

**BEFORE THE HEARING COMMISSIONER APPOINTED BY THE GREATER WELLINGTON
REGIONAL COUNCIL**

IN THE MATTER of the Resource Management Act 1991 (**the Act**)

AND

IN THE MATTER of hearing of submissions on Proposed Change 1 to the
Regional Policy Statement

**INDUSTRY STATEMENT TO BE TABLED BY EMILY LEVENSON FOR
HORTICULTURE NEW ZEALAND**

30 June 2023

INTRODUCTION

1. My name is Emily Levenson. I am an Environmental Policy Advisor at Horticulture New Zealand (HortNZ). I work within the Environmental Policy Team on national, regional, and district planning processes across New Zealand. I have been in this role since January 16, 2023.
2. I hold a Bachelor of Science in Urban Studies and Planning from the Massachusetts Institute of Technology (MIT).
3. I worked in urban planning research and environmental policy research for two years while a student at MIT, at Manaaki Whenua Landcare Research, and as an independent contractor assisting researchers at the Victoria University of Wellington and Scion.
4. I am an associate member of the Environmental Institute of Australia and New Zealand (EIANZ).
5. Since beginning my role at HortNZ, I have met with growers across New Zealand to better understand their horticultural operations and how resource management issues impact them.

Involvement in the proceedings

6. When I joined HortNZ in January 2023, I took on the role of supporting Wellington RPS proceedings.
7. I have had meetings and conversations with planners and other advisors since April 2023 seeking information to support the HortNZ submission and evidence produced for this process.
8. In preparing my evidence, I have read:
 - a. The Proposed Change 1 to the Regional Policy Statement
 - b. HortNZ submission
 - c. The Section 42A report and appendices
 - d. The New Zealand National Policy Statement for Highly Production Land (NPSHPL)
 - e. The New Zealand National Policy Statement for Urban Development (NPSUD)
 - f. The New Zealand National Policy Statement for Freshwater Management (NPSFM)
 - g. The Select Committee Report on the Natural and Built Environment Act

- h. The Proposed Otago Regional Policy Statement 2021 Brief of Second Supplementary Evidence of Felicity Ann Boyd LF – Land and Freshwater (Highly Productive Land)
- i. The Proposed Otago Regional Policy Statement 2021 Reply Report 9: LF – Land and freshwater and Reply Report 15: UFD – Urban form and development
- j. HortNZ submission and legal evidence for the Proposed Otago Regional Policy Statement 2021

PURPOSE AND SCOPE OF EVIDENCE

- 9. This statement responds to the Section 42A report recommendations in regard to Horticulture NZ submission and further submissions on Change 1, specifically on the National Policy Statement for Highly Productive Land (NPSHPL).

OVERVIEW OF HORTICULTURE NZ

- 10. HortNZ is the industry body for the horticulture sector, representing growers who pay levies on fruit and vegetables sold either directly or through a post-harvest operator, as set out in the Commodity Levies (Vegetables and Fruit) Order 2013.
- 11. On behalf of growers, HortNZ takes a detailed involvement in resource management planning processes as part of its national and regional environmental policy response.

RESPONSE TO SECTION 42A REPORT

- 12. **Appendix 1** includes a summary table setting out HortNZ's submissions, the recommendations of the S42A report on these submissions and HortNZ response.
- 13. The specific topic of NPSHPL, where further explanation is required, is addressed below.

National Policy Statement for Highly Productive Land

- 14. HortNZ submission sought to include relevant provisions from the NPSHPL including reference to "loss, fragmentation or reverse sensitivity effects on highly productive land" in Objective A – 'overarching resource management issues for the Wellington Region'.
- 15. HortNZ also sought to include a definition of highly productive land (HPL) in Appendix 3: Definitions. While this submission point was not covered by the S42A for Hearing Stream 2: Integrated Management, it is relevant to the discussion of whether the NPSHPL is within scope for this hearing.

