

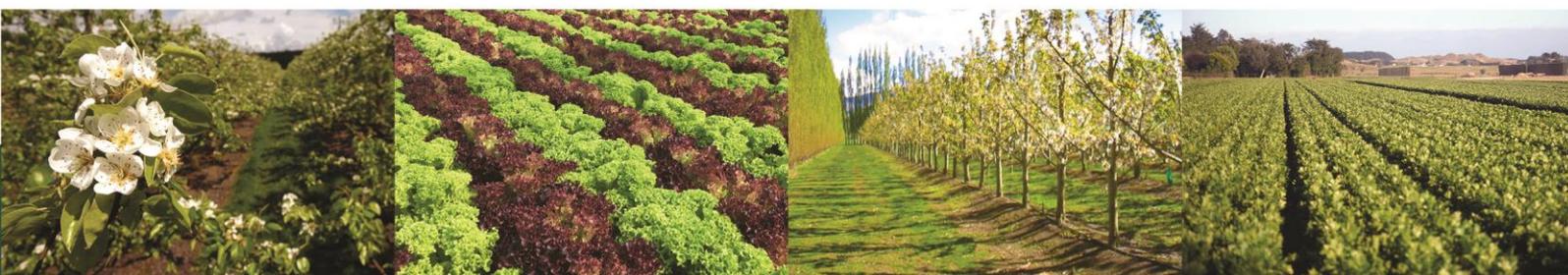
# **SUBMISSION ON**

## **Transforming the resource management system: opportunities for change - Issues and options paper**

3 February 2020

**TO:** Resource Management Review Panel

**NAME OF SUBMITTER:** Horticulture New Zealand



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## Introduction

Horticulture New Zealand (HortNZ) thanks the Resource Management Review Panel for the opportunity to provide comment on the Transforming the resource management system: opportunities for change Issues and Options paper and welcomes any opportunity to work with the Panel to discuss our submission.

## Background to HortNZ

HortNZ was established on 1 December 2005, combining the New Zealand Vegetable and Potato Growers' and New Zealand Fruitgrowers' and New Zealand Berryfruit Growers Federations.

HortNZ advocates for and represents the interests of 5000 commercial fruit and vegetable growers in New Zealand, who grow around 100 different crop types and employ over 60,000 workers. Land under horticultural crop cultivation in New Zealand is calculated to be approximately 120,000 hectares.

The horticulture industry value is \$5.7 billion and is broken down as follows:

<b>Industry value</b>	<b>\$5.7bn</b>
Fruit exports	\$2.82bn
Vegetable exports	\$0.62bn
<b>Total exports</b>	<b>\$3.44bn</b>
Fruit domestic	\$0.97bn
Vegetable domestic	\$1.27bn
<b>Total domestic</b>	<b>\$2.24bn</b>

For the first time New Zealand's total horticultural produce exports in 2017 exceeded \$3.44bn Free On Board value, 83% higher than a decade before.

It should also be acknowledged that it is not just the economic benefits associated with horticultural production that are important. The rural economy supports rural communities and rural production defines much of the rural landscape. Food

production values provide a platform for long term sustainability of communities, through the provision of food security.

HortNZ's mission 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.

The principles that HortNZ considers in assessing the implementation of the RMA include:

- The effects based purpose of the RMA;
- Non-regulatory methods should be employed by councils;
- Regulation should impact fairly on the whole community, make sense in practice, and be developed in full consultation with those affected by it;
- Early consultation of land users in plan preparation;
- Ensuring that RMA plans work in the growers interests both in an environmental and sustainable economic production sense.

## EXECUTIVE SUMMARY

Resource management of natural and physical resources inherently requires an integrated approach. There needs to be better integration, rather than a separation, of land use (development) and environmental protection. This is particularly important for the management of land use and impacts on water.

There is a need for higher level, integrated strategic level planning that is outcome focused, to provide long term strategic goals and spatial planning. This strategic planning would sit above the RMA and apply to all aspects of local government, transport planning, climate change and environmental/resource management.

We support the retention of the sustainable management purpose and principles of Part 2. However, revision could be made to strengthen direction and balance in Part 2. There is a need to include reference to highly productive land, ecosystem services and reverse sensitivity and for greater use of instruments such as national planning standards.

HortNZ support greater clarity in the roles of tangata whenua, hapu and iwi and the relationship of the RMA with the Treaty of Waitangi, to provide a more consistent, effective and efficient approach to resource management.

In our view failings in the RMA to date have in part been due to insufficient provision of national direction by central government; there is a need for more national direction and for that national direction to be more integrated.

There are opportunities for streamlining plan development and consenting. However, HortNZ would not be supportive of changes that would reduce the ability for further submissions and merit-based appeals on plan and consent decisions. We do think there is role for more oversight of plan development.

HortNZ see an important role for independently audited farm plans (GAP programmes) in delivering environmental outcomes and reducing the need for regulation.

HortNZ sees a role for economic instruments (and other incentives) in achieving positive outcomes in a resource management context, for example financial contributions and transferable development rights.

The RMA should provide principles for allocation. The allocation methods must reflect the local environment (at the appropriate spatial scale), however common principles could be developed at a strategic level.

In HortNZ's view, resource allocation frameworks must ensure that allocation occurs within environmental and cultural bottom lines and at minimum, provides for basic human needs. Trade-offs required to maintain and achieve strategic environmental, cultural, social, and economic outcomes over time, should consider both economic efficiency and alignment with the strategic outcomes.

