

**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 9 OF THE PROPOSED OTAGO  
REGIONAL POLICY STATEMENT FOR HORTICULTURE NEW ZEALAND**

**2 MAY 2023**

---



**ATKINS | HOLM | MAJUREY**

Helen Atkins/Louise Ford  
PO Box 1585  
Shortland Street  
AUCKLAND 1140

---

Solicitor on the record  
**Contact solicitor**

Helen Atkins  
Louise Ford

Helen.Atkins@ahmlaw.nz  
Louise.Ford@ahmlaw.nz

(09) 304 0421  
(09) 304 0429

## **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. Following legal submissions today, you will hear industry evidence from Leanne Roberts, economic evidence from Stuart Ford, and planning evidence from Lynette Wharfe.

## **PART 2 – LAND AND FRESHWATER**

5. These submissions discuss HortNZ's stance on the proposed rural chapter and implementation of the National Policy Statement for Highly Productive Land, and then HortNZ's approach to the Land and Freshwater (**L&F**) chapter of pORPS, with particular focus on the Land and Soil provisions.

### **Proposed new Rural Chapter.**

6. HortNZ submitted in support of a new chapter being added to pORPS which is dedicated to rural zones and associated activities. We discussed this in our submissions for Week 3 Urban Form and Development (**UFD**).
7. The Hearing Panel directed in Minute 7 that the UFD Chapter would undergo rewrites with input from numerous parties. The proposed updated version of the UFD Chapter was filed by Ms White on 31 March 2023, and incorporated greater recognition of rural issues, but did not go so far as to accept the submission of a separate chapter dedicated to rural issues.
8. HortNZ's position in response to Minute 7 remains that such a chapter would be the most appropriate recognition of rural issues, given their distinction from issues that may arise within

urban and suburban contexts.<sup>1</sup> There is additional work needed to strengthen the protection of rural activities and areas within the Otago region.

9. In her evidence, Ms Wharfe supported HortNZ's position, outlining some of the numerous reasons why a separate rural chapter is preferred.<sup>2</sup> Ms Wharfe reiterated her support for a separate chapter in her Memorandum in response to Minute 7.<sup>3</sup>

### **National Policy Statement for Highly Productive Land**

10. HortNZ's focus for the L&F chapter is the appropriate implementation of the National Policy Statement on Highly Productive Land (**NPSHPL**). The NPSHPL provides for highly productive land (**HPL**) and requires its protection from inappropriate development and reverse sensitivity effects. This provision is in recognition of the importance of land-based primary production, and the need for appropriate land to be available for such activities.
11. HortNZ submitted on the importance of the NPSHPL and has discussed it throughout the previous hearing weeks.

### **Scope**

12. The NPSHPL was gazetted in November 2022, after the pORPS was notified. Section 61 of the RMA directs that a regional council must prepare and change its regional policy statement in accordance with a national policy statement.<sup>4</sup> While the NPSHPL was not gazetted at the time of notification of pORPS, HortNZ submits that the NPSHPL should be given effect through this current process, as far as is possible within the scope of submissions.
13. HortNZ, and a number of other parties, referenced the impending policy statement in submissions, and sought the appropriate provision for rural land is consistent with the NPSHPL.<sup>5</sup> It is HortNZ's position that its submission provides the

---

<sup>1</sup> Memorandum on Behalf of Horticulture New Zealand, dated 21 April 2023, at [7].

<sup>2</sup> Statement of Evidence of Lynette Wharfe, dated 23 November 2022, at [331].

<sup>3</sup> Memorandum of Lynette Wharfe in Response to Minute 7, dated 21 April 2023, at [40].

<sup>4</sup> RMA s 61.

<sup>5</sup> Horticulture New Zealand Submission on Proposed Otago Regional Policy Statement 2021, page 4.

Hearing Panel with scope to implement the NPSHPL through this pORPS process.

