

**IN THE ENVIRONMENT COURT
CHRISTCHURCH REGISTRY**

ENV-2020-CHC-

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of appeals under Clause 14(1) of the First
Schedule of the Act in relation to the
Proposed Marlborough Environment Plan

BETWEEN **Horticulture New Zealand**

Appellant

AND **Marlborough District Council**

Respondent

**NOTICE OF APPEAL
ON THE PROPOSED MARLBOROUGH ENVIRONMENT PLAN**

To: The Registrar

Environment Court

Christchurch

1. Horticulture New Zealand ("**HortNZ**") appeals part of the decisions of the Marlborough District Council on the Proposed Marlborough Environment Plan.
2. HortNZ made a submission and further submissions on the Proposed Marlborough Environment Plan (submission number 769)
3. HortNZ is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. HortNZ received notice of the decisions on 21 February 2020.
5. The decisions were made by the Marlborough District Council.
6. The parts of the decision that HortNZ are appealing are:

Topic 4:

- (a) Policy 5.2.4
- (b) Policy 5.2.11
- (c) Policy 5.2.13
- (d) Policy 5.3.1
- (e) Policy 5.5.5
- (f) Rule 2.2.1

Topic 12:

- (g) Policy 14.4.10
- (h) Policy 14.4.15
- (i) Standard 3.2.1.10
- (j) Definitions for artificial crop protection structures, crop support structures
- (k) Definition of farming
- (l) Definition of intensive farming
- (m) Definition of rural industry

Topic 13:

- (n) Objective 15.1a
- (o) Policy 15.1.1
- (p) Method 15.M.1
- (q) Appendix 5

Topic 14:

- (r) Policy 15.3.4 (Air) and 16.3.10 (Discharges to Land)
- (s) 3.3.24.4, 3.3.25.2, 3.3.27.7
- (t) 3.3.24.5
- (u) 3.7.5 Disposal of hazardous waste into or into land (other than lawfully established hazardous waste landfill)

Topic 19:

- (v) Objective 15.4
- (w) 3.3.14 Cultivation

Topic 20:

- (x) Minor upgrading definition
- (y) 2.3.16

Agrichemical rules (Topics 6,9, 13,14):

- (z) 2.17.2 Discharge of aquatic agrichemical to waterbody
- (aa) 2.17.11 Discharge of agrichemical to water in Drainage Channel Network or the Floodway Zone
- (bb) 2.12.11 Discharge of an agrichemical to water (Drainage Channel Network Activity)
- (cc) 3.3.23 Agrichemical application (in rural zone) into or onto land (Rural Environment)

Biosecurity response (Topic 12, 13):

- (dd) Include permitted activity rules for a biosecurity response

7. The reasons for the appeals and relief sought are detailed in the table below.
8. General relief sought:
 - (a) That consequential amendments be made as a result of the relief sought from the specific appeal points above (including where the same provisions are in a number of different zone chapters).
9. The following documents are attached to this notice:
 - (a) a copy of HortNZ's submission and further submissions.
 - (b) a list of names and addresses of persons to be served with copy of this notice.



Jordyn Landers
Environmental Policy Advisor
Horticulture New Zealand

8 May 2020

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Decisions of Marlborough District Council on the Proposed Marlborough Environment Plan which are appealed by HortNZ:

Appeal Point	Provision or Decision	Scope	Reason	Relief sought
(a)	Policy 5.2.4 Topic 4 - Full decision of PMP – para. 119	HortNZ submitted (769.14) on Policy 5.2.4	HortNZ sought specific environmental flows and /or levels for Freshwater Management Units based on the freshwater objectives for each FMU which are informed by the values identified for that FMU. The NPSFM includes an 'irrigation, cultivation and food production' value and in HortNZ's view this important to provide for as part of the management regime.	Amend Policy 5.2.4 to include an 'irrigation, cultivation and food production' value.
(b)	Policy 5.2.11 Full decision of PMP – para. 119	HortNZ submitted (769.17) on Policy 5.2.11	HortNZ sought specific environmental flows and /or levels for Freshwater Management Units based on the freshwater objectives for each FMU which are informed by the values identified for that FMU, or amendment to provide for the identified values for the FMU. The NPSFM includes an 'irrigation, cultivation and food production' value and in HortNZ's view this important to provide for as part of the management regime.	Amend Policy 5.2.11 to include to include an 'irrigation, cultivation and food production' value.
(c)	Policy 5.2.13 Full decision of PMP – para. 74	HortNZ submitted (769.15) on Policy 5.2.5 (previous numbering)	The policy recognises that when minimum flows are reached, the management regime changes; in this case ceasing the take of water except for essential uses. HortNZ seek to provide for rootstock survival water to be provided (through a resource consent process) to maintain root stock during prolonged periods of drought, to keep the plants alive (not to maintain productive capacity) so that horticultural producers in that they can retain the core of their businesses, their rootstock. The loss of this capital investment would have serious impacts on the Marlborough community. Such an approach is not inconsistent with the NPSFM and is included in several other plans around the country.	Amend Policy 5.2.13: <i>With the exception of water taken for domestic needs, or animal drinking water <u>or rootstock protection water</u>, prevent the taking of water authorised by resource consent when flows and/or levels in a Freshwater Management Unit are at or below a management flow and/or level set as part of an environmental flow and/or level set in accordance with Policy 5.2.4.</i> AND include definition for rootstock protection water: <i><u>water required to maintain survival of permanent horticultural crops in drought, no</u></i>

