

SUBMISSION ON

Severe Weather Emergency Recovery Legislation Bill

29 March 2023

To: Governance and Administration Select Committee

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Our submission

Horticulture New Zealand (HortNZ) thanks Governance and Administration Select Committee for the opportunity to submit on the Severe Weather Emergency Recovery Legislation Bill and welcomes any opportunity to continue to work with the Government and to discuss our submission.

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

HortNZ's Role

Background to HortNZ

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

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

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

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

HortNZ's purpose is to create an enduring environment where growers prosper.



Submission on Severe Weather Emergency Recovery Legislation Bill

HortNZ seeks the following decisions on the Bill 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.

Provision	Support/oppose	Reason	Decision sought
7Governor-General may make Orders in Council	Support in Part	<p>One of the areas where the horticulture sector sees the needs for an Order in Council is for the burning of debris and waste.</p> <p>We are of the view that clear and specific direction must be provided so burn management plans can be approved and burning of mixed waste can be provided for as controlled activity subject to meeting specific nationally consistent criteria.</p> <p>We are also concerned that burning of fires that are larger than would be provided for under the Severe Weather Emergency Legislation Act 2023, will require an Order of Council, because it may not be possible to burn sufficient clean wood debris material at a sufficient rate, without causing some effects, that may be deemed significant, beyond property boundaries - particularly given the relatively small scale of horticultural properties. In our view a cumulative assessment is required and a consistent and clear method to enable rural landowners and occupiers to recover the</p>	<p>(2) An exemption from, modification of, or extension of any legislation or a provision–</p> <p>(a) may be absolute, or <u>subject to clear and direct terms</u> or conditions <u>to ensure there is consistency across the affected districts;</u> and</p>

		<p>productivity of their land in a timeframe that that supports economic and social recovery, while also providing communities reassurance that the cumulative effects have been considered and provided for within clear and direct terms.</p> <p>We are concerned that without clear and direct terms too much discretion will be left with Councils with varying degrees of capacity, and some with varying positions on how to enable recovery.</p> <p>The horticulture sector has developed some thinking on how burning could be managed responsibly, this is provided in Appendix A, as an example of the type of management plan approach that we could seek the Order in Council to direct.</p>	
13 Severe Weather Events Recovery Review Panel	Support in Part	The social and economic impact on the primary sector must be able to be considered, and expertise on the practical implications of proposals.	<p>c) <u>knowledge, experience, or expertise in one or more of the following:</u> <u>(v) livestock or horticultural farming</u></p>
32 Section 331B amended (Owner or occupier of rural land may take emergency preventive or remedial measures)	Support in part	The changes made to the Severe Weather Emergency Legislation Act 2023 at Select Committee to require 20 working days' notice and an open-ended permission process are unworkable and place a huge demand for cultural assessments on iwi and hapu and have the potential to create uncertainty and delay. On review of submissions to the Select Committee, we	<p>32 Section 331B amended (Owner or occupier of rural land may take emergency preventive or remedial measures)</p> <p>Add iii (C)</p> <p>Subsection (2) applies if,–</p> <p>iii)</p>

	<p>cannot see that these specific changes were sought in this from by any party.</p> <p>There are a very large number of properties that have large volumes of sediment deposited on them, and these rural landowners and occupiers need to remove this sediment quickly to support recovery. The removal of this sediment, triggers permitted earthworks volumes necessitating the use of this legislation, however the removal of flood silt it is much less risky to archaeological sites than other earthworks of a similar volume, because we seek simply to remove sediment, not to excavate below existing ground levels. We recognise the importance of caring for culturally significant sites in the removal of this sediment. There are a very large number of archaeological sites on the Heretaunga plains¹, as the legislation is written it will have a significant detrimental impact on the recovery of this highly productive land.</p> <p>We propose amendments that treat culturally significant sites in a similar manner to environmental protections. We seek to set out the performance standard in the legislation. Our expectation is then that rural owners and occupiers would undertake earthworks consistent with an earthworks plan that includes measures for managing impacts on archaeological sites and other</p>	<p>undertakes 1 or more activities to implement the measures in a manner that,–</p> <p><u>(C) will not excavate below the existing ground level on properties where culturally significant sites are located</u></p> <p><u>(d) will not cause significant adverse effects on culturally significant land</u></p> <p>Delete 3 (c) and 4</p> <p>3) However, an activity is not deemed a permitted activity under subsection (2) if it</p> <p>c) is undertaken on culturally significant land, or will impact on culturally significant land, without the written permission of the relevant iwi or hapū given following notice to the relevant iwi or hapū by the owner or occupier of the rural land in accordance with subsection (4):</p> <p>(4)</p> <p>The notice referred to in subsection (3)(c) must be given to the relevant iwi or hapū at least 20 working days before</p>
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¹ [Map - Hastings District Plan \(Partially Operative with the Exception of Section 16.1 & Appendix 50\) \(hdc.govt.nz\)](https://www.hdc.govt.nz/Map/Hastings-District-Plan-Partially-Operative-with-the-Exception-of-Section-16.1-Appendix-50) and provided as a snip in Appendix A below

