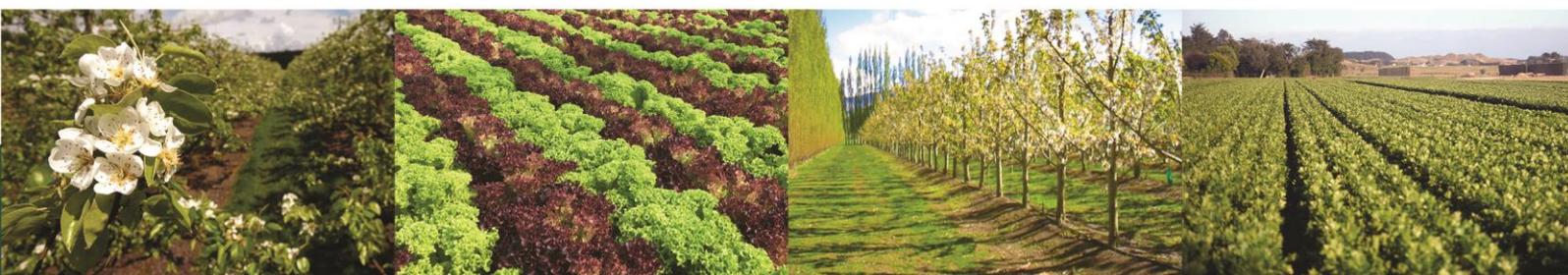


# **SUBMISSION ON Hawke's Bay Regional Council Plan Change 7**

February 2020

**TO:** Hawke's Bay Regional Council

**NAME OF SUBMITTER:** Horticulture New Zealand



## **CONTACT FOR SERVICE:**

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## Introduction

Horticulture New Zealand (HortNZ) thanks Hawke's Bay Regional Council for the opportunity to submit on Plan Change 7 and welcomes any opportunity to work with Hawke's Bay Regional Council to address and/or discuss the matters raised in our submission.

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

HortNZ wishes to be heard in support of our submission and would be prepared to consider presenting our submission in a joint case with others making a similar submission at any hearing.

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

## Background to HortNZ

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

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

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

<b>Industry value</b>	<b>\$5.68bn</b>
Fruit exports	\$2.82bn
Vegetable exports	\$0.62bn
<b>Total exports</b>	<b>\$3.44bn</b>
Fruit domestic	\$0.97bn
Vegetable domestic	\$1.27bn
<b>Total domestic</b>	<b>\$2.24bn</b>

For the first time New Zealand's total horticultural produce exports in 2017

exceeded \$3.44bn Free On Board value, 83% higher than a decade before.

It should also be acknowledged that it is not just the economic benefits associated with horticultural production that are important. The rural economy supports rural communities and rural production defines much of the rural landscape. Food production values provide a platform for long term sustainability of communities, through the provision of food security.

HortNZ's mission is to create an enduring environment where growers prosper. This is done through enabling, promoting and advocating for growers in New Zealand to achieve the industry goal of a \$10 billion industry in 2020, which it is well on the way to achieving.

## 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 also works to raise growers' awareness of the Resource Management Act 1991 (RMA) to ensure effective grower involvement under the Act.

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

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

## Horticulture in Hawke's Bay

### **The current state**

Horticulture is hugely important to the Hawke's Bay region. Around 22,000 ha of land is used for commercial fruit and vegetable production in the Hawke's Bay region, by around 380 horticultural growers. Seventy percent (70%) of all apples produced in New Zealand are grown in the Hawke's Bay, with the vast majority of those on the Heretaunga Plains, and the region also produces over 30% of New Zealand's processed vegetables. Summerfruit, squash and onions are other significant crops for the region.

Specialised post-harvest pack houses add significant value after the farm gate and many growing organisations are now integrated into the post-harvest chain. There are two significant international fruit and vegetable processing facilities located in Hastings (Heinz Wattie's and McCain's), and those post-harvest processing facilities alone employ over 1800 people.