An overarching issue for the New Zealand planning system is that there is increasingly parallel processes and overlapping regulation. This multitude of processes creates confusion, duplication and inefficiency. Overlaps between district and regional functions must be eliminated. Administration and interpretation confusion created through bylaws, HSNO and other regulations that impact resource management must be resolved.

# SUBMISSION

## INTRODUCTION

HortNZ is active in many resource management planning processes around the country, at a district, regional and national level. To provide context to the commentary we provide below on the questions posed on the issues and options paper, the following is an overview of the key policy issues HortNZ is involved with.

- Current projections around New Zealand's expected population increase and annual food volumes available for consumption show that domestic vegetable supply will not be able to sustain our future population consumption needs. Reasonably priced healthy food is essential for human health. Water and suitable soil are essential for the production of food.
- Good horticultural land is characterised by a range of factors other than just soil quality including, favourable climate for the crop, access to water, a lack of reverse sensitivity constraints, access to energy for hothouses, and access to post-harvest processing facilities and transport routes.
- Highly productive land is a finite resource. Once taken out of productive use and developed for other urban type land uses the resource is effectively lost. Avoiding this 'sterilisation' of productive land is HortNZ's key policy focus, and as such primary planning issues are:
  - a) Recognising nationally significant rural land;
  - b) Providing for regionally significant rural production;
  - c) Achieving economic development targets;
  - d) Protecting food supply; and
  - e) Providing for post-harvest production.
- HortNZ have experienced across multiple plans, failures in providing for vegetable production and low intensity horticulture; particularly, as they are a very different farming systems to pastoral farming. This is often misunderstood.

Key considerations for horticulture (and threats to food production) in a resource management context include:

- Water management – including allocation of water quality and quantity parameters, are key matters for the horticultural sector. Without water, highly productive land cannot support high value rural production. There are also threats to the rural sector from freshwater quality degradation as a result of urban activities (stormwater runoff, aquifer contamination).
- Land supply – which is affected by changes to the rural urban boundary and land fragmentation. Access to the land resource is paramount for the horticultural sector. The best land (including north facing and frost-free high production land), a finite resource, is being lost to urbanisation.
- Infrastructure – the transportation needs of the rural sector include land access and linkages to the market, ports, airport etc. With urban growth comes added pressure on transport networks. Seasonal workers accommodation. There is also pressure on other infrastructure and resources such as gas supplies and broadband
- Regulatory regime – the regulatory regime must be designed to avoid unreasonable costs and delays in undertaking rural production activities.
- Reverse sensitivity – conflict between resource users and particularly with rural residential land use can result in constraints to production.

- Biosecurity – policy to manage threats must be clear, activity placement must be cognisant of biosecurity issues.
- Labour – horticulture is labour intensive and has seasonal variances in labour requirements. While labour is not of itself a resource management issue, during peak labour needs, staff are often accommodated on site within ‘Seasonal Worker Accommodation’. District Plans generally do not provide for this type of accommodation and provide a barrier to horticultural operations.

## **COMMENTARY ON CONSULTATION QUESTIONS**

### **ISSUE 1: LEGISLATIVE ARCHITECTURE – QUESTION**

1. *Should there be separate legislation dealing with environmental management and land use planning for development, or is the current integrated approach preferable?*

There is a need for better integration of urban and rural planning responses, rather than a separation which would occur through a legislative split of ‘environmental management’ from ‘land use planning for development’.

Resource management of natural and physical resources inherently requires an integrated approach. We disagree with the analysis of the Productivity Commission in its recent inquiry into urban planning, which notes that the built and natural environments have different characteristics and require distinct management approaches<sup>1</sup>. According to the Commission, *“the natural environment needs a clear focus on setting standards that must be met, while the built environment requires assessments that recognise the benefits of development and allow change”*.

Built and natural environments have different characteristics, but the positive and negative effects of activities extend across both environments. An example is the effects of activities on freshwater resources, which is one interconnected resource:

- The conversion of rural land to urban land use results in a degradation of water quality. Those adverse effects are felt by the urban community (in a variety of ways, including lost recreational opportunities), and by rural communities and enterprises who need access to clean water to produce food for those same urban communities.
- Lifestyle development can invoke a permitted water take and use allocation of scarce water resources.
- Land use can have considerable impacts on the hydrology of catchments and the hydromorphology (e.g. impervious surfaces change the amount recharged and increase surface runoff, these changes result in hydrological changes).

HortNZ consider that the integrated approach of the RMA has not been the cause of poor outcomes for our urban areas or the natural environment. Rather, this can be attributed to implementation problems, such as insufficient provision of national direction by Central Government and lack of state of the environment monitoring and enforcement of that monitoring by Central Government. An example being the lack of national policy on nationally significant rural production land and a lack of a national strategy for food production to feed our growing population.

<sup>1</sup> <https://www.productivity.govt.nz/assets/Documents/0a784a22e2/Final-report.pdf>

While we support retaining the integrated nature of the RMA, HortNZ do believe that there is a need for higher level, integrated strategic planning. This needs to be outcome focused and provide long term strategic goals, supported by spatial planning. This strategic planning would apply to all aspects of local government, transport planning, planning for urban outcomes (including education and health facilities) and environmental/resource management. This new legislation would sit outside, and above the RMA; with the RMA being one of the methods of implementation.

