

SUBMISSION ON ORDER IN COUNCIL

Burning Cyclone and Flood Waste

13 June 2023

To: Ministry for the Environment

Name of Submitter: Horticulture New Zealand

Contact for Service:

Michelle Sands

Manager Strategy and Policy

Horticulture New Zealand

PO Box 10-232 WELLINGTON

Ph: 021 610 653

Email: michelle.sands@hortnz.co.nz



OVERVIEW

Submission structure

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

Our submission

Horticulture New Zealand (HortNZ) thanks the Ministry for the Environment for the opportunity to submit on the draft Order in Council under the Severe Weather Emergency Recovery Legislation Act 2023 (SWERLA), to permit open-air burning of cyclone and flood waste. HortNZ welcomes any opportunity to continue to work with the Ministry for the Environment and to discuss our submission.

HortNZ wishes to be heard in support of our submission if there is an opportunity.

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 fruit 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.



HortNZ's Resource Management Act 1991 Involvement

On behalf of its grower members HortNZ takes a detailed involvement in resource management planning processes around New Zealand. HortNZ works to raise growers' awareness of the Resource Management Act 1991 (RMA) to ensure effective grower involvement under the Act.

Executive Summary

The early weather events in 2023 caused extensive damage in rural areas of Hawke's Bay and Tairāwhiti, resulting in the accumulation of various types of debris and waste. These waste piles consist of a mix of trees, crops, support structures, chemically treated and untreated timber, different types of plastic, wire, metals, and sediment.

The impact of these waste piles is particularly significant for horticultural businesses. Clearing the waste is an essential initial step to restore the land's productivity.

Due to the urgency of meeting specific timeframes for crop growth, it is crucial to remove the waste promptly. However, physically separating and removing the debris poses significant challenges, including health and safety challenges, and is not practicable for larger piles, or where the waste is really intertwined.

HortNZ representing affected landowners, has requested an Order in Council to provide a legal pathway (through a permitted activity status) for landowners to burn the mixed waste on their properties. We welcome the proposal.

The feedback we have provided is to ensure the permitted activity standards within the Order in Council are worded clearly enough to enable the user to judge the meaning and effect of the rule at face value without having to resort to using explanations or seeking advice from those who wrote it.

We have also discussed this proposed OIC with Hawke's Bay Winegrowers Association, and support their submission seeking to shorten the time period within which burns could occur, changing the date that the Order in Council would lapse on 15 November 2023 - avoiding the risk of smoke tainting grapes after fruit set.

Submission

Impact of Cyclone waste on horticulture

The 2023 weather events caused extensive damage in rural areas of Hawke's Bay and Tairāwhiti, resulting in the accumulation of various debris and waste, including trees, crops, support structures, treated and untreated timber, plastic, wire, metals, and sediment. Clearing this waste is vital to restore productivity, especially for horticultural businesses.

1.1. Mixed Waste Burning - Estimated numbers for Horticulture Sector

We estimate that 60-140 properties have a mixed waste issue that may require burning of the waste that cannot be practicably sorted or removed.

- *Grapes* 10-20 properties
- *Vegetables* 0-10 properties
- *Pipfruit* 50-100 properties
- *Stonefruit* 0-5 properties
- *Kiwifruit* 0-5 properties

This is an estimate of maximum numbers of properties that have a mixed waste issue. If growers can practically separate waste they will (and have). We believe the burning numbers are generally normally distributed, which means that some properties will have lots of trees, a little wire or irrigation tubing and a small number (e.g. a dozen) broken posts mixed through the pile that they have been unable to pull out. Most properties will have slightly more prohibited items - particularly in the pipfruit sector which covers the most hectares of any horticultural crop in Hawke's Bay, and therefore has more affected properties. Newer apple plantings have been more severely damaged, as those trees are shallower rooting, and have more structural support (so more wire and posts supporting them, which effectively created more of a barrier to floodwaters, and were therefore flattened), but many orchards have only a handful of rows that have been flattened, and therefore are unable to be separated - the rest of the orchard is less severely impacted and therefore waste is able to be sorted. Properties that have sustained catastrophic damage represent the very far end of the spectrum. Properties that have sustained that degree of damage, creating the large mixed waste issue that they have, are believed to be in single figures.