Hawke's Bay produces significant quantities of food for domestic supply, which is important for the health and well-being of all New Zealanders. Hawke's Bay's contribution to the domestic food supply is particularly important because of the warmer climate which means that it can provide fresh produce when other regions are not able to provide fruit and vegetables into the supply chain.

There is also extensive export production within the region, which provides employment opportunities for many people. The Heretaunga Plains are arguably a nationally outstanding source of highly productive land and significant protection of this land has been regulated within district and regional planning tools due to pressures from urbanisation.

## HortNZ's Submission on Hawke's Bay Regional Council Plan Change 7

One of the seven objectives of Matariki (the Hawke's Bay Regional Development Strategy and Action Plan (2016)) is 'to leverage the region's natural advantages to optimise the export value of agribusiness and food and beverage manufacturing, further enhancing the premium positions and value-add of Hawke's Bay produce'. Hawke's Bay is world-renowned for its quality food production with these exports accounting for 52.5% of the region's GDP (compared to 30.7% for total New Zealand). OBJ LW1 of the Regional Policy Statement recognises the significant regional and national value of fresh water use for production and processing of beverages, food and fibre. However as currently drafted, Horticulture NZ has concerns that Plan Change 7 could have a detrimental impact on the ongoing success of the horticultural sector in the region, that would arguably challenge the ability of many people and communities within the region to continue to provide for the social and economic wellbeing, which cuts to the heart of the sustainable management purpose of the RMA.

HortNZ's particular concerns about Plan Change 7 relate to the following matters:

- The hierarchy of values that is proposed;
- The number of waterbodies that are proposed to be classified as outstanding; and
- The lack of detail provided within the Plan Change about what the outstanding (and significant) values of water bodies are.

Each of these three matters is explored in some further detail below. The three matters are interlinked, and we believe exacerbate each other, and HortNZ is of the view that amendments need to be made to the Plan Change as currently drafted to address all three matters. In an effort to assist with this we have set out in our concluding section the specific amendments that we believe are necessary to ensure that Plan Change 7 does not create such uncertainty for horticultural growers and post harvest operators such as Heinz Watties and McCain's that they move their operations to other regions. If Plan Change 7 remains as currently drafted, we believe that is a genuine possibility, that would clearly have a significant adverse effect on the economy, as well as the social and potentially also environmental fabric of the Hawke's Bay community.

### *Hierarchy of values proposed*

Objective LW1 seeks to protect the "outstanding and significant values" of outstanding water bodies identified in Schedule 25. The reason and explanation provided for this objective in the draft plan change is that it is consistent with the NPSFM. Objective A2 of the NPSFM does indeed require that the significant values of outstanding freshwater bodies are protected, while the overall quality of fresh water within a freshwater management unit is maintained or improved. However, the NPSFM makes no reference to the protection of outstanding values. HortNZ notes with interest that the draft NPSFM, which is obviously not yet government policy but was drafted and released for public consultation last year as part of the Essential Freshwater reforms, continues to seek that the significant values of outstanding waterbodies are protected – a requirement to protect the outstanding values of outstanding waterbodies is notable due to its continued omission.

In the Plan Change 7 documentation, it is challenging to locate an explanation about why outstanding values are proposed to be protected, in addition to the significant values of outstanding water bodies. The requirement to protect the significant values of outstanding

water bodies is clearly set out in the NPSFM, and as a lower order planning document, the RPS must, and as currently drafted does, give effect to the NPSFM. The additional requirement to protect the outstanding values of outstanding water bodies (as well as the significant values) presents a number of issues, particularly when the requirement to prioritise the protection of outstanding values above significant values is also taken into account, and therefore HortNZ has fundamental concerns about this aspect of the Plan Change.

