

SUBMISSION ON

Exposure Draft Natural and Built Environments Bill

4 August 2021

To: Select Committee

Name of Submitter: Horticulture New Zealand

Supported by: Boysenberries New Zealand, Citrus New Zealand, New Zealand Asparagus Council, New Zealand Avocado, New Zealand Kiwifruit Growers Incorporated, Onions New Zealand, Process Vegetables NZ, Summerfruit NZ, Tomatoes NZ, Vegetables New Zealand Inc, Central Otago Fruit Growers Association, Hawke's Bay Fruitgrowers' Association, Katikati Fruit Growers, NZ Tamarillo Growers Association, Pukekohe Vegetable Growers Association.

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OVERVIEW

Submission structure

1 Part 1: HortNZ's Role

An overview of HortNZ, executive summary and key overarching themes of this submission: food security, transition to low emissions economy and highly productive land.

2 Part 2: Feedback on the exposure draft of the NBA

Feedback on the provisions included in the exposure draft of the NBA, including rationale for the amendments sought in this submission. This is accompanied by **Appendix A**, which details tracked changes amendments sought.

3 Part 3: Feedback on the Parliamentary Paper

Commentary on specific aspects discussed in the parliamentary paper on the exposure draft.

4 Part 4: An efficient and risk-based regulatory system

Provides commentary on making the new system more efficient, more proportionate to the scale and/or risks associated with given activities, more affordable for the end user, and less complex, compared to the current system.

Our submission

Horticulture New Zealand (HortNZ) thanks the Environment Select Committee for the opportunity to submit on the 'Inquiry on the Natural and Built Environments Bill: Parliamentary Paper' and exposure draft. We welcome any opportunity to discuss our submission.

The HortNZ submission represents an industry wide view and is supported by the affiliated groups named in this submission. Many of these groups, have also developed individual submissions to highlight issues that are more specifically relevant to them.

HortNZ wishes to be heard in support of our submission.

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

Executive Summary

Background to HortNZ

HortNZ represents the interests of 6000 commercial fruit and vegetable growers in New Zealand, who grow around 100 different crop types and employ over 60,000 workers.

HortNZ is active within the RMA system, representing the interests of growers in district, regional and national planning processes. This submission summarises the key issues for horticulture and draws in many years of experience with the RMA to make recommendations for the future legislation.

Key high-level issues for horticulture

Wellbeing

People are part of the natural environment, and the social, economic, and cultural wellbeing of all people must be provided for within natural environmental limits.

Horticulture produces healthy food to support the essential health needs of people and provides jobs and export earnings which support the social, economic, and cultural wellbeing of our population.

Unworkable regulations are taking a toll on the mental health of growers, and we seek a more efficient and risk-based approach to managing our natural and built environment.

Food Security

HortNZ see a need for greater recognition of food security (as an important outcome) at the national level within the new legislation.

Food security is a nationally important issue which needs to be addressed at a strategic level, it is integral to human health. It is critical that New Zealand's domestic food supply (and food security) is one of the outcomes that is promoted and considered when making trade-offs that will inevitably be required to meet environmental limits and outcomes.

Transition to Low Emissions Economy

Diversification to horticulture presents an opportunity to reduce emissions. HortNZ supports the Environmental Objective relating to Greenhouse Gas emissions. It is important that decision makers can assess the benefits of land use change.

Highly Productive Land

HortNZ supports recognition of the importance of highly productive land (HPL) as an environmental outcome within the Natural and Built Environments Act but seek amendments to promote its use (for primary production) as well as protection from inappropriate subdivision, use and development. We consider the management of HPL must be addressed in the National Planning Framework.

Amendments sought to exposure draft NBA

The following is a high-level summary of the key amendments HortNZ's submission seeks to the exposure draft NBA:

Part 1 - Preliminary provisions

- **Re-consider the definition of mitigate** definition, and instead provide specific definitions for offsetting and compensation, to align with case law.
- **Amend the definition of natural environment**, to clarify that it is only the essential human health needs of humans that are considered part of the natural environment. This provides necessary context to the inclusion of humans in the natural environment and provides additional robustness.
- **Include a definition for essential human health** based on Maslow's hierarchy of needs, to enable assessment of uses/outcomes that promote human health.
- **Include a definition for highly productive land**, that recognises factors additional to LUC class.
- **Provide greater clarity to the lake and river definitions** (and associated terms, including what is excluded, as well as the meaning of river bed and floodplain) through the NBA.

Part 2 - Purpose and related provisions

- **Retain enabling use of the environment to support 'wellbeing'** - it is important that social and economic well-being of people and communities (and their health) remains central to the purpose, alongside environmental and cultural wellbeing.
- **Amend to refer to 'natural' environmental limits**, as this wording is more consistent with biophysical intent.
- **Re-word how limits may be formulated** so that there is a clearer relationship between what is a 'limit' and what is a state (which the limit should be designed to achieve).

- **Review the approach to the drafting in Section 8 Environmental Outcomes** - to provide clearer, more structured drafting and review the use of terminology to use more consistent terms.
- **Amend the outcome for rural areas** to retain the concept of sustainable use and development, include providing for essential human health/domestic food system and enabling the use of HPL for food production and land use change low emissions to lower agricultural emissions.
- **Include the domestic food system and highly productive land as matter the national planning framework must address** - we seek these are added to Part 3 Clause 13.

Other matters

Case law: It is important to make use of existing case law and areas which have been contentious where there could be opportunities to provide additional clarity through his legislation.

Spatial Strategies: We expect the Regional Spatial Strategies to play a significant role in managing/promoting environmental outcomes for resources such as highly productive land and to assist with resolving issues of conflict, allocation and priorities.

Treaty of Waitangi: HortNZ support a more consistent and efficient approach to resource management that gives effect to the Treaty of Waitangi - however this requires greater clarity. A key aspect of achieving this is greater clarity in the roles of tangata whenua, hapu and iwi, to provide a more consistent, effective, and efficient approach to resource management.

More Efficient System: We see potential for the new system to ensure that resource management processes are more efficient including through greater consistency across the country, as we discuss in Part 4 of this submission.

- Incentivising positive outcomes,
- Leveraging Freshwater Farm Plans,
- An NES for Commercial Vegetable Growing, and
- Streamlining consenting and plan making processes,



HortNZ's Role

1. Background to HortNZ

HortNZ represents the interests of 6000 commercial fruit and vegetable growers in New Zealand, who grow around 100 different crop types and employ over 60,000 workers.

There is approximately 120,000 hectares of horticultural land in New Zealand - approximately 80,000 ha of this is fruit and vegetables. The remaining 40,000 ha is primarily made up of wine grapes and hops, which HortNZ does not represent.

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



2. 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.

3. Wellbeing

People are part of the natural environment, and the social, economic, and cultural wellbeing of all people must be provided for within natural environmental limits. It is essential that all four well-beings are provided for within the purpose of the NBA legislation.

Horticulture produces healthy food to support the essential health needs of people and provides jobs and export earnings which support the social, economic, and cultural wellbeing of our population.

A global study into the gap between fruit and vegetable production and recommended consumption concluded that achieving recommended consumption of fruit and vegetable *"will require concentrated efforts across the food system to reorient investments and interventions to prioritise fruits and vegetables more. It will require additional investments in research and development to encourage more fruit and vegetable production, while decreasing its environmental footprint"*. It also noted that greater fruit and vegetable consumption could be 'win-win' for both public and ecological health.¹

3.1. Resilience and mental health

A lot of resource management regulation has been negative from the perspective of production of healthy food. The lack of recognition of the positive contribution of the sector is impacting on the mental health of growers.

We have heard clearly from growers that they need more time to consider and respond to the changes being proposed in the RMA reform, and that they seek a streamlined and risk-based approach to future regulation.

4. Food Security

Food security is a nationally important issue which needs to be addressed at a strategic level. While New Zealand is a net food exporter, many of the vegetables and some of the fruit that we grow are only for domestic food supply.

Growing of vegetables for domestic supply is integrated with vegetables grown for export in crop rotations. We also have a national food producing system that relies on growing vegetables and fruit in pockets of highly productive land, with good climate and access to freshwater. Fruit and vegetables are essential for the human health of New Zealanders.

Over 80 percent of vegetables grown in New Zealand are for domestic consumption. Deloitte's report on the 'Pukekohe Hub'² described three distribution channels: retail, foodservice and exports. In this area, the most heavily used channel was retail which distributes 83 percent of produce. The other two channels - food

¹ Mason-D-Croz et al. (2019). Gaps between fruit and vegetable production, demand, and recommended consumption at global and national levels: an integrated modelling study.

² The growing area that straddles the Auckland and Waikato boundaries and is a key producer of vegetables in New Zealand.

services and export – distribute 7 percent and 10 percent, respectively.³ Similarly, KPMG’s 2017 report on New Zealand’s domestic vegetable production demonstrated that for the ten key vegetables that are staples of New Zealand diets, the vast majority are consumed or processed in New Zealand.⁴

For most vegetable crops, the domestic market is the primary market, but many growers produce export crops within their rotations for practical (soil health) and economic reasons. For example, onions which are predominately grown for export are grown with other vegetable crops in rotation. Onions grown in rotation with non-alliaceae crops promote soil health. Export income provides greater economic resilience.

New Zealand also has an important role in exporting fresh vegetables to the Pacific Islands. For example, in 2016 76% of total exported potatoes went to Fiji, 87% of exported Kumara and 82% of exported cauliflower, 75% of exported cabbage went to the Pacific Islands. NZ has an important role in the food security of Pacific Islands.⁵

New Zealand and our Pacific Island neighbours are too remote to import many fresh vegetables from elsewhere in the world. Most vegetables that New Zealand imports are processed. In 2019, the most imported vegetables were preserved tomatoes and frozen potatoes.⁶

Some fruit crops grown in New Zealand have a predominately export focus – for example, it has been estimated by NZIER that 95% of kiwifruit and 83% of apples are exported⁷. These two crops account for approximately 75% of New Zealand’s fruit and vegetable exports⁸. The next largest fruit export crops are avocados, cherries, and blueberries.

Many fruit crops are grown mainly for the domestic supply. For example, nectarines, peaches and plums, oranges, mandarins, feijoas, tamarillos, and strawberries.⁹

4.1.1. NATIONAL FOOD SYSTEM

The production of fruit and vegetables (both outdoor growing and covered crops) in New Zealand operates as part of a national system, and therefore warrants national planning recognition.

Compared to 40-50 years ago, there is a greater reliance on large food hubs for vegetable growing – such as Pukekohe, the Horowhenua and Canterbury – to feed New Zealand’s population.¹⁰ New Zealand’s vegetable-growing regions supply

³ Deloitte “New Zealand’s Food Story: The Pukekohe Hub” Prepared for Horticulture New Zealand (August 2018)

⁴ KPMG, 2017 New Zealand’s domestic vegetable production: the growing story.

⁵ https://wits.worldbank.org/CountryProfile/en/Country/WSM/Year/2019/TradeFlow/Import/Partner/all/Product/16-24_FoodProd

⁶ Plant and Food, Fresh Facts 2019

⁷ NZIER, 2019. Farm share of retail prices. Analysis of domestic farmer margins in a globalised world.

⁸ Fresh facts 2020 data, as a proportion of total horticultural exports (excluding wine, hops, and ‘other horticulture’).

⁹ FreshFacts 2020

¹⁰ KPMG, 2017 New Zealand’s domestic vegetable production: the growing story.

markets at different times of the year; a sustainable, year-round supply of produce for New Zealand is only possible if the different growing regions work in conjunction to ensure that seasonality and other variables, such as diseases and weather, do not interrupt that supply.