There is a need for an overarching strategic outcomes focused legislation that provides a values setting process that provides the vision (for example, economic and social wellbeing, values based principles for water management, climate change adaptation/mitigation) to enable the RMA to focus on environmental considerations.

## ISSUE 2: PURPOSE AND PRINCIPLES OF THE RMA - QUESTIONS

### *2. What changes should be made to Part 2 of the RMA?*

*For example:*

- 3. Does s5 require any modification?*
- 4. Should ss. 6 and 7 be amended?*
- 5. Should the relationship or 'hierarchy' of the matters in ss. 6 and 7 be changed?*
- 6. Should there be separate statements of principles for environmental values and development issues (and in particular housing and urban development) and, if so, how are these to be reconciled?*
- 7. Are changes required to better reflect te ao Māori?*
- 8. What other changes are needed to the purpose and principles in Part 2 of the RMA?*

HortNZ support retaining the sustainable management purpose of Part 2 and the balancing of considerations this draws in decision making. However, Part 2 could be improved with more deliberate and direct wording about implementation and outcomes, which would link to integrated strategic outcomes (as touched on above).

HortNZ supports explicit environmental objectives being expressed through Part ,2 to provide bottom lines and certainty for resource users. The goal of limiting the scope of land use regulation to managing effects, based around nationally-established environmental bottom lines, remains a valid objective.

Part 2 would benefit from greater balance between, and discussion of, connections and relationships between the rural sector and urban areas. HortNZ supports urban intensification and is not opposed to urban expansion (metropolitan and rural/coastal settlement) where this is not onto highly productive land, does not compromise the quality or quantity of the freshwater resource for rural production and does not create reverse sensitivity conflicts between activities. The discussion below outlines changes which would help achieve this balance.

### ***Additional matters of national importance – highly productive land and ecosystem services to recognise that essential human health needs to include food.***

There should be a matter of national importance which specifically addresses maintenance/protection of highly productive land for food production. For HortNZ, this relates strongly to food security, a nationally important issue which needs to be addressed at a

strategic level<sup>2</sup>. Section 5 refers to enabling people and communities to provide for their health; the essential health needs of people includes food, this needs to be more explicitly provided for. We note that the National Policy Statement for Highly Productive Land is likely to be gazetted in 2020.

We would also support Part 2 being amended to acknowledge the importance of ecosystem services, including highly productive land for food production. It is important that the provisioning, regulatory and cultural services which soil supports are adequately acknowledged so they can be considered in decision making.

Being able to grow food in New Zealand is essential both for food security, and for the maintenance of the industry, which is a significant contributor to regional and national economies.

HortNZ's experience shows that at all levels of the regional and district planning process, it is possible for highly productive land to be inappropriately zoned and/or developed, and thus lost. Explicit recognition at the statutory level will ensure that local authorities plan for the most appropriate use of land resources in the area – including consideration of whether the resource is scarce and could be lost through inappropriate use. Such provision would support local authorities engaging in mapping exercises to identify and protect valuable highly productive land.

Section 7(g) RMA requires that particular regard be had to the finite nature of natural and physical resources. Implicitly, subsection (g) includes the finite nature of highly productive land. However, section 7(g) has not been interpreted as requiring councils to have particular regard to how their plans, including plans for development, impact upon highly productive land. The proposed NPS for Highly Productive Land should provide much needed direction in this area.

Currently, HortNZ's policy work largely seeks to protect rural production land by way of policy and rule recognition in regional and district planning processes. While HortNZ has produced a range of region-specific work to map significant growing land, no nationwide mapping work has been undertaken. If it is not considered appropriate to insert a new matter in to Part 2 now, Horticulture NZ submits that in the near future, similar nationally focussed work will need to take place in respect of rural production land, so as to ensure that a national stance may be taken on protecting New Zealand's food security and rural production economy.

### ***Additional matters of national importance – reverse sensitivity***

Avoiding reverse sensitivity should be a matter of national importance. This is an issue relevant to a number of sectors, however specifically with regard to horticulture, HortNZ has experienced consistent failings in district and regional planning outcomes due to lack of recognition of the impacts of reverse sensitivity. Managing reverse sensitivity is crucial to enable rural production to occur in an efficient and effective manner.

One example of this is the development that has occurred around orchards in Kerikeri, resulting in community tensions around agrichemical spraying. This issue is one that needs to be considered when strategic land use planning is occurring.

### ***Additional matters - Urban infrastructure***

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<sup>2</sup> Food security exists when all people, at all times, have physical, economic and social access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life (FAO)

Part 2 should address the role urban limits play in resource management, including the provision of infrastructure. Urban limits help achieve well planned, efficient urban development and improve certainty about the sequenced provision of infrastructure to support growth and development in existing urban areas and greenfield areas.

Robust, strategic and integrated spatial planning is crucial to achieving this.

### ***Te Mana o Te Wai***

HortNZ support the concept of Te Mana o te Wai and the holistic framework for resource management that Te Mana o te Wai provides. If Te Mana o te Wai is to be included in Part 2 (or the NPSFM) then a description needs to be developed to discuss the relationship with Section 5 of the RMA. As outlined in the HortNZ submission on the proposed NPSFM 2019, we see the concept Te Mana o Te Wai fitting well within a strategic, long term outcomes focused planning regime, compared with the RMA where the primary focus should be on ensuring bottom lines are maintained and alignment with longer-term strategic outcomes for improvement over time (including through the use of action plans and support from local government funding).