16. The S42A author recommends that the submissions be rejected on the basis that “This issue is already recognised in Chapter 3.11 of the RPS, with Policy 59 also being particularly relevant. This chapter of the RPS recognises the irreversible effects of losing Class I and II lands and that some activities will result in permanent loss of these soils from productive use. The Section 32 Report is clear that the intent of Change 1 is to give effect to the national direction contained in the NPS-FM and NPS-UD, and Appendix D of the Section 32 Report indicates (pg. 378) that the RPS will be amended to give effect to the NPS-HPL in the future in accordance with the timeframes and requirements in the NPS-HPL.”
17. HortNZ disagrees with the S42a author that the issue is sufficiently recognised in Chapter 3.11 of the RPS. The definition of HPL under the NPSHPL extends beyond LUC Class I and II soils to include LUC Class III soils so long as they are “in a general rural zone or rural production zone” and form “a large and geographically cohesive area.”¹ Further, the NPSHPL is not only focused on avoiding inappropriate use and development; It is also focused on managing reverse sensitivity issues from urban rezoning or rural lifestyle development that could affect land-based primary production on highly productive land.
18. The Select Committee Report in the Natural and Built Environment Bill in June 2023 includes an outcome that seeks to protect highly productive land for use in land-based primary productive and from inappropriate subdivision use and development.
19. The Select Committee Report in the Natural and Built Environment Bill in June 2023 includes enabling the supply of fresh fruit and vegetables as a matter on which the National Planning Framework must provide direction. Fruit and vegetable production occurs almost exclusively on highly productive land. The Wellington Region is highly dependent on other regions for the supply of fresh fruit and vegetables for the Wellington population. Any further loss of highly productive land in the Region could further erode the resilience of the supply of fresh fruit and vegetables to the Region's population.
20. The recognition of the protection of highly productive land and the supply of fresh fruit and vegetables in the Natural and Built Environment Bill highlights the importance of the management of highly productive as a strategic natural asset for the wellbeing of future generations.
21. It is our view that progressing with the implementation of the NPSUD and NPSFM ahead of the NPSHPL undermines integrated management, particularly as the NPSHPL specifically links to the urban zoning in Policy 3.4, 3.5 and the NPSUD in Policy 3.6 and the NPSFM in Policy 3.12.

¹ National Policy Statement for Highly Productive Land 2022

22. As outlined in the legal advice provided in Appendix 3, HortNZ submits that under section 55(2D) of the RMA, Council has a statutory obligation to give effect to the NPSHPL as soon as practicable. It is our view it is more appropriate to start the implementation of the NPSHPL in this process rather than to wait.
23. The approach of defining HPL (and then providing for the NPSHPL through the Regional Policy Statement) has been adopted by other regions- specifically Waikato Regional Council and Otago Regional Council, as outlined in the sections below.

Waikato Regional Council

24. Waikato Regional Council notified Change 1 - National Policy Statement on Urban Development 2020 and Future Proof Strategy in October 2022 (prior to the gazettal of the NPSHPL).
25. HortNZ submissions sought similar provisions to GWRC Proposed Change 1 including a definition of HPL which was accepted by the S42A author.
26. The S42A² author noted *"I see the NPS-HPL as a relevant consideration in WRPS Change 1 and do not consider it out of scope insofar as it relates to provisions which also address urban growth and the NPS-UD. Given the NPS-HPL will still apply in relation to urban development on highly productive land, the provisions of WRPS Change 1 would be immediately out of date without amendment to recognise and remove inconsistencies with the NPS-HPL. This would not assist WRC and territorial authorities in the region to achieve their functions"*.
27. *"Some submitters suggested such amendments would go beyond the scope of WRPS Change 1 in regard to giving effect to the NPS-HPL. As I have explained above, the amendments I recommend to WRPS Change 1 do not bypass the Schedule 1 process required by regional councils to give effect to or implement the NPS-HPL, this will occur through a separate process, Proposed Change 5. Rather, I recommend amendments to recognise the NPS-HPL which are within scope"*.
28. Following the release of the S42A report, the Hearing Commissioners set out the panel's approach to submissions in relation to NPSHPL. The panel stated *"The Panel must comply with the statutory requirements contained in section 61 of the RMA, in particular s61(1)(da), which requires that WRPS Change 1 must be "in accordance" with the NPSHPL"*.

