest link to methods within the NPSFM. Other attributes should still be monitored as part of State of Environment monitoring and used for plan monitoring and review.

The quashed Specified Vegetable Growing Areas (SVGA) and the hydro-power exemption provide limited exemptions to the bottom lines, in recognition of the potential consequences to nationally important human health values (domestic food supply, electricity, housing) if resource use and take limits alone had been set to drive towards achieving the national bottom lines. If the same logic was applied, most urban catchments would also have been identified as requiring exemptions.

The NPSFM would be more credible if there was recognition that the state of freshwater health is complex in some catchments, particularly within the peri-urban and lowland catchments where significant, and likely irreversible, hydrological change has occurred due to urbanisation, flood protection and land drainage. In these highly modified catchments, the ability to achieve sufficient improvements to drive achieving bottom-lines is unlikely to be achievable using resource use and take limits alone, or it is unlikely to be desirable from a social and economic perspective. In these catchments, an action plan approach, in addition to resource use and take limits, is required to achieve bottom lines.

In some cases, exemptions to national bottom lines may be warranted. HortNZ's preference is that exemptions to bottom lines are carefully managed through an exemptions policy that provides limited exemptions, as discussed above.

Q. 5	What would you like to see in a new 2025 NPS-FM? What are the elements you'd like to see from previous versions in a replacement NPS-FM? Are there any elements you think should be included, added or left out?

Generally, we would support reverting to the 2014 NPSFM structure. In our view, the 2014 structure is a more logical fit to Regional Policy Statements and Regional Plans. There are

elements of the NPSFM 2020 that should be carried over in objectives and policies, however.

One of the most important improvements of the NPSFM 2020 was the clear link between the concepts of vision, values, outcomes, target attribute states, flow regimes and limits. A critical improvement was that under the NPSFM 2020, it became clear that limits and, in some cases, action plans, must be designed to achieve the target attribute states or target flow regimes. This was also the direction in the NPSFM 2014, but the NPSFM 2014 was less directive.

Because the NPSFM 2020 put most weight on improving freshwater and little weight on the social and economic consequences of freshwater decisions, communities were directed to set ambitious target attribute states and target flow regimes. For example, Horizons Council went through a visions and values process to set outcomes with low public participation. This led Horizons to test ambitious water quality improvements scenarios requiring significant reduction in contaminant losses, likely requiring significant land use change.[24]

Freshwater visions that cannot be achieved without significant social and economic transformation should not be the driving force for resource use and take limits when communities have not considered the social and economic implications. This is a problem when nationally important human health values, such as fruit and vegetables for New Zealanders, may be compromised by local communities who are not appropriately placed to reconcile the trade-offs between local effects and national benefits.

If multiple decades or multiple plans are needed to achieve the long-term vision, a clear pathway for achieving the long-term vision must be provided for in the Plan. This includes describing the cumulative scale of resource use and take limits that would be required to achieve the outcomes associated with that vision.

The process of setting values, outcomes, target attributes states and target flow regimes must be focused on what can be achieved within the life of a Regional Plan. An approach which creates a clear link between the plan's targets, attributes states, target flow regimes, target water values, the associated limits and Actions Plans is also important to keep Councils accountable for developing Regional Plans that can be implemented, enforced and monitored.

PROPOSED CHANGES FOR THE NPSFM 2025

The **freshwater vision** should better reflect the intrinsic link between receiving water and land use within catchments. The freshwater vision must include both receiving waters and catchment and land use visions.

The freshwater **values and outcomes** should include compulsory use values – including nationally significant values - as well as the existing compulsory values to ensure the level of ambition for in-stream values is set in a way that considers the values together.

[24] Cox, Tim. Manawatū-Whanganui Region Catchment Nutrient Models: Model Updates. Prepared for Lizzie Daly, Science Manager, Horizons Regional Council. August 2022. ISBN 978-1-99-000997-6.

Freshwater values and outcomes should be set at the **FMU or waterbody scale**, or smaller scale only when there is specific value as identified in NPSFM 2020 Policy 3.8 (3), that warrants management at a finer scale.

We support **bottom lines** for ecosystem health. At a minimum, the outcomes should not be set lower than a "maintain" state above the bottom line or an "improve" state towards a bottom line. We acknowledge there may be a need for exceptions, but our view is exceptions should be carefully provided for with an exception policy linked to nationally significant values.

We support the use of **limits and action plans**. In catchments where the improvement sought goes beyond what can be achieved though good management practice and continuous improvement, a more deliberate and planned strategic and spatial approach is needed. An action plan approach may be warranted for various reasons, including because:

- the catchment is below the bottom line,
- the community seeks significant improvement,
- the water quality or flow regime is declining due to climate change,
- to support recovery from to floods, or
- the catchment supports a nationally significant value, and there is a need to prioritise that value while still working towards achieving freshwater outcomes.

The term "limit" has a few meanings within the NPSFM – "take limit", "resource use limit", and "limit". What is unclear in the NPSFM is that it is the cumulative take limit that achieves the target flow regime or target water level, and it is the cumulative resource use limit that achieves the target attribute state. If these cumulative limits do not at least maintain the existing state, that could lead to decline in water quality. The activity scale take limits and resource use limits are unlikely to perfectly add-up to meet the cumulative limits, but they are designed to meet the cumulative limits as best as possible. It would be useful to differentiate between the cumulative limits that are used to design plans that the activity scale limits that are the enforceable rules.

