

SUBMISSION ON

Review of Electricity Hazards from Trees Regulations (2003)

5 May 2023

To: Ministry Business, Innovation and Employment

Name of Submitter: Horticulture New Zealand

Contact for Service:

Leanne Roberts

Senior Environmental Policy Advisor

Horticulture New Zealand

PO Box 10-232 WELLINGTON

Ph: 027 546 1655

Email: leanne.roberts@hortnz.co.nz

OVERVIEW

Submission structure

- 1 Part 1: HortNZ's Role
- 2 Part 2: Executive Summary
- 3 Part 3: Submission

Our submission

Horticulture New Zealand (HortNZ) thanks the Ministry of Business, Innovation and Employment (MBIE) for the opportunity to submit on the Review of Electricity Hazards from Trees (2003) and welcomes any opportunity to continue to work with MBIE and to discuss our submission.

HortNZ could not gain an advantage in trade competition through this submission.

HortNZ wishes to be heard in support of our submission and would be welcome the opportunity to discuss our submission further with MBIE.

The details of HortNZ's submission and decisions we are seeking are set out in our submission below.

HortNZ's Role

Background to HortNZ

HortNZ represents the interests of approximately 5,500 commercial fruit and vegetable growers in New Zealand who grow around 100 different fruits, and vegetables. The horticultural sector provides over 40,000 jobs.

There is approximately, 80,000 hectares of land in New Zealand producing fruit and vegetables for domestic consumers and supplying our global trading partners with high quality food.

It is not just the direct economic benefits associated with horticultural production that are important. Horticulture production provides a platform for long term prosperity for communities, supports the growth of knowledge-intensive agri-tech and suppliers along the supply chain; and plays a key role in helping to achieve New Zealand's climate change objectives.

The horticulture sector plays an important role in food security for New Zealanders. Over 80% of vegetables grown are for the domestic market and many varieties of fruits are grown to serve the domestic market.

HortNZ's purpose is to create an enduring environment where growers prosper. This is done through enabling, promoting, and advocating for growers in New Zealand.



Executive Summary

1. What is the problem?

The discussion paper sets out the existing regime and considers what are the problems of the existing regulations. The paper sets out seven issues that have been identified:

1. Risk of trees outside the Growth Limit Zone (GLZ) falling on electricity assets
2. Over-trimming of hazardous vegetation, reducing economic or amenity value
3. Regulations apply at an individual tree level
4. Application of the 'no-interest' notices and first trim work
5. Regulations don't sufficiently consider impact of new tree planning and risk for network assets
6. Access by works owners onto private land
7. Dispute resolution process.

Submission

1. Horticulture and trees

Trees are the basis of many horticultural operations, and many horticulturalists have electricity lines running through their properties.

Tree maintenance is fundamental to any tree-based horticultural operation¹. Regular pruning and maintenance are essential for managing tree shape, tree health, size, and fruit production.

Some orcharding operations require shelter² of 5-10m depending on the crop and size of the planted area. This is to provide protection to crops which are susceptible to wind damage, are shallow rooting or may be vulnerable when exposed to wind. Operations with shelterbelts often have well maintained cut-outs to provide access to lines infrastructure for maintenance. Any removal or prevention of shelterbelt use will reduce the productivity of the planted area.

There are regular visits to orchards throughout the annual growing cycle, however this does not mean people are working on each tree every day, so the risk to human safety is comparatively low. There are industry guides developed to encourage safe working practices around lines infrastructure³, HortNZ would welcome the opportunity to work closer with WO to ensure growers are able to get good specialty advice for safely working around lines infrastructure.

Modern orcharding systems and techniques tend to discourage height and focus on encouraging growth in a way that enables more efficient production⁴. For example, some orchards espalier branches onto crop support structures limiting tree height and dimension. The risk from such a controlled style of growing is much lower and should be given consideration.

It is noted that MBIE states that they have spoken to vegetation owners, including horticulturalists. HortNZ is not aware of horticulturalists that have been spoken to and is aware that this process was started some time ago. Growers' practices, and feedback may have changed in this time.

