

UNDER THE RESOURCE MANAGEMENT ACT 1991
IN THE ENVIRONMENT COURT AT AUCKLAND



IN THE MATTER of a reference to the Environment Court
under Clause 14 of the First Schedule to the
Resource Management Act 1991

AND

IN THE MATTER of the Proposed Regional Policy Statement
for Otago

BETWEEN Horticulture New Zealand

Appellant

AND Otago Regional Council

Respondent

TO:

The Registrar
Environment Court
Christchurch

1. Name of applicant:

Horticulture New Zealand
P.O. Box 10 232
Wellington
2. Name of authority issuing the proposed policy or plan or making a decision on submissions:

Otago Regional Council
3. Name of Plan Appealed:

Proposed Regional Policy Statement for Otago
4. Horticulture NZ made submissions and further submissions on the Proposed Regional Policy Statement for Otago.
5. Horticulture NZ received notice of the decision on 3 October 2016. The Council advised on 7 November 2016 that the Environment Court had granted a time extension for lodging appeals until 9 December 2016.
6. Horticulture NZ is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.

7. Decisions appealed against:

1. Chapter 1 Resource management in Otago is integrated
Decision 5.1 Integrated resource management (Pg 28)
2. Policy 3.1.1 Fresh water (was Policy 2.1.1)
Decision 7.2 Fresh water (Pg 43)
3. Policy 3.1.4 Water shortage (was Policy 4.4.1)
Decision 7.3 Water allocation and use (Pg 48)
4. Policy 3.1.7 Soil Values (Was policy 2.1.5)
Policy 3.2.17 Identifying significant soil (was 2.2.14)
Policy 3.2.18 Managing significant soil (was 2.2.15)
Decision 7.7 Soil (Pg 59)
5. Policy 4.3.1 Managing infrastructure activities (was Policy 3.4.2)
Decision 8.4 Infrastructure (Pg 79)
6. Policy 4.4.5 Electricity distribution infrastructure (was Policy 3.6.5)
Decision 8.4 Infrastructure (Pg 79)
7. Policy 4.5.1 Managing for urban growth and development (was Policy 3.8.1)
Decision 8.7 Growth (Pg 95)
8. Policy 4.6.2 Use, storage and disposal of hazardous substances (was Policy 3.9.2)
Decision 8.8 Waste hazardous substances and contamination (Pg 99)
9. Policy 5.3.1 Rural activities (was Policy 4.3.1)
Decision 9.3 Management of land for Economic activities (pg 114)
10. Policy 5.4.5 Pests plants and animals (was policy 4.5.5)
Decision 9.8 Biosecurity and pests (Pg 126)
11. Anticipated Environment Results
Decision 10.3 Anticipated Environmental Results and Monitoring (Pg 138)

The reasons for the appeals and relief sought are detailed in the table below.

8. General Relief Sought:

- 8.1 That consequential amendments be made as a result of the relief sought from the specific appeal points above.



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Horticulture New Zealand

Dated: 9 December 2016

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Decisions of Otago Regional Council on the Proposed Regional Policy Statement for Otago which are appealed by Horticulture New Zealand (HortNZ)

Appeal Point	Topic and Provisions	Relevant Decisions	Reasons	Relief sought
1.	Chapter 1 Resource management in Otago is integrated	5.1 Integrated resource management (Pg 28)	HortNZ supports the new chapter of integrated resource management as it recognises the interlinked nature of resource management. This is particularly relevant to primary production as a production system requires a range of attributes to enable a production system to be effective. For instance both water and soil attributes are necessary. While the new chapter recognises integrated management and economic wellbeing there is no specific identification of the integrated nature of primary production systems. HortNZ made a number of submissions and further submissions on policies which are incorporated into Chapter 1 that sought greater recognition of primary production systems, particularly food production and seeks that these be reflected in the new Chapter 1.	Add a new point to Policy 1.1.1: Recognising the integrated nature and use of resources in primary production systems
2	Policy 3.1.1 (was Policy 2.1.1) Fresh water	7.2 Fresh water (Pg 43)	HortNZ sought that food production values be provided for in Policy 2.1.1. The decision states that the focus is to manage fresh water and it is not considered appropriate to provide for specific uses such as food production. The decisions policy provides for a range of use values, including recreation. The NPSFM provides for food production and it is considered that the policy should reflect the intent of the NPSFM and include food production or food security as one of the aspects that fresh water will be managed to provide for. Food security is an important issue for the region and fresh water is an important component of achieving such security. The addition is sought to provide a policy framework when considering the importance of food production and food security when developing regional and district plans and assessing resource consents. There is recognition of the importance of soil to primary production but the soil is of little value unless	Amend Policy 3.1.1 Fresh water by adding 'food production' as an additional point.