Similarly, fruit crops are predominately grown in certain regions in response to the specific soil and climatic conditions required, and where key infrastructure exists – for example, avocados are predominately grown in Bay of Plenty and Northland, summerfruit predominately in Hawkes Bay and Central Otago, apples predominately in Tasman and Hawkes Bay, citrus predominately in Gisborne and Northland.¹¹

4.1.2. FOOD INSECURITY AND HEALTH LOSS

Ministry of Health data indicates that only 33.5% of adults and 44.1% of children are meeting fruit and vegetable intake guidelines.¹²

Despite, on the whole, New Zealand producing more food than we can consume (noting this is not true of all crops – as explained above), many New Zealanders live in food insecurity. A 2019 Ministry of Health study analysed household food insecurity among children in New Zealand, it estimated that 174,000 (19%) of all children in New Zealand live in food-insecure households.¹³

There is an extensive body of research indicating that children experiencing household food insecurity have lower fruit and vegetable intake, diets higher in fat, and are at an increased risk of obesity.¹⁴

In New Zealand, for families living in deprived areas, increases in fruit and vegetable prices, especially around their off-season, compel them to substitute the purchase of healthier whole fruit and vegetables with cheap energy-dense and nutrient-poor products.¹⁵

Just as maintaining our environmental brand is of value to our high value export products, so too is ensuring that all New Zealanders have access to the healthy food, that we built our export reputation on.¹⁶

There are complex social and economic reasons that people struggle to meet their nutritional needs. Growers are passionate about providing healthy produce; however, it is still a business and for them to continue to grow the healthy food we rely on, it has to be economically viable.

¹¹ FreshFacts 2020

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

¹³ Ministry of Health. (2019). *Household food insecurity among children, New Zealand Health Survey*

¹⁴ Ibid.

¹⁵ Rush, E., Savila, F., Jalili-Moghaddam, S., & Amoah, I. (2018). Vegetables: New Zealand Children Are Not Eating Enough. *Front. Nutr.*

¹⁶ /assets.kpmg/content/dam/kpmg/nz/pdf/2020/05/agri-food-now-normal-future.pdf

Regulatory pressure is preventing the expansion of vegetable growing from keeping up with population growth. This is predicted to result in increased cost for consumers, with tangible health consequences.

Health costs of increase in vegetable prices

Otago University has recently modelled the potential health impacts of increased vegetable prices. This study found that using the health costs of an increase in vegetable prices of 43 - 58 percent, (Deloitte, 2018) would be a loss of 58,300 - 72,800 Quality Adjusted Life Years and health costs of \$490 - \$610 million across the population.¹

4.1.3. PRESSURE ON FOOD PRODUCTION

New Zealand's existing food production systems are coming under increased pressure from population growth (and competing land use demands reducing availability of highly productive land), climate change, and the need to improve environmental outcomes.

Supporting evidence to the Climate Change Commissions advice to Government (on emissions reduction) notes that, "... if the production of items grown primarily for domestic consumption (such as some fresh vegetables) contracts, as this could drive prices up and exacerbate existing food and nutrition access for some vulnerable groups". There is a misconception that there is not a risk of reduced food production, as the horticulture industry as a whole is growing. However, it is generally speaking export-oriented crops which are most likely to expand - this alone does not guarantee New Zealand's food security, as it represents only a subset of the crops grown in New Zealand.

It is also important to highlight the fragility of the vegetable sector particularly. There are number of compounding pressures on growers, including:

- Market dynamics - it is clear in the Commerce Commission's draft report into the retail grocery sector (a critical route to market) that there is limited competition, which gives suppliers few options and creates an imbalance of bargaining power.¹⁷ While it is desirable socially, for vegetables to be affordable for consumers, growers are price takers and often run with very tight profit margins as a result. A more sustainable economic model would include a greater proportion of the profit being returned to growers, to ensure the system is economically sustainable and competition within the growing market is retained.
- Increasing competition for natural resources - including land (from urban development both directly and indirectly through reverse sensitivity pressures).
- Competition for water for irrigation, for example 30% of the fully allocated groundwater on the Heretaunga plains is for municipal supply.¹⁸

¹⁷ Commerce Commission (2020). [Market study into the retail grocery sector. Draft report - executive summary.](#)

¹⁸ www.hbrc.govt.nz/assets/Document-Library/TANK/TANK-Key-Reports/Groundwater-Quantity-State-of-Environment-5-yearly-report-2003-2008.pdf

- Unworkable discharge allocation regulation where vegetables are becoming very strictly regulated within regionally inconsistent frameworks.¹⁹
- Unworkable regulation, that prevents and stifles crop rotation.²⁰
- Increasing labour availability challenges²¹, and labour costs²², which growers have limited ability to pass on to consumers due to market dynamics.
- Disruption of export markets due to Covid-19, impacts on profit margins for businesses.²³
- Subsidised competitors, the European Commission recently announced €270 billion in support for growers and farmers through the Common Agricultural Policy (CAP) from 2023-2027.

In the past ten years due to competition of land, the area in vegetable growing has declined²⁴, and the price volatility has increased²⁵. 76% of vegetable growing area is managed by 115 businesses²⁶. In the face of continuing pressures there is a real risk that the exit of only a few large players in the industry would have a significant impact on food supply.

4.2. Approach sought in the new legislation

Food security must be an issue that is promoted and considered alongside other uses for essential human health, when making trade-offs that will inevitably be required to meet natural environmental limits. This is particularly relevant in peri-urban areas where there is competition for resources from urban growth.

It is critical that New Zealand's domestic food supply (and food security) is one of the NBA outcomes and is supported with national planning direction, including nationally consistent rules for vegetable growing.

5. Transition to a Low Emissions Economy

In the context of greenhouse gas emissions reduction targets, the Paris Agreement highlights the importance of food production and food security, recognising the "fundamental priority of safeguarding food security ..." and noting the need to adapt and foster resilience and lower emissions, in a manner that does not threaten

¹⁹For example, PC2 Horizons

www.horizons.govt.nz/HRC/media/Media/One%20Plan%20Documents/One%20Plan%20Reviews%20and%20Changes%20Documents/Horizons-Regional-Council-Plan-Change-2-Recommendations-of-the-Hearing-Panel.pdf?ext=.pdf

²⁰ <https://www.waikatoregion.govt.nz/assets/WRC/WRC-2019/Volume-2-Proposed-Waikato-Regional-Plan-Change-1-Decisions-version.pdf>

²¹ Skilled labour - tractor drivers, RSE

²² Labour intensive, % of wages.

²³ <https://www.tomatoesnz.co.nz/latest-news/december-2020-update/>

²⁴ <https://www.stats.govt.nz/indicators/agricultural-and-horticultural-land-use>

²⁵ https://www.stats.govt.nz/indicators/consumers-price-index-cpi?gclid=Cj0KCQjw6eTtBRDdARIsANZWjYYzWVW0UmAjVys4HN_NIOFzElbLZmxuI9ladZmkXB2K6nyffRSOQxQaAtz8EALw_wcB

²⁶ NZGAP data

food production. This same consideration is relevant to resource management more broadly.

5.1. Food production in a low emissions economy

The emissions trading scheme was established as market instrument for managing emissions. The experience of the glass house sector has been that the ETS price has not driven reductions in emissions, because currently there are few viable alternatives for heating glass houses. The glasshouse sector is at risk of becoming economically unviable due to ETS costs. If growers no longer produce these crops in NZ, this will result in lesser variety of vegetables available to NZ consumers, and substitution with imported products.

It is our opinion, that the transition to developing indoor growing and outdoor food systems that have lesser emissions, will require an integrated approach, that include behaviour change, investment in research, infrastructure, and technology as well as regulatory signals.

The primary sector partnership for managing agriculture emissions is an example of integrated approach.

He Waka Eke Noa

He Waka Eke Noa is a climate action partnership with the primary sector, Government and Maori, of which HortNZ is a partner. The partnership is designing an alternative to the ETS for reducing and offsetting agricultural emissions. The He Waka Eke Noa system includes a price and farm planning to drive on-farm behaviour change.

The He Waka Eke Noa approach acknowledges that a price in isolation cannot drive the systems wide change required to reduce agricultural emissions, and what is needed to achieve change is an integrated approach including farm planning supporting behaviour change.

The farm level response through He Waka eke Noa, will need to be supported by a wider network of changes including investment in research, infrastructure and technology as well as strategic planning and regulation.

5.2. Enabling land use change to horticulture

Diversification to horticulture presents an opportunity to reduce emissions while increasing food production, as identified by the Climate Change Commission.

'Ināia tonu nei: a low emissions future for Aotearoa' includes the assumption (in the Demonstration Path) that 2,000 ha of land will be converted to horticulture per year from 2025 and notes that the Commission expect this could increase if "barriers - such as water availability, labour, supply chains and path to market - are addressed". Opening up more opportunities for conversion to lower emissions production systems and land uses, including horticulture' is listed as a critical outcome.²⁷

²⁷ <https://www.climatecommission.govt.nz/our-work/advice-to-government-topic/inaia-tonu-nei-a-low-emissions-future-for-aotearoa/>

The advice also notes that further land use change from livestock agriculture into horticulture and forestry (from 2021, additional 3,500 ha per year converted from dairy) would be required to meet the more ambitious end of the 2050 methane target if new technology does not come through.

5.3. Approach sought in the new legislation

From HortNZ's perspective it is important to not create barriers to climate change adaptation and/or mitigation and enable long-term climate change adaptation and/or mitigation, through projects such as water storage and provisions which enable growing areas to move between regions.

6. Highly Productive Land

For future generations, it is critical that Highly Productive Land (HPL) is protected from the continual trend of cumulative loss and loss of productive capacity due to reverse sensitivity and competition for natural resources. Any protection of HPL from inappropriate subdivision, must also recognise its value for current and future generations for food production and enable its use for food production.

We accept that there needs to be flexibility to develop highly productive land in some places. What is important in our view, is that urban development and productive land are considered together to provide a planned approach so new urban areas are designed in a manner that maintains the overall productive capacity of highly productive land.

We need to ensure economic and environmental sustainability of primary production are taken into account when protecting HPL. Otherwise, we risk stranded assets being sold off as poorly performing lifestyle blocks.

Multiple factors make land 'highly productive' beyond just soil - this makes providing a clear definition of this term important.

6.1. Recognising the Value of HPL

HortNZ's submission on the proposed National Policy Statement for Highly Productive Land (NPS-HPL) was very clear that protection of HPL, without also enabling its use for food production is an unacceptable outcome and would further disadvantage an already economically fragile domestic food system.

In our view, it is important that the definition of highly productive land includes the key natural and physical resources that contribute to the land's productivity. We also recognise that some of these natural and physical factors can be modified with policy and investment, and that all of these factors contribute to the productive capacity of land.

6.2. Protecting HPL from loss to inappropriate development

Highly Productive Land is a finite resource and intergenerational asset that is under threat in New Zealand - most significantly due to urban development, as reported

in 'Our Land 2021' which states that the area of HPL that was unavailable for horticulture because it had a house on it increased by 54% from 2002 to 2019.²⁸

HPL can be lost directly to urban development, inappropriate subdivision creates reverse sensitivity issues (complaints about spray, noise, and amenity).

The importance of HPL, and the need to manage this natural resource strategically, was clearly articulated in the consultation on the proposed NPS-HPL, including that the lack of clarity under the RMA means highly productive land is given inadequate consideration by local government:²⁹

"The value of this land for primary production is often given inadequate consideration, with more weight generally given to other matters and priorities. This absence of considered decision-making is resulting in uncoordinated urban expansion over, and fragmentation of, highly productive land when less productive land may be available and better suited for urban use. This is preventing the use of this finite resource by future generations... National direction on highly productive land could provide councils with a clearer framework for managing this resource and assessing trade-offs between competing land uses ..."

There are many examples of HPL being lost in New Zealand, a case study is presented below.³⁰

Case study: Save our Soils Society Incorporated in the Hawkes Bay

The Heretaunga Plains in the Hawkes Bay, across approximately 30,000 ha, are an exceptional location for horticulture, viticulture and agriculture. The Plains have a combination of water, favorable climate and infrastructure (including proximity to a major port), which contributes to it producing half of New Zealand's fruit, vegetables and grapes. The underlying aquifer provides water for the public water supply, irrigation and industrial use on the Heretaunga Plains and adjacent areas. Since the 1960s, approximately 5,500 hectares of land has been taken for urban development.

Save Our Fertile Soils Incorporated recently submitted on the Hastings District Long Term Plan (2021 to 2031), concerned with the rate of urban sprawl and loss of fertile soils of the Plains to urban and industrial development. Despite the vision '*We are focused on protecting and enhancing our fertile land and the life-giving waters which support it*', the 30-year programme for residential development would result in an additional 186ha of more fertile soil being lost.

In response, Save Our Fertile Soils Incorporated, concerned that this was short-sighted and based on development which represented the 'easiest and most cost-effective option' took it upon themselves to propose alternative areas for urban and industrial development on unproductive land.

