

**BEFORE THE COMMISSIONERS  
AT DUNEDIN**

**IN THE MATTER**

of the Resource Management Act 1991  
**(the Act)**

**AND**

**IN THE MATTER**

of Proposed Otago Regional Policy  
Statement – Non-Freshwater

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**LEGAL SUBMISSIONS FOR HEARING WEEK 1 AND 2 OF THE PROPOSED  
OTAGO REGIONAL POLICY STATEMENT FOR HORTICULTURE NEW  
ZEALAND**

**7 FEBRUARY 2023**

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## **INTRODUCTION**

1. These legal submissions are made on behalf of Horticulture New Zealand (**HortNZ**) in relation to the non-freshwater parts of the proposed Otago Regional Policy Statement (**pORPS**).
2. HortNZ's legal submissions will be presented in two parts, which will be followed at each topic's hearing that HortNZ presents at:
  - (a) Part 1: Overview and general submissions; and
  - (b) Part 2: Topic specific submissions.
3. Only Part 2 will be presented in future hearings.
4. Following legal submissions today, you will hear from each of HortNZ's experts:
  - (a) Leanne Roberts (Industry) who is a Senior Advisor on Environmental Policy within HortNZ;
  - (b) Stuart Ford (Economics) who is an independent expert on agricultural and resource economics;
  - (c) Vance Hodgson (Planning) who provides an expert planning opinion, focussing on Parts 1 and 2 of pORPS and the freshwater planning instrument matters to be considered as part of a separate hearing process; and
  - (d) Lynette Wharfe (Planning) who provides an expert planning opinion, focussing on the Significant Resource Management Issues and Part 3 chapters of pORPS.

## **PART 1 – OVERVIEW AND GENERAL SUBMISSIONS**

### **HortNZ and its interest in pORPS**

5. HortNZ is an industry good body representing the interests of horticultural growers. Its mission is to:
  - (a) provide a unifying vision for the horticulture sector which increases collaboration between product, sector, regional and district groups and enhances the sector's ability to respond to and influence decisions that affect it; and

- (b) develop and encourage industry-wide projects which benefit all growers.
6. HortNZ participates in regulatory and legal proceedings on behalf of growers nation-wide to ensure the best outcome is secured, not only for growers, but for the continued food security of all New Zealanders. Over the years HortNZ has refined its submissions in regulatory proceedings, having been guided by what is occurring at the national level. In addition, HortNZ has been assisted by a dedicated expert team who have provided the detailed technical work that underpins the organisations position.
  7. The Otago Region is important for horticulture, playing a critical role in the national food production system due to the unique production capability of the region. The climate conditions and soils provide ideal growing conditions, especially suited to high-quality crops. The Otago Region is relied upon for both domestic and export crops and is particularly important during the summer fruits season.
  8. Food production systems are coming under increased pressure from population growth, competing resource use and climate change. Given that food is essential to human health and wellbeing, and that food production plays an important part in New Zealand's regional and national economies, the role of the Otago Region within the national food production system must be maintained and protected.
  9. HortNZ has engaged with pORPS since its inception, by submitting on the initial notified policy statement, attending the pre-hearing discussions, submitting on the freshwater planning instrument provisions once delineated, and being generally involved throughout the process.

#### **HortNZ's case**

10. Throughout the pORPS process, HortNZ has sought greater recognition for the role of food production within the Otago Region, as well as protections relating to food supply and food security. HortNZ's submissions look to strengthen the position of food production and security in the region, while recognising and working alongside the requirements of other needs and activities.
11. HortNZ has sought to achieve its outcomes through a new issue statement for Food Production, Food Supply and Food

Security, along with reference to food production, supply, and security within the other issue statements. These issues straddle several significant resource management issues identified within the pORPS.