"Limit" had a different meaning in the repealed Natural and Built Environment Act than the NPSFM. Clearer definitions and naming conventions and a consistent meaning across legislation should be adopted.

Discussion Questions on National Direction for Fruit and Vegetables

Q. 1	What do you see as the problems and opportunities facing commercial fruit growing and/or commercial vegetable growing in the resource management system?

NATIONAL IMPORTANCE OF VEGETABLE PRODUCTION

The New Zealand vegetable sector supplies New Zealanders with vegetables year-round. Over 70% of the fruits and vegetables bought by New Zealanders (by value) were produced in New Zealand.[25] Over 80% of vegetables grown in New Zealand are sold for domestic consumption.[26] It is not possible to import fresh vegetables to meet our population's nutritional needs due to our country's geographic isolation and the perishable nature of the product. This means that a well-functioning sector is critically important for our domestic food security and ensuring New Zealanders have access to healthy and affordable food.

UNWORKABLE REGIONAL RULES

Over 20% of New Zealand's fresh vegetable supply is threatened by unworkable freshwater regulations likely to become operative in 2024-25. If over one-fifth of the country's supply of fresh vegetables is disrupted by unworkable regulations, the impact on the price and accessibility of fresh vegetables for New Zealanders will be severe. It is predicted that a 20% price increase is likely, but prices may increase by more than 100%.[27,28]

Councils have created rules to manage diffuse discharges by requiring land users to reduce nitrogen leaching per hectare incrementally over time. If freshwater limits are designed to consider leaching intensity without considering value of the activity, then the social and economic costs of the water quality limits are not adequately assessed.

Council rules also struggle to accommodate crop rotation, a millennia-old growing system that involves changing which crop is grown on a piece of land to manage soil health, pests and diseases. As crops rotate, leaching rates change across time and location across a mix of owned, leased and swapped land. Councils have been unsuccessful at designing effective regulation that accounts for this complexity and allows this standard growing practice to continue.

CONSISTENT NATIONAL APPROACH

We need to recognise the value of our domestic vegetable supply and ensure that vegetables are given a priority allocation of the contaminant load for the long-term viability of the sector. The most effective and efficient way to do this is to provide national direction. The alternative – seeking priority in each regional planning process

[25] United Fresh, Plant & Food Research. "Fresh Facts 2024". (p. 33)
[26] Vegetables NZ, Inc. (personal communication)
[27] Agchain 2023. Sensitivity of Domestic Food Supply to Loss in Vegetable Growing Production in Specified Vegetable Growing Area. Report for MfE.
[28] NZIER. 2024. Making the case for vegetable production in New Zealand. A report for Horticulture New Zealand.

– carries uncertainty, high costs and risks to the sector's ability to supply a range of fresh vegetables year-round.

A consistent approach is needed to ensure that New Zealanders' access to fresh, affordable, domestically grown vegetables is not put at risk by regional freshwater regulations. We believe that this can be best provided through a new National Environmental Standard. Workable rules for vegetable production are possible while progressing aspirations for protecting and improving our freshwater.

METHOD OF ASSESSING SIGNIFICANT ENVIRONMENTAL EFFECTS IN A NATIONAL ENVIRONMENTAL STANDARD

HortNZ sought legal and planning advice to support our understanding of the test for assessing significant adverse effects under Section 43A of the RMA. The memo is provided in Appendix A of this submission, and the conclusions provided below.

Section 43A(3) prescribes that an activity cannot be permitted in a national environmental standard if the activity has significant adverse effects on the environment. That assessment is not cumulative to satisfy 43A(3), as it is for sections 70 and 107. The cumulative assessment that integrates NES provisions occurs in the regional planning and consenting processes.

NES analysis shows that the Government appears to accept that in the case of NES's that permit certain activities, the effects of discharges are not assessed cumulatively. Furthermore, in the context of Section 43, receiving waters being degraded or below the bottom lines is not a threshold that determines whether an effect is significant.

Also relevant in the assessment of the scale of effects are any qualitative or quantitative standards, discharge standards, methods for classifying a resource, methods, processes or technologies to implement standards, non-technical methods and standards and exemptions from standards that might be imposed such that effects are able to be avoided, remedied or mitigated to not be significant. The CVP sector already employing various measures that will be relevant in that assessment.

WATER QUALITY EFFECTS OF COMMERCIAL VEGETABLE PRODUCTION

The overall area of CVP is small, nationally estimated at about 37,000 ha, and has contracted in the last ten years.[29] Recent supply shocks have demonstrated that the CVP supply is vulnerable, and some expansion is needed to enable a resilient supply of vegetables for New Zealand. CVP contributes a small proportion of the nutrient, sediment and pathogen load at a national level (much less than 1%) and makes up a minor proportion of the contaminant load in almost all catchments, with a small number (six of LAWA monitored waterbodies) where CVP and cropping makes up more than 50% of the nitrogen load. It should be noted that these small catchments only contain 2,000 ha of CVP cumulatively,[30] and all of these catchments have nitrate toxicity below NPSFM bottom lines (i.e. poor water quality).