On the face of it, seeking to provide additional protection for outstanding water bodies seems like a good idea, however, for a region whose economy, and thus the communities social and economic wellbeing is so heavily reliant on the ongoing growth and productivity of the horticultural sector, the implications of this need to be particularly carefully worked through, as we seek to do here, and HortNZ ultimately concludes that the current drafting of Plan Change 7 could have impacts we don't believe other parties have completely understood, and arguably would not be willing to accept. We seek to explain the basis of our concerns below:

- An 'outstanding water body' is defined in PC7 as a freshwater body or estuary that has one or more outstanding cultural, spiritual, recreation, landscape, geology, natural character or ecology value(s). 'Outstanding' is defined as conspicuous, eminent, and/or remarkable in the context of the Hawke's Bay region. As set out in the Section 32 Evaluation Report, in June 2017, the RPC and Council formally excluded economic and consumptive values from consideration as 'outstanding values' for the purposes of PC7. The specific reasons why this decision was taken are not explained in the Section 32 Evaluation Report, and HortNZ would argue that economic and consumptive uses should have been able to be considered as outstanding values. As is illustrated by the data provided earlier in this submission, and as this organisation has argued in evidence submitted to the Tribunal for the WCO application for the Ngaruroro and Clive Rivers, the Heretaunga Plains are outstanding in the Hawke's Bay context, and arguably in the national context, for economic and consumptive values – namely the volume and quality of horticultural crops that are grown on them. While arguably there are private individuals that stand to benefit economically from the success of the horticultural crops grown on the plains, the economic benefits to the wider Heretaunga Plains community are immense, and enable many, many people and communities to provide for their social and economic wellbeing.
- Notwithstanding that economic and consumptive values were not considered to be available for recognition as outstanding values as part of this Plan Change 7 process, this may not have been as problematic if the decision wasn't also made to prioritise the protection of outstanding values, over the protection of significant values. Policy LW2 sets out this hierarchy, which is also reinforced in the current drafting of POL LW3A (and the associated policies for the coastal environment). This essentially means that the protection of economic and consumptive values will never be afforded the highest priority in an outstanding water body, because to be classified as outstanding, the waterbody must also have at least one outstanding value, which must be protected as a priority. HortNZ is strongly of the view that the policies setting out the hierarchy must be amended to remove the requirement for prioritisation. OBJ LW2 requires that the management of land use and freshwater use recognises and balances the multiple and competing values and uses of resources, and Horticulture New Zealand submits that a balancing of the competing values is a more appropriate approach. OBJ LW2 does go on to state that where significant conflict between competing values or uses exists, or is foreseeable, the regional policy statement and regional plans should provide clear priorities for the protection and use of those freshwater resources. It is noted that use

of freshwater resources is anticipated by the objective, therefore prioritising non-consumptive uses over uses of a consumptive nature is not considered to be inconsistent with the overall intent of the objective, and therefore the amendments that HortNZ's seek are both appropriate, and arguably will enable a balancing of competing values, that is appropriate in the context of each individual case. We believe the ability to appropriately weigh competing values on a case by case value is particularly important moving forward, as the immense challenges that lie ahead with regard to maintaining, or enhancing water quality and quantity throughout the region are going to require innovative thinking, flexibility and nimbleness in planning instruments to enable changes to different land uses that have lower nutrient loss profiles, such as many permanent horticultural crops for example.

- It is understood, particularly from the reading of Footnotes 4 and 5 of POL LW1, that the requirement to prioritise the protection of outstanding values over significant values must also be applied in the process of preparing regional plans. Although it is not explicitly clear, the current drafting of Plan Change 7 indicates that additional outstanding values cannot be identified as part of a catchment planning process, and would instead require a change to the RPS. If this is not the case, then it is suggested that redrafting is required to clarify this. It may be that as part of a collaborative, catchment specific planning process, that a decision is made to prioritise the protection of the outstanding values of outstanding waterbodies over significant values is made, which HortNZ could accept, however HortNZ does not believe this is an appropriate decision to be made at the RPS level, when there has been limited opportunity for representatives of all sectors of the community to be involved in the drafting of this plan change.
- The primary point that HortNZ wishes to submit on this matter is that maintaining the ability to balance competing values is important, and we do not believe a hierarchy that prioritises outstanding values over significant values in all cases (ie. is not context specific) is appropriate.
- The additional matters specified in POL LW3A that a consent authority must have regard to also warrant comment, particularly subsection (c). The reasons why these two aspects of proposed activities have been identified, and a consent authority directed to have regard to is not clearly articulated, and arguably consideration of the activities effects would include these matters if appropriate in context, and as this proposed policy relates only to discretionary and non-complying activities, the councils ability to impose conditions on such matters is not restricted in any event. While we note that there is some time delay in these provisions taking effect, we still have concerns about them and seek their deletion from the policy.