Appeal Point	Provision or Decision	Scope	Reason	Relief sought
				<i>more than the equivalent of 50% of the total allocation of the consent holder.</i>
(d)	Policy 5.3.1 Full decision of PMP – para. 151 - 152	HortNZ submitted (769.20) on Policy 5.3.1	HortNZ sought to include capital rootstock and crop survival water, ahead of the clause for municipal supply. HortNZ also sought to include 'Values identified for the FMU' as the second clause. Municipal supply should not be given greater priority than other commercial users of water (which may include irrigation).	Amend Appendix 5 to include food production, and amend Policy 5.3.1: To allocate water in the following order of priority: (a) Te Mana o te Wai (b) natural and human use values; then (c) aquifer recharge; then (d) domestic and stock water supply; then (e) municipal water supply; and then (f) all other takes of water.
(e)	Policy 5.5.5 Full decision of PMP – no specific reference	HortNZ submitted (769.27) on Policy 5.5.5	Horticulture NZ supports ensuring that the water that is taken is reasonable for the intended uses; this should be the first approach to reducing over allocation. Should further reductions be required beyond this, then a process of reduction should be undertaken.	Amend Policy 5.5.5: Resolve over-allocation of the Benmorven, Brancott and Omaka Aquifer Freshwater Management Units by <u>ensuring water permits granted reflect the reasonable demand given the intended use and if further reduction is required</u> reducing individual resource consent allocations on a proportional basis, based on the total allocation available relative to each individual's irrigated land area, or equivalent for non-irrigation water uses (excluding domestic and stock water). The reductions will be achieved by reviewing the conditions of the relevant water permits to reallocate the available allocation fairly across all relevant users.
(f)	Rule 2.2.1 Full decision of PMP – no specific reference	HortNZ submitted (769.75) on Rule 2.2.1	The current use of 'dwelling' excludes workers accommodation from being able to access water as a permitted activity (if not on municipal supply).	Amend Rule 2.2.1 (and PA standard 2.3.1):

Appeal Point	Provision or Decision	Scope	Reason	Relief sought
				Take and use of water for an individual's reasonable domestic needs up to 5m ³ per day per dwelling <u>habitable building</u> .
(g)	Policy 14.4.10 Topic 12 - Full decision of PMP para. 34-51	HortNZ submitted (769.53) on Policy 14.4.10	The policy should apply to all sensitive activities, not just residential. For example, educational facilities can be sensitive to the effects of primary production activities. HortNZ's submission sought that the plan controls the establishment of residential and other sensitive activities within the rural environments as a means of avoiding reverse sensitivity between sensitive activities and primary production activities.	Amend Policy 14.4.10: Control the establishment of residential activity <u>and other sensitive activities</u> within rural environments as a means of avoiding conflict between rural and residential amenity expectations and avoiding reverse sensitivity effects on existing activities.
(h)	Policy 14.4.15 Full decision of PMP – no specific reference	HortNZ submitted (769.57) on Policy 14.4.15	As above. Horticulture NZ supports that primary production is enabled in the Wairau Plain and that residential activity is to be controlled. However, this should also include other sensitive activities.	Amend Policy 14.4.15 (c): (c) controlling residential activity <u>and other sensitive activities</u> , other than that associated with primary production, to avoid conflict between rural and residential amenity expectations;
(i)	Standard 3.2.1.10 Full decision of PMP – no specific reference	HortNZ submitted (769.091) on standard 3.2.1.10 (previously 3.2.1.11).	It was clear throughout the hearing process that artificial crop protection structures/crop protection structures were considered by council as a building under the PMP definition. HortNZ sought that the building coverage standard 3.2.1.11 (now 10) of 15% net site area not apply to artificial crop protection structures. Given that the structures are open and permeable the aspects of concern with site coverage, such as management of stormwater, are not relevant to artificial crop protection structures. The s42A author for Topic 12 (in reply to evidence) agreed that crop protection structures do differ in effect from that of a building from an amenity perspective	Amend 3.2.1.10: Permanent buildings must not cover more than 15% of the net site area within a Record of Title. For the purposes of this Standard, the net site area does not include <u>a greenhouses utilising the soils of the site or artificial crop protection structures</u> .