In terms of the locations of properties that have mixed waste issues, the majority are located in areas where there were stop bank breaches, such as Dartmoor, Omarunui and Korokipo. The Esk Valley was also severely impacted, and a number of vineyards in the Ohiti area were also damaged. All of these are rural areas, well separated from the Napier and Hastings airsheds and population centres. There are some properties with mixed waste issues in the Pakowhai and Twyford areas, and a handful in the Meeanee area, but the scale of the mixed waste issue on these properties is generally towards the lower end

of the spectrum, as the damage was less widespread, and growers have done what they can to separate tanalised posts and wire where they have been able to.

In terms of burning within the Napier and Hastings airsheds, HortNZ considers that there are two options. There are understood to be a fairly small number of horticultural properties located within the air sheds that have a major mixed waste issue. This means that those properties could and should be prioritised by the Hawke's Bay Regional Council for support to enable that waste to be separated onsite, or the mixed waste moved off-site (by council) where it could be separated. Alternatively burns could be allowed on those properties (during the months of June, July or August) if the conditions are met.

The need for urgency

The Order in Council is time critical to allow burning to occur this winter to enable the land to be remediated as necessary and planted this spring, enabling some economic return to be made from the land this coming season.

Given the unprecedented stress faced by growers with land and businesses that have been severely impacted by the cyclone, there is a risk that if an Order in Council does not provide a practical pathway for managed burns of mixed waste materials this winter, burning of mixed waste piles may be done anyway and without the necessary environmental or health considerations.

As a sector, we want to manage the effects on the environment and on human health, and we want to protect growers social license to operate in the future. In our view the Order in Council providing a legal and practical pathway to support responsible mixed waste burning this winter is essential.

Linked to this need for urgency, we would like to express our support for the submission of Hawke's Bay Winegrowers Association that seeks to shorten the period that the Order in Council would be in effect for. There is a risk of smoke tainting the taste of grapes if they come into contact with it after fruit set has occurred. As fruit set can occur from mid-November, we seek that the Order in Council lapses on 15 November 2023 (rather than 15 December 2023 as currently proposed) to avoid the risk of smoke tainting grapes after fruit set.

Suggested permitted activity standards and terms

As a sector we understand that the burning provisions being provided under the Order in Council are exceptional, in response to an exceptional event.

In this section we discuss the proposed matters. In the table below we outline proposed wording for the permitted activity standards and terms.

It is essential that the order in council is clear and can be understood by growers. As a permitted activity, it is important that the order in Council does no reserve discretion where none is intended or appropriate and can be reasonably implemented.

It is essential that this Order in Council only apply to mixed burn piles that contain prohibited materials, and that burns that currently permitted remain so, under the existing requirements.

1.2. Steps are taken to separate materials where practicable (especially hazardous waste containers and unknown substances).

HortNZ supports the criteria for the separation of waste materials. We would support more clarity around the judgement of what is practicable, so there are clear expectations, and propose alternative wording to avoid confusion around this term.

1.3. Weather conditions encourage a hot burn to minimise the amount of contaminants released and limit any smoke blowing across neighbouring properties.

HortNZ supports standards around windspeed to ensure conditions are suitable for open-burning. We also support terms requiring the material is reasonably dry, to support hot-burning. We support the need for hot burning, although consider the phrase may be difficult to define or measure in the context of a permitted activity. We prefer an emphasis on the wind conditions and dryness of the material, as set out in our draft permitted activity conditions.

1.4. A fire management plan is prepared which includes measures to extinguish the fire if weather conditions change and present a risk to health or the environment.

We support the requirement to prepare a fire management plan. Fire management plans need to be able to be completed by landowners (ie. not require expert input), and we note the availability of a lot of useful information on the Fire and Emergency website that could assist growers with this. The provision of a template would also be helpful to make clear expectations about what a plan needs to include, although any template would need to maintain such flexibility to enable it to be tailored to the scale of a fire. We do not support any kind of approval process for fire management plans.

1.5. Key parties are notified of the burn, including councils, Fire and Emergency NZ (FENZ) and the National Public Health Officer.

We support the requirement to notify Councils, Fire and Emergency NZ, and the National Public Health Officer. We seek that any parties required to be notified are clearly identified within the Order in Council. Although not necessarily contained within the Order in Council document, it is important that actual contact details are provided for each party that needs to be notified, and it is also made clear what details need to be provided in the notification (location and timing of burn, together with contact details for person responsible for burn should be sufficient). We do not support the requirement for the approval from/of any party prior to burning.

Given the importance of ensuring that weather conditions on the day/s of a burn are suitable, we suggest that the notification period should only be 1 working day prior to a burn occurring, as this will allow more accurate weather forecasts to be checked.