HortNZ is not aware of examples where horticulture trees have taken out power lines.

¹ Orcharding crops such as apples, pears, summerfruit, Kiwifruit vines, avocado orchards etc.

² Shelter can be in the form of shelterbelt trees

³ [Growers-Guide.pdf \(nzkgi.org.nz\)](https://www.nzkgi.org.nz/growers-guide.pdf)

⁴ 2D growing for example, enables use of tractor and machinery.

HortNZ is actively involved in regional and district plan processes across the country and the electricity providers⁵ are also involved seeking large setback for their lines within the district plan rules. This is in addition to the provisions in NZECP34: 2001 and the Hazard from Tree Regulations.

Similar issues emerge during such plan processes where the electricity providers seek protection without due regard to the impact on the landowners over whose land the lines cross. In the horticulture context this can lead to reduced productivity in an orchard and the location of a line can effectively sterilise the land from productive use. This is particularly relevant on highly productive land which is important for food supply and food security which is recognised in the National Policy Statement for Highly Productive Land (NPSHPL).

2. Other high-level topics to consider

2.1. Highly productive land

The National Policy Statement for Highly Productive Land (NPS HPL), which came into effect 17 October 2022⁶, was put in place to protect the productive capacity of the land, and from the outset applies to Land Use Classes (LUC) 1, 2, & 3. The NPS HPL provides for the productive capacity of the land to be prioritised and maintained.

There is a conflict between the proposal to increase the Growth Limit Zone (GLZ), further restricting and reducing areas in productive orchard, and the risks being addressed through this review. The risk to lines infrastructure from well-maintained orchard tree-crops, which are generally under 10m tall, is not as significant as from taller trees – such as unmanaged urban trees or plantation forestry. However, the proposed review to the Hazards from Trees Regulations can capture horticultural tree crops.

The NPS HPL requires an integrated approach for the management of highly productive land, freshwater and urban development. The NPS HPL seeks that reverse sensitivity is managed so as not to constrain land-based primary production activities on highly productive land. Horticultural practices such as frost-fans, bird scarers, crop protection products and crop protection infrastructure, should be provided for to ensure horticulture is not constrained in highly productive land and horticulturalists can operate in a safe manner.

2.2. Safeguarding Food Security

The Paris Agreement speaks to a 'fundamental priority of safeguarding food security' and action in a manner that does not threaten food production. Food security is a nationally important issue which needs to be addressed at a strategic level. We have a national food producing system that relies on growing vegetables

⁵ Both Transpower and the National Grid and local distribution providers.

⁶ Source?

and fruit in pockets of highly productive land, with good climate and access to freshwater.

Vulnerabilities in our domestic food supply network have been highlighted during recent weather events with availability of fresh New Zealand grown produce being impacted by the recent rain events, and Cyclone Gabrielle causing damage to key horticultural growing areas such as Pukekohe, Northland, and The East Coast regions of Gisborne and Hawkes Bay⁷. The timing of these events has also increased the scale of impact, as many seasonal crops were in their harvest period and a years-worth of investment into growing the crop has been lost, along with the product and flow on impacts to employment, health, and safety. The recovery in some areas from these events is likely to be long, and the ongoing supply of fresh fruit and vegetables vulnerable during this recovery. Covered crops as pointed out above, aren't exposed to the same vulnerabilities, so while they require a certain level of carbon in their production, they provide a more secure growing environment which is less likely to be disrupted due to extreme weather events.

Fruit and vegetables are essential for the human health of New Zealanders. It is important to draw a link between the impact of weather events, supply of fresh NZ grown produce and retail prices that consumers experience because of these supply interruptions. One key point is that weather events on the scale of Cyclone Gabrielle, and the types of horticulture in the areas impacted, is likely to mean a longer recovery than one season.