6.3. Approach sought in the new legislation

HortNZ seek that the outcome related to the protection of HPL is focused on protecting the productive capacity of highly productive land from inappropriate

²⁸ Our Land 2021. Ministry for the Environment.

²⁹ Valuing Highly Productive Land: A discussion document on a proposed national policy statement for highly productive land, Ministry for Primary Industries, August 2019.

³⁰ <https://www.saveourplains.co.nz/>

subdivision, use and development and seeks an amendment so that the Act promotes the use of highly productive land for food production, both for domestic and export.

While the 'quality of soils' is proposed as a topic that the National Planning Framework must include, protection of HPL is not specifically identified as a topic that that national planning framework must include (nor is domestic food supply). We consider that this leaves a gap and recommend amendments to include this in our commentary on the exposure draft below.

Exposure Draft NBA

The following section provides commentary and feedback on the exposure draft of the Natural and Built Environments Bill (NBA) – this is accompanied by Appendix A, which outlines the amendments HortNZ seeks in tracked changes.

7. General comments

Planning for the rural environment will be required in the National Planning Framework and regional spatial planning.

The exposure draft NBA is not particularly clear on the how rural use is addressed (and primary production and food security promoted). We expect that this will need to feature clearly in the National Planning Framework and spatial planning process, to ensure that these important considerations are taken into account. High-level value trade-offs should be determined at a strategic level.

A clear framework for resolving conflicts will be important.

‘Conflict’ is often associated with clashing expectations of resource allocation that can be resolved through resource management. Establishing priorities for resource allocation and use where there are likely to be competing uses, based on social, cultural, environmental, and economic values will be important.

As a matter not addressed in the exposure draft, it also remains to be seen how resource allocation will fit into the purpose of the Act or at what ‘level’ of the framework this will be determined. We envisage that this will come through the National Planning Framework (and to a degree, NBA plans). The exposure NBA only refers to “resources” once (in the ‘Natural Environment’ definition) – a definition for ‘allocation’ or ‘resource allocation’ may be warranted.

Relationship with consenting framework will provide necessary context.

How the purpose, limits and outcomes translate into the consenting regime in the NBA has a large bearing on how efficient and effective the framework will be. Some aspects of the exposure draft are difficult to comment on in the absence of this framework.

Well-resourced support for implementation will be critical.

It is crucial to the implementation and transition to new legislation that MfE is well-resourced to support this.

There is also a need to recognise, and respond to, the significant uncertainty that a new legislative regime represents for landowners and resource users, which has a mental health toll. Recognition of the investment of growers, reasonable timeframes that enable change to occur, clear communication will be critical, and community support will be important.

8. The NBA and its relationship to the RMA and Case Law

Case law developed under the RMA has provided valuable decisions on how natural resources should be managed. We are concerned that a departure from key definitions and concepts within the RMA could lead to uncertainty and undermine the implementation of the NBA.

For example, in the PCE report³¹ concerns were raised about loss of case law and the uncertainty that could create:

“the Supreme Court in King Salmon put to bed the “overall broad judgment” approach.” ... In my view, if the King Salmon facts were considered under the Review Panel’s proposals then, given that the natural environment is not given any priority in either the outcomes clause or the purpose clause (which, as noted above, infects the empowering provisions on limits), the result would have been anyone’s guess. Certainly, the Court would have been free to make an overall broad judgement based on the undifferentiated elements being proposed. Aquaculture could well have been considered a ‘positive outcome for the environment’”

In **Appendix A** we have made suggestions to amend definitions and wording to achieve improved alignment with the RMA and/or case law under the RMA, while still aligning with the drafting intent of the NBA.

However, even with the edits we have proposed our legal counsel have residual concerns about the loss of case law. Key definitions, principles and the broader decision-making framework have changed under the exposure draft provisions, meaning the considerable amounts of substantive precedent set under the RMA would not be applicable.

In particular, the definitions for mitigate, offset, compensate, river (particularly in relation to riverbed, river bank, flood plain and wetland), and water cut across existing and settled case law. Loss of the applicability of such key case law results in immediate uncertainty and inevitable cases relitigating essentially the same points. Minimising the loss of settled precedent should be strongly considered in drafting.

We are also concerned with an inconsistency in language used, particularly in key sections like ‘Environmental Outcomes’. This is likely to further create litigation, interpretation, and administration issues.

9. Part 1 - Preliminary provisions

In **Appendix A** we have made suggestions to definitions in the Interpretation section. For the most part the suggestions we have made are related to alignment to accepted definitions in the planning standards and the RMA. Key definitions with particular importance to the management of natural and built environment from the perspective of the horticulture sector are discussed in the sections below.

9.1. Definition of ‘Environment’ and ‘Natural Environment’

³¹ www.pce.parliament.nz/media/197067/salmon-lecture-rma-reform-coming-full-circle.pdf

The definition of 'Environment' includes both the natural environment as well as people and communities and the built environment they create (as well as the social, economic, and cultural conditions).

9.1.1. HUMANS AS PART OF THE NATURAL ENVIRONMENT

The natural environment is defined to include animals, which includes humans. Our position is that the natural environment must include humans alongside all other animals, however, to ensure the wellbeing needs of people generally are not balanced against other aspects of the natural world, the inclusion of humans in this context must be limited to meeting the essential physiological health needs.

To achieve this, the definition should make it clear it is only the physiological needs of humans (current and future generations) living in New Zealand that are considered part of the natural environment. HortNZ propose an amendment in **Appendix A** to this effect.

All other aspects of the wellbeing of people are provided for - in parts (b) and (c) of the environment definition - but not within the definition of the natural environment.

This change in definition is important, because it enables the words 'Natural Environment' to replace 'Environment' within the Bill in respect of limits, to provide greater certainty that natural resource management will occur within natural environmental limits.

In our view, the present wording would allow for an overall judgement approach that prioritises the environmental outcomes associated with the built environment (beyond those associated essential human health needs of people), above natural environmental limits.

9.2. Definition for 'Essential Human Health'

The Bill refers to human health in numerous locations, for example: the definition of well-being (in respect of the health and safety of people and communities), in Section 5(3) Te Oranga o te Taiao incorporates the health of the natural environment (which as above, does not exclude humans), and human health is one of the purposes of environmental limits in Section 7(1). However, the concept of human health in relation to the Bill is somewhat vague and could be interpreted at a variety of scales.

We consider that a definition for essential human health is required, and suggest drafting for such as definition in **Appendix A**. It is necessary to provide this additional resolution to enable assessment of uses/outcomes that promote human health - as explained further below.

9.3. Definition of Highly Productive Land

We see a need to provide a definition for highly productive land - either in the NBA or in the National Planning Framework - so that there is a consistent understanding. It is important that the definition of highly productive land includes the key natural and physical resources that contribute to the land's productivity.

There are a range of factors – in addition to soil LUC – that contribute to what is best described as the productive capacity of ‘highly productive land’, including for example: suitability of the climate, title size/configuration, supporting infrastructure (e.g., packhouses, transport), and lack of reverse sensitivity constraints. Other factors also include existing water availability and receiving water sensitivity.

For example, the recently notified Otago Regional Policy Statement 2021 refers to (in LF-LS-P19):

- “... 1. identifying highly productive land based on the following criteria:
- a. the capability and versatility of the land to support primary production based on the Land Use Capability classification system,
 - b. the suitability of the climate for primary production, particularly crop production, and
 - c. the size and cohesiveness of the area of land for use for primary production,”

In **Appendix A**, we seek the wording sought in HortNZ’s submission on the proposed NPS-HPL.

We envisage that the definition of highly productive land will have a clear linkage to/ be expressed in, Regional Spatial Strategies.

9.4. Definition of Mitigate

The definition of mitigate, in relation to the phrase “avoid, remedy and mitigate”, includes offsetting and compensation where enabled by the national planning framework or a plan, or as a consent condition proposed by the applicant. This revokes the existing case law and introduces uncertainty and potential for unintended outcomes.

Offsetting has been established as separate from mitigation and below it in the hierarchy. We therefore recommend a separate definition for offsetting (and potentially for avoid and remedy also) to clarify the position and intent.

Similarly, compensation should be kept separate and clearly as a last resort in the hierarchy.

Offsetting or the provision of compensation must remain a consideration to be enabled and not a requirement.

The NBA would be improved by defining all elements of the effects hierarchy noting that the meaning of ‘avoid’ has been clearly articulated through case law.

9.5. River and associated freshwater definitions

9.5.1. LAKE, RIVER AND WATER

The definition of lake is extremely broad and will inevitably capture unintended bodies of water. Whilst the definition of river is clear from subsections (a) and (b), the exclusions in (c) are limited and nullify the considerable existing case law on the definition of river without offering sufficient clarity. This is touched on further below.

In particular, the definition the riverbed in relation to the river is now once again unclear, as are the definitions of riverbank and floodplain. This, along with the

broad definition of lake will ultimately require clarification, or risk litigation, where there are conflicting interpretations for water bodies, irrigation ponds, troughs, and wetlands.

The exclusions provided for in the definition of water provide some respite but should not be necessary to clarify the more specific definitions.

9.5.2. CLASSIFICATION OF RIVER/STREAMS

The definition for river is in substance the same as the RMA definition - it refers to the following:

- Continually or intermittently flowing body of freshwater (included)
- Stream (included)
- Modified watercourse (included)
- Irrigation canal, a water supply race, a canal for the supply of water for electric power generation, a farm drainage canal (excluded)
- Any other artificial watercourse (excluded)

These definitions have been subject to much debate through regional plan processes throughout the country over a number of years and continue to be so. The new legislation presents an opportunity to bring in a suite of clearer terms for all waterbodies so that there is consistency across the country, and under the new legislation these terms do not have to be debated again.

An example of current differences in approach and inconsistency are shown below, specifically in relation to 'artificial watercourse' in a subset of regional plans.

Regional Plan	Definitions of 'artificial watercourse'
Canterbury Land and Water Regional Plan, includes definitions for: <ul style="list-style-type: none"> • Artificial watercourse • Drain • Water race or water supply race 	<i>means a watercourse that is created by human action. It includes an irrigation canal, water supply race, canal for the supply of water for electricity power generation, and farm drainage canal channel. It does not include artificial swales, kerb and channelling or other watercourses designed to convey stormwater.</i>
Tairāwhiti Resource Management Plan, includes definitions for: <ul style="list-style-type: none"> • Artificial watercourse • Modified watercourse • Drain • Permanently flowing stream • Intermittent stream • Ephemeral stream 	<i>A watercourse that is created by human action but excluding modified watercourses. It includes an irrigation canal, water supply race, canal for the supply of water for electricity power generation, and farm drainage canal channel.</i>

Waikato Regional Plan, includes definitions for:

- Artificial watercourse
- Modified watercourse
- Farm drainage canal
- Ephemeral streams

A watercourse that contains no natural portions from its confluence with a river or stream to its headwaters and includes irrigation canals, water supply races, canals for the supply of water for electricity power generation and farm drainage canals

The classification of the subsets of 'river' (e.g., permanent, intermittent, ephemeral etc.) need defining to prevent ongoing litigation region-by-region in Natural and Built Environment Plans.

Furthermore, the exclusions (in the RMA definition of river, which is mirrored in the exposure NBA) have not actually been exclusions from regulation e.g., ECAN PC5 concerning inanga habitat extended setbacks to Farm Drains and Artificial watercourses. There is also an opportunity through the legislation, to provide greater clarity on the management functions in relation to these different classifications.

9.5.3. BED/BANK OF A RIVER

An issue to which there has much debate, uncertainty and case law is to where the river bed extends/ what is the extent of a river bank. There is an opportunity to make this clearer and more definitive in the new legislation.

10. Part 2 - Purpose and related provisions

In **Appendix A** we have made suggestions to the wording of provisions. In the following sections we discuss the rationale for the changes we have sought.

10.1. Section 5 - Purpose of the Act

We support the enabling of Te Oranga o te Taiao but would suggest that this concept be clarified (for example in a similar manner to Te Mana o te Wai in the NPSFM, where Te Mana o Te Wai is a lens for decision-making as well as an integrated outcome).