		<p>cultural sites, and subject to retrospective assessment by iwi , hapu and Council.</p>	<p>the activity is undertaken and must include=</p> <p>(a) details of the proposed activity to be undertaken; and</p> <p>(b) the proximity of the proposed activity to the wāhi tapu, site of cultural significance, or area subject to a statutory acknowledgement; and</p> <p>(c) the anticipated effect of the proposed activity on the wāhi tapu, site of cultural significance, or area subject to a statutory acknowledgement and proposals to avoid, remedy, or mitigate the effect; and</p> <p>(d) a request for permission from the relevant iwi or hapū to undertake the proposed activity; and</p> <p>(e) a request for protocols or management plans in relation to the wāhi tapu, site of cultural significance, or area subject to a statutory acknowledgement.</p>
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<p><u>33 Amend 331C Requirement for owner or occupier to give notice to relevant consent authority</u></p>	<p>New Section</p>	<p>Add a requirement to notify iwi and hapu alongside council in section 331 C for activities that may impact on culturally significant sites</p>	<p>331C Requirement for owner or occupier to give notice to relevant consent authority <u>and iwi or hapu in the case where the activity may impact culturally significant land</u></p> <p>An owner or occupier of rural land who has acted under section 331B must give written notice to the relevant consent authority, <u>or in the case of activities that may impact culturally significant land, iwi or hapu</u> that the activity has been undertaken.</p>

Appendix B - Draft Summary of Option for Managed Burning of Wood Waste and Mixed Waste.

Cyclone Gabrielle related flood damage to orchards and farms includes the deposition of slash and other wood debris, destruction of orchards and in some instances the creation of large areas of mixed wood and other debris, which in some cases cannot be separated.

The purpose of this memo is to describe the thinking of the horticulture sector regarding options for burning of wood-waste and mixed waste.

Scale of issue

Based on estimates using location and severity of impact maps, we estimate approximately 100 orchards in Hawkes Bay may have mixed waste piles that are tangled to a point that it is not economic or safe to separate. The size of the burn pile would vary depending on the extent of damage.

GIS analysis shows none of these burn pile locations fall within the Napier or Hastings airshed.

We have not analysed the extent of the issue within the Gisborne Region yet.

Existing Rules in NES and Hawkes Bay and Tairāwhiti Regional Plans

- Mixed waste including prohibited materials - coated wire, tanalised posts and plastic cannot be burned.
- There are urban airshed within Hawkes Bay (with limited horticulture inside them), where there are restrictions on the times of year burning can occur.
- At other times of the year, open burning of wood and non-prohibited waste can occur as a permitted activity, or a discretionary activity if the permitted activity standards are not met.
- During restricted fire seasons a permit to burn may need to be obtained from Fire and Emergency NZ.

Severe Weather Emergency Legislation

- The legislation provides for burning permitted materials at any time of the year.
- The Legislation provides no pathway for burning prohibited materials.
- The effects management and notification within the Act is less stringent than the permitted activity standards, and may enable burning of slightly larger fires, provided significant adverse effects are not caused beyond the boundary.
- During restricted fire seasons a permit to burn may need to be obtained from Fire and Emergency NZ

Order in Council

- An order in Council will be required to enable the burning of mixed waste, and for larger fires that will generate smoke or emissions beyond the boundary, where the effect of that smoke or emissions are deemed to be significant.
- An order in Council can set out methods for managing environmental and human health effects.
- During restricted fire seasons a permit to burn may need to be obtained from Fire and Emergency NZ

Order in Council - Provisions to manage adverse effects.

HortNZ has developed some thinking about methodology for managing burning. The Order in Council would need to stipulate some criteria to support appropriate burn management protocols.

Methodology

We propose to develop burn management guidance to support the classification of waste and the adoption of burn protocols for various waste types. Management protocols would include open burning and curtain burning, and risk-based decision process for adopting appropriate waste disposal options.

Below is an outline of the type of approach that the horticulture sector would adopt if the appropriate authorisations were put in place to enable some burning of mixed waste, in cases where it is simply impractical and uneconomic to separate it all. Given the limited period available to pull this together, it is focused on setting out at a high level how we would seek to ensure that the option of burning mixed waste is only utilised where appropriate. We consider burning mixed waste to be a critical part of the suite of options of remedying the horticulture sectors waste issues which are immense, and therefore warrant a diverse and multifaceted response, that in our view must include the ability to burn mixed waste.

Onsite assessments to determine need for burning of mixed waste.