The price of NZ grown fresh fruit and vegetables has been steadily increasing prior to these weather events⁸. This can be attributed to labour shortages, increased costs in compliance, increased costs of horticultural supplies as well as freight and energy costs⁹. The increase of energy costs directly impacts the cost of production in New Zealand of fresh produce. Consumers are price driven, and the consequence of high production costs of New Zealand produce, is that retailers will look to importing produce, or substitutes to meet consumer expectations of price. Importing fresh fruit and vegetables produced in other countries that can otherwise be grown in New Zealand increases carbon leakage due to freight and supports less climate-friendly growing and environmental practices in other countries. Any change that may further threaten food security in New Zealand needs to be carefully considered and avoided.

Food insecurity is pervasive and harmful in New Zealand, linked with poor physiological health outcomes and psychological distress.¹⁰ A 2019 Ministry of Health study analysed household food insecurity among children in New Zealand

⁷ [Cyclone Gabrielle's impact on the New Zealand economy and exports - March 2023 | New Zealand Ministry of Foreign Affairs and Trade \(mfat.govt.nz\)](#)

⁸ [Fruit and vegetables drive up annual food prices | Stats NZ](#)

⁹ [Food prices are up, but the cost to grow it has skyrocketed | Stuff.co.nz](#)

¹⁰ [The association of food security with psychological distress in New Zealand and any gender differences](#), Social Science & Medicine 2011

and estimated that 19% of all children in New Zealand (174,000) live in food-insecure households.¹¹ There are complex social and economic reasons why people struggle to meet their nutritional needs. Addressing the issue of food insecurity will be even more difficult, however, if burdensome legislation impedes growers' work, reducing supply and forcing prices of healthy food to increase.

Beyond the first step of feeding communities, it is critical that we prioritise healthy, nutritious foods to improve health outcomes. New Zealanders diets aren't as healthy as they could be. Ministry of Health data indicates that only 33.5% of adults and 44.1% of children are meeting fruit and vegetable intake guidelines.¹² For families living in deprived areas, increases in fruit and vegetable prices compel them to substitute the purchase of healthier whole fruit and vegetables with cheap, energy-dense, and nutrient-poor products.¹³

11 Ministry of Health. (2019). *Household food insecurity among children, New Zealand Health Survey*

12 New Zealand Health Survey Data. Accessed: https://minhealthnz.shinyapps.io/nz-health-survey-2019-20-annual-data-explorer/_w_b6ac76b1#!/explore-topics

13 Rush, E., Savila, F., Jalili-Moghaddam, S., & Amoah, I. (2018). Vegetables: New Zealand Children Are Not Eating Enough. *Front. Nutr.*

3. Discussion Questions

3.1. Context

Q.1

Do you agree with the issues that MBIE has identified with the Trees Regulations? Why, or why not?

GENERALLY AGREE

HortNZ agrees there is an ongoing tension between the wants of Electricity Lines companies, and growers' needs.

- Horticulturalists grow fruit and vegetable crops where the physical size and height of trees are not that of plantation forestry. HortNZ does not believe it is necessary increase the Growth Limit Zone (GLZ) beyond the current range of 4m when there is electricity network infrastructure within, or adjacent to a horticultural operation.
- Horticultural operations rely on the ability to safely use productive land to produce fresh fruit and vegetables for consumption. If the GLZ is increased, this reduces the productive capacity of the land available to an operation and will have an adverse economic impact on an operation.
- There is a tension between the proposed tree regulations and the National Policy Statement of Highly Productive Land (NPSHPL) which seeks to enable the productive capacity of LUC 1, 2 & 3 land, and land identified and mapped by regional councils as highly productive land. Many horticultural operations are located on these classes of land or on classes of land that may be HPL, such as class 4 land in Central Otago where there are many orchards and electricity lines.
- Costs and compensation for loss of productive land must be considered if changes are made.
- HortNZ believes that Works Owners (WO) have an obligation to provide expertise and advice about how to safely work near High Voltage Lines - acknowledge that growers have a high level of knowledge regarding tree maintenance, pruning, tree health and that Horticultural operations in vicinity of Electricity Lines need to have a high level of working knowledge about safely working around these.
- Electricity infrastructure on private land can also present a risk to horticultural operations and we note that WO are able to have use of this land at no cost.
- The time of year that access is sought is also an important consideration for horticulturalists, with a need to ensure that critical periods such as harvest are avoided.