HortNZ support 'use of the environment for wellbeing' (which includes economic, social, environmental, and cultural as well as health and safety) being in the purpose of the NBA, in clause (1)(b).

There is however some lack of clarity regarding the interface between subsections (a) and (b), particularly the precedence of one over the other.

We support the 'Panel Plus' approach (as it is referred to in the Initial Impact Analysis) of "enabling use and development within natural environment limits" however consider that the articulation of this intent within the drafting could be further clarified/strengthened in some areas. Areas which we consider would benefit from additional clarity are:

- Amendments to refer to include 'natural' in clause (2) consistent with our discussion elsewhere on the definition of natural environment and the interface of this with the essential needs of humans.
- We consider the words in a "at a rate" should be added to clause 5 (1)(b). This aligns better with the RMA and is particularly important in the context of the emphasis of the Bill on enhancement. It must be recognised the rate at which environmental enhancement can be achieved will influence the social, economic, and cultural well-being of present and future generations.
- Clause (2) sets out a requirement that the use of the environment "must comply with" limits - the framework for which is set out in a subsequent section. It is unclear to us how a 'must comply with' direction will translate into a consenting framework, i.e in RMA terms, does this equate to a Prohibited Activity? (Or more akin to Non-Complying?)

Given the uncertainty that is typically inherent in limit setting (and the requirement to take a precautionary approach), prohibiting exceedance will not always be reasonable and/or practical. This necessitates, in our view, the need for some level of 'overall judgement', however this needs to be limited in two ways:

- Overall judgement for essential human health (for urban and rural activities that support essential human health)
- Requiring offset/compensation in other cases (and clarification that offset and compensation are mechanisms that can be used to demonstrate that you are within a limit but are not compulsory).

There is further discussion on how limits are set in the sections below.

10.2. Section 6 - Te Tiriti o Waitangi

We note the change in emphasis from "take into account" to "give effect to" the principles of the [Treaty of Waitangi](#) (Te Tiriti o Waitangi). This is a strong requirement that will lead to better outcomes than the RMA, particularly for co-governance and management. However, there must be clarity on how this is achieved through the NBA.

10.2.1. RECOGNITION OF THE TREATY OF WAITANGI AND ROLES OF TANGATA WHENUA

HortNZ supports the concept of Te Oranga o te Taiao and the holistic and wellbeing framework for resource management that Te Oranga o te Taiao provides - but seek further clarification of the concept.

HortNZ supports a more consistent and efficient approach to resource management that gives effect to the Treaty of Waitangi.

In our view, tangatawhenua, hapu and iwi role in resource management co-governance and co-management should be focused at the plan-making level,

where natural environmental limits to achieve a range of outcomes are set and trade-offs are made.

Strategic spatial planning could also be a means of (at a local level) expressing the aspirations and roles of tangata whenua, hapu and iwi, including a more streamlined Cultural Impact Assessment approach that would consider both the fair expectations of tangata whenua, iwi and hapu and certainty regarding the process for the applicant.

Through stronger involvement of tangata whenua, iwi and hapu in plan development, we anticipate natural, and built environment plans will reflect the outcomes, limits and allocation principles required to achieve Te Oranga o te Taiao, and that rules and requirements supporting these outcomes will then apply to all people.

HortNZ strongly supports clarification of consultation procedures, guided by a clear set of principles contained within the NBA and Natural and Built Environment Plans. Greater clarity and lesser reliance on consent level consultation between individual growers and iwi are required to avoid delay, expense, and frustration for all parties.

We are mindful that as many iwi receive their treaty settlements, they may wish to invest in horticulture, and we would hope iwi can have the flexibility to utilize land in the best way they see fit.

10.3. Section 7 - Environmental Limits

10.3.1. "NATURAL" ENVIRONMENTAL LIMITS

The Parliamentary Paper describes that the NBA will include "a mandatory requirement for the Minister of the Environment to set environmental limits for aspects of the natural environment". The same paper also refers to discretion to prescribe limits for "other natural environment matters".

We consider, that with the clarification to the definition of the natural environment to include only essential human health, Section 7 can be strengthened to be clearer that the social, cultural, and economic needs of people must be met within natural environmental limits, to achieve a minimum biophysical state of the natural environment. We make this recommended throughout in HortNZ's proposed amendments in **Appendix A** (including proposed amendment to refer to the limits as 'natural environmental limits').

The limits should be related to the natural environment (where the natural environment is defined to include the essential human health needs of people including food, water, shelter, and warmth) – as proposed in **Appendix A**.

10.3.1.1. Recognition of essential human health in the NBA

Maslow's hierarchy of needs³² can be used to define the essential human health needs of people, corresponding to the most basic physiological needs. Of the basic

³² [Maslow, A.H.](#) (1943). "[A theory of human motivation](#)". *Psychological Review*. **50** (4): 370–96,

human physiological needs, breathing, food, water, sleep, and excretion are the elements that are reliant on natural resources.

Of these matters, breathing, water, sleep, and excretion are afforded recognition within the NBA through environmental outcomes and national direction for air, water, soil, housing and infrastructure.

Food is essential for human health. As outlined in Section 4, above, while New Zealand is a food exporting nation, many horticultural crops are grown specifically for domestic food supply. Fruit and vegetables are amongst the foods identified as being critical for meeting people's essential health needs.

Not all food produced in New Zealand is essential for the human health needs of the New Zealand population, including food that is produced for export. However, in practice, due to crop rotation requirements (for soil health and pest management) and the need to be economically viable and resilient, it is common for growers to produce a range of crops some for domestic supply and some for export. The domestic and export food systems are inherently linked both in practical and economic terms. For example, it would not be practical to provide land exclusively for domestic purposes as this would undermine the economic viability of the sector.

Similarly, not all housing or infrastructure exclusively serves essential human health needs, for example:

- Municipal water supplies serve people's essential drinking and sanitation needs, and also wider urban economic and recreational uses.
- Electricity provision contributes to meeting people's needs for water, food, and sleep. However, electricity is also used to support wider social, economic, and cultural uses.
- Housing ranges from affordable to luxury, and while all housing serves market demand, not all housing types could be described as essential.

The fact that food, housing and infrastructure outcomes contain elements of both essential health needs of humans and the broader social, economic and cultural needs of people and communities, should not be used as either a justification to elevate all aspects of these uses above other resource uses, nor in the case of food, should it be used to justify an absence of stating national outcomes and providing direction for the achieving food outcomes for current and future generations of New Zealanders.

10.3.1.2. Clause (1)

Greater clarity will be required as to the point in time at which ecosystem integrity is measured or assessed.

We support the inclusion of (protection of) human health as a purpose of limits, however it at present be interpreted in any number of ways (from at a population level, right through to an individual's health in any number of domains). Our

suggested amendments in **Appendix A**, relating to essential human health (and separately, contact recreation) make this clearer in our view.

10.3.1.3. Clause (3)

HortNZ proposes an amendment so that the 'limit' is not conflated with state, but rather the limit is set to achieve a minimum biophysical state (of the natural environment). In the exposure NBA, clause (a) describes a state which the limits are designed to achieve. The state (a) should reflect the environmental outcome sought.

In our view, this distinction is quite clear in the NPSFM 2020 - where a limit is expressed as a limit on resource use (being the maximum amount of resource use permissible while achieving relevant target attribute state), or a take limit (limit on the amount of water that can be taken). The limits must be set to achieve environmental outcomes (for which target attribute states are set to reflect).

We have been involved in planning processes where freshwater states have been put forward as limits. This is a technically problematic due to the natural variability of attribute states. This issue was raised in the Ngaruroro Water Conversation Order (WCO) hearing, where proposed limits based on existing state instream concentrations would have prevented consents being granted when the instream water quality was within the statistical range of the existing state. The WCO decision was appealed and is before the Environment Court.³³

In clause (3)(b), the use of the term 'permitted' is potentially problematic (in the context of what this word means in the RMA framework) - we suggest that an alternative term such as "allowed" is used instead. The risk is that it otherwise does not account for consented activities (depending on how the consenting framework is set out in the NBA).

10.3.1.4. Clause (6)

As discussed above (section 4.4.1) - it will be important how this translates to the consenting framework.

10.4. Section 8 - Environmental Outcomes

10.4.1. SOIL OUTCOME

HortNZ supports the inclusion of soil within the natural environmental domains for which outcomes and limits must be set.

Crop rotation is essential to maintain soil health, and an inherent and essential part of sustainable commercial vegetable growing.

In several regional plans, the definition of farm and the design of farm-level limits, has not provided for crop rotation.

³³ www.epa.govt.nz/assets/FileAPI/proposal/NSP000041/Evidence-Submitters-evidence/125a6f9713/WCN-Stage-2-Horticulture-New-Zealand-Gillian-Holmes-Evidence-25-January-2019.pdf

Crop rotations are both temporally and spatially dynamic. Crop rotations are a sequence of crops rotated on the same piece of land over time. The location of the ground the vegetables grow on also shifts over-time as lease arrangements change, and to provide for the arable and pasture phases of rotations.

The Horizons One Plan established a nitrogen allocation regime based on the grass-curve as a proxy for productivity. The One Plan allocated productivity nitrogen limits at the farm level. The One Plan requires consents from some activities, including vegetable growing. These provisions required that farmers consent their farms to allow vegetable growing to occur on their farms, on the off chance a specialist grower might seek to lease land from the farmer. Unsurprisingly no farmers sought this consent. PC2 Horizons decision in 2021, provided a more workable definition for crop rotation. Unfortunately, the definition that would have enabled crop rotation has been appealed.³⁴

It is our expectation that setting outcomes and limits for soil health will support the development of regulations that enable growers' sufficient flexibility to rotate crops in the optimum manner.

10.4.2. GREENHOUSE GAS EMISSIONS OUTCOME

HortNZ support the direction regarding greenhouse gas emissions in Environmental objective (j), for reasons discussed above in section 2 (Transition to a low emissions economy).

This provision directs both reductions in emissions and increasing removals through sequestration. We support the offsetting approach within the climate Change Response Act for long lived gases.

For highly productive land, we consider the emphasis should be in enabling this land for food production, but not sequestration.

Until changes to the RMA in 2020 (which do not come into effect until 31 December 2021) there has been very little ability to consider climate change from a perspective of how land use change can reduce our emissions and/or assist in adapting to climate change and becoming more resilient

Recently in the HortNZ evidence to the PC9 TANK Plan Change in Hawkes Bay, HortNZ sought an objective to enable climate change mitigation and adaption to be taken into account when making decisions about land and water management within the TANK catchments. The decision on PC9 is yet to be made, but the HBRC officers S42a report, in response to evidence, recommended that the change proposed by HortNZ be adopted³⁵.

10.4.3. AMENDMENT OF THE RURAL ENVIRONMENTAL OUTCOME

HortNZ supports the need for a rural objective, however, considers that there could be improvement on the outcome proposed as (m). Outcomes will guide regional

³⁴ <http://www.horizons.govt.nz/publications-feedback/one-plan-reviews-changes/plan-change-2>

³⁵ <https://www.hbrc.govt.nz/assets/Uploads/Officers-Recommended-Changes-PPC9.pdf>

spatial strategies under the SPA – it is therefore important that the rural outcome is be made clearer and more focused.

10.4.3.1. Replace ‘Development is pursued’ with sustainable use and development

We are uncertain about the phrasing “development is pursued” in the chapeau – this is unfamiliar terminology and is unclear what this relates to. The outcome is better structured as per the Review Panel (June 2020) format, which importantly also provided an outcome for the ‘*sustainable use and development of the natural and built environment in rural areas*’. We propose an amendment that uses this wording in **Appendix A**. We consider the use of the term ‘sustainable use and development’ remains a useful concept for rural resource use and decision making.

10.4.3.2. Delete clause (ii)

We are concerned that the broad nature of ‘(ii) enables a range of economic, social, and cultural activities’ may have unintended consequences in respect of enabling subdivision and/or development in the rural environment that conflicts with primary production (reverse sensitivity) and result in competition for water and discharges (assimilative capacity) from other development. We consider the intent of this clause is sufficiently captured by (iii), and therefore seek deletion of clause (ii) in **Appendix A**.

10.4.3.3. Include new clause for the domestic food system

We consider that an addition outcome for the assurance of food security, through providing for essential human health is required. This would involve providing for the protection of a suitable domestic food system that prioritises the sustainable availability of adequate healthy food within New Zealand.