- A risk assessment matrix is developed and used to assess each horticultural growing operation where mixed waste is an issue and burning is the best practical option to get the site cleared and able to be used productively again.
- The matrix/assessment criteria would consider matters such as:
- A proportion of the property impacted - ie. What is the grower's ability to productively use other parts of the property until mixed waste issue is resolved
- Location of the property - is it close to or within an airshed? Are there sensitive receivers nearby?
- What is potentially to be burned: it is just trees and tanalised posts, or is there wire, carcasses etc also tangled up in waste pile/s? What is the proportion of prohibited materials, is it a very small fraction or a more significant proportion.
- How long is it estimated it would take to separate the waste?
- What alternative means of clearing mixed waste off site are practically available in this particular instance?
- The matrix needs to consider environmental factors as well as economic and social factors - ie. The ability of growers to start growing a crop as soon as possible to ensure their economic livelihood, as well as grower wellbeing (particularly mental health). While the exemption from burning is required under the Resource Management Act which arguably focuses on environmental factors, we note the definition of sustainable management explicitly notes enabling people and communities to provide for their social and economic wellbeing, and for their health and safety (including their mental health)

- If the mixed waste issue on a block met the relevant criteria/threshold, then burning would be undertaken.
- It is envisaged that the development of the matrix/assessment criteria would be done in collaboration with the regional council, and also informed by the advice of technical experts if and where necessary.

Managed burns

- If a burn of mixed waste is to occur, it has to be managed by an experienced contractor.
- Currently there are 3 contractors in Heretaunga Plains area that do managed burns - any time period provided for burns to occur within would need to take this into account and allow sufficient time to ensure that fires of mixed waste were able to be managed by those with experience.
- Need 6-8 weeks drying before fire could be lit - noting cyclone was now 4 weeks ago, if contractors had capacity, then burns could arguably start within the next month or so (if we don't get significant further rain and material to be burned is sufficiently dry)
- Usually only notify Fire Service if burning at night but would propose to do so for all fires as a courtesy.
- General approach is to set in a suitable location a fire, and get this going really well before feeding it with new material - the fire would not simply be lit in an existing mixed waste heap, but specifically sited, the existing heap/s of mixed waste would be pulled apart, what could be sorted pulled out, material shaken to drop out as much soil as possible, and then material put onto fire to feed it. If there was a high proportion of coated wire and tandalised posts, curtain (pit) burning² instead of open burning could be adopted if this was considered to be the most suitable option.
- HBRC guidance would be followed - fires not lit unless wind speed 1 metre above ground level is less than 3 m per second etc
- A fire management plan could be prepared for each fire - using a template similar to the attached prepared by the fire service. The level of detail contained within the plan would be commensurate with the estimated volume of mixed waste and size of the fire

Site rehabilitation

- Once a mixed waste fire has burnt out, then soil under burn pile/s would be tested for contamination - initially in situ, and if necessary, with further lab analysis, and a remediation action plan prepared by a suitably qualified person

² Attached information on curtain burning. Work had previously been done looking at them as an option for burning stock. Pit burners are also called air curtain incinerators - trials were authorized by WRC and emissions testing undertaken so there is some data. Essentially, they are a modified shipping container, and we know of several that can be deployed.

to appropriate address any contamination present (similar to process under NES for contaminated land)

- Any material such as wire that could be recycled would be recycled.

Mixed Slash

- 4ha orchard
- Approximately 7m of slash on top
- 280,000m³ of material
- Big logs are being removed by forestry contractor.
- The vast majority is wood and could be sorted and burned as a permitted activity, but the time it would take to burn the material without causing significant smoke beyond the boundary would be impracticable.
- Unlikely that could be certain that all irrigation pipe/posts/wire would be separated, a very small proportion of the volume would need to be managed as mixed waste.



Orchard Waste

- This is an example of damage that is quite common, and more orchards will be in this category as trees continue to die and as businesses fail.
- The waste can be separated, and the trees burned without causing significant adverse effects - although the cumulative effect of other orchard burns, may require an Order in Council to ensure the remediation work can occur quickly enough to support economic recovery.
- Only trees would be burned, the treated timber and coated wire would be recycled or disposed of to landfill.



Mixed Waste - 5ha 2d structure apple orchard-1 of 3 photos

- The first image shows debris left behind by the flood water where a shed was destroyed, and the entire orchard disappeared. This whole image should be 5ha of 2d structure of apple trees.



Hawkes Bay 5 Ha of 2d apples - destroyed.

Mixed Waste - 5ha 2d structure apple orchard- 2 of 3 photos

- The second two images are the piles of debris that have been collected where the 5ha were lost.



Sorted piles of waste debris left following the destruction of the orchard.

Mixed Waste - 5ha 2d structure apple orchard- 3 of 3 photos

- The mixed waste has been built into potential burn piles after having removed what could be removed. Which included containers, apple bins, fridges, freezers, picking platforms, diesel tankers etc. The growers were unable to separate many posts and wires from the other waste with serious man hours which isn't feasible and deemed very unsafe.
- This is an example of where curtain burners may be an appropriate management option.



Mixed piles, that cannot be further separated.

Appendix B [Map - Hastings District Plan \(Partially Operative with the Exception of Section 16.1 & Appendix 50\)](https://www.hdc.govt.nz/Document/2022/Map-Hastings-District-Plan-Partially-Operative-with-the-Exception-of-Section-16.1-Appendix-50) (hdc.govt.nz)