The discussion identifies that Works Owners (WO) have more interactions with large commercial businesses (such as forest owners) rather than with individuals or small businesses. But the regulations apply across all types of vegetation. HortNZ considers that the GLZ should be related to the height of the tree not just the electricity voltage of the line. It is inappropriate to apply the same GLZ to a large plantation pine tree as an orchard tree. From this perspective HortNZ believes risk-based approach would be suitable.

3.2. Evidence on the current problem

MBIE consulted with a range of stakeholders, most of whom were either works owners or vegetation owners or vegetation owner organisations.

We note that HortNZ, representing horticulturalists, was not consulted and seek to be added to the MBIE consultation data base.

The discussion sets out concerns of vegetation owners that their business is effectively subsidising a public good by sacrificing some of their land for lines to pass through, while being unable to pass on the cost of lost production. HortNZ agrees with that issue, especially where the land is highly productive land.

Works owners are concerned about the low awareness that the EDB's are not responsible for repairing lines owned by customers. HortNZ considers that this is a matter of public relations and liaison with landowners by companies and not a matter for regulations to address.

The discussion document outlines discussion with Māori and iwi interests. It should be noted that Māori have significant investment in horticulture and these interests are affected by the regulations.

Q.2

What consideration do you believe the Trees regulations should have in respect to Te Tiriti o Waitangi?

We believe consideration needs to be given to land with lines infrastructure that has been part of a Te Tiriti o Waitangi Settlement. This land was returned under a Te Tiriti Settlement process, and at that time further considerations could have been incorporated into the conditions of the land at the time of return/redress.

- Agree there is a conflict between the changes Works Owners seek and land in Māori ownership - particularly land that has been returned to iwi ownership as part of a treaty settlement.
- WO are infringing on property rights and agree that the Crown had the ability to put in place easements to favour Lines owners prior to settlement and did not do so.
- WO are limiting the productive ability of land returned in a settlement after the fact.

Q.3

Do you think that the Trees Regulations should restrict the distance in which new trees can be planted or replanted in proximity to electricity lines?

The discussion document considers whether there should be regulations over new plantings near powerlines. Transpower considers that there should be a trigger distance of 50m from the centreline to be broad enough to capture tree fall risk.

AGREE - IN PART

HortNZ agrees that the trees regulations are unclear on the position regarding replanting, however we would like to make a clear distinction between plantation forestry trees and horticultural operations.

The discussion document notes that the harvest height of Radiata Pines is 25m and appears to use this as a standard by which all regulations are then set to address. Horticultural tree crops, and vegetable cropping operations do not have trees or plants that reach those heights. Traditional style orchards have trees that are usually 8m tall - in exceptional circumstances some vigorous trees can reach 10m prior to pruning. Modern orchard methods usually focus on encouraging smaller or 2-D tree structures, these are intentionally smaller, and pruned more frequently.

To require tree planting, or replacement, based on a 50m radius to prevent fall risk to lines is excessive when considering the nature and context of horticultural operations.

Any regulation should be based on the maximum potential height of the tree being planted.

3.3. Other relevant information

The discussion document sets out the case law regarding the Tree Regulations.

Q.4 Arguably the judgement in Nottingham Forest Trustee Ltd v Unison Networks Ltd has decisively clarified the responsibility for managing the fall line risk outside of GLZ. Do you agree, and if so, is further government intervention necessary to address this risk?

Agree the piece of case law presented provides insight to the plantation forestry context but disagree that these findings are replicable across all land types, uses and the horticulture context.

Also agree that if there are identified gaps in the arbitration regime then this should be improved.