In a horticultural context, the location of particularly a water take, but arguably also a land use consent associated with a waterbody (such as a culvert), are generally location specific, and cannot simply be moved. For example, in the case of a water take, it will be located where there is an established well, or for a new well, where the well driller believes there is the best change of accessing groundwater; in relation to a land use consent for a structure in a waterbody, a culvert will be proposed to be located where it is best sited from an engineering, as well as health and safety perspective. The location of proposed activities are always well considered, and in many cases, would be extremely difficult to change. Given the outstanding matters that have been identified in PC7, and the current lack of specificity around what the values are, and

therefore what needs to be done to protect them, it is not clear what a consent authority could require in relation to the location of an activity – could an applicant be required to change it? How are other matters such as the value of existing investment taken into account when such things are considered. HortNZ has similar concerns about the potential impact that time limits that could be imposed may have on growers. Horticultural activities have very specific requirements with regard to water demand at certain times of the growing season. Seasonal, or annual limits on water take consents are now relatively standard practice, and would not be of concern to horticulturalists, however as currently drafted, this provision creates concern for HortNZ, as it would appear that further timing limits could be imposed on consent applicants. Concerns related to these two matters are amplified because of the lack of specificity in the plan change about what the outstanding and significant values are, as discussed further below.

#### *Number of water bodies proposed to be classified as outstanding*

The magnitude of the matter raised above is compounded by the number of waterbodies that have been identified in PC7 as being outstanding. As noted in the Section 32 Evaluation Report, the supporting documentation for the NPSFM consistently indicates that only a small number of outstanding waterbodies should be identified across the country. Thirty-eight waterbodies in the Hawke's Bay region are identified in this plan change as being outstanding. Arguably this is the total number that were anticipated as being identified as outstanding across the country – not within one region. HortNZ believes that identifying such a large number potentially could result in perverse outcomes, because to avoid the plan change being unworkable, and potentially making it difficult for an entire sector such as horticulture to continue to operate in the region, provisions must be reworded and made less stringent, which then undermines the level of protection that is afforded to those truly outstanding water bodies that are located in the Hawke's Bay region. It is interesting to note that the Taranaki Regional Council has identified three waterbodies within that region as being outstanding<sup>1</sup>.

HortNZ submits that the list of outstanding water bodies must be revisited, and at a minimum is reduced to the list of waterbodies that was agreed by the expert panel as being outstanding, although, for reasons set out further below, HortNZ disagrees with the identification of both the Heretaunga and Ruataniwha Aquifers as being outstanding, and therefore seeks that they are removed from Part 2 of Schedule 25, as well as all of the other waterbodies not identified by the expert panel as being outstanding.

Both aquifers are identified in Part 2 of Schedule 25 as having outstanding cultural, spiritual and geological values. HortNZ recognises the importance of water to tangata whenua, and the very highest importance that is placed on the recognition of Te Mana o Te Wai in the management of freshwater through the NPSFM, however suggests that to enable the protection of these outstanding values, further detail must be provided about what they are, and how impacts on their outstanding values can be measured, and/or assessed by consent authorities. Without such further detail, it would be incredibly difficult for a consent applicant to provide any form of assessment exploring how their proposed activity impacted these outstanding values. Requiring a consent applicant to provide a cultural impact assessment to support any and all applications that sought authorisation for an activity within an outstanding waterbody (particularly given the number of water bodies currently included in Schedule 25) seems unreasonable, and would also be very difficult to resource with appropriately skilled

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<sup>1</sup> Namely the Hangatahua (Stony) River, Lake Rotokare, and the Maketawa and Ngatoro Streams.

persons. As has been requested by HortNZ, reducing the number of outstanding water bodies to those that are truly remarkable, would go some way to addressing this issue.