Concepts of mana whakahaere, kaitiakitanga and manaakitanga can be retained/included in Part 2 where clearly expressed through definitions.

## **ISSUE 3: RECOGNISING TE TIRITI O WAITANGI /THE TREATY OF WAITANGI AND TE AO MĀORI – QUESTIONS**

- 9. Are changes required to s8, including the hierarchy with regard to ss. 6 and 7?*
- 10. Are other changes needed to address Māori interests and engagement when decisions are made under the RMA?*

HortNZ support a more consistent and efficient approach to resource management that recognises the Treaty of Waitangi. A key aspect of achieving this is greater clarity in the roles of tangata whenua, hapu and iwi.

HortNZ see governance arrangements as an important means of providing better recognition of the Treaty of Waitangi, by providing structures that enable consistent and efficient resource management decisions. There are a range of governance arrangements in place at present that provide models, including Maori boards and co-governance.

HortNZ strongly support clarification of consultation procedures to avoid the delay, expense and frustration for all parties, particularly at a consenting level. In all parts of the country significant delays, cost and uncertainty have been experienced due to unsatisfactory consultation processes.

Strategic spatial planning, discussed further below, could also be a means of (at a local level) expressing the aspirations and roles of tangata whenua, hapu and iwi.

## **ISSUE 4: STRATEGIC INTEGRATION ACROSS THE RESOURCE MANAGEMENT SYSTEM - QUESTIONS**

- 11. How could land use planning processes under the RMA be better aligned with processes under the LGA and LTMA?*

12. *What role should spatial planning have in achieving better integrated planning at a national and regional level?*
13. *What role could spatial planning have in achieving improved environmental outcomes?*
14. *What strategic function should spatial plans have and should they be legally binding?*
15. *How should spatial plans be integrated with land use plans under the RMA?*

If we are to recognise, protect and enhance the rural production systems that support our national economy and supply food to the national and international communities, then we must clearly identify the resources required and how these systems will be considered in decision making. It is not a matter of goals around the protection of 'highly productive' agricultural land unnecessarily constraining or distorting development; investment and growth in rural production requires certainty. Without spatial planning this cannot be achieved.

While spatial planning is undertaken in some areas already, there is inconsistency in the geographic coverage, extent of considerations, stakeholders involved and they are generally lacking statutory weight.

Spatial planning needs to have a broad focus, to include factors such as urban development, the need for schools, health facilities, infrastructure, recreation etc. These discussions also need to consider other factors (and potential trade-offs) with regard to, for example, water and soil resources. This would enable the RMA to be focused on implementing this higher-level strategy, through resource management controls.

Spatially identifying opportunities and constraints for activities and development remains the key to addressing urban/rural interface issues. Defining 'no go' areas and providing security they will not be affected by unplanned, opportunistic and sporadic development ensures ongoing activity and sustained investment in the rural sector and certainty to urban form.

For example, a recent resource consent application proposed to establish a school in a vegetable growing area in Pukehohe; there is both a need to protect land for food production (which is significant on a regional and national scale), as well as a need to provide schools. In this instance the application states a lack of alternative sites as urban land is too expensive. High-level value trade-offs should be determined at a strategic level, rather than at a consenting process.

Many other countries have developed, or are developing, Food Policy<sup>3</sup>. In our view this is something that should be developed for New Zealand. A New Zealand Food Policy would consider climate change, water, urban development and urban development policy and the impact of these policies on New Zealand's domestic food security and New Zealand's role as an exporter of food. A Food Policy would assist New Zealand to achieve the UN Sustainable Development Goals<sup>4</sup>, particularly Goals 2 (Zero Hunger) and 3(Good Health and Wellbeing).

## **ISSUE 5: ADDRESSING CLIMATE CHANGE AND NATURAL HAZARDS - QUESTIONS**

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<sup>3</sup> <https://foodsecurecanada.org/>, <https://www.nationalfoodstrategy.org/>

<sup>4</sup> <https://sustainabledevelopment.un.org/?menu=1300>

16. *Should the RMA be used as a tool to address climate change mitigation, and if so, how?*
17. *What changes to the RMA are required to address climate change adaptation and natural hazards?*
18. *How should the RMA be amended to align with the Climate Change Response Act 2002?*

We see an opportunity for overarching strategic planning, including spatial planning, to account for both climate change adaptation and emissions reductions. HortNZ is working with government and primary sector partners as part of He Waka Eke Noa to work at farm level to reduce agricultural emissions. A transition to a low emissions economy is likely to drive land use change. At the same time, a changing climate will also drive land use change. In our view, the transition to a low emissions economy and adaptation decision-making require strategic planning to achieve (social, economic, environmental, cultural and climate change) outcomes.

The RMA framework should have the ability to consider how resource management decisions could support the achievement of these strategic outcomes over time (i.e not creating barriers to climate change adaptation and/or mitigation, enabling consideration of long-term climate change adaptation and/or mitigation ) while also seeking to safeguard ecosystem health through limits to achieve bottom lines.

We note that under the current framework, with regard to having regard to the effects of climate change (section 7), the focus has largely been solely on natural hazards.

## **ISSUE 6: NATIONAL DIRECTION - QUESTION**

19. *What role should more mandatory national direction have in setting environmental standards, protection of the environment more generally, and in managing urban development?*

As discussed above, HortNZ see a need for a higher-level strategic legislation that would provide outcomes-based strategy, but see a role for the RMA in implementing this vision. In doing so, a clear framework of national direction is required in the RMA framework.