10.4.3.4. Amend outcome for highly productive land

The wording of the outcome for highly productive land could be clearer – for example, is it the use of HPL for those matters identified in (m)(i) and (ii), for which all rural land is managed to achieve? Or are there specific values associate with Highly Productive land, that warrants it being protected?

In the NPSHPL discussion document, the purpose of the proposed NPSHPL is described as³⁶:

- recognise the full range of values and benefits associated with its use for primary production;
- maintain its availability for primary production for future generations; and
- protect it from inappropriate subdivision, use and development.

In our view, a key value associated with the protection of HPL is its productive capacity, related to food production, for current and future generations. This value has an important link to domestic food supply/security. It also makes an economic contribution to New Zealand through exports.

³⁶ /www.mpi.govt.nz/dmsdocument/36621-Valuing-highly-productive-land-a-summary

In our view there are specific values, and the two key outcomes that we consider should be articulated as the reason for the protection of the Highly Productive Land are: domestic food production and food production with relatively lower agricultural greenhouse gas emissions. We suggest an amendment of this nature in **Appendix A**.

It is important to ensure that economic and environmental sustainability of primary production is taken into account when protecting the productive capacity of highly productive land - i.e that HPL is enabled to be used for a food production purpose otherwise it is left stranded - not able to be used for its productive purpose or to provide housing. This is the basis of the amendment we seek in (iv) relating to food production.

For this reason, it is also important that as part of the approach to HPL, where there are considerable constraints on the use of HPL for horticulture (or another highly productive land use), then there should be options for using that land. This reinforces the need to protect the HPL at a macro scale, so there is somewhere else for the food production to move to.

We seek amendments in **Appendix A** to address the points raised above.

10.4.4. CONFLICTS AND COMPLEXITY

The Parliamentary Paper notes that, "An important role for the system is to enable people and communities to weigh competing objectives and make decisions.". In our view, this is not clear in the exposure draft of the NBA.

Our legal counsel have concerns that the conflicting nature of the environmental outcomes will inevitably lead to complex case law where outcomes overlap or are fundamentally opposed. The application of these outcomes and the effect of them on the resource consenting process needs to be clear from the outset, particularly where many of these outcomes seek highly conceptual ideals.

10.4.5. IMPROVEMENTS TO STRUCTURE AND TERMINOLOGY

The Environmental outcomes have a mixture of different focuses. There is not clear sense of hierarchy, consistency of terms or how conflicts are managed.

HortNZ suggest grouping the list of 16 environmental outcomes into two (or more) categories, for example grouping:

- Outcomes for mana whenua
- Outcomes for the natural environment (from a protection lens)
- Outcomes that address the use of resources relating to enabling people and community wellbeing (including essential human health)

Or, by adopting the structure proposed in the RM Review Panel recommendations whereby outcomes are grouped within the themes of: Natural Environment, Built Environment, Tikanga Māori, Rural, Historic Heritage, and Natural hazards and climate change.

The proposed Environmental Outcomes used a varied range of terminology, that is for the most part different to the suite of terms used in the RMA. We are concerned this may create confusion and unnecessary litigation in implementation, particularly in terms of hierarchy. We recommend that there is a review of the terminology to achieve greater consistency (including with existing RMA terms, where appropriate) and review of whether these terms above are intentionally different and/or indicate hierarchy.

For example, there are a number of differing 'protection' objectives:

<i>'Protected, restored or improved'</i>	In regard to: <ul style="list-style-type: none"> • Quality of air, freshwater, coastal waters, estuaries, soils • Ecological integrity • ONF/L • Significant indigenous vegetation and significant habitats of indigenous fauna
<i>'Protected or enhanced'</i>	In regard to public access to and along the coast, lakes, rivers, wetlands and their margins
<i>'Preserved'</i>	In regard to natural character (of the coast, lakes, rivers, wetlands and their margins)
<i>'Restored and protected'</i>	In regard to relationship of iwi and hapū, and their tikanga and traditions, with their ancestral lands, water, sites, wāhi tapu, and other taonga
<i>'Protected and restored'</i>	In regard to mana and mauri of the natural environment
<i>'Protected and sustained' (through active management that is proportionate to its cultural values)</i>	In regard to cultural heritage, including cultural landscapes
<i>'recognised'</i>	In regard to Protected customary rights
<i>'protection and sustainable use'</i>	In regard to the marine environment

11. Part 3 - National planning framework

In our specific comments provided on the draft provisions in **Appendix A** we have made suggestions to provision wording. In the following sections we discuss the rationale for the changes we have sought.

11.1. General comments

HortNZ supports the approach of a National Planning Framework (NPF) as a means for providing more integrated national direction.

The NPF could be a useful place to integrate national planning standard definitions (or these could come in directly through the legislation) - it would assist if could

these were carried through unchanged for consistency, and reflecting that these went through a consultation process, and are now being implemented.

11.2. Environmental limits in Clause 12

Limits need to be set in a way and at a rate that enabled people and communities to be met, while also moving towards an improved environmental state and Te Oranga o Te Taiao. We suggest an amendment to reflect this in **Appendix A**.

Resource management history in New Zealand has seen consent or plan change processes as methods to gather data and inform knowledge about the state of the environment where that might previously have been unknown or uncertain.

The application of the precautionary principle needs to be balanced against monitoring to ensure this is not unreasonable and adaptable, and the processes under the Bill need to make some allowance for updating limits and/or approaches in situations where a limit where it is no longer valid/correct, due to new information.

Without a robust process to update information (and limits) then the precautionary approach of the NBA will likely lead to roadblocks for resource allocation and use at the detriment of present and future generations well-being. We suggest a new clause (3) in **Appendix A**.

11.3. Topics that national planning framework must include

11.3.1. ADDITION OF HIGHLY PRODUCTIVE LAND (HPL) TO CLAUSE 13

Highly productive land is not included as one of the matters that the national planning framework must include.

HortNZ consider this leaves a significant gap and that this needs to be added to Clause 13 (Topics that national planning framework must include). This is critical to ensure that this flow through into regional and local management responses.

11.3.1.1. Justification for including HPL as a matter of national significance

Aligns with the purpose of the national planning framework

The inclusion of HPL as a matter that the National Planning Framework must address aligns with Part 3 Section 10 (Purpose of the national planning framework), as this is both (a), a matter of national significance and (b), a matter for which national consistency is desirable.

A recent report into the cumulative effects of fragmentation and development on HPL emphasised that this is an issue which requires 'national attention', noting that trends in the loss of HPL raises questions as to the effectiveness of current policies relating to the protection of LUC 1-3 land at the regional level.³⁷

³⁷ Curran-Cournane, Fiona & Carrick, Sam & Barnes, Michelle & Ausseil, Anne-Gaelle & Drewry, John & Bain, Isaac & Golubiewski, Nancy & Jones, Haydon & Barringer, James & Morell, Lance. (2021). Cumulative effects

As mentioned previously, the need to manage this resource of 'national significance' strategically, was clearly articulated in the consultation on a proposed NPS-HPL.

Enables conflict resolution for HPL at the urban interface

The purpose of national direction is to resolve conflicts. In our experience there is considerable conflict with the use of HPL in the peri-urban areas. The identification of national direction for housing, urban areas and infrastructure and not for HPL and food production, indicates that the outcomes sought for HPL will be afforded less priority than those for urban, housing and infrastructure.

HortNZ's experience shows that at all levels of the regional and district planning process, it is possible for HPL to be inappropriately zoned and/or developed, and thus lost. HortNZ has also observed ongoing loss of HPL based on the view that a particular area of land is not "significant" due to it making up a relatively small proportional contribution to the areas of high-class soil in the district or region. This perpetuates the cumulative loss of this finite resource.

As an example of the risk of continued cumulative loss of HPL, in the Selwyn District, there have been 18 private plan changes seeking urban zoning - 14 of these are on land that is LUC 1, 2 or 3 (equating to 66% of the total area). There has been no cumulative assessment of the loss of these soils in these plan changes.

As well as the protection of HPL from urban development, we also seek a policy that enables its use, and reduces conflict. An example of this is a proposed policy within PC9 Hawkes Bay, which prioritises allocation of water to primary production on versatile soils, other primary production, and other commercial and non-commercial uses.³⁸

11.3.2. ADDITION OF DOMESTIC FOOD SYSTEM TO CLAUSE 13

In Section 10.4.3.3, we seek a specific outcome relating to the domestic food system (as part of the rural environmental outcome). As with HPL, we consider that this is a matter for which national direction should be developed, because the domestic food system needs to be considered nationally.

11.3.2.1. Justification for including domestic food system as a matter of national significance

Aligns with the purpose of the national planning framework

The inclusion of the domestic food system as a matter that the National Planning Framework must address aligns with Part 3 Section 10 (Purpose of the national planning framework), as this is both (a), a matter of national significance and (b), a matter for which national consistency is desirable.

Many regional plans have served vegetable growing very poorly

of fragmentation and development on highly productive land in New Zealand. New Zealand Journal of Agricultural Research. 1-24. 10.1080/00288233.2021.1918185.

³⁸ www.hbrc.govt.nz/assets/Document-Library/TANK/S42-reports/Appendix-1A-Recommended-Changes-to-PPC.pdf

We have seen regional regulations that has consistently failed to recognise the national value of regionally based food production, and the difficulty for practical and regulatory reasons for replacing lost vegetable production elsewhere in New Zealand. While domestic food security, is the outcome sought, it must be recognised that domestic and export food systems are inherently linked both in practical and economic terms.

Manawatū Whanganui - Operative One Plan

The One Plan includes farm-based nitrogen discharge allocations based on the grass curve. These discharge allocations are sufficient to grow grass and insufficient to grow vegetables. The farm-based allocations have no relationship to achieving freshwater outcomes, and theoretically provide for the nitrogen load in the Lake Horowhenua catchment to increase. The result of the One Plan is that all dairy farms in the Horowhenua District have long-term consents, and sheep and beef farming is a permitted activity and can intensify as a Controlled Activity. Whereas vegetable growing is not permitted and has no viable consenting pathway.

The outcome of the One Plan is that no existing vegetable growers in the Horowhenua target catchments, including the Lake Horowhenua catchment, can gain consents. The rules for land use change make establishing new green and brassica vegetable growing areas unviable.

The limitations of the One Plan for vegetable growing have led to proposed Plan Change 2, discussed below.

Waikato - Notified Proposed Plan Change 1 (PC1)

The notified version of PC1 provided a controlled activity status for existing vegetable growers. However, it was unclear whether the plan would transfer of the grand parented nitrogen load from lessor to lessee. The rules for land use change would have made the expansion of many vegetable rotations uneconomic. HortNZ submitted on the plan change, the decision is discussed below.

Canterbury - Operative Canterbury Land and Water Plan

The outcome of the Canterbury Land and Water Plan is a transfer of the grand parented nitrogen load from lessee to lessor, and a subsequent loss of the baseline vegetable growing area. The rules for land use change made the expansion of many vegetable rotations uneconomic and prevented crop rotation. This resulted in many growers being unable to consent vegetables growing activities.

The limitations of the Canterbury Land and Water Plan for vegetable growing has led to proposed Plan Change 7, the interim decision on PC7, is discussed below.

Competition for resources in peri-urban locations

Another key reason HortNZ considers that domestic food supply (and highly productive land) is necessary to add is because of the location of horticulture (typically in the peri-urban area) and the resulting competition (for land and resources such as water) with urban and municipal interests at the urban boundary in the face of increasing urban expansion pressures.

It is well established that horticulture, due to it typically being located on the peri-urban fringes, is more vulnerable to urban expansion than other primary sectors. This is borne out of the historical location of cities in proximity to highly productive land, for local food production needs, as is surmised below:

“Horticulture has been traditionally located close to labour supply and markets, which coupled with the lower costs of developing flat land and public concern about housing affordability, means horticultural land is typically more vulnerable to urban expansion than other rural sectors.”³⁹

Horticulture is generally restricted in its ability to move in response to urban expansion, due to a range of factors including regulatory (particularly freshwater regulation), biophysical (i.e availability of soils, climate), and economic.

Due to the recognition of urban areas, housing supply and infrastructure services in the proposed environmental outcomes and as topics that the national planning framework must include, this resource is otherwise very vulnerable to loss if not also afforded priority at a national-level.