#### *Definition of HPL*

14. The NPSHPL requires each regional council to undertake mapping of general rural and rural production zoned land, with a particular focus on LUC 1, 2, and 3 land, to determine which of this land should be identified as highly productive land in the context of that region. Interim definitions for HPL require councils to treat land that is zoned general rural or rural production, and is LUC 1, 2, or 3, as highly productive land.<sup>6</sup>
15. The Ministry for the Environment has produced guidance documentation to aid local authorities when implementing the NPSHPL.<sup>7</sup> Though HortNZ acknowledges that such guidance is not legally binding,<sup>8</sup> it can be helpful in unpacking new policy statements. HortNZ considers that the guidance for NPSHPL has utility in understanding how Central Government envisions HPL will be protected, in particular, the acknowledgement that this may differ from region to region to reflect local circumstances.<sup>9</sup>
16. As drafted, the pORPS includes a transitional definition of HPL which refers to the definition provided in this clause 3.5(7) of the NPSHPL, i.e., HPL is defined as all LUC 1, 2, and 3 land within rural zones that is not already under consideration for development or plan change.
17. However, the definition of HPL does not provide for consideration of land as provided for in clause 3.4(3) of the NPSHPL, prior to mapping being included in an RPS.<sup>10</sup> As noted by Ms Wharfe, the consequence is that "land which may be deemed highly productive through a mapping process has no protection in the interim until mapping has occurred and included in a regional policy statement."<sup>11</sup>
18. HortNZ submits that in Otago, there is evidence to look more broadly than just at LUC 1, 2, and 3. As discussed by Ms

---

<sup>6</sup> NPSHPL, clause 3.5(7).

<sup>7</sup> National Policy Statement for Highly Productive Land: Guide to Implementation March 2023.

<sup>8</sup> *Federated Farmers of NZ v Northland Regional Council* [2022] NZEnvC 016, at [29].

<sup>9</sup> Above n3, see pages 58 and 59 "Mapping Highly Productive Land".

<sup>10</sup> Statement of Evidence of Lynette Wharfe, dated 23 November 2022, at [118].

<sup>11</sup> Statement of Evidence of Lynette Wharfe, dated 23 November 2022, at [119].

Roberts, the Otago region and specifically the Central Otago area, is a key region for food production in New Zealand.<sup>12</sup> Of note, is that much of the land utilised for land-based primary production within Central Otago is categorised as LUC 4 or 5.<sup>13</sup> These areas of land are particularly suited to the pipfruit and summerfruit crops which are a mainstay in Central Otago, and a vital component of the region's economy.<sup>14</sup> Hence, in the context of the Otago Region, such soils are highly productive.<sup>15</sup>

19. The inclusion of some Central Otago LUC 4 and 5 land within HPL of the Otago Region is expected to occur under the broader powers afforded to local authorities under clause 3.4(3) which recognise the existing productive use of these areas. Hence, it is appropriate for the transitional definition to recognise, and protect, these existing areas of land utilised for land-based primary production.
20. Through Ms Wharfe's evidence, HortNZ seeks a mechanism is included in pORPS that identifies HPL sooner than the three years provided for the Council to identify and map land other than LUC 1, 2 or 3.<sup>16</sup>
21. Such an amendment would enable land that is currently highly productive within the context of the Otago Region (including LUC 4 and 5) are appropriately recognised and protected as HPL. Ms Wharfe considers this to be particularly relevant "where there may be private plan changes or development proposals for land that may be identified as highly productive prior to inclusion of mapping in the regional policy statement."<sup>17</sup>
22. Ms Wharfe, in her evidence considers there are two mechanisms that could be used to address this issue:<sup>18</sup>
  - (a) Retain the definition of highly productive land recommended in the s42A Report until the mapping

---

<sup>12</sup> Statement of Evidence of Leanne Roberts, dated 23 November 2022, at [52].

<sup>13</sup> Statement of Evidence of Stuart Ford, dated 23 November 2022, at [35].

<sup>14</sup> Statement of Evidence of Stuart Ford, dated 23 November 2022, at [29-31].