CVP can improve contaminant losses with the adoption of good management practice (GMP), as can other activities. GMP improvements from CVP (assuming a 2017

[29] United Fresh, Plant & Food Research. "Fresh Facts 2024". (p. 47)
[30] Appendix 1: Collaborations, Sept 2024. Nitrogen Load Modelling.

baseline consistent with the NPSFM), have been predicted to be approximately 24%,[31] with the reduction varying from grower to grower.

Existing CVP continuation is likely to result in a small reduction in contaminant loads discharged to receiving environments compared with the existing situation due to the adoption of GMP mitigations, and therefore, a minor improvement or neutral environmental effect.

The expansion of CVP can be considered in two parts:

- Domestically focused rotations: These are the rotations with higher leaching, shallow rooted crops and the need to produce year-around supply. The expansion of these rotations is unlikely to exceed population growth.

- Potentially export focused rotations: Crops such as onions and process potatoes have the potential to expand at a greater rate than domestic population growth, but these crops are commonly integrated with pastoral and arable farming and have contaminant losses similar to other farming land uses.

The predicted population growth over the next 15 years is in the order 10-15%.[32] Expansion of CVP is most likely to occur in existing vegetable growing areas because these locations have the combination of soils, climate, access to water and access to labour required for CVP. In some catchments, like the Whangamarie Stream in Pukekohe, the suitable soil resource is already close to be fully utilised by CVP.

If CVP expands relative to its current footprint in catchments where it is currently located, the adoption of GMP will mitigate the increase in contaminant load associated with CVP expansion. The change in discharge contaminant loads will be neutral, or there will be a negligible reduction or increase in contaminant load with a neutral environmental effect.

If CVP expansion is greater than the relationship to population growth in some catchments, the effects of this will depend on the type of rotation that is expanding.

If the expansion includes process vegetables or export crops grown in rotations integrated with pastoral farming, the effect on contaminant loads is likely to be neutral as these rotations have similar leaching losses to the type of pastoral farming that is currently located on suitable soils. Therefore, expansion of this kind would have a neutral environmental effect.

If the expansion includes more intensive rotations primarily serving the domestic market, the expansion is likely to contribute a small increase in contaminant load and have a small or negligible adverse effect on the existing environment.

[31] www.hortnz.co.nz/assets/Environment/Reports-research/AgChain-Sensitivity-of-domestic-food-supply-in-SVGAs.pdf
[32] https://www.stats.govt.nz/information-releases/national-population-projections-2022base2073/

Q. 2	What are your thoughts on the options? What are the potential benefits and risks of the options? Are there other options that we should be considering?

Option 1: Status quo

Growing activities are managed by regional councils through plan rules and consents.

HortNZ does not support maintaining the status quo. Current regional approaches are making it near impossible to consent vegetable growing, which is a threat to New Zealand's domestic food supply and the future of the vegetable growing industry, as described throughout this submission.

Option 2: National direction

There are two proposals to amend or develop national direction. These could be delivered as stand-alone or combined options, and either at the same time or sequentially. They could apply to vegetable growing only, or also to fruit growing.

Option 2A: Amending the NPS-FM

New objectives and policies could state the national significance of fruit and vegetable growing and require councils to provide for commercial fruit and vegetable growing through regional plans. This could apply broadly, or in specified catchments/areas.

HortNZ supports this approach, alongside other amendments to national direction. HortNZ seeks that "Enabling the supply of fresh fruits and vegetables" is recognised as a compulsory freshwater value in the equivalent of Appendix 1A of the NPSFM 2020 and supported with targeted policy in the NPSFM.

In addition, the quashed SVGA policy should be revised, so national vegetable supply is enabled while freshwater outcomes are achieved over time by providing for an action plan approach. Providing for an action plan approach reduces the tension between in-stream values and use values, by enabling more tools to be used to achieve freshwater outcomes.

Requiring decision makers to consider nationally important water use values alongside the compulsory freshwater values supports balanced decision making on the appropriate level of ambition and timeframes for achieving freshwater outcomes.

Option 2B: National environmental standards

National environmental standards could set out conditions that must be met to undertake land use and discharge activities (eg, cultivation, nitrogen fertiliser application). These standards could target specific areas or apply everywhere. They may take time to develop, given the complexity of growing activities and managing environmental effects. There may be an opportunity to use freshwater farm plans in the standards.

HortNZ supports this approach, but it should be clear that resource management direction for vegetables is urgently needed at a national level in the RM 2 phase of work,

given impending court decisions on PC1 and PC2. As such, we seek an interim amendment to the RMA or provisions within the NES Freshwater, as described below.

The NES Vegetables provisions must prevail over all Regional Council rules, so they set the national standard that must not be made either more or less stringent at the Regional Council level.

The NES provisions would make existing CVP and expansion of CVP a permitted activity in all catchments in New Zealand, provided the CVP was operating at GMP demonstrated with a freshwater farm plan.

In combination with the amendments to the NES Freshwater, HortNZ seeks amendments to the Freshwater Farm Plan Regulations to create a process for the NZGAP Environmental Management System (EMS) would be recognised as an industry equivalent system for delivering freshwater farm plans, using a risk-based approach and including minimum standards. We would expect the minimum standards to be:

- A risk-based nutrient management plan, including at a minimum, a farm scale nutrient crop budget that accounts for plant uptake and nutrient supply and is supported by a minimum of one soil nitrogen test per cultivated block per annum.
- A risk-based erosion and sediment control plan, including at a minimum, 5 m setbacks with a buffer strip from waterways or contouring such that water flows to a sediment treatment device rather than flowing into the water course via overland flow.
- An irrigation scheduling plan that, at a minimum, accounts for the plant growth phase, soil type, water holding capacity and climatic conditions.