Human health is identified as one of the purposes for setting environmental limits. Food is essential to human health. While the draft legislation written is clear about housing and urban outcomes, it needs an equivalent outcome related to domestic food supply. Without it, there is a risk that the need to house people and to supply municipal water will come at the expense of feeding these same people, which will put the health of current and future generations at risk.

11.3.2.2. Policy recognition of Domestic Food Supply under the RMA framework

In recent years, there has been some recognition of domestic food supply within policy, in a belated response to the risks to this value, from poor resource management planning.

Domestic food supply and/or food security has been recognised in a number of policy provisions under the current RMA framework, examples in the freshwater management context are listed below:

National Policy Recognition

- The Action for Healthy Waterways Section 32 Evaluation explains that, in respect of the NESFM, intensification provisions specifically excluded horticulture for reasons including security of supply of vegetables to New Zealanders.
- The NPSFM 2020 includes policy for specified vegetable growing areas (in Pukekohe and Horowhenua) to recognise the importance of maintaining the domestic supply of vegetables, recognising the importance of this to the health of New Zealanders. However, this policy has been judicially reviewed and is at risk.⁴⁰

³⁹ Curran-Cournane, Fiona & Carrick, Sam & Barnes, Michelle & Ausseil, Anne-Gaelle & Drewry, John & Bain, Isaac & Golubiewski, Nancy & Jones, Haydon & Barringer, James & Morell, Lance. (2021). Cumulative effects of fragmentation and development on highly productive land in New Zealand. *New Zealand Journal of Agricultural Research*. 1-24. 10.1080/00288233.2021.1918185.

⁴⁰ <https://environment.govt.nz/assets/Publications/Files/action-for-healthy-waterways-section-32-evaluation-report.pdf>

- Consultation on a proposed NPS-HPL in 2019, which is under development, discusses the importance of this land for food production and vegetable production in particular.⁴¹

Regional Policy Recognition

Furthermore, resource management plans have increasingly been more directive on the regional and national significance of rural areas for food supply.

- Auckland Unitary Plan – Regional Policy Statement, Rural Environment Objective (1) rural areas make a significant contribution to the wider economic productivity of, and food supply for, Auckland and New Zealand. (2) Areas of land containing elite soil are protected for the purpose of food supply from inappropriate subdivision, urban use and development
- Waikato PC1 decision – Policy 3 recognises the ‘positive contribution to people and communities from commercial vegetable production’ through providing for expansion (up to area limits and sub-catchments) to account for population growth. The intention of the policy was positive, but overly complex. However, this policy has been appealed and is at risk.⁴²
- Horizons PC2 decision – included inserting into policy (Policy 14-6) as a matter have regard to, the ‘importance of maintaining food security for New Zealanders to support community well-being’. However, this policy has been appealed and is at risk⁴³.
- Horizons One Plan ‘Surface Water Management Values and Objectives’ – ‘domestic food supply’ as a water use value (the management objective being that water is suitable for domestic food production).
- Canterbury PC7 – at the time of writing this submission we are awaiting decision on this plan change, however the Planner’s Section 42A reply report recommends including in policy recognition of ‘the importance of commercial vegetable growing for domestic food supply’.⁴⁴

11.4. Strategic Directions

The National Planning Framework will be important in resolving conflict – particularly this is necessary at this strategic level for issues of national importance for example, the food system which has local effects, but national benefits.

⁴¹ <https://environment.govt.nz/publications/national-policy-statement-for-freshwater-management-2020/>

⁴² www.mpi.govt.nz/dmsdocument/37065-Proposed-National-Policy-Statement-for-Highly-Productive-Land-Cabinet-paper

⁴³ www.horizons.govt.nz/HRC/media/Media/One%20Plan%20Documents/One%20Plan%20Reviews%20and%20Changes%20Documents/Horizons-Regional-Council-Plan-Change-2-Recommendations-of-the-Hearing-Panel.pdf?ext=.pdf

⁴⁴ <https://www.ecan.govt.nz/your-region/plans-strategies-and-bylaws/canterbury-land-and-water-regional-plan/change-7/>

The strategic goals that are required by section 14 – will in our view, be important in understanding/informing the resolution of limits (spatially and temporally) and in providing guidance to inform the resolution of conflicts.

The RM Review Panel was of the view that a reformed RMA should state “principles for the design and application of policy and tools for allocation ... Including principles in legislation would define the outcomes sought from allocation policy and provide a framework within which the tensions between competing interests could be addressed. These principles could then be used to guide the development of detailed policy”.⁴⁵ HortNZ was quoted as saying:

Horticulture New Zealand also noted “the RMA should provide principles for allocation. The allocation methods must reflect the local environment (at the appropriate spatial scale), 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.”

Rootstock survival water is an area where we see strategic directions could provide the framework to balance different environmental outcomes.

Rootstock survival water is a sub-set of a consent holders' abstraction limit that is available between primary and secondary low flow cease-take thresholds for the sole purpose of avoiding plant death or plants sustaining damage to the degree that they require removal. The provision of rootstock survival water is crucial for horticulture growers because of the inability to move the crops in times of drought or provide an external food source to maintain farm viability. It is not always possible or feasible to have access to water storage to meet this need.

HortNZ has demonstrated with modelling in several regions that a small volume of water can be allocated for rootstock survival (below the primary cease-take threshold) with a negligible impact on the flow regime. In this way, root stock survival water is provided for within an appropriate 'boundary' – this enables an economic value to be met, achieves efficient allocation, and also enables ecological objectives.

Rootstock survival water has been provided for several regional plans across the country⁴⁶; however, the framework continues to be challenged in each case.

11.5. Implementation principles

The Parliamentary Paper notes that further consideration is being given to how the implementation principles can be clearly expressed to best support decision-making. We note that their role is unclear based on where they are located in the exposure draft.

We think there is a need for implementation principles to be included as part of the 'Part 2' provisions, alongside the purpose of the Bill.

⁴⁵ [Report of the Resource Management Review Panel, June 2020](#). Paragraph 69

⁴⁶ Hawkes Bay (Tukituki Catchment), Tasman, Gisborne, withdrawn Bay of Plenty (PC9) and Northland. Auckland Unitary Plan includes priority in regard to water shortage directions.

In **Appendix A**, we also seek to include an additional principle, that relates to incentivising positive action.

12. Part 4 - Natural and built environments plans

Overall, we support less plans/integrated plans, that provide greater alignment and consistency.

12.1. Section 22 - Content of plans

New legislation provides for opportunity to iron out any duplication/unclear roles and functions under the RMA in regard to Section 30 and 31, also in terms of topics such as hazardous substances which are largely managed by other legislation (however have still been included to a degree in district plans, even post-RMA changes which removed this as a specific function).

12.2. Section 23 - Planning committees

It is important that there are clear lines of accountability through the Planning Committees to the communities that they serve.

12.2.1. GREATER CLARITY REQUIRED AS TO THE ROLE OF THE MINISTER OF CONSERVATION IN PLANNING COMMITTEES

We note that the Minister of Conservation has broad role on planning committees in the exposure draft NBA. The accompanying Parliamentary Paper explains that “reflect that Minister’s role with regard to the coastal marine area under the RMA. However, the Minister’s role in the planning committee is not limited to matters within the coastal marine area”.

We note that this is unlike the current RMA for the majority of resources (e.g., water, soil, air etc.) and see a need to provide clarity as to whether this means they can also submit on plans in the way they do currently.

We note that the Minister of Conservation is active within the current planning system. For example, in the appeals on the Northland Regional Council (provisions relating to freshwater), the Minister sought restrictions for water harvesting and root survival water, both of which are important to support horticulture in Northland, which has social and economic benefits as well as contributing to achieving a low emission economy. These matters were resolved in Environment Court⁴⁷.

12.2.2. CONSIDERATIONS RELEVANT TO PLANNING COMMITTEE DECISIONS

Precautionary principle

As we touch on above (in reference to meeting limits in the purpose of the Bill), we note that resource management processes in the RMA have relied on consents to fill information gaps, and this has been particularly important in regions which have been under-resourced or slow in developing science to support resource management that accounts for cumulative effects. If there is to be lesser reliance on

⁴⁷ <http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZEnvC/2021/1.html?query=Northland%20Topic%203>

consent applications to fill these gaps, there will be greater investment from Government to ensure that science is robust and routinely updated.

Defining conflict

Conflict is defined in Section 24(6) – however this is a term that also has application broader than ‘Considerations relevant to planning committee decisions’

E.g.

13 Topics that national planning framework must include

(3) In addition, the national planning framework must include provisions to help resolve conflicts relating to the environment, including conflicts between or among any of the environmental outcomes described in section 8.

22 Contents of plans

(g) help to resolve conflicts relating to the environment in the region, including conflicts between or among any of the environmental outcomes described in section 8; and

This could be defined at an earlier stage in the Bill/Act.

13. Schedules

13.1.1. SCHEDULE 1: PREPARATION OF NATIONAL PLANNING FRAMEWORK

While we acknowledge the benefits of enabling the NPF to be made as a regulation - it will be important that there is robust and sufficient consultation in the development of the NPF- as this will be really important for the functioning of the entire framework and is important to get right.

Given the significance and implications of what may be include in the NPF, we consider that the process should include/enable:

- For submitters to present expert evidence (like a plan change process under the RMA)
- Evaluation/assessment requirements similar to Section 32 under the current RMA.

Parliamentary Paper

The following provides commentary on the Parliamentary Paper on the exposure draft; where we have comments specific to provisions in the exposure draft these are noted the previous section.

14. Managing Environmental Effects

Para 38, in respect to managing environmental effects states that - *"The NBA will also ensure that measures to avoid, remedy or mitigate effects do not place unreasonable costs on development and resource use"*,

We support this sentiment - but note that how this will be achieved is not clear within the exposure draft NBA. The term 'resource use' is also no prevalent in sections in exposure draft NBA.

15. Strategic Planning Act and Regional Spatial Strategies

The discussion on the Strategic Planning Act and regional spatial strategies (RSS) includes reference to highly productive soils and long-term objectives for urban growth and land use change (among other things).

At para 56 it states that RSS will *"need to translate national-level direction, such as that contained in the NPF, into a regional context and provide strategic direction for NBA plans"*

This reinforces the need - as discussed above in section 11.3.1 - to ensure that HPL is a matter that is addressed in the National Planning Framework. This will be an important tool of managing the HPL resource.

16. Next steps

We note that there will an opportunity to submit on the three Bills (through the normal Select Committee process) next year - it will be important to provide sufficient time for submitters to fully consider these Bills by providing a sufficient time period for consultation.

17. Other

We note that in Appendix 2 of the Parliamentary Paper, in regard to efficiency in NBA plan development, the list includes *"stricter controls on the use of expert evidence"* - we have reservations about this could mean, as expert evidence (by submitters and applicants) often advances our understanding of local environments and supports robust decision making.

An Efficient and Risk Based Regulatory System

Over the last few years particularly, a steady stream of change and pressures in the resource management space alone (not to mention in other areas such as labour etc.). Many of these changes are simply unworkable. For example:

- Increasing costs and decreasing industrial allocation in the ETS, alongside proposed national direction to phase out the use of fossil fuels in process heat, when there is currently a lack of economic, proven alternatives.
- Pastoral based allocation systems that don't allow for crop rotation (farm limits that don't account for leased land), or are irrelevant (allocation of discharges based on gras curve and stock carrying)
- Regulation that places a high degree of reliance on Overseer modelling, despite its limitations for horticulture being well established.
- The onerous process of seeking amendments to improve regulation, for example PC2 (Horizons), PC7 (Canterbury) and PC1 (Waikato)
- Uncertainty in definitions of natural wetlands within the NPSFM, which differs from existing case law and has created regulatory uncertainty.

Freshwater farm planning approaches, that are not aligned with existing GAP farm level assurance system, These policies have taken a toll on trust of growers in the regulatory system and on the resilience of growers to participate in the system.

We seek a system that is less onerous to participate in, seeks to achieve outcomes in an efficient way and provides greater certainty for growers.