Failings in the RMA to date have in part been due to insufficient provision of national direction by Central Government; there is a need for more national direction and for that national direction to be more integrated.

### ***Structure of national policy direction***

HortNZ support a mandatory suite of national directions with provision for regular review. This will ensure policy development progress across political change.

We see the potential for one integrated National Policy Statement (akin to a Regional Policy Statement) that would provide strategic direction on matters of national importance (i.e. incorporating the current National Policy Statements, and any additional ones required, into one document). HortNZ has raised numerous times in previous submissions concerns about the integration of the numerous national policy statements, for example how the draft NPSFM and NZCPS would work together, alongside the NPSUDC and the proposed NPS for Highly Productive Land.

Matters identified in Part 2 (which would be revised, as discussed) should have clear and integrated national direction.

As noted above, HortNZ consider that there is a need for national direction on food production. This should take the form of a national strategy that sits across resource management, local government and health, to inform policy and legislation in lower order documents. The RMA could then give effect to this in a resource management setting through national policy direction.

### ***Other methods of providing national direction***

There is a clear need for national consistency on some issues that are not matters of national significance, but are regularly the subject of debate and litigation not about values-based decision making in a local setting but the role of RMA plans. In this instance, the National Planning Standards are a tool that need to be used.

An example of this is the management of hazardous substances. HortNZ is currently involved in a plan change in the Waikato District, where a key topic of debate in submissions and hearings is the role of the district plan in managing hazardous substances and the need to avoid inefficient duplication of regulation with the Hazardous Substances and New Organism Act (HSNO), administered by the EPA and the Health and Safety at Work Act (HSWA) administered by WorkSafe. This is despite the Resource Legislation Amendment Act 2017 (RLAA17) removing the explicit function of regional and territorial authorities under section 30 and 31 to control the adverse effects of the storage, use, disposal and transportation of hazardous substances to ensure RMA controls do not duplicate controls in these other Acts, and the decision of the Independent Hearing Panel for the Christchurch Replacement District Plan, which (due to the CERA) process directly involved the Crown and the EPA. A National Planning Standard could provide a definitive framework, while still allowing local variation on specific matters.

HortNZ has also experienced similar issues regarding national consistency regarding agrichemical provisions in regional plans. While it is appropriate that the provisions themselves are subject to a Schedule 1 process that includes the local community, it is not necessary to debate the role of RMA plans compared with other legislation in every plan change process.

Vegetables production is another area that would benefit from national regulation. Regional Councils have failed to provide for vegetable growing, and have not considered the impact of regional rules constraining vegetable growing on the resilience of the national food system.

## **ISSUE 7: POLICY AND PLANNING FRAMEWORK - QUESTIONS**

- 20. How could the content of plans be improved?*
- 21. How can certainty be improved, while ensuring responsiveness?*
- 22. How could planning processes at the regional and district level be improved to deliver more efficient and effective outcomes while preserving adequate opportunity for public participation?*
- 23. What level of oversight should there be over plans and how should it be provided?*

HortNZ agree that plans could be improved by being clear and easy to understand. The reader should not have to seek an explanation from Council on an interpretation of a rule. In this instance the advice received from a council can vary from planner to planner, causing more confusion; this does not result in effective or efficient planning. The language used in plans should be consistent with the Government's plain English policy and any information that is required to interpret rules or policies should be included in the Plan.

Planning processes at regional/district level could be improved with adequate resourcing to manage planning workload, greater use of strategic outcome focused planning, greater investment in robust science and ongoing consultation with affected parties to reduce appeals.

HortNZ consider that there should be consideration given to establishing an independent national oversight role (a planning ombudsman type organisation or similar), as currently there is a lack of oversight of plans at a national level. This oversight role could be achieved through a greater role for existing organisations, such as MfE or the EPA.

### ***Further submissions***

HortNZ would not support reforms that limit the ability of directly affected parties to make further submissions on proposed plan changes. Plan change documents have become larger in volume and more complicated. Without significant reform this will remain the case. HortNZ's experience is that a plan change can change significantly from the notified version to the operative version, as a result of submissions. The inability to address a submission through a further submission will result in the principles of natural justice being compromised.

However, narrowing the eligibility to make further submissions on plan change processes would be supported. The current provisions are too broad and the opportunity abused by submitters to provide scope and coverage across parts of the process not of direct relevance.

### ***Flexibility in notifying site-specific Plan changes***

HortNZ would not support the adoption of the limited notification process formally included in the Housing Accords and Special Housing Areas (HASHA) Act 2013 whereby for plan changes and resource consent applications that apply to qualifying developments, only the following parties may be notified:

- a) the owners of the land adjacent to the land subject to the application; and
- b) the local authorities in whose district or region the land subject to the application falls; and
- c) any infrastructure providers who have assets on, under, or over the land subject to the application or the land adjacent to that land; and
- d) if the land subject to the application or land adjacent to that land is subject to a designation, the requiring authority that required the designation.

This may be a suitable process where land has already been through a public process to confirm suitability to support urban growth – e.g. a Future Urban Zoning. Where this has not occurred, it is not appropriate to exclude affected parties from the planning process.

There may be a case for refining the affected parties but this needs to be supported by the higher-level spatial planning and values setting initiatives previously identified by HortNZ.