The NZGAP EMS standard would retain the risk assessment approach relying on a toolkit of management practices described within codes of practice. It would also include the minimum standards set in the NES F CVP provisions.

Option 2C: NES Freshwater or RMA (Proposed by HortNZ)

In this approach, proposed by HortNZ, Commercial Vegetable Production is made a permitted activity, provided robust good management practice (GMP) standards are met and demonstrated through an audited Freshwater Farm Plan.

This matter is about developing achievable and enforceable rules for CVP which drive uptake of robust good practice efficiently. The scale of CVP is such that CVP operating at GMP does not have significant adverse effects and, therefore, can be regulated as a permitted activity in an NES for both existing CVP and CVP expansion.

An NES or RMA amendment is required to override unworkable regional plan rules to manage the risk of vegetable supply constraints and increased price volatility for the next 5-10 years, ahead of the RMA replacement legislation. It would be most efficient for the NES rules to apply nationally to existing CVP and expansion of CVP.

NATIONAL PARTY ELECTION POLICY

A variation of the National Party election promise for a permitted activity for vegetables could be workable. We propose it could be designed as follows:

- NPSFM provides enabling policy for fruit and vegetables,
- CVP provisions within the NES F that override regional plans,
- All existing CVP is permitted with a freshwater farm plan, and
- Existing CVP rotation is permitted at the FMU scale.

The proposed National Party election policy sought to require consent for CVP expansion in catchments that are below the nitrogen bottom lines. HortNZ does not support including this element of the National Party election policy in NES provisions for a number of reasons:

- In many regions, CVP expansion does not currently require consent, so this requirement would be stricter than the current situation.
- The Section 32 report for the NES F deliberately did not capture expansion of CVP within the intensification rules. This specific exclusion is intended to ensure the security of supply of commercial vegetables to New Zealanders. [33]
- Most of the catchments where vegetable production needs to occur due to the specific combination of factors (soil, climate, access to water, access to labour) needed to grow are in catchments that are below the bottom line for nitrogen attributes. [34]
- The amount of CVP expansion likely to occur is small. CVP has not expanded in the past 10 years, but as our population grows, vegetable production expansion should be enabled to keep place. Otherwise, the price of vegetables will increase as supply will not meet demand because New Zealand is too geographically isolated to import sufficient vegetables to meet our population's nutritional needs. [35]
- If the NPSFM 2025 provides supportive policy for vegetables, then we would expect regional plans developed under the NPSFM 2025 to make CVP expansion a permitted activity with a Freshwater Farm Plan.

[33] https://environment.govt.nz/assets/Publications/Files/action-for-healthy-waterways-section-32-evaluation-report.pdf pg 109

[34] https://agresearchnz.maps.arcgis.com/apps/webappviewer/index.html?id=67651ab38f434cf686115e3e8fbc19af

[35] Agchain 2023 Sensitivity of Domestic Food Supply to Loss in Vegetable Growing Production in Specified Vegetable Growing Area. Report for MfE.

Q. 3	Do you think options should target key growing areas/regions, or apply nationally?

HortNZ seeks a national approach. Commercial vegetable production takes place at scale beyond the Horowhenua and Pukekohe, the areas that were identified as SVGA in the NPSFM 2020. Significant production also occurs in Waikato, Gisborne, Hawke's Bay, Ohakune, Manawatu, Tasman and Canterbury.

Only enabling vegetable production in specified regions poses a risk to resilience from climate change and natural hazards. When some regions experience large-scale natural hazard events that limit food production or cut off transport of goods, other regions need to be ready to supply food, and the impacted regions would benefit from local food production during their recovery. In the immediate aftermath of Cyclone Gabrielle, the price of fresh produce skyrocketed, which increased the cost of living across the country. Destruction from the cyclone continued to impact the availability and price of tinned fruits and vegetables at least nine months on from the event.[36]

One of the pitfalls of the SVGA policy was that it created a tension between the value of domestic food supply and the value of ecosystem health and gave the erroneous impression to communities and Councils that commercial vegetable production was the sole or primary cause of water quality issues within Horowhenua and Pukekohe.

In vulnerable catchments that are important for commercial vegetable production, it should not only be vegetable growers that participate in catchment action. These catchments often have complex water quality issues that are related to pressures associated with other activities, including historic activities and permanently changed hydrology. This is why an action plan approach is supported.

Q. 4	Do you see an opportunity to use freshwater farm plans to support the management of commercial fruit growing and/or commercial vegetable growing?

If vegetable production is made a permitted activity with freshwater farm plans, it means that councils must ensure that the nitrogen contaminant load from vegetables is accounted for *within* cumulative catchments limits, such that freshwater outcomes are achieved over time.

Farm plans are an effective way to reduce nitrogen leaching through GMP. Growers, with industry support, are working hard to move to good and best management practice. Growers can achieve reductions in contaminant discharges with good fertiliser application practices and sediment retention mitigations.