12. Further to this, HortNZ considers that highly productive land must be protected for land based primary production. In Otago, noting that some of the most productive soils here are not Land Use Class (**LUC**) 1, 2 or 3, recognition of all soils valued for horticulture, must be provided for within this pORPS.
13. Reverse sensitivity issues are required to be managed, so that horticulture on highly productive land is prioritised and not constrained by incompatible land uses.
14. Many of HortNZ's concerns were addressed in the Otago Regional Council Section 42A report (**s42A Report**). The remaining concerns will be addressed throughout this hearing and those that follow.

### **General legal issues**

15. This section canvasses the legal issues which apply to the whole of HortNZ's case. Chapter specific legal issues will be canvassed through part 2 of these legal submissions and at subsequent hearing days.
16. The purpose of a Regional Policy Statement (**RPS**) is to achieve the purpose of the RMA by providing an overview of the resource management issues of the region and policies and methods to achieve integrated management of the natural and physical resources of the whole region.<sup>1</sup> The Regional Council has already set out what this RPS must be prepared in accordance with.<sup>2</sup>
17. Since the pORPS was first notified in June 2021, submissions and further submissions were received, Court assisted pre-hearing discussions occurred, Freshwater Planning Instrument (**FWPI**) parts of the pORPS were re-notified and hearing dates for these non-freshwater parts of the pORPS were set. This process has been lengthy, cumbersome and at times confused. It has resulted in two distinct processes whereby

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<sup>1</sup> RMA, s59.

<sup>2</sup> See para 3 of ORC legal submissions dated 23 January which include reference to various RMA sections, National Policy Statements, National Planning Standards and relevant regulations.

two sections of the policy statement are now undergoing separate hearing processes. The process does not lend itself to ensuring that the two sections of the policy statement will result in one document that ensures it meets the purpose of a RPS under the Act. Specifically, consideration of certain sections of the pORPS (in particular, those that are captured as FWPI) cannot be undertaken at the same time as others. There is no opportunity to provide appropriate and certain cross-referencing. Nor is there the opportunity to ensure the policy statement achieves integrated management of natural and physical resources.

## **PART 2 - TOPIC SPECIFIC SUBMISSIONS**

18. Part 2 of these legal submissions respond to the specifics of each hearing topic. HortNZ recognises that a number of its submission points have been addressed as a result of the pre-hearing discussions, evidence exchange, and updated s42A reports. For brevity, only HortNZ's remaining concerns are set out below.

### **Significant resource management issues for the region (SRMR)**

#### *Food production*

19. As noted above, HortNZ sought a new issue statement for Food Production, Food Supply and Food Security. As noted in the evidence of Mr Hodgson for HortNZ, his opinion now aligns with that of the authors of the s42 Reports that a new issue statement, as sought by HortNZ is not necessary and coverage is provided through the traditional issue suite proposed (with the suggested amendments).
20. However, Mr Hodgson disagrees with the assertion that the issue statement sought by HortNZ deals with "industry specific concerns."<sup>3</sup> For this reason, HortNZ is still seeking changes throughout this section of the pORPS.
21. Food production is a region wide issue and provides significant economic contribution,<sup>4</sup> as well as contributing to the social and wellbeing of the region.

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<sup>3</sup> Statement of Evidence of Vance Hodgson, dated 23 November 2022, at [25-26].

<sup>4</sup> Statement of Evidence of Stuart Ford, dated 23 November 2022, at [31].

22. HortNZ submits that the pORPS should reference food production throughout the issue statements to provide useful acknowledgement of this matter and ensure appropriate linkage into and from the description of the region.
23. HortNZ also sought a number of changes to SRMR-I4 to better describe the context for productive land and rural areas. HortNZ considers many of the recommended changes from the s42A Reports are acceptable, however, further changes will need to be made to include reference to Highly Productive Land. Ms Wharfe has recommended that the Context and Environmental section of SRMR-I4 is amended to include:

*Otago has areas of highly productive land which are particularly valuable for food production.*

*Urban or rural lifestyle expansion onto highly productive land removes the land resource from production, including production of food.*