### ***The costs and benefits of appeals in plan change processes***

HortNZ has been actively involved in a plethora of appeals in relation to full plan reviews, plan changes and variations. HortNZ notes that in Canterbury (under the ECAN legislation), Christchurch (in relation to the District Plan review) and Auckland (in relation to the Unitary Plan) merit appeals were limited. HortNZ was actively involved in these alternative processes and to date observes that:

- The processes are very labour and cost intensive with hearings generally focussing on topics necessitating multiple appearances over many months;
- The experts panels and their advisors are generally very good at focussing on the key issues that require determination;
- Only the larger players are involved with ordinary people finding the process too complex and difficult to engage with.
- Decisions are never perfect and unintended consequences could not be addressed through appeals if appeal rights were removed. The only avenue to remedy the issue is through a subsequent plan change which requires the agreement of Council. A new plan change uses more resources and time than an Environment Court appeal.

There has been a clear benefit (and improvement in plans) through the appeal process in a number of planning processes where HortNZ has been a party as an appellant. HortNZ has experienced a number of instances where vegetable growing has failed to be provided for in plans (e.g Environment Canterbury, Horizons, PC1 Waikato), removing the merit appeal process would not enable crucial issues such as this to be resolved.

HortNZ considers that if appeal rights were to be changed, this needs to be part of comprehensive review of the RMA that looks at the process holistically, rather than just focussing on one aspect – namely where and who considers the appeal. There could be value in establishing a process whereby, for example, appeals are reviewed by an independent national oversight body or the Environment Court and only accepted if certain criteria are met, to limit appeals to key issues.

HortNZ's submission on the Resource Management Amendment Bill 2019, expressed concern about the impact the loss of appeal rights would have on the quality of decision making, and that in the NPSFM context, it is essential an independent body is established for challenging whether the Council has given effect to NPSFM, consulted adequately and taken account of all the values.

Fast-tracking decision-making process increases the risk of rushed and poor decisions particularly in an area where science is often lacking or inconclusive.

## ISSUE 8: CONSENTS/APPROVALS – QUESTIONS

- 24. How could consent processes at the national, regional and district levels be improved to deliver more efficient and effective outcomes while preserving appropriate opportunities for public participation?*
- 25. How might consent processes be better tailored to the scale of environmental risk and impact?*
- 26. Are changes required for other matters such as the process for designations?*
- 27. Are changes required for other matters such as the review and variation of consents and conditions?*
- 28. Are changes required for other matters such as the role of certificates of compliance?*

There are opportunities for streamlining the consenting process, including:

- A more streamlined Cultural Impact Assessment approach (to take into account both fair expectations of iwi and hapu and certainty regarding process for the applicant)
- Lower consent costs by adopting online systems
- Consistent application of the law across councils
- Reduce complexity of consent applications
- Greater use of NES and National Planning Standards where appropriate

HortNZ consider that there have been failings in how activity statuses have been applied by Council, specifically:

- A reluctance to use Controlled Activities – this is a valid consenting pathway for some activities, that strikes a balance between ensuring environmental effects are managed while also providing certainty. This is also a means of ensuring that applications are better tailored to the scale of environmental risk and impact.
- Similarly, we see benefit in the use of Restricted Discretionary Activities, when the effects of an activity are certain. We have noted that in some cases the matters of discretion are so broad that these become akin to a Discretionary Activity – this is not efficient for some resource management issues.

Public participation is an important aspect of the resource management system, however there needs to be a stronger link to the integrity of the plan making process and strategic outcomes set through a consultative process.

Public participation is essential in setting the strategic vision for communities, this would then reduce the potential for conflict at the resource consent stage.

### ***Centralised regulation of farm planning***

HortNZ see benefit in centralised regulation of farm planning. The horticulture sector uses existing Good Agricultural Practice (GAP) (both NZ and Global GAP) as a type of farm plan. 3500 growers (over 90% of the horticulture crop) are independently audited under a GAP programme. The auditing of these programmes is undertaken by inspection bodies accredited through JAS ANZ. Ministry of Business, Innovation and Employment (MBIE) has oversight of the integrity of the independent auditing of JAS ANZ certified inspection bodies.

The horticulture sector is in the process of developing “add on” programmes to GAP systems. This has been completed for the vegetable sector with the NZGAP Environmental Management System (EMS). The NZGAP EMS audits growers against national codes of practice that reflect current understanding of good management practices (GMP) and best management practices (BMP). The GMPs and BMPs in the codes of practice are based on robust scientific research. Environment Canterbury has recognised the NZGAP EMS as an acceptable farm environment planning and auditing process.

Each region has developed bespoke farm planning requirements. The needless regional variation is frustrating for growers who operate across regions. The regional variation is complicating efforts to progress the delivery of our industry led programme.

If the EPA has a compliance function, the process could operate in a similar way to how the GAP programmes interacts with Ministry of Primary Industries on the Food Act. The GAP programmes have been accepted to audit Food Act compliance. This has required a national process of benchmarking and acceptance of the programme. Agreeing the requirements at a national level has required effort, but the acceptance process has been much simpler than it would have been to try and reach agreement with each local authority.

In order to deliver Freshwater Plans, the horticulture sector needs to be enabled to build on the existing GAP programmes. The regulation of freshwater farm planning also needs to be more streamlined than it is currently.

### ***Use of independent commissioners***

Relevant to Issue 7 and 8, is whether independent commissioners deliver more robust outcomes. In HortNZ's experience, independent commissioners are able to focus on the key issues and question expert evidence in a robust manner. However, whether this results in more robust outcome is very difficult to judge given the relatively recent use of independent commissioners in planning policy decision-making and noting that not all councils use independent commissioners so it is difficult to make comparisons.