Agree adverse weather events will increase because of climate change, however we disagree that this will require such a drastic change to the GLZ to affect all landowners with tree crops.

The proposed change would have an excessively adverse impact on horticultural operators whose tree crops do not pose the same level of risk to electrical lines from tree fall outside the existing GLZ due to the smaller heights of horticultural tree crops.

3.4. Primary issues and options analysis

The discussion document sets out preferred objectives for the regulatory framework:

- Promote adequate security of electricity supply, particularly in response to a changing climate
- Ensure vegetation management is undertaken in a way that provides for public safety.

Q.5 Do you agree with our preferred objectives of the regulation, why or why not?

AGREE - IN PART

We agree with the concept of promoting adequate security of electricity supply, particularly in response to a changing climate, if the policies, rules, and regulations implemented are fair and reasonable to all landowners with vegetative growing operations.

However the word 'adequate' is not defined or a level of service indication of what is 'adequate' security of supply.

Dictionary definitions of adequate are:

- able to fulfil a need without being abundant or outstanding
- satisfactory or acceptable in quantity and quality
- sufficient for a special need or requirement

Such definitions indicate that an 'absolute' security of supply would not emanate from the objective. There needs to be a clear indication of level of service that would meet an 'adequate' security of supply. HortNZ experience is that the EDB's seek a high level of security of supply with the cost falling on individual landowners.

We would seek to have consideration of the risk to other vegetative production operations that would be unfairly disadvantaged if rules made to address the risks presented by one industry are applied to all growing industries

We agree that vegetation management needs to be undertaken in a way that provides for public safety. This includes the safety of horticultural owners and workers undertraining tree maintenance. We believe there is a role for WO to provide expertise, advise and services, such as temporary switch off or isolation of electricity to provide a safe working environment for horticultural operations undertaking tree maintenance activities.

Q.6

Our policy assessment criteria, why or why not?

The discussion document sets out three criteria for assessment:

- Effectiveness
- Efficiency
- Regulatory certainty

A double weighting is given to effectiveness.

AGREE - IN PART

An assessment criteria is a useful tool to provide a lens or understanding on how a policy may improve or degrade the issues trying to be addressed through policy options.

The effectiveness criterion should include deliver 'adequate' security of supply to reflect the objective.

The document states that MBIE will consider the balance of interests between vegetation owners and works owners when assessing option where there may be a conflict between interests and MBIE seeks to avoid unreasonably infringing on vegetation owners' interests. HortNZ's experience with EDB's is that there is little understanding or appreciation of infringing on vegetation owner interests. The focus is totally on the security of supply as being paramount.

HortNZ seeks that there is a policy criteria that explicitly considers the limitations on vegetation owners' interests. While this may be implicit in the efficiency criteria, it is considered that it should be explicit criteria when considering regulations.

Criteria relating to level of infringement on vegetation owners' rights is important to achieving a balance in the regulations.

HortNZ is mindful that the scope or issue being considered through this process maybe limited or narrowed by addressing a problem with larger trees found on plantation forestry operations and that this lens is not applicable to all vegetative growing operations. The risks to electricity lines from tree fall outside of the GLZ, for example, increase proportionately to the height of the tree. Seeking broad policy controls that will apply to all vegetative growers, could encompass growers of smaller tree crops, such as horticultural orchard operations. These operations would be unfairly impacted by regulations implemented that area designed to manage a risk from trees that are much larger and maintained in a way to encourage height rather than fruit production.

Damage to electricity lines caused by tree fall can be addressed through consideration of the following criteria:

- Primary purpose of the productive land
- What tree crops are in place to grow
- What qualities of the tree crop generally pursued
- What is the general height of tree crops on the property
- Apply a calculation of average tree height and fall distance to consider whether an operation needs to maintain trees further than a minimum 4m zone.