#### *Climate change*

24. Climate change is a key topic throughout the issue statements in pORPS. HortNZ submits that the statements do not go far enough in recognising the impact that climate change has on food production, food supply and food security in the Otago region.
25. The evidence submitted by HortNZ highlights the reliance that horticulture has on water available for irrigation, and the significant contribution to the region that horticulture has:<sup>5</sup>

*As set out in the evidence of HortNZ the impacts are likely to be wider than affecting the number and types of crops and animals that the land can sustain and affect the very viability of food production systems, threaten food supply and food security needs.<sup>6</sup>*

26. Mr Hodgson recommends that the pORPS would be improved by amending the Statement of SRMR-I2, as follows:<sup>7</sup>

*Otago's climate is changing, and these changes will continue for the foreseeable future. Central Otago is likely*

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<sup>5</sup> See the Statements of Evidence of Vance Hodgson, Stuart Ford and Leanne Wharfe, dated 23 November 2022.

<sup>6</sup> Statement of Evidence of Vance Hodgson, dated 23 November 2022, at [59].

<sup>7</sup> Statement of Evidence of Vance Hodgson, dated 23 November 2022, at [60].

*to see more varied precipitation, leading to increased flooding and reduced water reliability. This will be compounded by stronger winds, increased temperatures and longer dry periods, which may affect the number and types of crops and animals that the land can sustain, food production systems and related food supply and food security needs and the potential for renewable electricity generation.*

27. Mr Hodgson also recommends the following change to the Context of SRMR-I2:<sup>8</sup>

*Climate change may also result in shifting land-use activities to adapt to altered climate conditions, which will incur costs, and potentially enable resources previously unviable to come into production. Diversification to horticulture presents an opportunity to reduce emissions and support the transition to a low emissions economy.*

#### *Cumulative impacts and resilience*

28. HortNZ sought changes to SRMR-I11 to note the need for essential human health. Mr Hodgson recommends changes to this issue statement to improve the pORPS's consideration of people and communities' health needs:<sup>9</sup>

*How and where we currently live, and the activities we undertake, are likely to change significantly in coming years. To respond to all the issues identified in this RPS, it is essential to consider changes to how we travel, the industries our economy relies on, the use we currently make of the natural and physical resources of the region, and how we provide for personal and community well-being and health and safety, all while protecting our natural environment. Consideration must include the rate at which change or adaptation is required to occur, the nature of place-specific and activity specific responses required, and the timeframes for action.*

#### **Integrated management**

29. The pORPS provides a chapter setting out the objectives and policies of IM. It is clear that Council intends that the provisions of the IM chapter will assist decision-makers to resolve tensions between provisions in other chapters of the pORPS.

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<sup>8</sup> Statement of Evidence of Vance Hodgson, dated 23 November 2022, at [65].

<sup>9</sup> Statement of Evidence of Vance Hodgson, dated 23 November 2022, at [70].

30. HortNZ is concerned with the effectiveness of the overall ability of the pORPS to achieve integrated management. This is largely because the process has resulted in the delineation of the non-freshwater planning instruments from the FWPI. It is self-evident that a number of topics within the non-freshwater provisions of pORPS, that are at this hearing stage are closely related to the freshwater provisions. The management of resources as a whole need to consider the interrelationships of those resources. Activities that use air, coastal and land resources also use freshwater resources. Provisions that focus on urban form and the development of highly productive land also need to consider the management of freshwater. The RMA is underpinned by the need to ensure we integrate the management of natural and physical resources.<sup>10</sup>

### **Air**

31. Regional and District Plans must give effect to a RPS. Therefore, it is important that pORPS provides sufficient direction on matters relating to air quality and discharges. In her evidence, Ms Wharfe details how pORPS can provide for those activities which seek to discharge to air (such as some horticultural activities) while ensuring people and communities are not adversely affected.
32. Horticulture can result in activities, such as spray drift, which may require an air discharge consent. HortNZ submits that the pORPS should provide adequate direction for regional plans so that activities that have air discharges can occur, and reverse sensitivity issues can be managed effectively.
33. Ms Wharfe recommends a number of changes to the Air provisions in pORPS, however, in these legal submissions we only canvass two as having specific legal matters for your consideration.