## **ISSUE 9: ECONOMIC INSTRUMENTS – QUESTIONS**

*29. What role should economic instruments and other incentives have in achieving the identified outcomes of the resource management system?*

*30. Is the RMA the appropriate legislative vehicle for economic instruments?*

HortNZ does see a role for economic instruments (and other incentives) in achieving positive outcomes in a resource management context.

Economic instruments could potentially be used as part of a water allocation system, however consideration would need to be given to the degree to which economic instruments efficiently achieve the immediate term outcomes, for example freshwater objectives, as well as longer term strategic outcomes. Outcomes would include both instream and catchment values, including outcomes to reflect social, cultural, economic and environmental values.

### ***Transferable development rights***

HortNZ has always been a strong supporter of a viable Transferable Rural Site Subdivision (TRSS) rule package. There are some positive environmental outcomes that can be achieved for the rural production system. The system that HortNZ sees as viable is one that moves rural subdivision capacity away from areas of Highly Productive Land and also considers its application to other situations e.g. removing parcels from potential reverse sensitivity conflicts around infrastructure. As demonstrated in the Franklin and Rodney District legacy plan examples, the system must be simple and economically viable for the transfer to occur. This requires careful consideration of the donor and receiver situations.

### ***Financial contributions***

HortNZ support financial contributions being available. We see financial contributions being a useful across a number of resource management issues, in a horticulture context they could also be a useful tool. For example, if offset mitigation is required as a result of stream loss due to culverting, a grower may not have sufficient stream length within their ownership to achieve the offset. The use of financial contributions could enable the grower to achieve the required offset elsewhere. As this offset process would then be managed by the Council (collectively with other similar financial contributions), greater environment outcomes may be able to be achieved.

We note that there is a need for the framework around financial contributions to be clear and clearly distinguished from development contributions. As we see it, financial contributions play a different role and one that is focused on offsetting environment effects (as such it is an appropriate tool for a resource management framework).

## ISSUE 10: ALLOCATION - QUESTIONS

31. *Should the RMA provide principles to guide local decision-making about allocation of resources?*
32. *Should there be a distinction in the approach taken to allocation of the right to take resources, the right to discharge to resources, and the right to occupy public space?*
33. *Should allocation of resources use such as water and coastal marine space be dealt with under the RMA or elsewhere as is the case with minerals and fisheries, leaving the RMA to address regulatory issues?*

HortNZ has previously expressed support for the statement by the Productivity Commission Issue Paper: Better Urban Planning, Dec 2015 that “*planning systems can be thought of as a set of institutional arrangements that strike some balance between the rights of property owners to use and manage their land and the interests that others have in that land. This includes the community’s interest in environmental outcomes.*”

Diverse perspectives can be accounted for by:

- Establishing clear and consistent priorities for protection by identifying boundaries and limits based on environmental values and boundaries
- Establishing priorities for resource use where there are likely to be competing uses, based on social, cultural and economic values and boundaries.

There is a need for better integration of urban and rural planning responses particularly for resource allocation. For example, industrial and commercial land often requires the provision of significant municipal water supply. The Nelson region is an example where rezoning of industrial and commercial land has occurred ahead of resolving freshwater availability and allocation issues with other users including the rural activities competing for the same resource. While zoned for industrial and commercial use, water restrictions prevent high water use activities from establishing.

A planning system that did not recognise these relationships would be detrimental to sustainable resource management.

The RMA should provide principles for allocation. The allocation methods must reflect the local environment (at the appropriate spatial scale), and could differ across the country, however common principles could be developed at a strategic level.

In our view, allocation design must ensure that allocation occurs within environmental and cultural bottom lines and at a minimum, provide for basic human needs. Trade-offs required to achieve strategic environmental, cultural, social, and economic outcomes over time, should consider both economic efficiency and alignment with the strategic outcomes.

## ISSUE 11: SYSTEM MONITORING AND OVERSIGHT – QUESTIONS

34. *What changes are needed to improve monitoring of the resource management system, including data collection, management and use?*
35. *Who should have institutional oversight of these functions?*

Across multiple resource management issues (district and regional), there is often a very poor basis of evidence to undertake a review of the effectiveness of plan provisions and this is evident in many s32 reports.

HortNZ's submission on the Action for Healthy Waterways proposal called for the development of Section 360 regulations for monitoring and analysis and noted that Councils need good quality decision support tools. In our view Councils need national support to ensure that good quality decision support tools are developed in a timely manner.

The Resource Management Amendment Bill 2019 proposed additional powers for the EPA. We are concerned the new EPA powers could lead to duplication and inefficiency with local government process. But we also see potential benefits of greater consistency and efficiency. The outcome will depend on how well the process is established and managed.

HortNZ's submission on the Action for Healthy Waterways proposal called for an Independent Water Commission, as a unit of the Environment Court, to hear merit appeals and to assess the performance of Councils (in a freshwater context), and a requirement for a requirement for MfE to undertake annual reporting on which limits in regional plans are complaint.

HortNZ reiterates the point made above that there is a need for a planning ombudsman, or increased role for MfE or EPA in terms of providing a level of oversight and cohesion across the resource management system.