Because vegetable production has low profit margins, there is little room for reductions beyond these practice changes while maintaining economic viability and without forcing land use change away from vegetables. The only options are either to shift to a different

[36] Taunton, Esther. "Where have all the tinned fruit and vegetables gone?" 05 November 2023. Stuff. Accessed online https://www.stuff.co.nz/business/133221876/where-have-all-the-tinned-fruit-and-vegetables-gone.

production approach or move out of the catchment. Greenhouses, the main alternative growing system, have high capital costs and only a limited range of vegetables can be grown under cover. Suitable locations for vegetable growing are very limited, so once growing is lost from a growing area, it may not be possible to grow the same crop at the same time of year elsewhere.

Discussion Questions on National Direction for Water Storage

Q. 1	Have we understood the problem correctly? Is it hard to build water storage? What would make it easier?

The problem is wider. It includes complexity in the regulation related to:

- harvesting water,
- building storage on-line,
- using groundwater storage,
- injecting water into groundwater,
- conveying stored water in streams,
- abstracting water from storage and using it,
- transferring consents between users and
- operating globalised consents.

Q. 2	What are your views on the options? Are there others that we should consider?

NPSFM

SPATIAL SCALE OF "MAINTAIN AND IMPROVE", TRANSFERS AND GLOBAL CONSENTS

Establishing globalised consents and enabling transfer is a precursor to enabling harvested and stored water to be used efficiently beyond the farm-scale. A rigid interpretation of the "maintain" concept constrains options to allocate water differently to enable greater improvements in freshwater health at the river scale over time.

This rigid interpretation of the "maintain" concept would make building storage within any waterbody challenging. It may be challenging to harvest high flows if harvest results in any localised adverse effects on a tributary, no matter how minor impact that effect has on freshwater values. It may even be challenging when harvesting and augmentation provides an improvement in freshwater values downstream on the same waterbody.

While transfer of water needs to occur within a meaningful hydrological unit, even within a groundwater zone or sub-catchment, transferring water between users may have slightly different hydrological impacts in terms local draw-down. If a rigid interpretation of "maintain" is applied, it may prevent transfers that result in any adverse change, regardless of whether that change was minor or there were also benefits occurring because of the transfer on the same waterbody.

SPATIAL SCALE OF MAINTAIN AND ENHANCE - BUILDING STORAGE

The rigid interpretation of the "maintain" concept supports off-line single-farm-scale water storage. While that option is valid, the land most likely to be suitable for off-line single-farm storage would be pastoral rolling land intersected by streams with harvestable quick-flows. This land has much lower versatility than highly productive land in the lowlands and is much less likely to support activities with low contaminants and greenhouse gas emissions.

Horticulture tends to be located on flat, highly productive land at the bottom of the catchment. Land on the alluvial plains is less likely to intersected by streams. All the tributary streams combine into larger rivers on the alluvial plains, underlain by groundwater. The streams that are in lowlands are often spring fed with limited water harvesting potential. The lowland streams are often highly modified drainage networks. Many of these lowland streams are drained wetlands rather than natural streams.

Therefore, while off-line on-farm storage is an option for some growers, most horticultural land will need to be served by strategically located storage, either off-line, on-line or in groundwater. For the lowlands, stored water will need to be shared via transfers and globalised consents. This requires an ability to account for the benefits of argumentation and assess them alongside localised effects associated with abstractions or storage. Otherwise, limits will be designed at a constrained scale.

The policy to "avoid over-allocation" of limits makes it difficult to design consenting pathways for any activity other than an individual grand-parented approach where existing resource use is slowly reduced, and limited flexibility is provided for resource users to respond by using resources in a more efficient and collective manner.

THE SPATIAL SCALE OF CULTURAL ASSESSMENT AND MIXING OF WATERS

Another tension with storage is the scale of cultural effects. The concept of not mixing waters is well-established in Te Ao Māori. The scale at which mixing is deemed to occur or be acceptable or not acceptable, however, is seemingly variable. For example, the diversion of the Upper Whanganui River into the Tongariro River is clearly mixing of waters from two different catchments.

Is harvesting water from one tributary of a waterbody and releasing into another tributary of the same waterbody mixing? Is harvesting water from a tributary and using gravity or pumping to divert that water into groundwater – where the groundwater is also connected to the same river system – mixing? These questions of where mixing starts and stops create complexity in the design of harvesting, storage, conveyance and use of stored water.

THE LANGUAGE OF LIMITS

The NPSFM uses the term "limit" and "take limit" in respect to water quantity. For water storage, there will be a take limit at the high flow. This water will be stored off-line, in-line or in groundwater. If it is stored in-line or in groundwater, it needs to be abstracted from storage to be used. In some Regional Plans, abstraction of stored water has not been provided for because the Plans haven't differentiated between the "harvested and stored water" from the "natural" water within the stream or groundwater.

National Environmental Standard

An NES could assist with supporting water storage through a consenting pathway for off-line storage, although this is not the most complex type of storage to design. It could also assist by providing for policy support to enable transfers and global consents, as those are the precursors to storage operating efficiently.