18. Incentivise activities which promote environmental outcomes

We need to reframe resource management to not just be about the negative - but about enabling and incentivising positive action to achieve positive outcomes. While this is part of the intent of the new legislation - evident in the 'promotion of environmental outcomes' This needs to be inherent throughout the system and the way in which it operates on the ground, including through:

- Incentivising positive action, rather than just relying on regulation. It is often the case that environmental enhancement or improved resource management outcomes are still subject to complex consenting processes (at the cost of the applicant) and/or restored areas being then subject to greater regulation.

- Incentivising positive action through mechanisms such as transferable development rights, which provide an economic incentive to achieve positive outcomes for housing, the productive capacity of highly productive land and ecosystems.
- Recognising that environmental restoration takes time and ensuring that this is not disincentivised through additional regulation being placed on restored areas.
- Recognising the benefits associated with activities which rely on natural resource use.

19. Nationally consistent rules for commercial vegetable growing

Rules for vegetable growing should be consistent across the country to ensure equity, fair competition and security of food production across multiple regions HortNZ sees a particular need for a National Environmental Standard for Commercial Vegetable Growing (or the equivalent in the National Planning Framework under the NBA) and have lobbied for this consistently in our submissions.

This is already signalled within the NPSFM 2020, where Pukekohe and Levin are recognised as specified vegetable growing areas. The Specified Vegetable Growing Areas are transitional national direction. This needs to be replaced with a national planning framework that sets both national policy and national rules.

HortNZ sought an NES for Commercial Vegetable Production in our submission on the NES FW.⁴⁸ The broad principles outlined in that submission were as follows:

A national planning approach is justified because:

- National food systems
- Healthy Food is essential for New Zealanders human health
- Failure of Regional Councils to provide for commercial vegetable growing
- A nationally consistent approach to regulation for commercial vegetable growing will improve investment decisions

The broad principals would be:

- Recognition that export and domestic vegetable growing is integrated across NZ's regions and consistent regulation is required
- Production is located on Highly Productive Land

⁴⁸ www.hortnz.co.nz/assets/Environment/National-Env-Policy/Freshwater/HortNZ-submission-proposed-NPSFM_NESFW_combined.pdf

- Crop rotation supported across Highly Productive Land
- Support existing vegetable growing with the ability for expansion within environmental constraints
- Risk based approach to good management practices aligned with GAP
- Farm Environment Plans which are nationally consistent and independently audited
- Consented activities to provide security and consistently assess risks
- Consents are granted to operator(s) not landowner's and the consented area is linked to Highly Productive Land within an FMU
- Enterprise consents supported
- Distributed across New Zealand to provide for resilience and seasonal food provision
- In sensitive catchments where audited GMP is insufficient to meet limits, an Action Plan approach to ensure the resilience of the food system is not threatened, by limits that drive land use change.

20. Freshwater Farm Plans

We consider certified and audited freshwater farm plans (FWFP) provide a mechanism to simplify consenting for rural activities.

FWFP provide an opportunity for regulators and the community to have more certainty regarding activities that were previously permitted. The robustness of farm level assurance also provides an opportunity to shift from activities that were previously managed as controlled activities, into the FWFP, where regulators could be satisfied that the certification and auditing process provides sufficient assurance such that consent is not required.

Delivering efficient and effective freshwater farm plans, will require agreed standards that set out the criteria that must be met. These standards should clearly link to the limits that they are seeking to implement. The assurance process associated with Freshwater Farm Plans, means that onerous data reporting is not required.

Currently FWFP's are set up to manage non-point discharges, but the scope could be increased to enable the management of other activities that would otherwise have been regulated through permitted or controlled activity status consents, or where the effects and the management of those effects through agreed standards can be achieved with sufficient certainty, that farm specific assessment of environmental effects is not required.

These standards can provide for some flexibility, but similar to a controlled activity limited discretion.

20.1. The role of industry in Freshwater Farm Plans

Industry can play a role in the delivery of freshwater farm plans, through for example GAP schemes (e.g., NZ GAP, GLOBAL.GAP) which most growers are part of in order to meet market requirements.

The GAP schemes have established assurance processes that are aligned with international standards. The GAP schemes cannot adapt these assurance processes, because they are required to provide assurance for food safety.

The GAP schemes in horticulture are mandated by most markets. Zespri require all growers to be Zespri GAP certified. Most horticultural growers face the market directly, and GAP certification is required to sell product for export and in NZ supermarkets. Using the GAP schemes to deliver farm plans is likely to be the preferred method for many growers to satisfy their FWFP regulatory requirements, but this cannot be mandated by the horticultural levy bodies. There needs to be a default government scheme that can be accessed by all.

The GAP schemes require a process for the GAP schemes to be assessed as equivalent to a default government standards and default government assurance process.

20.2. Consents

In our view while a large proportion of activities could be managed through Freshwater Farm Plans, there still needs to be a consenting pathway for activities that do not meet the standards.

These activities must be able to demonstrate that they are consistent with compliance with the natural environmental limits, or to provide offset or compensation.

The critical aspect of the consents for activities that cannot be managed by agreed standard and freshwater farm plans, is that all assessment of environmental effects, must be cumulative to enable consistency with natural environmental limits to be assessed.

21. Consenting framework

The consenting framework under the NBA is not yet clear however we see an opportunity for great efficiencies through:

- A 'permissive' pathway for activities which are aligned to environmental outcomes and within (natural) environmental limits that is set at a nationally consistent level, leaving the consent process at the local level for variance and activities which require greater assessment. For example, setting at a national level for some matters, that x activity that meets y standards is permitted (or otherwise goes through consent process at local level).

- A more streamlined range of activity statuses and greater use of limited discretion (such as provided by Controlled and Restricted Discretionary in the RMA framework) to focus the assessment on key matters.
- Notification tests may need to also align with whether activities are achieving environmental outcomes and regional spatial strategies, compared to effects, due to the change away from solely focusing on effects (e.g., where something is anticipated through a regional spatial plan, it would not be likely to warrant notification).
- Consent durations that provide sufficient certainty for growers to undertake future planning and invest in the environment improvements are essential. The raft of transitional plans stipulating short-duration consents⁴⁹⁵⁰, is creating uncertainty.

22. Plan making processes

22.1. Systems that prevent unnecessarily prolonged hearing processes

HortNZ is involved (as a submitter) in various plan making and/or changing processes around the country.

We have noticed a trend toward very long hearing processes where council-level district plan hearings are dealt with on a theme or chapter-by-chapter approach.

For example:

- The Waikato District Plan, first notified in July 2018. Hearings commenced in October 2019 through to July 2021 (21 months). There were 28 individual hearing sessions.
- The Selwyn District Council has recently published their indicative hearings schedule, which includes a series of hearings from August 2021 through to April 2022.
- The New Plymouth District Council has recently published their indicative hearings schedule, which includes a series of hearings from July 2021 through to April 2022.

These processes can be very expensive and inefficient to be involved in, requiring multiple appearances from experts and involvement over a long period. It also means that some issues that impact on the whole plan are dealt with discreetly through evidence.

⁴⁹ Plan Change 2 Horizons Decision sought to limit consent durations to 10 years.
www.horizons.govt.nz/HRC/media/Media/One%20Plan%20Documents/One%20Plan%20Reviews%20and%20Changes%20Documents/Horizons-Regional-Council-Plan-Change-2-Recommendations-of-the-Hearing-Panel.pdf?ext=.pdf

⁵⁰ PC7 Otago, sought a consent duration of no more than 6 years.
<https://environmentcourt.govt.nz/assets/Documents/Publications/2020-03-18-ORC-PC7-Water-Permits.pdf>

We consider that, in order to make the new system more efficient, the new legislation could be more specific about how hearings are to be conducted, to strike a balance between participation and inefficiency.

We also suggest:

- A clearer process for supplementary evidence, and S42A reply evidence – we have noticed in recent processes what continually needing to respond, review, and revisit based on new and evolving information very late in processes.
- Placing a time limit restriction on appeal resolution and mediations (which we have been experiencing extending over years) to promote efficient resolution of issues.

22.2. Streamlining plan development

Plan changes/ new plans tend to be a very lengthy and protracted processes under the RMA – especially where there are contentious issues.

Some of this might be negated to a degree by stronger/more integrated and conclusive (with regard to conflict) national direction, however there are no doubt also opportunities for streamlining plan development. 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.

22.3. Resourcing to support oversight and consistent application

A well-supported roll out of the new legislation at a Central Government level would assist in a more efficient system by aiding in ensuring consistent application and shared learnings across jurisdictions.

Clear nationally consistent definitions will also play an important role.

22.4. Other suggestions

22.4.1. REMOVAL OF THE WATER CONSERVATION ORDERS

In our view the WCO instrument is of limited use. The NPSFM provides a high degree of national direction and the regional process it directs enables the views of the local community, iwi, hapu and tangata whenua to be better reflected in the decision making.

We consider there is a place for national values to be accounted for in local decision making, but in our view the NBA proposed national outcomes and national direction, guided by strategic direction provides a better framework.

22.4.2. CONSENT APPLICATION EXPECTATIONS

For approvals under the NBA, the legislation should clearly state consent application assessment expectations – for example when a plan is made that reflects higher order documents in the local context (which is the requirement), then specific assessment of the ‘Part 2’ provisions should not be an

expectation/required. This should only be in cases where there are conflicts not anticipated by the plan they can be referred back to and assessed against. It would assist to have this clearly articulated in the legislation to inform planning practice .

Appendix A Submission on Exposure draft of the NBA

Without limiting the generality of the above, HortNZ seeks the following amendment to the exposure draft NBA provisions, 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.

Additions are indicated by bolded underline, and deletions by strikethrough text.

PART 1 - PRELIMINARY PROVISIONS

Interpretation	Support/ oppose	Reason	Amendment sought
<p>environment means, as the context requires, –</p> <p>a) the natural environment:</p> <p>b) people and communities and the built environment that they create:</p> <p>c) the social, economic, and cultural conditions that affect the matters stated in paragraphs (a) and (b)</p>	Support in part.	As explained in section 9.1 above - it could be made clearer that people (or at least their essential needs) are part of the natural environment definition. We propose to alter the definition of 'natural environment' to make it clear.	Retain definition of environment (subject to clarification amendment sought to 'natural environment').

or that are affected by those matters			
New Definition: Essential human health		As explained in section 9.2 above – there is a need to provide definition and clarity to what is being managed in respect of human health, in terms of the purpose of the NBA, environmental limits and outcomes.	<u>Essential human health: means the physiological needs of humans, it includes safe drinking water and sanitation, nutritious food, adequate shelter and warmth.</u>
New definition: Highly Productive Land		Refer to discussion in Section 9.3 – this term is used in the environmental outcomes, but not defined. It may be that HPL would be defined within the NPS HPL. A clear definition is required.	Include a definition for highly productive land that recognises the range of factors (in addition to soil) which contribute to land being productive. For example: <u>Highly productive land: means land that has been assessed and identified using the following criteria:</u> <ul style="list-style-type: none"> • <u>the capability and versatility of the land to support primary production based on the Land Use Capability classification system (or better information as it becomes available);</u> • <u>Identify specific areas of land that has special characteristics suitable for highly productive value that is regionally significant;</u>

			<ul style="list-style-type: none"> • <u>the suitability of the climate for primary production, particularly crop production;</u> • <u>the size and cohesiveness of the area of land to support primary production;</u> • <u>Existing access to water;</u> • <u>Existing infrastructure;</u> • <u>Sensitivity of receiving environment</u>
lake means a body of freshwater that is entirely or nearly surrounded by land	Support in part.	Refer to discussion in Section 9.5.1 – this is a broad definition which may inadvertently capture unintended waterbodies.	Provide either a clarification, exemption or separate definition for wetlands and waterbodies used as infrastructure.
natural environment means– a) the resources of land, water, air, soil, minerals, energy, and all forms of plants, animals, and other living organisms (whether native to New Zealand or introduced) and their habitats; and	Support in part.	As discussed in Section 9.1, humans are included within the definition of the natural environment, which is fundamentally true. However, to ensure the wellbeing needs of people generally are not balanced against other aspects of the natural world, the definition should make it clear it is only the physiological needs of humans (current and future generations) living NZ that are	Natural environment means– a) the resources of land, water, air, soil, minerals, energy, and all forms of plants, animals, and other living organisms (whether native to New Zealand or introduced) and their habitats; and b) ecosystems and their constituent parts; c) <u>limited to the essential human health needs of humans (including the essential human</u>