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			fresh water is available. While the plan separates the various resources they collectively contribute to a production system so need to be addressed in an integrated way.	
3	Policy 3.1.4 (was Policy 4.4.1) Water shortage	Decision 7.3 Water allocation and use (Pg 48)	Policy 3.1.3 has been relocated from Policy 4.4.1 c) and d). HortNZ supported Policy 4.4.1. However the decision amends clause d) from 'Enabling water harvesting and storage' to 'encouraging water harvesting and storage'. No specific reason is provided for this change to the policy direction. The ability to undertake water harvesting and storage are important to the Otago Region and there needs to be a clear direction in the RPS to ensure that water harvesting and storage can be undertaken. A policy of 'encourage' is not an adequate framework to provide for water harvesting and storage, particularly through regional plans.	Amend Policy 3.1.4 b) by deleting 'encourage' and replace with 'Enable'
4	Policy 3.1.7 Soil Values (Was policy 2.1.5) Policy 3.2.17 Identifying significant soil (was 2.2.14) Policy 3.2.18 (was 2.2.15) Managing significant soil	Decision 7.7 Soil (Pg 59)	HortNZ made a number of submissions on provisions relating to soil. Changes have been made to a number of aspects as a result of submissions. However HortNZ remains concerned about the lack of food production. The decisions consider that the importance of soil for primary production is explicitly recognised in a number of policies and that these policies provide an appropriate balance. While there is recognition of soil resources for primary production in Policy 3.1.7 HortNZ considers that a particular focus is necessary for food production as soil is a critical component for food production. Policy 3.2.17 seeks to use criteria to identify significant soil and included the significance for primary production. However HortNZ sought that the importance of food production also be included as a criteria as it is a specific primary production use	Amend Policy 3.1.7 by adding 'and food production' to f): Maintain or enhance soil resources for primary production, particularly food production. Amend Policy 3.2.17 by adding to b) Degree of significance for primary production <u>and importance for food production.</u> Amend Policy 3.2.18 by deleting 'Protect' and replace with 'Manage'. Add an additional point to 3.2.18: Recognising that while soil may be significant it may not be able to be utilised for primary production unless other

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			<p>that should be taken into account when determining the significance of soils.</p> <p>Policy 3.2.18 sets out the framework for managing significant soils, with a premise of 'protect' and 'avoid'. The RMA seeks that the life supporting capacity of soils is safeguarded. Such an approach does not necessarily mean to 'protect' or 'avoid'. In addition soils are not a sole attribute for a production system and there needs to be recognition that while a soil may be determined as 'significant' the extent to which it is able to be utilised is dependent on the availability of other attributes of the production system.</p>	<p>attributes required for a production system are available.</p>
5.	<p>Policy 4.3.1 Managing infrastructure activities (was policy 3.4.2)</p>	<p>Decision 8.4 Infrastructure (Pg 79)</p>	<p>Policy 4.3.1 establishes the framework for managing infrastructure activities, including protecting infrastructure corridors for infrastructure needs, now and for the future. Policy 4.3.4 relates to protecting nationally and regionally significant infrastructure and includes protecting infrastructure corridors from sensitive activities. HortNZ supports the inclusion of sensitive activities in Policy 4.3.4.</p> <p>Protecting corridors for nationally and regionally significant infrastructure from sensitive activities is important, but it is unclear why Policy 4.3.1 should seek to protect all infrastructure corridors even if they are not nationally or regionally significant infrastructure.</p>	<p>Delete Policy 4.3.1 e) or amend by adding: Protecting infrastructure corridors <u>from sensitive activities</u> for infrastructure needs, now and for the future.</p>
6.	<p>Policy 4.4.5 Electricity distribution infrastructure (was Policy 3.6.5)</p>	<p>Decision 8.4 Infrastructure (Pg 79)</p>	<p>Policy 4.4.5 protects electricity distribution infrastructure, which are lines other than the National Grid. HortNZ sought to ensure that land uses over which the electricity distribution lines pass are not adversely affected or penalised by the protection the policy provides. This could have significant effect on rural land uses when implemented through district plans. It is recognised</p>	<p>Amend Policy 4.4.5 by adding an additional point: Recognise the existing land uses over which electricity distribution infrastructure may pass and ensure existing land uses are not penalised by its location.</p>