The NES Freshwater does not include an intensification rule associated with increase irrigation area. HortNZ supports this because land use change from unirrigated pastoral farming to irrigated fruit production is likely to result in water quality and greenhouse gas emissions reduction benefits. Some Councils, however, have introduced intensification rules to constrain new irrigated area.[37] The NES Freshwater could include a provision that made new irrigated horticulture a permitted activity, overriding regional plans.

Q. 3	What information can you share to support our analysis?

TANK AND TUKITUKI

The Tukituki water storage scheme can supply water via abstraction from the lower Tukituki and reticulation to the Whakatu area. In the Whakatu area, there are a number of horticultural and primary industry commercial water users who draw water from the confined Heretaunga aquifer. The confined Heretaunga aquifer is over-allocated, and the TANK Plan seeks to reduce allocation for primary industry and irrigators while allowing the municipal use to increase, such that the overall abstraction is reduced over time. The reduction in the overall allocation for irrigators will have serious economic consequences if the reductions occur before storage is created to harvest water and replace some of the groundwater abstractions with stored water. Providing additional stored water is required to enable greater production.

The Tukituki stored water may be the first available stored water, now that the project is listed as part of the Fast-Track Approval process. In order for that water to be useful for the Heretaunga Plains, the ability to transfer water amongst users within the groundwater zones and to manage the groundwater abstractions as global consents is needed. The TANK Plan does provide provisions for transfer and global consents, but the spatial scale at which these transfers and global consents can occur is unclear. In HortNZ's opinion, the groundwater zone is a single hydrological unit, and the plan should provide the flexibility to transfer and globalise consents at any scale within that unit.

Establishing efficient globalised consents is precursor to making most storage options work on the Heretaunga Plains. Most irrigators do not have streams with harvestable flows running though their orchards, so most will not be able to access water for on-farm storage. They will rely on storage being located elsewhere in the catchment and using transfers to switch and optimise water use.

This case study identifies how the design of freshwater resource take limits and water storage are interlinked. They need to be developed carefully to enable efficient water use within cumulative water body limits.

[37] TANK

MATAWII AND THE NORTHLAND REGIONAL PLAN

In 2019, HortNZ participated in the Northland Regional Plan Environment Court Hearing. The Matawii water storage had been consented through the Fast-Track process but relied on the water harvesting provisions within the Northland Regional Plan to access sufficient water to supply the storage.

The water harvesting provisions were appealed, and the evidence for the Minister of Conversation sought a restrictive high-flow allocation regime of 10% of the instantaneous flow and a prohibited activity for takes above that amount. HortNZ provided evidence supporting the Council position, and the decision did not support the appeal.

This case study identifies a risk that even when a water storage project has met the criteria of national importance, arguments related to localised tributary scale environmental effects may prevent the project from proceeding, because there is no water allocation guidance within the NPSFM.

GISBORNE MANAGED AQUIFER RECHARGE

The Tairawhiti Resource Management Plan identifies the Waipaoa deep groundwater as overallocated and proposes reductions in abstractions over time. The plan includes provisions to support water harvesting and policies supporting managed aquifer recharge. While it is possible under the plan to harvest water and recharge the groundwater with harvested water, it is a non-complying activity to abstract that harvested and stored water. This is because this harvested and stored water is stored in the groundwater, and any new abstractions from the groundwater are not provided for in the plan.

This case study highlights the risk of unclear meanings associated with the term "limit" in the NPSFM.

HELEN ATKINS

HODGSON PLANNING CONSULTANTS

MEMORANDUM

To: Michelle Sands, General Manager Strategy and Policy | Horticulture New Zealand

From: Vance Hodgson, HPC Ltd and Helen Atkins, Atkins Law

Date: 10 December 2024

Subject: RMA Section 43A(3) – Significant Adverse Effects

Recent MfE communications[1] on replacing the RMA (Phase three of the Resource Management Reforms), set out principles to guide the development of legislative proposals to ensure the vision for RM reforms is adhered to during the policy development.

The principles set out how national standards are to be used in the future.

> *Provide for greater use of national standards to reduce the need for resource consents*
>
> *Resource management can enable development, protect the natural environment and protect the amenity of existing homes by using clear rules in national standards and plans to control the use of land and natural resources.*
>
> *Resource consents have become the default management tool under the RMA, but they are not always the best tool. People should reliably know in advance what they can do with their properties as much as possible.*
>
> *National standards are already a tool under the RMA but have been underused to date. Greater use of standards has the potential to simplify plans, reduce the need for resource consents, and accelerate processes by codifying effects management for common activities. The Infrastructure Commission has recognised this need and has identified a prioritised programme of work to this effect.*
>
> *A new Planning Tribunal – outlined below – will provide an accountability mechanism to ensure these standards are honoured through the ability to strike out council demands for resource consents for standard-complying activities.*
>
> *I envisage a significant reduction in the approximately 40,000 resource consents issued each year. This will not occur immediately but will become possible as national standards are developed for a greater range of activities over time.*

As the Phase three reforms progress a suite of changes will be advanced (Phase two) to national direction to drive economic growth and productivity.

[1] Replacing the Resource Management Act 1991

HELEN ATKINS

HODGSON PLANNING CONSULTANTS

RMA Section 43A(3) is currently being considered in the context of drafting a National Environmental Standard for Commercial Vegetable Production (NES-CVP) that would enable, as a permitted activity, existing CVP and growth in CVP while the RM system reforms progress.