The description of the 'outstanding value' in Part 2 of Schedule 25 states that the Heretaunga Aquifer system consists of interconnected layers of water bearing gravels, sands, silts, clays and shells located beneath the Heretaunga Plains. A google search seeking to answer 'what is an aquifer?' provides the following answer: "An aquifer is an underground layer of water-bearing permeable rock, rock fractures or unconsolidated materials (gravel, sand, or silt)." Arguably the 'description' of the outstanding geological value of the Heretaunga Plains Aquifer provides no information about its outstanding value, and simply explains what an aquifer actually is. It provides no clarity about what the expert panel believed made the Heretaunga Plains Aquifer outstanding, nor how that outstandingness can or should be protected. Is it the size of the aquifer, or the volume of water it produces, or its depth, or its geological makeup that make it outstanding? The current drafting of Schedule 25 provides none of this detail, and would make it extraordinarily difficult for a consent applicant, or a consent planner, to make an informed assessment about what the potential effect of an activity may be on the outstanding geological value. A consent planner must reach a conclusion about whether or not the outstanding geological value of the aquifer would be protected if an application was granted, and to do that, further detail must be included in the Plan Change that details tools that can be used in that assessment. For example, is the groundwater level an indicator that could be used, and could an assessment be made of the potential effect of the proposed activity on the groundwater level trends in the regional council's closest monitoring bore. One possible outcome of such a scenario is that growers, because of the potential uncertainty and cost associated with going through a resource consent process are deterred from making any changes to their operations, and potentially look to relocate their growing operations to other regions where regional planning frameworks are more explicit, and expectations clearer.

HortNZ also notes that the identification of aquifers as outstanding water bodies is without precedent in New Zealand. Maintaining the ability for growers to abstract water from the Heretaunga and Ruataniwha Aquifers, and undertake other activities associated with their operations such as discharges, is absolutely critical to the ongoing success of the horticultural industry in the region. Around 250 growers grow above either the Heretaunga or Ruataniwha Aquifers – that means that potentially around 70% of growers within the Hawke's Bay region would be impacted if the Heretaunga and Ruataniwha Aquifers were classified as outstanding waterbodies. The impact of this would be significant, and it should not be underestimated the real financial impact that would have on growers. The additional assessments, both in terms of what would be required to support a consent application, and the additional time that council would need to consider those assessment would all add, potentially in the order of thousands, to the cost of obtaining resource consents, and particularly for smaller growers, such costs may be unsustainable. There is also the potential that consent applications could be declined, which would obviously create an impediment for horticultural production on the most highly productive land in the region.

#### *Lack of guidance about outstanding values*

As currently drafted, and as already noted earlier in this submission, HortNZ submits that Plan Change 7 lacks specificity about what the outstanding and significant values of outstanding water bodies are, and how effects on those values can be assessed. The lack of detail in the current wording of Plan Change 7 makes it extraordinarily difficult for a consent applicant to

understand what any consent application would need to include, and would rely on individual consents planners making decisions about what was necessary in a particular context, which does not enable consistent application of any planning framework. Outcomes and/or limits that provide an indication of whether an outstanding value is being protected must be detailed for each value identified, to provide a means of assessing any effects on those values. For example, the Tukituki River is identified as having outstanding ecological values, and has a significant population of black fronted tern in the lower river and estuary area. A measurable outcome that provides material guidance about whether or not that outstanding ecological value is protected could be that the population of black fronted tern is not effected by the proposed activity. The approach that HortNZ is requesting here is generally consistent with suggested changes to the NPSFM that require components and attributes to be identified for values, and states that, where possible, attributes should be able to be assessed in numeric terms.

Although similar specificity around significant values identified would be immensely useful, it is acknowledged that such an activity is a large body of work and is required by POL LW1 to be done as part of catchment specific planning processes.

#### *Summary of relief sought*

The table below identifies the changes required to the wording of specific objectives and policies of Plan Change 7 to provide the relief that Horticulture NZ is seeking in this submission. Consequential changes would also need to be made to relevant reasons and explanations to ensure that they are consistent with the final wording of the objectives and policies.

