

**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

**LEGAL SUBMISSIONS FOR HEARING WEEK 5 OF THE PROPOSED OTAGO
REGIONAL POLICY STATEMENT FOR HORTICULTURE NEW ZEALAND**

15 MARCH 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. You have already heard that HortNZ is presenting its legal submissions in two parts:
 - (a) Part 1: Overview and general submissions; and
 - (b) Part 2: Topic specific submissions.
3. We refer to our earlier submissions which discuss Part 1 in detail and will not cover those topics today.
4. These submissions address HortNZ's approach to the Energy, Infrastructure, and Transport (**EIT**) chapter of pORPS.
5. Following legal submissions today, you will hear industry evidence from Leanne Roberts and planning evidence from Lynette Wharfe regarding EIT.

PART 2 - ENERGY, INFRASTRUCTURE, AND TRANSPORT

6. As noted in her evidence Ms Wharfe states that much of the existing lineal infrastructure in the Otago region is located within rural areas, some of which passes through property owned by growers.¹
7. In her evidence, Ms Wharfe generally supported the notified version of the pORPS in relation to objectives EIT-INF-O4 and EIT-INF-O5, which sought that infrastructure be integrated in the region to support the economic activity and growth and peoples wellbeing.² Therefore, the approach Ms Wharfe seeks in responding to the specific submission points on infrastructure is that there is a need for balance to recognise the key contribution of infrastructure but also recognise the ability of others to undertake their activities for the wellbeing of society.³

¹ Statement of Evidence of Lynette Wharfe, dated 23 November 2022, at [219].

² Statement of Evidence of Lynette Wharfe, dated 23 November 2022, at [217].

³ Statement of Evidence of Lynette Wharfe, dated 23 November 2022, at [218].

8. Ms Wharfe sought to specifically respond to submissions that sought to limit activities on the basis of reverse sensitivity or the potential for there to be incompatibilities with infrastructure.⁴
9. In her evidence in chief and rebuttal evidence Ms Wharfe sets out her professional opinion on the implementation of the National Policy Statement for Electricity Transmission (**NPSET**), the National Policy Statement for Renewable Electricity Generation (**NPSREG**), and the National Policy Statement for Highly Productive Land (**NPSHPL**) through pORPS.⁵
10. These legal submissions are designed to support Ms Wharfe's evidence and in them we consider the interplay between the NPSET, NPSREG and NPSHPL.
11. HortNZ does not seek to elevate the interests of its grower members above those of the infrastructure providers or other sectors. As noted in Ms Wharfe's evidence, growers are completely reliant on the infrastructure sector and recognise that the needs for energy, infrastructure, and transport are vital in supporting theirs, and the broader community's, within which they are located.
12. It is the position of HortNZ, as articulated in Ms Wharfe's evidence, that some of the requests of submitters within the energy sector are seeking protection and provision for their activities that go beyond what is provided for by the NPSET and NPSREG.
13. Therefore, it is the submission of HortNZ that it is important the Hearings Panel carefully consider the interplay between the NPSET, NPSREG, and the NPSHPL. The remainder of these submission discuss this point.

National Policy Statement for Electricity Transmission

Nationally significant infrastructure and regionally significant infrastructure

14. The status of nationally and regionally significant infrastructure has been a topic of several submissions, in particular relating to policy EIT-INF-P15. The s42A report, along with submissions from other parties, suggested numerous amendments which substantially strengthen the protection provisions within this

⁴ Statement of Evidence of Lynette Wharfe, dated 23 November 2022, at [219].

⁵ Statement of Evidence of Lynette Wharfe, dated 23 November 2022, at [209-277].

policy, and strengthen the requirements on avoiding reverse sensitivity effects.

15. While HortNZ acknowledges that a regional policy statement may impose more stringent measures than required by an NPS, it is important that such implementation does not occur to the detriment of other nationally and regionally important considerations including those in national policy statements (such as highly productive land).
16. HortNZ opposed changes in submissions which sought to strengthen the requirements on avoiding reverse sensitivity activities, a position which is supported by Ms Wharfe in her evidence.⁶ Ms Wharfe discussed how the strengthened provisions of policy EIT-INF-P15 is an inappropriate application of the NPSET and goes beyond the intention of that policy statement to the detriment of other considerations.
17. Ms Wharfe notes that NPSET Policy 10 is not an absolute 'avoid' policy. Rather it is that '*decision makers must, to the extent reasonably possible, manage activities to avoid reverse sensitivity effects*'.⁷ It is HortNZ's position that the wording of Policy 10 clearly not only allows, but requires, decision makers to take into account other considerations. In short, it is our submission that the implementation of Policy 10 through EIT-INF-P15 should not lead to an absolute avoid policy, as sought by some submitters, as in Ms Wharfe's opinion it would be based on an inappropriate interpretation and application of the NPSET.⁸

National grid

18. Policy EIT-INF-P16 is the main policy that gives effect to the NPSET and provides for the National Grid.
19. HortNZ submitted that EIT-INF-P16 be changed to remove reference to electricity transmission because it is, by definition inclusive of the phrase electricity transmission. Reference to the term National Grid is clear and precise and as noted by Ms Wharfe is all that is required to ensure that the pORPS policy is consistent with Policy 11 of the NPSET.