² <https://atlas.boprc.govt.nz/api/v1/edms/document/A4391615/content>

29. Under s41C(2) of the RMA, the Panel requested all submitters (including further submitters) that have lodged submissions in respect of the NPSHPL to provide further information:
- How does the submission/opposition of submission fall within the current Schedule 1 process for the WRPS Change 1 rather than sit within the proposed Schedule 1 process for WRPS Change 2?
 - How does the submission/opposition of submission enable the proposed WRPS Change 1 to be in “accordance with” the NPS HPL as required by s61(1)(da) of the RMA? Minute 2 is attached as **Appendix 2.**
30. HortNZ sought a legal opinion on these questions, which is attached as **Appendix 3.**
31. The legal advice agreed with the approach taken by the council and supported the view that the inclusion of the NPSHPL was appropriate.

Otago Regional Council

32. Otago Regional Council notified the Proposed Otago Regional Policy Statement (pORPS) in June 2021, also prior to the gazettal of the NPSHPL. While the notified version of pORPS did not seek to fully implement the NPSHPL, it did include an interim definition of highly productive land.
33. A number of submitters, including HortNZ, made submissions that sought provisions for highly productive land that provided scope for changes to be made in pORPS to give effect, or partial effect to the NPSHPL.
34. While the final content of the NPSHPL was not known at the time of submissions, there was considerable alignment between the decisions sought by submitters and the gazetted NPSHPL.
35. The Second Supplementary s42A Report (HPL) dated 21 October 2022 wrote, *“In accordance with section 62(3) of the Resource Management Act, a regional policy statement must give effect to a national policy statement. I understand that because the NPSHPL has been introduced ‘mid-process’, the extent to which the pORPS can give effect to the NPSHPL is confined by the scope of the submissions lodged that seek changes to the pORPS provisions.”*
36. *“Having considered the content of the NPSHPL, the provisions of the pORPS, and the submissions on the pORPS provisions, I recommend several amendments to the pORPS to give effect to the NPSHPL. I consider that these*

recommendations give effect to the NPSHPL to the extent that there is scope in submissions.”³

37. HortNZ presented expert evidence before the Hearing Commissioners in the matter of the pORPS (Non-Freshwater parts). The author of the Reply Report, which was released 23 May 2023, recommended a definition of highly productive land in alignment with the NPSHPL as well as additional protection for areas of land that are valuable for horticulture and viticulture that do not fall within the NPSHPL definition.⁴
38. In the reply report for Chapter 15: UFD – Urban form and development, the author wrote, “The National Policy Statement for Highly Productive Land 2022 (NPSHPL) came into effect after the s42A reports were released. This required reconsideration of various provisions in the pORPS which relate to highly productive land and resulted in the preparation of supplementary evidence.”⁵

Conclusion

39. The S42A author for Proposed Change 1 has recommended the NPSHPL is out of scope. HortNZ rejects this approach based on the approach taken by Waikato Regional Council, Otago Regional Council and HortNZ legal advice.
40. A key constraint to horticultural operations is access to land. This is due to a number of factors, one being competition for HPL for housing, an aspect which has been heavily influenced by policy.
41. Not all land is suitable for fruit and vegetable production; this makes the productive use of HPL important. Urban development and productive land need to be considered together to provide an integrated, planned approach that facilitates urban growth in a manner which maintains the overall productive capacity of highly productive land.
42. HortNZ supports an approach to include amendments to GWRC Proposed Change 1 that recognises the NPSHPL.

Emily Levenson

30 June 2023

³ Proposed Otago Regional Policy Statement 2021 Brief of Second Supplementary Evidence of Felicity Ann Boyd LF – Land and Freshwater (Highly Productive Land)

⁴ Proposed Otago Regional Policy Statement 2021 Reply Report 9: LF – Land and freshwater

⁵ Proposed Otago Regional Policy Statement 2021 Reply Report 15: UFD – Urban form and development