<b>Provision</b>	<b>Support/oppose</b>	<b>Decision sought</b>	<b>Reason</b>
POL LW2 (1) (c) (i) & (ii)	Oppose in part	Deletion of (c) (i) and rewording of (ii) as follows: "Protecting outstanding and significant values of any outstanding waterbody in Schedule 25"	The proposed hierarchy is not considered to be appropriate.
POL LW3A (1) (a) & (b)	Oppose in part	Deletion of (a) and rewording of (b) as follows: "the extent to which the activity would protect the outstanding and significant values described in Schedule 25 of the relevant outstanding waterbody".	The proposed hierarchy is not considered to be appropriate, and values must be described to enable decision makers to assess whether or not those values are protected.
POL LW3A (1) (c)	Oppose	Deletion of (c)	The ability for a decision maker to require changes to the location of an activity or impose additional time limits is not considered reasonable or necessary.

POL LW3A (1) (d)	Oppose	Deletion of (d)	The proposed hierarchy is not considered to be appropriate.
POL LW3A (3) (a) & (b)	Oppose in part	Deletion of (a) and rewording of (b) as follows: “where a description of the outstanding waterbody’s outstanding or significant value is stated in Schedule 25”.	The proposed hierarchy is not considered to be appropriate, and values must be described in more detail to enable decision makers to assess whether or not those values are protected.
POL C2 (1) (a) & (b)	Oppose in part	Deletion of (a) and rewording of (b) as follows: “the extent to which the activity would protect the outstanding and significant values described in Schedule 25 of the relevant outstanding waterbody”.	
POL C2 (1) (c)	Oppose	Deletion of (c)	The ability for a decision maker to require changes to the location of an activity or impose additional time limits is not considered reasonable or necessary.
POL C2 (1) (d)	Oppose	Deletion of (d)	The proposed hierarchy is not considered to be appropriate.
POL C2 (3)	Oppose	Deletion of (a) and rewording of (b) as follows: “where a description of the outstanding waterbody’s outstanding or significant value is stated in Schedule 25”.	The proposed hierarchy is not considered to be appropriate, and values must be described to enable decision makers to assess whether or not those values are protected.
Schedule 25, Part 2	Oppose in part	Deletion of the following water bodies from the list of outstanding water bodies: <ul style="list-style-type: none"> <li>• Hautapu River</li> <li>• Heretaunga Aquifer</li> <li>• Karamu River</li> <li>• Kaweka and Ruahine Ranges wetlands</li> </ul>	Outstanding values that warrant protection as outstanding water bodies are not clearly identified. Additional reasons for proposed deletion of the Heretaunga and

		<ul style="list-style-type: none"> <li>• Lake Tutira</li> <li>• Makirikiri River</li> <li>• Mangahouanga Stream</li> <li>• Nuhaka River</li> <li>• Opoutama Swamp</li> <li>• Porangahau River</li> <li>• Putere Lakes</li> <li>• Ripia River</li> <li>• Ruataniwha Aquifer</li> <li>• Tarawera Hot Springs</li> <li>• Te Paerahi River</li> <li>• Tutaekuri River</li> <li>• Waihua River</li> <li>• Waikaretaheke River</li> <li>• Wairoa River</li> </ul>	<p>Ruataniwha Aquifers are also outlined above.</p>
		<p>Add 'outcome/indicator' column to table, and identify in that column outcomes and/or indicators that can be used as a means of assessing whether or not the outstanding value of the water body would be protected or not.</p>	<p>Provides clarity about values that require protection, and how effects on those values can be assessed.</p>

Horticulture New Zealand would like to thank the Hawke's Bay Regional Council for providing the opportunity to submit on Plan Change 7, and would be happy to meet with the Council to discuss our concerns in more detail if that would be of assistance. Horticulture New Zealand supports the protection of the outstanding and significant values (on a balanced case by case basis) of the truly outstanding water bodies in the Hawke's Bay region, and believes this can be achieved with our suggested amendments to Plan Change 7.