⁶ Statement of Evidence of Lynette Wharfe, dated 23 November 2022, at [220-235].

⁷ Statement of Evidence of Lynette Wharfe, dated 23 November 2022, at [231].

⁸ Statement of Evidence of Lynette Wharfe, dated 23 November 2022, at [234].

National Policy Statement for Renewable Energy Generation

20. Policy EIT-EN-O2 Renewable electricity generation provides for activities that generate renewable electricity within the Otago Region.
21. Energy providers, such as Contact Energy and Trustpower, sought changes to the wording of this policy to strengthen the provisions made for renewable energy generation:⁹

*The generation capacity of renewable electricity
generation activities in Otago:*

1. is protected and maintained, if practicable, where appropriate increased maximalised within environmental limits, and....

22. The rationale for this change from submitters is that it reflects the objectives of the NPSREG. However, in our submission the wording sought goes beyond what is provided for in the NPSREG. The NPSREG requires the recognition and provision for activities which generate renewable energy; however, it does not inherently seek to protect those activities.
23. Policy B of the NPSREG enables decision-makers to consider a number of matters, including that maintenance of existing power generation may require protection of assets, operational capacity, and continued availability. Though the word “protection” does occur within the policy, it must be taken in the context it is used, which is that maintenance of existing power generation may require protection of assets, not must. The wording does not, in our submission, apply in the broader sense of a general protection of all renewable electricity generation.¹⁰ HortNZ submitted that to effect such a change in policy EIT-EN-O2 goes beyond what the NPSREG provides: that renewable electricity generation should be ‘recognised and provided’ for, not ‘protected’.
24. This submission is supported by Ms. Wharfe in her evidence.¹¹

National Policy Statement for Highly Productive Land

25. Of particular importance to HortNZ is the appropriate recognition of highly productive land within the pORPS. Much

⁹ Summary of Decisions Requested, dated 30 October 2021, submission number 00236.024, Contact Energy.

¹⁰ Statement of Evidence of Lynette Wharfe, dated 23 November 2022, at [254].

¹¹ Statement of Evidence of Lynette Wharfe, dated 23 November 2022, at [252-255]

of the existing energy, infrastructure, and transport network within the region exists within and alongside rural areas which growers rely upon for food production activities. There is a concern that stringent protection policies for energy and infrastructure in the pORPS may result in (albeit inadvertent) adverse impacts on growers by reducing their ability to utilise such land due to the application of the pORPS at the district level. Language is very important and being clear about what is protected, why it is protected and the basis upon which it is protected must be clearly articulated in this regional policy statement.

26. Further to this, LUC 1, 2, and 3 land is inevitably going to be more suitable for infrastructure (including transport) because it provides flatter areas of land upon which to build new structures. It is much easier for such infrastructure to be built on these locations. If this was to occur it would restrict the productive use of highly productive land, for food production purposes.¹² This interacts with the NPSHPL which requires decision makers to ensure highly productive land is appropriately utilised for production purposes.
27. HortNZ, among others, submitted that certain policies in this chapter be amended to reflect the NPSHPL. These cover policies:
 - (c) EIT-INF-P13 (1);
 - (d) EIT-INF-P16 (5); and
 - (e) EIT-EN-P4.
28. Ms. Wharfe supports these submissions in her evidence, noting that recognition of highly productive land is particularly appropriate following the gazetting of the NPSHPL.¹³ In short the NPSHPL is in effect now so to the extent there is scope to do so then it should be given effect to at least in part.

CONCLUSION

29. HortNZ supports the recognition of the energy and transport sectors within the EIT chapter of the pORPS. However, given the geographic overlap between areas of highly productive

¹² Statement of Evidence of Leanne Roberts, dates 23 November 2022, at [121-123].

¹³ Statement of Evidence of Lynette Wharfe, dated 23 November 2022, at [274-277].

land and areas which are suitable for infrastructure, the needs of each industry may at times conflict.

30. HortNZ seeks to ensure that the implementation of the NPSET and the NPSREG do not occur at the detriment of other industries such as horticultural primary production. Striking a balance between these interests will ensure the economic, social and wellbeing needs of people and communities is appropriately provided for.
31. Finally, HortNZ seeks that greater recognition needs to be given to the NPSHPL.

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