THE S43A(3) ASSESSMENT

RMA Section 43A(3) is as follows:

> *43A Contents of national environmental standards*
> *(3) If an activity has significant adverse effects on the environment, a national environmental standard must not, under subsections (1)(b) and (4),—*
> *(a) allow the activity, unless it states that a resource consent is required for the activity; or*
> *(b) state that the activity is a permitted activity.*

Of interest is the meaning and threshold of a *significant adverse effects on the environment* as it relates to CVP and nutrient contaminant discharges.

Determining a Significant Adverse Effect

The quality planning resource[2] describes that when determining the extent of adverse effects (in the context of a consent notification decision and also if an activity is appropriate under ss104 and 105), it is good practice to think about the level of effects along a continuum to ensure that each effect has been considered consistently and, in turn, cumulatively. This continuum may include the following effects:

- Nil Effects
  No effects at all.
- Less than Minor Adverse Effects
  Adverse effects that are discernible day-to-day effects, but too small to adversely affect other persons.
- Minor Adverse Effects
  Adverse effects that are noticeable but will not cause any significant adverse impacts.
- More than Minor Adverse Effects
  Adverse effects that are noticeable that may cause an adverse impact but could be potentially mitigated or remedied.
- Significant Adverse Effects that could be remedied or mitigated.
  An effect that is noticeable and will have a serious adverse impact on the environment but could potentially be mitigated or remedied.
- Unacceptable Adverse Effects
  Extensive adverse effects that cannot be avoided, remedied or mitigated.

[2] Determining the Extent of Adverse Effects | Quality Planning

The quality planning resource goes on to describe that some councils use a similar scale to assess effects based on rating the extent of the effect with a number. It can also be narrative.

In terms of an application for a discharge permit, s105 the consent authority must have regard to the nature of the discharge and the sensitivity of the receiving environment to adverse effects. This would inform a determination on the scale of the effect and whether it is significant. Also relevant would be any conditions that could be imposed on consent pursuant to s108 to avoid, remedy or mitigate the extent of adverse effects,

The receiving environment is the environment upon which a proposed activity might have effects. It can include the future state of the environment as it might be modified by the utilisation of rights to carry out permitted activities and as it might be modified by implementing resource consents that have been granted at the time a particular application is considered, where it appears likely that those resource consents will be implemented.

<u>The Significant Adverse Effects test in 107 and 70 is different to the test in Section 43</u>

It is not considered that the wording used in s70 and s107 is helpful in determining what the phrase 'significant adverse effect' means in the context of water quality. This is because those sections specifically refer to rules in regional plans (s70) and resource consents (s107) rather than NES.

One key difference between the assessments is that the assessment is cumulative for s70 and s107 but is not cumulative in s43. In sections 70 and 107 the words "either by itself or in combination with the same, similar, or other contaminants or water", are used. These words are not used in Section 43A(3). If Parliament had intended the assessment to be cumulative in terms of what "significant adverse effects" means then the words in sections 70 and 107 would have been repeated in s43A(3) which uses the phrase "significant adverse effects on the environment".

In the context of the recent High Court decision in *Environmental Law Initiative v Canterbury Regional Council* [2024] NZHC 612 (sometimes referred to as the "Lyndhurst case" as that is the irrigation company it related to, the Court was concerned with the meaning of significant adverse effect in the context of s107 not in the context of s43. The Court found that the receiving environment was already below the bottom line set out in the NPSFM and was already experiencing "significant adverse effects" in terms of the way that term is expressed in s107. The Court found that a discharge into that receiving environment of contaminants would therefore contribute to an existing significant adverse environmental effect related to existing cumulative discharges and would 'in combination' with the existing cumulative discharges be considered to be a significant adverse effect on aquatic life.

The case posed significant difficulties for the consenting of both existing and new activities and led to the Resource Management (Freshwater and Other Matters) Amendment Act 2024 which came into force on 25 October 2024. One of the key changes is to clarify councils' ability to consent discharges that would result in significant adverse effects, provided receiving waters are already subject to such effects, and conditions reduce effects over time.

It is important to note that this case is in the context of the cumulative assessment that must be undertaken for a resource consent for an activity that is occurring within the context of the Regional

Plan freshwater limits, which are required to achieve the target attribute states set out in the NPSFM 2020 (October 2024).

The Lyndhurst case can be distinguished from the situation under s43. In the context of s43, the fact that a receiving environment is already experiencing significant effects does not mean that an additional discharge into that environment would result in a significant adverse effect because there is no specific requirement to consider the effects cumulatively, in other words the assessment is done using a non-cumulative assessment. Under s43A (3), the discharge would have to be assessed as to whether it on its own would be noticeable and will on its own have a serious adverse impact on the environment.

Another key difference between the assessment of effects for S43 and S70 and S107, is the specificity of the assessment. For s43, the assessment refers to adverse effects on the environment. The term environment is defined in the RMA and has a broad definition (as set out below). The assessment under Section 43 refers to effects, indicating that more than one significant adverse effect would be required to prevent an activity from being permitted. Sections 70 and 107 refer to a range of matters individually (with the exception of the aquatic life one) are not significant adverse effects - taken from s70 (but same as s`107) they are: *the production of conspicuous oil or grease films, scums or foams, or floatable or suspended materials: any conspicuous change in the colour or visual clarity: any emission of objectionable odour: the rendering of fresh water unsuitable for consumption by farm animals*. It is therefore not necessarily the case that if all or one or more of these effects occur, they are considered to be significant re water quality.