<sup>15</sup> Statement of Evidence of Stuart Ford, dated 23 November 2022, at [36].

<sup>16</sup> Statement of Evidence of Lynette Wharfe, dated 23 November, at [129].

<sup>17</sup> Statement of Evidence of Lynette Wharfe, dated 23 November, at [130].

<sup>18</sup> Statement of Evidence of Lynette Wharfe, dated 23 November, at [132].

and identification according to the NPSHPL has occurred; or

- (b) Include the definition of highly productive land from the NPSHPL with an additional interim provision included with reference to LF-LS-P19 (4).

#### *Definition of productive capacity*

- 23. The Second Supplementary s42A Report recommended that the definition for productive capacity used in the NPSHPL should be adopted within the pORPS and applied to all instances of productive capacity. The definition is considered to be consistent with the criteria already set out in LF-LS-P19(1).
- 24. However, the definition from the NPSHPL limits productive capacity to land-based primary production. Within the pORPS there are other references to productive capacity outside of the context of highly productive land or of land-based primary production.
- 25. Adopting the NPSHPL definition, and applying it to all instances of productive capacity, may inadvertently exclude other activities for which productive capacity is relevant. HortNZ therefore seeks that the definition for productive capacity be amended to expressly reference it is in relation to highly productive land only, as set out in the evidence of Ms Wharfe.<sup>19</sup>

#### *Other Policies in the Land and Freshwater Chapter*

- 26. HortNZ submitted on a number of policies within the LF chapter of the pORPS. We refer to the outstanding submission points contained within the submission, further submission, and the briefs of evidence from HortNZ's experts. Each of the outstanding matters relate to the implementation and application of the NPSHPL in pORPS.

---

<sup>19</sup> Statement of Evidence of Lynette Wharfe, dated 23 November 2022, at [146-151].

27. These outstanding submission points, as detailed in the evidence of Ms Wharfe, include the following:
- (c) proposed amendments to new objective LF-LS-O11A;<sup>20</sup>
  - (d) policy LF-LS-P19, including amendments to subparagraphs (2) and (3), and a proposed new subparagraph (4);<sup>21</sup>
  - (e) support new method LF-LS-M11A with amendments;<sup>22</sup>
  - (f) strengthening method LF-LS-M12(4)<sup>23</sup>; and
  - (g) changes within the Urban Form and Development Chapter as suggested by the s42A Report and Second Supplementary s42A Report.<sup>24</sup>

## CONCLUSION

28. HortNZ seeks greater recognition of the NPSHPL both within the current LF chapter, and through the inclusion of a new chapter for Rural Issues.
29. HortNZ considers that the Panel has the requisite scope to recognise the NPSHPL given the submissions of parties which referred to the impending policy statement.
30. HortNZ seeks changes to the definition of HPL, which are intended to greater recognise the reality of horticultural production within the Central Otago Region.
31. Additionally, HortNZ seeks changes to the definition of productive capacity to ensure its application in relation to HPL only, which will reduce the risk of inadvertently excluding other productive activities outside of HPL.

---

<sup>20</sup> Statement of Evidence of Lynette Wharfe, dated 23 November 2022, at [143].

<sup>21</sup> Statement of Evidence of Lynette Wharfe, dated 23 November 2022, at [165], [169], and [182].

<sup>22</sup> Statement of Evidence of Lynette Wharfe, dated 23 November 2022, at [185] and [190].

<sup>23</sup> Statement of Evidence of Lynette Wharfe, dated 23 November 2022, at [197-199].

<sup>24</sup> Statement of Evidence of Lynette Wharfe, dated 23 November 2022, at [203-204].

32. Finally, HortNZ continues to seek a separate Rural chapter to appropriately address rural issues and provide for rural activities within the pORPS.

**DATE: 2 May 2023**

A handwritten signature in blue ink that reads "L. O. Ford". The signature is written in a cursive, flowing style.

---

Louise Ford / Amelia Scharling  
Counsel for Horticulture New Zealand