HortNZ believes applying a GLZ of 24m is excessive for horticultural operations and would reduce the productive capacity of productive land. HortNZ notes that many (not all) horticultural operations are located on LUC class 1, 2 or 3 land and this is required to be enabled to its productive capacity under the NPS HPL¹⁴

Issue 1: How should vegetation risks outside the GLZ be managed?

The discussion document sets out some options for addressing the issues identified with the Tree Regulations.

Issue 1 relates to the GLZ with the options presented:

- No risk management beyond the GLZ.
- A much wider GLZ
- No GLZ but a broad power to address vegetation 'likely to interfere with' electricity lines
- A new notice category applying outside the GLZ

Q.7

What are your thoughts on extending the GLZ to cover a larger area, what would be the appropriate distance for the extension and how might this affect you?

¹⁴ National Policy Statement for Highly Productive Land - [National Policy Statement for Highly Productive Land | Ministry for the Environment](#)

OPPOSE EXTENDING THE GLZ TO COVER A LARGER AREA

HortNZ does not support extending the GLZ to cover a larger area by an arbitrary distance. HortNZ believes the current GLZ of 4m provides Electricity Lines a good level of safety and security from risk of damage to lines from tree crops in horticultural operations.

A GLZ should be related to the potential height of the vegetation being grown.

HortNZ believes there is an opportunity to apply greater GLZ for other types of vegetation operations that have trees being grown specifically for the purpose of length of trunk or wood products. Horticultural tree crops are generally grown and maintained in a way to primarily encourage fruit production, rather than trunk height and size.

The cost implications on growers of having to remove, or be prevented to plant as outlined in options 2 and 3 would be significant on a horticultural operation and compensation would need to account for:

- Land value of land lost to increased GLZ
- Loss of tree crops and rootstock
- Loss of future earnings

This would no doubt result in some operations becoming financially non-viable and would pose risk to the ongoing food security and access to fresh fruit and vegetables in New Zealand.

Q.8

Would a 'likely to interfere with' approach work if 'likely interference' were clearly defined and limited in regulation? What would this look like to you?

AGREE - IN PART

HortNZ is cautious in agreeing with MBIE as there is a need for greater understanding and context as to how a 'likely to interfere' approach would be applied in a horticultural context.

HortNZ is of the view that clear definitions and limits, like provided in the GLZ are easier and less likely to cause confusion or conflict when they are applied to landowner properties and limits on use. We would strongly suggest clearly defining 'likely to interfere with' and have consideration of all vegetative growing operations when looking to define this term. We have discussed possible things to consider when looking at assessment criteria in our response to Question 6.

Q.9

Would a 'likely to interfere with' approach work if combined with a risk-based approach?

POSSIBLY

A risk-based approach would be more prescriptive and consider wider factors when assessing risk to electricity lines from tree crops and HortNZ would prefer this as a means of clarity for regulators and landowners.

However there are no criteria included for establishing a 'risk-based approach' so difficult to assess how it may be determined.

Q.10 What is your preferred option out of the options proposed by MBIE for Issue 1? Are there any options you would recommend that have not been considered?

HortNZ prefers Option 4 - a new notice category. We consider that this, if implemented correctly, could provide a clear delineation between the elevated risks presented from trees on vegetative growing operations above certain heights or placements, compared with vegetative operations that have trees that are generally lower in height and found on horticultural operations.

Issue 2: How can the Trees Regulations prevent the over-trimming of hazardous vegetation, which can result in unnecessary diminution of economic or amenity value?

The discussion documents set out a range of options for preventing over trimming of vegetation:

- Risks dealt with through existing risk management tools
- A risk-based approach overlaid on the existing regime
- A risk-based approach combined with a broad power to address vegetation 'likely to interfere with' electricity lines
- A risk-based approach applied outside of the GLZ to support a new notice power.

Q.11 How do you think a risk-based approach in the Regulation to managing vegetation could be implemented and enforced?

A risk-based approach would be more prescriptive and consider wider factors when assessing risk to electricity lines from tree crops and HortNZ would prefer this as a means of clarity for regulators and landowners and needs to be balanced with the economic realities of owning and operating a vegetative operation. HortNZ believes if trees are outside of defined areas and through a risk assessment, deemed a risk to electrical lines, then this should not be at the VO cost.