APPENDIX 1

Provision	Support/oppose	Reason	Decision sought	S42A Response	HortNZ response
<p>Overarching Issue 1: Adverse impacts on natural environments and communities</p>	<p>Support in part</p>	<p>Highly productive land is a finite resource that is impacted and lost through 'inappropriate and poorly managed use and development' - this reflected in parts of the operative RPS and should be carried through into/reflected in the overarching resource management issues for the Wellington Region.</p>	<p>Amend paragraph 1 (p. 4) 1. Adverse impacts on natural environments and communities Inappropriate and poorly managed use and development of the environment, including both urban and rural activities, have damaged and continue to impact the natural environment, increase greenhouse gas emissions, destroying ecosystems, degrading water, result in loss, fragmentation or reverse sensitivity effects on highly productive land, adversely impacting the relationship between mana whenua and the taiao, and leaving communities and nature increasingly exposed to the impacts of climate change.</p>	<p>Reject</p>	<p>HortNZ continues to seek alignment with the NPS HPL.</p>

Overarching Objective A	Support	Integrated management is a key theme of national direction, such as the NPSFM 2020 and supports this.	Retain as notified.	Accept in part.	HortNZ accepts the recommendation in the S42A report.
Policy IM.1: Integrated management - ki uta ki tai - consideration	Support in part	Support a more consistent and efficient approach to resource management that includes partnership with mana whenua / tangata whenua. HortNZ's support this being focused on the plan-making level and governance, so that values inform the plan approach. In respect to consent applications, this clause needs to be appropriate to the size/scale/significance of the consent.	Consider providing further clarification in respect to partnering with mana whenua / tangata whenua at the consenting level.	Reject	HortNZ accepts the recommendation in the S42A report.
Highly productive agricultural land (Class 1 and II land):	Amend definition	Amend the existing RPS definition, to be more consistent with the NPS for Highly Productive Land 2022, and the WRGF, to	Amend definition, <i>Highly protective agricultural land is Class I and, II land and III in the land use capability</i>	Not discussed.	HortNZ continues to seek alignment with the NPS HPL.

		capture Land use classes 1-3.	<i>classes of the New Zealand Land Resources Inventory</i>		
			Consequential amendment to Policy 59		

Appendix 2

**HEARING OF WAIKATO REGIONAL POLICY STATEMENT – PROPOSED CHANGE 1
BY THE WAIKATO REGIONAL COUNCIL
HEARING PANEL MINUTE #2**

1. The purpose of Minute #2 is to set out the Panel's approach to submissions in respect of the National Policy Statement for Highly Productive Land (**NPS HPL**) lodged in respect of Proposed Change 1 hearing (**WRPS Change 1**).

2. The Panel is cognizant of the following:
 - (a) Section 55 of the Resource Management Act 1991 (RMA) sets out the ways in which a Regional Council may incorporate an NPS into its operative Regional Policy Statement.
 - (b) The NPS HPL directs a Regional Council to prepare maps of the highly productive land within its region and thereafter incorporate these within its operative Regional Policy Statement by way of the Schedule 1 process (clause 3.5 NPS HPL). A Regional Council has 3 years following commencement date of the NPS HPL to do so.
 - (c) The NPS HPL is silent as to the incorporation of the balance of the NPS HPL into Regional Policy Statements and therefore the Schedule 1 process must be followed.
 - (d) The Waikato Regional Council intends via proposed WRPS Change 2 to incorporate the NPS HPL into the operative Regional Policy Statement (**WRPS Change 2**).
 - (e) WRPS Change 1 is proceeding through the Schedule 1 process to incorporate the National Policy Statement for Urban Development and the present Future Proof Strategy into the operative Regional Policy Statement.
 - (f) The Panel must comply with the statutory requirements contained in section 61 of the RMA, in particular s61(1)(da), which requires that WRPS Change 1 must be "in accordance" with the NPS HPL.

3. Accordingly, by way of its powers under s41C(2) of the RMA, the Panel requests all submitters (including further submitters) that have lodged submissions in respect of the NPS HPL, provide the further information referred to in paragraph 4 below (**further information**). The further information must be lodged with Council by **4.00pm, 4 May 2023**. The further information may be incorporated within the legal submissions lodged by the submitter prior to hearing, provided it is identified by way of heading "Further

Appendix 3

**BEFORE THE COMMISSIONERS
AT WAIKATO**

IN THE MATTER of the Resource Management Act 1991
(the Act)