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			that there should be a protection afforded to nationally and regionally significant infrastructure but Policy 4.4.5 effectively provides the same level of protection to lower order infrastructure. There needs to be an adequate balance in the policy between providing for infrastructure and avoiding adverse effects on other land users.	Amend Policy 4.4.5 e) by adding: from sensitive activities.
7.	Policy 4.5.1 Managing for urban growth and development (was Policy 3.8.1)	Decision 8.7 Growth (Pg 95)	HortNZ made submissions on both Policies 3.8.1 and 3.38.3 which sought to manage fragmentation of rural land. Both policies are now incorporated into Policy 4.5.1. However there is no specific recognition of the issue of fragmentation of rural land in Policy 4.5.1. There is a need to minimise adverse effects on rural activities and significant soils but this does not adequately incorporate the issues relating to fragmentation. It is important in providing policy direction to district plans that this issue is clearly stated in the RPS.	Amend Policy 4.5.1 by adding a new clause: Avoid development or fragmentation of land which forecloses or undermines the potential of rural land to be used for primary production.
8.	Policy 4.6.2 Use, storage and disposal of hazardous substances (was Policy 3.9.2)	Decision 8.8 Waste hazardous substances and contamination (Pg 99)	<p>HortNZ made submission and further submissions relating to hazardous substances. Policy 4.6.2 has been restructured to address only hazardous substances and this is supported.</p> <p>Clause c) retains 'other values. However Recommendation 26 (pg 16) recommends that 'on other values' is deleting from avoiding, remedying or mitigating adverse effects' throughout the RPS. Therefore 'other values' should be deleted from Policy 4.6.2.</p> <p>However HortNZ remains concerned about clause e) regarding disposal of hazardous substances only at 'authorised facilities', which is not defined. It is recognised that there needs to be care in disposal of hazardous substances and this is addressed through HSNO controls on substances. Therefore Policy 4.6.2 may override the HSNO controls. The submission sought that there be specific recognition of disposal of agrichemicals and</p>	<p>Amend Policy 4.6.2 c) by deleting 'other values'.</p> <p>Amend Policy 4.6.2 e); Ensuring hazardous substances are treated or disposed of appropriately in accordance with relevant disposal instructions, which may include use of an authorised facility.</p> <p>Define 'authorised facilities'.</p>

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			fertilisers for primary production. The decision states that no changes are required to address agrichemical and fertiliser use of farms as the provision relates to disposal, not use. In respect of Policy 4.6.2 HortNZ is concerned about the disposal of excess fertiliser or agrichemicals and recognises that care needs to be taken but that best practice should be used for such disposal. For instance NZS8409:2004 Management of Agrichemicals sets out a range of mechanisms for disposal of agrichemicals that are considered best practice but do not require an 'authorised facility'. There should be recognition of the use of best practice for disposal of hazardous substances, which may include use of an authorised facility for particular substances.	
9.	Policy 5.3.1 Rural Activities (was Policy 4.3.1)	Decision 9.3 Management of land for Economic activities (pg 114)	<p>HortNZ made submissions on Policy 4.3.1 Rural activities but sought inclusion of food production, but the decision does not recommend inclusion though no specific reason is given.</p> <p>There is inclusion of managing pest species throughout the plan but this is not included in respect of rural activities. Pest management is an important component of enabling primary production and should be specifically included in Policy 5.3.1.</p>	<p>Amend Policy 5.3.1 by adding a new point: Recognising the importance of the rural area in providing food production and food security.</p> <p>Add to Policy 5.3.1: Controlling the adverse effects of pest species, prevent their introduction and reduce their spread and enable the removal and destruction of diseased material for biosecurity purposes</p>
10.	Policy 5.4.5 Pest plants and animals (Was policy 4.5.5)	Decision 9.8 Biosecurity and pests (Pg 126)	<p>Policy 5.4.5 includes a list of activities which are sought to be safeguarded from the pest species. HortNZ sought that primary production be added to the list but the decision rejects the submission on the basis that primary production is included as an 'ecosystem service that supports economic activities.' The definition of ecosystem services is: the resources and processes the environment provides that people benefit from e.g. purification of water and air, pollination of plants and decomposition of waste.</p>	<p>Amend Policy 5.4.5 by adding: Control the adverse effects of pest species, prevent their introduction and reduce their spread <u>and enable the removal and destruction of diseased material for biosecurity purposes</u> to safeguard:</p> <p>h) primary production.</p>