## **ISSUE 12: COMPLIANCE, MONITORING AND ENFORCEMENT - QUESTIONS**

*36. What changes are needed to compliance, monitoring and enforcement functions under the RMA to improve efficiency and effectiveness?*

*37. Who should have institutional responsibility for delivery and oversight of these functions?*

*38. Who should bear the cost of carrying out compliance services?*

There has been under-investment in compliance, monitoring and enforcement functions and this has undermined RMA plans.

HortNZ supports more national involvement in state of the environment monitoring and compliance, provided it achieves improved efficiency and outcomes.

Providing national acceptance of industry led farm planning schemes, such as the GAP programmes, could improve efficiency and outcomes.

As per our comments above, there is a need for a greater role at a national level in some areas.

It would be helpful if the RMA could provide some support to Council's in pushing back on serial or vexatious complainants. Often the charges for investigating complaints are passed onto a consent holder, regardless of if they were in the wrong or not. This technique is used by neighbours to put pressure on lawful operations in an attempt to drive them to close.

Bylaws are often used adopted by Councils as an easier enforcement mechanism than the RMA, highlighting the structural problems of the current Act.

## **ISSUE 13: INSTITUTIONAL ROLES AND RESPONSIBILITIES – QUESTIONS**

*39. Although significant change to institutions is outside the terms of reference for this review, are changes needed to the functions and roles or responsibilities of*

*institutions and bodies exercising authority under the system and, if so, what changes?*

*40. How could existing institutions and bodies be rationalised or improved?*

*41. Are any new institutions or bodies required and if so what functions should they have?*

Ultimately, we are concerned that the speed of planning processes may result in plans not being of a sufficient quality, or trade-offs needing to be made between different aspects of the process to enable the plan to get to the notification stage. For example, between quality/durability, community engagement, data collection and evaluation.

HortNZ reiterate the point made above that there is a need for planning ombudsman type organising, or increased role for MfE or EPA in terms of providing a level of oversight and cohesion across the resource management system.

HortNZ note also, that there is a need to consider the role/interaction with Council Controlled Organisations (e.g. Watercare, Auckland Transport, Wellington Water) and the potential increase in such organisations with the Three Waters Review, in terms of their role and statutory responsibility at a consenting level (compared to the requirements of Council's).

#### **ISSUE 14: REDUCING COMPLEXITY ACROSS THE SYSTEM – QUESTIONS**

*42. What other changes should be made to the RMA to reduce undue complexity, improve accessibility and increase efficiency and effectiveness?*

*43. How can we remove unnecessary detail from the RMA?*

*44. Are any changes required to address issues in the interface of the RMA and other legislation beyond the LGA, LTMA?*

An overarching issue for the New Zealand planning system is that there are increasingly too many parallel processes – Local Government (Auckland Council) Act 2009, Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014, the Environmental Protection Authority Act 2011, the National Policy Statement for Freshwater Management limit-setting processes, as well as new National Templates, National Planning Standards, Streamlined Planning Process, and National Direction processes. This multitude of processes creates confusion, duplication and inefficiency. Overlaps between district and regional functions must be eliminated.

HortNZ provide specific comment on a number of other legislation below that also need to be considered (in terms of the interface with the RMA, directly and indirectly):

##### *HSNO*

As already discussed, Horticulture NZ is routinely involved in plan review and change processes in which the management of the storage, use, disposal or transportation of hazardous substances is a contentious issue. HortNZ produces evidence on a regular basis as to the regulation provided by HSNO, and its companion regulations, particularly in respect of agrichemicals and fertilisers. There are rarely resource management issues to be addressed over and above the matters regulated by HSNO, and plans tend to duplicate the HSNO controls, making compliance costly and inefficient for users.

##### *The Rating Act*

There is a need to review the Rating Act to value land for the purpose it is currently zoned for and remove the opportunistic “right” created by rating land based on its potential use. The rural sector has suffered significant land costs and rates increases on rural production land, particularly where that land is in proximity to urban centres. Areas on the urban fringe have been valued not just for productive capability but also lifestyle use. This has skewed land price,

and in some circumstances, pushed growers off rural land, particularly when other factors (e.g. access to freshwater, reverse sensitivity) have compounded to make growing conditions unsustainable.

#### *The Property Law Act and Land Transfer Act*

There is a need to review the use of land covenants imposed through the Property Law Act and Land Transfer Act. Land covenants have been used in the rural environment to protect countryside living amenity – at the expense of rural production. In the rural context limitations on development size, style, type, location etc are often also supported by limitations on land use controlling the number or type of livestock or agricultural use. Covenants should not fetter or restrain what council would otherwise recognise as a lawful land use activity.

#### *Building Act*

There is an interaction between immigration requirements, the Building Act and seasonal worker accommodation requirements which can become complex (and potentially limiting) in a resource management setting.

#### *Bylaws (Local Government Act 2002)*

There is confusion as to the role of Bylaws that cross over into the resource management regulation. Bylaws should only be used when it has been determined as the most appropriate way of addressing a perceived problem. HortNZ was a participant on the preparation of the Auckland Councils Proposed Stormwater Bylaw 2014 submitting that as proposed the Bylaw was an unnecessary duplication of the PAUP regulations; did not properly account for impacts of the bylaw on rural land and stormwater concerns; had not been produced nor consulted on thoroughly enough due to the parallel (and intensive) PAUP process; and so the proposed bylaw was not the “most appropriate way of addressing the perceived problem.” Some changes were made as a response to the submission, which was a costly and frustrating exercise for all parties.