AND

IN THE MATTER of Proposed Waikato Regional Policy
Statement Plan Change 1

LEGAL SUBMISSIONS FOR HORTICULTURE NEW ZEALAND

4 MAY 2023



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INTRODUCTION

1. These legal submissions are on behalf of Horticulture New Zealand (**HortNZ**) in relation to the proposed Waikato Regional Policy Statement Change 1 (**Change 1**), and in response to the further information requested by the hearing panel in Minute 2, dated 12 April (**Minute**).
2. HortNZ made a submission on Change 1 and considered the Waikato Regional Council's (**Council**) section 42A report sufficiently addressed HortNZ's concerns. HortNZ therefore, did not lodge evidence on Change 1. However, following the Minute, HortNZ considers these legal submissions are necessary to clearly set out its position.

Background to Change 1

3. Change 1 was notified in October 2022 for the purpose of incorporating the requirements of the National Policy Statement on Urban Development 2020 (**NPSUD**) into the Waikato Regional Policy Statement (**WRPS**) and to reflect the updated Future Proof Strategy.
4. Upon notification, Change 1 did not make any reference or meaningful attempt to incorporate the National Policy Statement for Highly Productive Land (**NPSHPL**), which came into force in October 2022. The Section 42A Report on Change 1 stated:¹

The National Policy Statement for Highly Productive Land (NPS-HPL) came into force on 17 October 2022. As such, it was not considered in the development of WRPS Change 1 (which was publicly notified on 18 October 2022). WRC has up to 3 years (from 17 October 2022) to publicly notify changes to the WRPS to give effect to the NPS-HPL, including mapping highly productive land in the region. This will be done separately from the WRPS Change 1 process. However, as I address below, there are some inconsistencies between WRPS Change 1 and the NPS-HPL and I recommend amendments in line with the WRC staff submission to resolve this.

5. HortNZ supports the Council's recommendations to amend Change 1 to remove inconsistencies between Change 1 and the NPSHPL.

¹ Change 1 Section 42A Report, paragraph 37.

6. WRC has indicated, as noted in the Minute, that the NPSHPL will be incorporated into the WRPS through Waikato Regional Policy Statement Change 2 (**Change 2**). Change 2 is yet to be consulted on or notified. As such, there is no information from WRC on the way the NPSHPL would be incorporated into the WRPS.
7. The Independent Hearings Panel (**Panel**) released the Minute directing that Counsel for submitters make submissions on the following questions:
 - (a) How does the submission/opposition of submission fall within the current Schedule 1 process for the WRPS Change 1 rather than sit within the proposed Schedule 1 process for WRPS Change 2? (**Question 1**); and
 - (b) How does the submission/ opposition of submission enable the proposed WRPS Change 1 to be "in accordance with" the NPSHPL as required by S61(1) (da) of the Resource Management Act 1991? (**Question 2**).

HortNZ's Overall Position

8. Many of HortNZ's concerns were addressed in WRC's Section 42A report (**Report**). The Report recommended a number of changes to Change 1 to make it more consistent with and recognise the NPSHPL, such as the inclusion of the definition of highly productive land from the NPSHPL. As noted above, HortNZ is generally accepting of the recommendations in the Report, which is why it decided not to submit evidence in this process.
9. These legal submissions respond to the Minute and set out HortNZ's position that recognition of the NPSHPL should not be left to Change 2. This is due to the lack of certainty around what Change 2 will look like or when it may be implemented. Until such a time as Change 2 is notified it is unclear whether the NPSHPL will adequately be given effect to. Furthermore, in the time intervening Change 1 and the notification of Change 2 there is potential for a "trickle down" of negative planning results from Change 1's failure to adequately implement the NPSHPL.

10. HortNZ submits that the Panel have the scope and obligation to consider and address, as far as practicable, the NPSHPL through this Change 1 process.
11. We make these submissions noting that Change 2 will still be necessary to give full effect to the NPSHPL given the timing of Change 1 and the timing of the gazetting of the NPSHPL.