The WO has an obligation to monitor and assess risks to lines and may deem a tree is of increased risk. This should then be subject to a risk assessment at WO cost by an arborist and include the VO. If the tree is found to be of increased risk because of this assessment, the WO should be required to pay the VO for loss of the tree, and costs associated with its removal - if the tree has been planted outside GLZ and in accordance with guidelines.

HortNZ notes in the discussion document, internationally, that these costs and activities are more commonly the responsibility of the WO.

Q.12 What do you think are the most important aspects to include in a risk-based approach methodology? Are there any additional issues that you think should be considered

HortNZ seeks that there is consideration of the Land Use Class (LUC) and if the land the tree crops are located on is subject to the NPS HPL and the impact this has on the requirement to enable to productive capacity of land deemed productive under this NPS HPL.

Q.13 Do you agree with our view to include the consideration of fire risk in a risk-based approach to vegetation risk, why or why not?

We agree fire risk should be a consideration, however, note that most horticultural operations have access to water on their sites for irrigation. This needs to be considered in relation to fire risk and electrical lines hazards.

Q.14 What is your preferred option out of the options proposed by MBIE for Issue 2, are there any options you would recommend that have not been considered?

HortNZ's preferred option is Option 4 - a risk-based approach applied outside of the GLZ to support a new notice power - as it would have the least impact on horticultural operations and provides opportunity for the Trees Regulations to apply tools to vegetative operations with taller trees and greater risk. HortNZ would seek to have horticultural tree crops defined as 'being within the GLZ' and therefore not subject risk approaches outside the GLZ.

HortNZ would like to note that additional financial costs on horticultural operations will have a direct impact on the operational costs of horticultural business and could result in higher food costs for consumers caused by reduced supply from growers exiting the industry or needing to pass increased costs of compliance onto the consumer.

Q.15 Do you have any feedback on the Tree Regulations obligation to works owners to remove danger to persons or property from trees damaging conductors?

HortNZ is supportive of softening Section 14 considering the recent weather events, to allow a transition to more climate resilient operations. HortNZ believes works owners and vegetation owners need to be enabled to work together better to manage these risks.

Issue 3: How should the Regulation balance the responsibility of vegetation owners and works owners?

The discussion document considers the balance of responsibility of vegetation owners and works owners and sets out several options regarding:

- Responsibility for identification of vegetation risk
- Allocation of cost for the first cut or trim
- Notice provision on a per tree basis

Q.16

Do you agree with MBIE's view that responsibility to identify risks sits best with works owners?

HortNZ agrees that the responsibility to identify risks sits best with the WO as they generally have specialist knowledge regarding Electricity Lines and the unique risks these pose.

HortNZ believes WO have an obligation to consult with VO to clearly outline risks, and best actions required to address these risks.

Q.17

Do you agree with MBIE's view that the allocation of the first cut or trim should remain with improvements to its application, and why, or why not?

HortNZ believes the first cut or trim requirement needs to remain as part of the regulations. HortNZ is mindful that removing the 'first cut' requirement will place additional cost on horticultural operations. There is a requirement for WO to have some administrative responsibility and responsibility to ensure notices to clear trees are being fairly and appropriately issued. HortNZ believes the 'first cut' requirement forms part of this test.

Q.18

Is there a way to apply the notice system at a higher level than the individual tree?

HortNZ supports Option 2. The efficiency of the WO being able to notify several trees requiring cut or trim in one notice is helpful.

Hort NZ believed responsibility of the first cut or trim needs to remain the responsibility of the WO.

HortNZ is mindful that removing the 'first cut' requirement will place additional cost on horticultural operations. There is a requirement for WO to have some administrative responsibility and responsibility to ensure notices to clear trees are being fairly and appropriately issued. HortNZ believes the 'first cut' requirement forms part of this test.