1.6. Soil testing occurs at the burn site to check for contamination.

We support soil testing to check for contamination. We seek that the Order in Council is clear about the circumstances where testing is required and the standard testing method and parameters.

We are aware that there are limited contaminated land specialists in Hawke's Bay and Tairāwhiti. We seek that there is a means of prioritising the use of specialist input. Many fires may only contain a very small amount of prohibited materials - for example some plastic irrigation pipe. We think it is more important that the testing and remediation is focused on those burns where there is a significant proportion of tanalised tangled with other wood and organic materials.

1.7. Appropriate measures are in place to dispose of any remaining waste and ash.

We support the requirements for appropriate measures to be in place for the disposal of remaining waste and ash. We anticipate a requirement that the soil underneath the burn pile would be remediated in accordance with the NES contaminated soil if necessary - pre-sampling would be done, post-sampling would be done, and then any soil that has been contaminated removed to an approved site, so that pre-burn levels are achieved. As it is ash it will only be a shallow depth, and we anticipate that normally only 100-200 mm of soil will need to be removed across the burn pile area (where remediation is required at all). We seek there is clarity within the terms as to what appropriate measures are.

1.8. Remediation of the site occurs, if required.

We support the requirements for remediation of sites if contamination has occurred resulting from the burning of tanalised timber. We seek that the Order in Council makes clear what circumstances would trigger the need for remediation.

Submission on Order in Council to permit open air burning of cyclone and food waste

Without limiting the generality of the above, HortNZ seeks the following decisions on the Order in Council as set out below, or alternative amendments to address the substance of the concerns raised in this submission and any consequential amendments required to address the concerns raised in this submission.

Draft Consultation Provision	Support/ oppose	Proposed wording for Permitted Activity Standards and Terms
Steps are taken to separate materials where practicable (especially hazardous waste containers and unknown substances)	Support	<ul style="list-style-type: none"> Reasonable efforts shall be made to remove prohibited materials prior to burning. No household waste or flood damaged household items shall be added to fires.
Weather conditions encourage a hot burn to minimise the amount of contaminants released and limit any smoke blowing across neighbouring properties	Support	<ul style="list-style-type: none"> All plant material burnt shall be as dry as practicable OR No green plant material shall be burnt. The discharge shall not occur if the wind speed measured at 1 metre above the ground is less than 3 metres per second; or exceeds 15 km/h.
A fire management plan is prepared which includes	Support	<ul style="list-style-type: none"> Prior to the burn occurring, a fire management plan shall be prepared. The plan shall include the following:

<p>measures to extinguish the fire if weather conditions change and present a risk to health or the environment.</p>		<ul style="list-style-type: none"> • A map showing the location of the burn pile/s and separation distances from buildings, flammable vegetation, power lines and any other combustible material (eg. fuel storage facilities). • Details of how the fire will be extinguished <p>The fire shall be managed in accordance with the plan, and a copy of the plan provided to the regional council upon request.</p> <ul style="list-style-type: none"> • The burn shall be supervised at all times.
<p>Key parties are notified of the burn, including councils, Fire and Emergency NZ (FENZ) and the National Public Health Officer</p>	<p>Support</p>	<ul style="list-style-type: none"> • The New Zealand Fire Service, the Hawke’s Bay Regional Council and the National Public Health Officer shall be notified at least 1 working day prior to the burn commencing.
<p>Soil testing occurs at the burn site to check for contamination</p>	<p>Support with amendments</p>	<ul style="list-style-type: none"> • If treated timber constitutes over 1/2 of the material to be burnt, then the soil underlying the proposed burn pile/s shall be sampled by a suitably qualified environmental practitioner for heavy metals, hydrocarbons and organochlorine pesticides prior to the pile/s being created.
<p>Appropriate measures are in place to dispose of any remaining waste and ash</p>	<p>Support</p>	<ul style="list-style-type: none"> • Any contaminated ash and soil shall be discharged at an appropriately authorised location. • Any material remaining after the burn (ie. wire) shall be recycled if possible, or otherwise disposed of at an appropriately authorised location.

Remediation of the site occurs, if required.

- If soil testing was undertaken prior to the burn, once the burn has been completed, the soil underlying the burn pile shall be re-sampled by a suitably qualified environmental practitioner for heavy metals, hydrocarbons and organochlorine pesticides. The soil shall be remediated if and as necessary to ensure that pre-burn soil quality is achieved in accordance with the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health.