<p>b) ecosystems and their constituent parts</p>		<p>considered part of the natural environment.</p> <p>Physiological needs include water, food, shelter, warmth (Maslow’s Hierarchy). In this way the human’s ecosystem and constitute parts are recognised as “natural”. All other aspects of the wellbeing of people are provided for, but not within the definition of the natural environment.</p>	<p><u>health needs of current and future generations).</u></p>
<p>mitigate, in the phrase “avoid, remedy, or mitigate”, includes to offset or provide compensation if that is enabled–</p> <p>a) by a provision in the national planning framework or in a plan; or</p> <p>b) as a consent condition proposed by the applicant for the consent</p>	<p>Support in part</p>	<p>Refer to discussion in discussion in section 9.4 above.</p> <p>We support the inclusion of the offsetting and compensation, however due to the existing case law, we suggest clarifications of definitions.</p>	<p>We recommend a separate definition for offsetting, compensation (and potentially for avoid and remedy also) to clarify the position and intent.</p>
<p>person includes–</p> <p>a) the Crown, a corporation sole, and a body of persons, whether</p>	<p>Support</p>	<p>Supports our GAP Certifier position, which is related to a legal person.</p>	<p>Retain definition of person.</p>

<p>corporate or unincorporate; and</p> <p>b) the successor of that person</p>			
<p>river-</p> <p>a) means a continually or intermittently flowing body of freshwater; and</p> <p>b) includes a stream and modified watercourse; but</p> <p>c) does not include an irrigation canal, a water supply race, a canal for the supply of water for electric power generation, a farm drainage canal, or any other artificial watercourse</p>	<p>Oppose in part</p>	<p>Refer to discussion above in Section 9.5. We are concerned that without additional clarity, unnecessary litigation will result and inconsistent approach applies throughout the country (like in the current system).</p>	<p>Either a clarification, exemption or separate definition for wetlands, riverbeds, riverbanks, floodplains and waterbodies used as infrastructure. Provide clarity and consistency by defining the subsets of waterbody (and exclusions) within river.</p>
<p>well-being means the social, economic, environmental, and cultural well-being of people and</p>	<p>Support</p>	<p>We agree that wellbeing includes social, economic, environmental and cultural factors - it is critical that these are recognised and part of the purpose of the NBA. We also consider the inclusion of essential health,</p>	<p>Retain definition of wellbeing</p>

communities, and includes their health and safety.		however, note it would be better contextualised (refer to submission above seeking to include a definition for essential human health).	
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PART 2 - PURPOSE AND RELATED PROVISIONS

Provision	Support/oppose	Reason	Amendment sought
<p>5. Purpose of this Act The purpose of this Act is to enable– ...</p>	Support in part.	<p>People are within the definition of natural environment - refer to discussion in Section 9.1. Well-being includes health, so health of people is a purpose.</p> <p>It can be made clear that the purpose of the Act is the use of the environment must comply with Natural Environment Limits.</p> <p>There is also some lack of clarity regarding the interface between subsections (a) and (b), particularly the precedence of one over the other.</p> <p>The inclusion of "at a rate" provides a stronger link to RMA case law. It is also important in the context of the rate at which improvements can be achieved.</p>	<p>5. Purpose of this Act</p> <p>(1) The purpose of this Act is to enable–</p> <ul style="list-style-type: none"> a) Te Oranga o te Taiao to be upheld, including by protecting and enhancing the natural environment; and b) people and communities to use the environment in a way or at a rate that supports the well-being of present generations without compromising the well-being of future generations. <p>(2) To achieve the purpose of the Act,–</p> <ul style="list-style-type: none"> a) use of the environment must comply with natural environmental limits; and

			<ul style="list-style-type: none"> b) outcomes for the benefit of the environment must be promoted; and c) any adverse effects on the natural environment of its use must be avoided, remedied, or mitigated. <p>(3) In this section, TeOranga o te Taiao incorporates–</p> <ul style="list-style-type: none"> a) the health of the natural environment; and b) the intrinsic relationship between iwi and hapū and te taiao; and c) the interconnectedness of all parts of the natural environment; and d) the essential relationship between the health of the natural environment and its capacity to sustain all life.
6. Te Tiriti o Waitangi	Support	We note the change to ‘must give effect to’ - this is a strong requirement that will lead to better outcomes than the RMA, particularly for co-governance and management.	Retain, however. there must be clarity on how this is achieved through the NBA.
7. Environmental limits			7. Natural Environmental limits and biophysical states

<p>Clause (7.1) The purpose of environmental limits ...</p>	<p>Support in part.</p>	<p>The limits should relate to the definition of the natural environment (and that definition should include the essential human health needs of people)</p>	<p>(1) The purpose of natural environmental limits is to protect either or both of the following:</p> <p>a) the ecological integrity of the natural environment:</p> <p>b) Essential Human health and contact recreation</p>
<p>Clause (7.3) Environmental limits may be formulated as ...</p>	<p>Support in part.</p>	<p>The wording is conflating, two concepts. (a), describes a state which the limits are designed to achieve.</p> <p>The state (a) should reflect the environmental outcome sought.</p> <p>There needs to be distinction between natural environmental limits (and outcomes and states) and the broader environmental outcomes sought that must be achieved within these natural environmental limits</p>	<p>(3) Natural Environmental limits may be formulated as–</p> <ul style="list-style-type: none"> the maximum amount of harm or stress that may be permitted allowed on the natural environment or on a specified part of that environment, that will achieve the minimum biophysical state of the natural environment or of a specified part of that environment, consistent with achieving natural environmental outcomes, and other environmental outcomes within natural environmental limits
<p>Clause (4) Environmental limits must be prescribed for the following matters: ...</p>	<p>Support in part</p>	<p>Support the recognition of soil, and the link to the environmental outcome of protecting the productive capacity of highly productive land.</p> <p>Consider the wording is unclear, because of two concepts within 7 (3).</p>	<p>(4) Environmental biophysical states and limits must be prescribed for the following matters:</p> <p>a) air:</p> <p>b) biodiversity, habitats, and ecosystems:</p>

		We propose wording to provide greater clarity.	<p>c) coastal waters:</p> <p>d) estuaries:</p> <p>e) freshwater:</p> <p>f) soil.</p>
8.Environmental outcomes		HortNZ are concerned the unclear structure and range of terms used unnecessarily will create uncertainty and litigation, we recommend a review and restructure of Section 8, as discussed in Section 10.4.4	<p>HortNZ suggest:</p> <ul style="list-style-type: none"> grouping the list of 16 environmental outcomes into two (or more) categories, or adopting the structure of the RM Review Panel. Reviewing and aligning the range of terms used.
Clause (j) greenhouse gas emissions are reduced ...	Support	The transition to a low emissions economy with lesser emissions is an important outcome that must be promoted through the NBA, with provisions that facilitate land use change to that achieve lesser emissions and increased removals.	<p>Retain environmental outcome (j).</p> <p>(j) greenhouse gas emissions are reduced and there is an increase in the removal of those gases from the atmosphere:</p>
Clause (m) in relation to rural areas, ...	Support in part	Domestic food supply and food security is an essential human health need, similar to water. The ongoing provision of a resilient	(m) in relation to rural areas, sustainable use and development is pursued that–

		<p>domestic food systems needs to be specially planned for as an outcome.</p> <p>As explained in section 10.4.3 - we seek to delete (ii) as it may result in unintended consequences that do not align with sustainable management of rural environment.</p> <p>The protection of highly productive land is supporting, but it needs to be linked to enabling this land to be used for primary production.</p>	<ul style="list-style-type: none"> i. <u>Provides for the essential human health needs of people, related to the domestic food system.</u> ii. enables a range of economic, social, and cultural activities; and iii. contributes to the development of adaptable and economically resilient communities; and iv. promotes the protection of <u>the productive capacity</u> of highly productive land from inappropriate subdivision, use, and development. v. <u>enables the use of highly productive land for food production that contributes to domestic food supply and land use change to lower agricultural emissions food production.</u>
<p>Clause (o) the ongoing provision of infrastructure services ...</p>	<p>Support in part</p>	<p>Similar to food production, that part of infrastructure services that are related to people's essential human health needs and other elements of the well-being of people should be distinguished.</p>	<p>(o) the ongoing provision of infrastructure services to support the well-being of people and communities, including by supporting–</p> <ul style="list-style-type: none"> i. <u>the essential human health needs related to water, sanitation and warmth.</u>

			<ul style="list-style-type: none"> ii. the use of land for economic, social, and cultural activities: iii. an increase in the generation, storage, transmission, and use of renewable energy:
Clause (p) in relation to natural hazards and climate change, ...	Support	Support the recognition of the need to manage natural resources in a way that is focused on managing significant risks.	Retain environmental outcome (p).

PART 3 - NATIONAL PLANNING FRAMEWORK

Provision	Support/oppose	Reason	Amendment sought
12. Environmental limits			12. Natural Environmental limits
Clause (1) and (2)	Support in part	The limits should be related to the natural environment (where then natural environment is defined to include the essential human health needs of people including food, water, shelter and warmth).	<p>(1) Natural Environmental limits–</p> <ul style="list-style-type: none"> (a) may be prescribed in the national planning framework; or (b) may be made in plans if the national planning framework prescribes the

		<p>It is important that limits can be set at different levels in different circumstances and locations – as they should be ecologically relevant to the area and type of natural resource being measured.</p> <p>We suggest (c) is added – to reflect that limits need to be set in a way and at a rate the enabled people and communities to be met, while also moving towards an improved environmental state and Te Oranga o Te Taiao.</p> <p>As discussed above, it is important the limits are routinely reviewed so that are set on the most current information.</p>	<p>requirements relevant to the setting of limits by planning committees.</p> <p>(2) Natural Environmental limits may be prescribed–</p> <p>(a) qualitatively or quantitatively;</p> <p>(b) at different levels for different circumstances and locations</p> <p>(c) <u>in a way that sets interim biophysical states and limits</u></p> <p><u>3. Natural environmental limits must be regularly reviewed, and where necessary updated.</u></p>
<p>13. Topics that national planning framework must include</p>	<p>Support in part</p>	<p>HortNZ seeks the inclusion of the domestic food system and highly productive land as matters which the national planning framework must include.</p> <p>Refer to the explanation for this amendment sought in section 11.2</p>	<p>13. Topics that national planning framework must include</p> <ul style="list-style-type: none"> • (1) The national planning framework must set out provisions directing the out- comes described in– <p>a) section 8(a)(the quality of air, freshwater, coastal waters, estuaries, and soils); and</p> <p>b) section 8(b) (ecological integrity); and</p>

			<ul style="list-style-type: none"> c) section 8(c) (outstanding natural features and landscapes); and d) section 8(d) (areas of significant indigenous vegetation and significant habitats of indigenous animals); and e) section 8(j) (greenhouse gas emissions); and f) section 8(k) (urban areas); and g) section 8 (l) (housing supply); and h) section 8(o) (infrastructure services); and <ul style="list-style-type: none"> • section 8(p) (natural hazards and climate change); • j). Section 8(q) (domestic food system) k) Section 8 (r) (highly productive land)
14. Strategic directions to be included	Support in part	The limits should be related to the natural environment (where then natural environment is defined to include the essential human health needs of people including food, water, shelter and warmth)	<p>14. Strategic directions to be included</p> <p>The provisions required by sections 10, 12, and 13 must include strategic goals such as–</p> <ul style="list-style-type: none"> (a) the vision, direction, and priorities for the integrated management of the environment within the natural environmental limits; and

			(b) how the well-being of present and future generations is to be provided for within the relevant natural environmental limits.
17. Implementation principles			Move the 'Implementation Principles' section to as part of the 'Part 2' provision, alongside the purpose of the Bill. And, add as a principle: <u>(h) incentivise actions which promote environmental outcomes</u>
Part 4 22 Content of plans Clause (2)(b)		It is unclear why this is limited only to land.	(2) A plan may– (a) set objectives, rules, processes, policies, or methods: (b) identify any land or resource type of land in the region for which a stated use, development, or protection is a priority: (c) include any other provision.
24. Considerations relevant to planning committee decisions Clause (6)		This section defines what conflict means - we consider this would be useful further up in the Bill.	Move Section 24 (6) from Part 4 to an earlier, more overarching section of the Bill.