HortNZ also believes the 'first notice' shall only apply to individual trees not whole operations if several trees are being notified in one notice.

Q.19

What is your preferred option out of the options proposed by MBIE for Issue 3, are there any options you would recommend that have not been considered?

HortNZ prefers Option 1 or 2.

HortNZ is opposed to any additional costs being placed on horticultural operations.

HortNZ is mindful that removing the 'first cut' requirement will place additional cost on horticultural operations. There is a requirement for WO to have some administrative responsibility and responsibility to ensure notices to clear trees are being fairly and appropriately issued. HortNZ believes the 'first cut' requirement forms part of this test.

Issue 4: What should be the process for works owners to access vegetation on private land?

The discussion documents set out options for access to vegetation on private land:

- Vegetation owner or landowner must be notified
- Amend the notification wording in regulation 11(3) e) to make it easier for works owners to notify vegetation owners about land access
- Works owners can apply to access land if reasonable effort has been made to contact vegetation owners

Q.20

What is your preferred option out of the options proposed by MBIE for issue 3? Are there any options you would recommend that have not been considered?

HortNZ prefers Option 1 or 2.

HortNZ believes horticultural property owners are relatively easy to locate and notify due to the nature of horticulture. Generally property owners, or managers are easily contactable and owners or nominated representatives can be available to go to sites with reasonable notice.

Works owners should have established relationships with landowners over whose properties line traverse so making contact should not be unreasonable. Establishing and maintaining such relationships is a critical component of the regulations working for both parties.

HortNZ can appreciate that other type of vegetative growing may have different models which do not have owners or nominated representatives present or easily contactable. On this basis, HortNZ can appreciate how Option 2 could enable more timely notification from a WO to require access to privately owned land for the purposes of addressing risk to lines in accordance with the Tree Regulations.

Issue 5: How should disputes between vegetation and works owners be resolved?

The discussion document sets out options for resolving disputes:

- Status quo - limited scope of arbitration provisions
- Extend the scope of the current arbitrator's jurisdiction
- Use the Utilities Disputes or mediation to resolve disputes

Q.21

What is your preferred option out of the options proposed by MBIE for issue 4, are there any options you would recommend that have not been considered?

HortNZ prefers Option 2.

HortNZ is opposed to any additional costs being placed on horticultural operations and believe widening the scope of an arbitrator could provide a better dispute resolution process at minimal cost to the vegetation owner.

HortNZ does consider that there may be barriers, or perceived barriers, to utilising the current arbitration option that could explain the low numbers of complaints being directed here and the larger number being directed through the UDL. HortNZ would urge MBIE to explore this further.

3.5. Offences and penalties

Q.22 Do you consider that ongoing penalties are a useful element of the current regulatory regime?

HortNZ agrees the current penalty system need not change. It is helpful to have penalties in place to incentivise compliance and deter non-compliance.

3.6. Arrangements for monitoring, evaluation, and review

Q.23 Do you have any comments on our proposals for monitoring, evaluating, and reviewing the Tree Regulations, for example when a review of the new Tree Regulations should occur?

Regular reviews of regulations ensure regulations are current, fit for purpose and reflect our ever changing social, political economic and environmental landscape.

HortNZ is mindful that as part of a transition to a low emissions economy, primary production businesses may change in their balance to incorporate more vegetative production. This may be through horticultural opportunities, plantation forestry or vineyard. HortNZ would like to encourage MBIE to think about the benefits of enabling this transition - both environmental and economic and believe review periods should be set every ten years to support the ability of regulations to be able to respond to change.

3.7. Additional feedback

Q.24 Do you have any additional feedback that you would like to provide on the regulation or the options we have proposed?

- Ensure changes to regulations do not have an unintended consequence of impacting all types of vegetative operations.
- Clearly define what operation types and trigger points would apply when extending the GLZ beyond the current settings.
- A risk-based approach helps WO identify best approaches to avoiding or minimising risk to lines from treefall.