The non-cumulative assessment in the NES provisions, is an important distinction because the NES is a national direction that can override regional plans. In the context of s43, whilst it is important to consider what the state of the receiving environment is at the time the NES is promulgated, just because the receiving environment is in a degraded state it does not mean that any discharge into it (no matter what the qualities of that discharge are) are not permissible.

The *environment* is defined in the RMA as:

> ***environment*** *includes—*
>
> *(a) ecosystems and their constituent parts, including people and communities; and*
> *(b) all natural and physical resources; and*
> *(c) amenity values; and*
> *(d) the social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) or which are affected by those matters*

ANES may apply, generally, to any specified district or region or to any specified part of NZ. The scale of application is relevant to the scale of the assessment of effects. A NES that applied nationally would require a national assessment of the environment.

s43(2) prescribes that national environmental standards may contain qualitative or quantitative standards, discharge standards, methods for classifying a resource, methods, processes or technologies to implement standards, non-technical methods and standards and exemptions from standards. This is

applicable in considering where an activity could be permitted relative to s43A such that effects are able to be avoided, remedied or mitigated to not be significant.

The CVP sector employs various measures to manage effects which include the New Zealand Good Agricultural Practice (NZ GAP) requirements – a prerequisite to market access, the environment management system (EMS) add-on to the NZ GAP requirements, and the array of additional guidance, ranging from erosion and sediment control, nutrient management, washwater discharge and mahinga kai. Many of these measures are already embedded in planning documents as permitted activity[3] or consent entry qualifiers[4]. These are relevant to the significance of effect assessment.

Having undertaken a review of three NES's – Freshwater (NES-FW), Commercial (NES-CF) and Electricity Transmission (NES-ET) it is clear that the way in which the government has interpreted s43 is differently to the assessment under section 107 and 70. The assessment of significant adverse effects in each case are as follows:

NES-FW

As an example, regulation 9 sets out a permitted activity status for feedlots and other stockholding areas on the condition that 90% or more of the cattle held in the feedlot must—(a) be no more than 4 months old; or (b) weigh no more than 120 kg. Having reviewed the relevant material that related to this NES there is no apparent information that justifies these conditions. It is therefore assumed that no cumulative effects were considered. If the effects had been considered in a cumulative manner it is difficult to conclude that the conclusion would be that there would be no significant adverse effect, given there is no condition that constrains this activity in receiving environments that have water quality below the National bottom lines. We note that the MfE Action for Healthy Waterways s32 Evaluation states as follows:

> *8.2.8 Alternative Options and Reasons For Deciding On The Farming Standards Summary*
>
> *The potential environmental effects (including potential for significant environmental effects) resulting from permitted activities has not been assessed in any detail (Section 43A(3) of the RMA). The Ministry is seeking further advice and it is assumed there is no issue that affects this s32 report.*

NES-CF

We note for example that regulation 26 which provides for conditions for sediment as a permitted activity does not appear to provide a cumulative effect type of assessment because while it requires an assessment of significant adverse on aquatic, it does not include the words "either by itself or in combination with the same, similar, or other contaminants" included within section 107 and 70. We further note that in the recommendations and decisions report on amendments to the NES-CF there is a consideration of significant adverse effects that concludes:

The analysis for each proposed change is detailed in the following analysis sections of the report. Further analysis is included in supporting documents, including the s32, regulatory impact assessment and cost benefit analysis. Officials have evaluated the proposed changes to the NES-CF and determined that if amendments are made as proposed, the NES-CF will limit the requirement for resource consent to the most severe end of the risk threshold and that no significant residual effects will arise from activities that are permitted. There is no restriction on permitted activities occurring in catchments with water quality below the bottom line target attribute states, further indicating that the assessment to support the NES-CF is not cumulative.

NES-ET

This NES (the oldest of the ones reviewed) includes in regulation 28 in relation to permitted discharges for contaminants to water a list of similar matters that are listed in s107 but with regards to aquatic life it simply says the discharge must not have adverse effects on aquatic life that are more than minor. The assessment does not include the words "either by itself or in combination with the same, similar, or other contaminants" included within section 107 and 70, indicating this assessment is not cumulative.

Conclusion

Section 43A(3) prescribes that an activity cannot be permitted in a national environmental standard if the activity has significant adverse effects on the environment. That assessment is not cumulative to satisfy 43A(3) – as it is for sections 70 and 107. The cumulative assessment, that integrates NES provisions occurs in the regional planning and consenting processes.

The NES analysis provided shows that the Government appears to accept that in the case of NESs that permit certain activities, the effects of discharges are not assessed cumulatively. Furthermore, in the context of Section 43, receiving waters being degraded or below the bottom lines, is not a threshold that determines whether an effect is significant.

Also relevant in the assessment of the scale of effects, are any qualitative or quantitative standards, discharge standards, methods for classifying a resource, methods, processes or technologies to implement standards, non-technical methods and standards and exemptions from standards that might be imposed such that effects are able to be avoided, remedied or mitigated to not be significant. The CVP sector already employing various measures that will be relevant in that assessment.