RESPONSE TO QUESTION 1

12. HortNZ submits that the consideration and implementation of the NPSHPL can fall within the current Schedule 1 process for Change 1, and is more appropriate to start now, rather than waiting until the Schedule 1 process for Change 2.
13. In relation to local authority consideration of national policy statements, section 55(2D) of the RMA requires the following:

"In all cases, the local authority must make the amendments—

 - (a) as soon as practicable; or*
 - (b) within the time specified in the national policy statement (if any); or*
 - (c) before the occurrence of an event specified in the national policy statement (if any)."*
14. The ultimate effect of these provisions is that the Council has a statutory obligation to give effect to the provisions of the NPSHPL in the WRPS as soon as practicable.
15. In *Horticulture New Zealand v Manawatu-Wanganui Regional Council*² the High Court found that the Council (and later the Environment Court) was not obliged to consider implementing the National Policy Statement for Freshwater Management (**NPSFM**) at that stage in the proceedings due to the fact that implementation must be undertaken through a Schedule 1 process, of which notification and consultation are vital aspects, and to implement the NPSFM at that late stage in proceedings would undermine the Schedule 1 process.³
16. This case can be distinguished from the current Change 1 process as the NPSHPL took effect in October 2022. Change 1

² *Horticulture New Zealand v Manawatu-Wanganui Regional Council* [2013] NZHC 2492.

³ *Horticulture New Zealand v Manawatu-Wanganui Regional Council* [2013] NZHC 2492, at [101].

was open for submissions and consultation after the NPSHPL was gazetted and in effect. Therefore, while Change 1 (as notified) did not consider the NPSHPL, the Council has recommended amendments which remove many inconsistencies between Change 1 and the NPSHPL.

17. HortNZ supports the recommendations in the section 42A Report and submits that Change 1 enables the Council to implement the NPSHPL, as soon as practicable, and to the extent possible based on the scope provided by submissions on Change 1.
18. In contrast, Change 2 has yet to be notified, or consulted on. While consideration and implementation of the NPSHPL through Change 2 is required, leaving it to the Change 2 Schedule 1 process will not meet the Council's obligation to "make amendments as soon as practicable".

RESPONSE TO QUESTION 2

19. HortNZ submits that its submission provides the scope for the Panel's consideration of the NPSHPL to occur under this Schedule 1 process for WRPS Change 1. HortNZ submits that the Panel has the scope to make changes to Change 1 for it to be "in accordance with" the NPSHPL, as required by s61(1)(da) of the RMA.
20. Section 61(1)(da) of the RMA requires that regional councils must prepare and change their regional policy statements in accordance with national policy statements, it is therefore a legal requirement that the WRPS be changed in accordance with the NPSHPL. HortNZ's submission on Change 1 gives the Panel scope to consider, and make determinations, in accordance with the NPSHPL.
21. When considering whether an amendment to a proposed plan or policy statement is fairly and reasonably within the submissions filed, the relevant test is whether an interested person would have reasonably anticipated that an amendment to a proposed plan (or policy statement) could have resulted from a decision sought by the submitter as summarised by the local authority.⁴

⁴ *Christchurch International Airport Ltd v Christchurch City Council*, ENC C77/99, 12 May 1999, at [15].

22. The present case falls squarely within this test. HortNZ made multiple references to the implementation of the NPSHPL in its submission on Change 1. Thus, bringing the consideration of the NPSHPL within the ambit of consideration during Change 1's Schedule 1 process, and for this consideration to be "in accordance with" the NPSHPL, as required by s61(da) of the RMA.
23. Many of the recommendations sought in HortNZ's initial submissions, along with those recommended in the Report align closely and could reasonably have been anticipated by anyone who had read HortNZ's initial submissions. There is a clear link between HortNZ's submissions, and the recommendations made in the Report.

CONCLUSION

24. In conclusion, HortNZ submits that there is a requirement for the Council to implement the NPSHPL as soon as practicable. HortNZ's submission on Change 1, and the Council's recommendations in its Report, give the Panel the necessary scope to consider the NPSHPL, and to make a determination which would be in accordance with the NPSHPL.
25. HortNZ considers the Report sufficiently addresses its concerns in relation the implementation of the NPSHPL, and sufficiently protects highly productive land, until a specific Schedule 1 process is undertaken for the indicated Change 2.

DATE: 4 May 2023



Louise Ford / Tait Hoby
Counsel for Horticulture New Zealand