### *Objectionable, noxious or dangerous*

34. HortNZ made a submission that sought that the words 'offensive, objectionable, noxious or dangerous effects' be described or defined, or that AIR-P4 be deleted. Ms Wharfe,

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<sup>10</sup> Statement of Evidence of Lynette Wharfe, dated 23 November 2022, at [19].



in her evidence, considers deletion on the basis that the place to address what these terms mean is the Regional Air Plan.

35. Ms Wharfe recommends that the policy AIR-P4 be deleted and that the:<sup>11</sup>

*...Regional Air Plan develop the framework to implement the direction of the RPS, including how offensive, objectionable, noxious or dangerous adverse effects are described and managed.*

*Such an approach would enable the matters to be addressed in totality within the Regional Air Plan, rather than splitting between the pORPS and Regional Air Plan.*

*Inclusion of offensive, objectionable, noxious or dangerous effects in the Regional Air Plan is not contingent on inclusion in the pORPS, as the Air objectives provide the scope and direction for inclusion of such effects in the Regional Air Plan.*

#### *Sensitive activities*

36. HortNZ sought that a new policy be included in the Air chapter:

*Avoid locating new sensitive activities near existing activities which are permitted or consented to discharge to air.*

37. Ms Wharfe confirms that the:<sup>12</sup>

*policy was sought because it is considered that there needs to be clear direction in the pORPS that the location of activities is an important consideration in terms of likely adverse effects on people from discharges to air and that new sensitive activities locating in proximity to existing consented or permitted discharges to air is likely to lead to reverse sensitivity effects.*

38. As can be seen through the evidence of Ms Roberts and Mr Ford, horticulture provides significant economic, social and wellbeing benefits to the region and new urban development (and other sensitive activities) are encroaching on productive

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<sup>11</sup> Statement of Evidence of Lynette Wharfe, dated 23 November 2022, at [49-51].

<sup>12</sup> Statement of Evidence of Lynette Wharfe, dated 23 November 2022, at [60].

land.<sup>13</sup> By including a policy providing for sensitive activities, pORPS will address a policy gap.<sup>14</sup>

39. The methods in Air-M3 continue the chain for sensitive activities. HortNZ seeks a new method linked to the new policy for the location of activities:

*Ensure that there is spatial separation between location of new sensitive activities and existing activities that are consented or permitted to discharge contaminants to air.*

40. Ms Wharfe supports the additional method as it ensures the use of appropriate mechanisms to avoid adverse effects from discharges to air.<sup>15</sup>

## CONCLUSION

41. Food production in the Otago Region is of unique quality and importance for the rest of New Zealand, due to both the position within the domestic food supply chain, and the amount of export quality fruits and vegetables produced in the region. It is important to represent this industry within the pORPS, to protect food supply and food security for the future.
42. HortNZ submits that food production, food supply and food security must be better recognised throughout pORPS.
43. The evidence of Ms Roberts and Mr Ford confirm why horticulture is important to the region.
44. Mr Hodgson and Ms Wharfe both acknowledge the progress made towards recognition of food production, food supply and food security. In their opinions, the pORPS, with the recommended refinements to clarify food production values, is an appropriate resource management response to the resource management issues in Otago and achieves the purpose of the Act.

**DATE: 7 February 2023**



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<sup>13</sup> See the Statements of Evidence of Leanne Roberts, [38-59] and Stuart Ford, at [16-31].

<sup>14</sup> Statement of Evidence of Lynette Wharfe, dated 23 November 2022, at [69].

<sup>15</sup> Statement of Evidence of Lynette Wharfe, dated 23 November 2022, at [86].