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			<p>It is not clear from this definition that primary production activities are classed as ecosystem services. Given the importance of pest control to primary production it is important that it is clearly recognised as a matter to be provided for.</p> <p>In addition HortNZ sought throughout the RPS that there is adequate provision for removal of material infected by unwanted organisms. The decisions reject these submissions on the basis that the current provisions do not prevent such control. Horticulture NZ does not consider that such removal is clearly anticipated in the plan as provisions seeks to control the adverse effects of pest species, prevent their introduction and reduce their spread. Horticulture NZ seeks specific reference to the need to remove material infected by unwanted organisms so that there is a clear direction in the RPS that can be given effect to in regional and district plans.</p> <p>The decision states that there are a number of methods that provide general direction on implementation of Policy 5.4.5. However the issue is significant and there should be a specific method that set out the requirements to implement Policy 5.4.5.</p>	<p>Add a specific method for implementing Policy 5.4.5 for both regional and district councils under Methods 3 and 4 as follows: Regional Plan will set objectives, policies and methods to implement provisions for management of pest species and in particular removal and disposal of unwanted organisms for biosecurity purposes. City or District Plans will set objectives, policies and methods to implement provisions for management of pest species and in particular removal and disposal of unwanted organisms for biosecurity purposes.</p>
11.	Anticipated Environment Results	Decision 10.3 Anticipated Environmental Results and Monitoring (Pg 138)	<p>AER.1 Resource management in Otago is integrated includes both natural and physical resources but the AER is limited to natural resources. The AER should reflect the objective.</p> <p>AER 3.1 is linked to Objective 3.1 and seeks that water bodies support healthy ecosystems, are safe for swimming, and maintain their natural form and character.</p>	<p>Amend AER 1.1: Natural and physical resources are managed in an integrated way.</p> <p>Amend AER 3.1: Water bodies support healthy ecosystems and maintain their natural form and character.</p>

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			Objective 3.1 and the related poly 2.1.1 do not specifically set out policies to require all water bodies to be safe for swimming. The AER should reflect the objective and policy.	

Advice to recipients:

How to become a party to proceedings

You may be a party to the appeal if you made a submission or further submission on the matter of this appeal.

To become a party you must:

- within 15 working days after the period for lodging a notice of appeal ends lodge a notice of your wish to be a party to the proceedings (in Form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant
- Within 20 working days after the period for lodging a notice of appeal ends serve copies of your notice on all other parties

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see Form 38).

How to obtain copies of documents relating to the appeal

The copy of this notice served on you does not attach a copy of the appellant's submission or the decisions appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any question about this notice contact the Environment Court in Wellington.

Contact details of Environment Court for lodging documents

Location: District Court Building
Level 1
282 Durham Street
Christchurch 8013

Postal: PO Box 2069
Christchurch 8013

OR

WX11113
Christchurch
New Zealand

Telephone: 03 365 0905 or 03 353 8546
Fax: 03 365 1740

Annexures:

- A) Copy of the applicant's submission and further submission to which this appeal relates.
- B) Copy of the relevant sections from the respondent's decision on submissions.
- C) Names and Address of persons to be served with a copy of this notice.