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			given that they appear to be largely transparent, and permeable and agreed and recommended the following change: "...the net site area does not include a greenhouses or artificial crop protection structures utilising the soils of the site. " There was no further commentary on this in the decision report for this topic, it is unclear why this recommendation from the s42A author was not carried through.	
(j)	<p>Definitions for artificial crop protection structures, crop support structures</p> <p>Full decision of P MEP – para 129</p>	HortNZ submission (769.117) seeking definitions and submission (769.118) on Building.	<p>HortNZ sought that definitions be included in the plan for artificial crop protection structures and crop support structures. The decisions version inserted a definition for crop protection structure.</p> <p>A range of terms are used for similar structures in the Rural Environment rules chapter – ‘crop protection structure’ (in 3.2.1.11), ‘artificial crop protection structures and crop protection structures’ (in 3.3.52), ‘viticulural support structures’ (in 3.2.1.14).</p> <p>The term Artificial crop protection structure term more commonly used (instead of crop protection structure).</p> <p>Crop support structures being not covered with material, would not be covered by the crop protection structure definition, but are listed specifically in regard to the controls in standard 3.3.52. We would not consider crops support structures a building; therefore, they are subject to height and setback provisions (for specific identified areas) that apply to structures, but not the site coverage, boundary setback provisions.</p>	<p>Include definition for crop support structure: <u>Crop support structures are open structures on which plants are grown.</u> <u>Note: Crop support structures are not considered a building.</u></p> <p>AND amend the definition of crop protection structures to reference ‘artificial’: <u>Artificial</u> crop protection structures</p> <p>AND reconcile the use of ‘artificial crop protection structure’, ‘crop protection structure’ and ‘viculture support structure’ to reflect the defined terms.</p>
(k)	<p>Definition of farming</p> <p>Full decision of P MEP – no specific reference</p>	HortNZ submission (769.90) on 3.2 Permitted Activities and the definition of Farming	Various chapters provide for farming as a permitted activity (e.g. Rural Environment Zone, Coastal Environment Zone, Rural Living Zone ...) however the definition for farming does not explicitly include associated buildings, nor do these rules provide for primary production/farming buildings as a distinct activity.	<p>Amend the definition of farming to include associated buildings:</p> <p>Farming means a land based activity, having as its primary purpose the commercial production and sale of any livestock or vegetative matter, <u>and</u></p>

Appeal Point	Provision or Decision	Scope	Reason	Relief sought
			<p>The policy framework (for example in the Rural policy chapter) clearly anticipates activities <u>and buildings</u> linked to land-based primary production.</p> <p>By including associated buildings or structures in the definition, these activities would be clearly provided for but still managed by the standards that apply to all activities (e.g. height, site coverage).</p> <p>We note that the definition of winery was amended to include the terminology “and includes all buildings and plant associated ...”, the primary production activity (which is the term used in the policy chapter) includes “buildings ancillary to the listed activities” and the definition of production land includes “auxiliary buildings user for the production ...”. This relief sought be consistent with this approach.</p>	<p><u>associated buildings or structures</u>. Farming does not include intensive farming, forestry, and in the case of vegetative matter, does not include the processing of farm produce beyond cutting, cleaning, grading, chilling, freezing, packaging and storage of produce grown on the farming unit. For clarity farming includes the slaughtering and processing of animals for personal consumption but not for sale purposes.</p> <p>OR provide a permitted activity rule that provides for buildings/structures associated with farming (where this activity is listed as permitted).</p>
(l)	<p>Definition of Intensive farming</p> <p>Full decision of PMEP – no specific reference</p>	<p>HortNZ submitted (769.124) on intensive farming.</p>	<p>HortNZ seeks that greenhouses be excluded from the definition of Intensive Farming.</p> <p>Under the National Planning Standards Definitions, greenhouses are ‘primary production’ but not ‘intensive indoor primary production’ which includes only fungi, or keeping or rearing livestock. The ‘Recommendations on submissions report for the first set of national planning standards’ says “...<i>horticulture activities should not be considered ‘intensive primary production’</i>. <i>Horticulture undertaken within a glasshouse or greenhouse generally does not produce the same type or scale of odour or noise effects as the activities listed in the definition</i>”.</p> <p>While we acknowledge that the Council is not required to implement the National Planning Standard as part of this plan process, however this analysis is relevant to the relief sought.</p>	<p>Amend definition of intensive farming to exclude greenhouses.</p>

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			<p>Greenhouses should not be a discretionary activity and should not be categorised as intensive farming as the effects from a greenhouse are quite different to both intensive indoor fungi and intensive indoor animal management.</p> <p>Furthermore, standard 3.2.1.10 has a permitted activity standard that mentions greenhouses. The s42A report author for Topic 12 (in reply evidence, pg. 53-54) agreed that this should not be limited to greenhouses 'utilising the soils of the site'.</p> <p>It is appropriate that the greenhouses be considered farming and subject to the standards applicable to buildings which would manage amenity effects (rather than for example imposing a setback of 150m for dwellings).</p>	
(m)	<p>Definition of Rural Industry</p> <p>Full decision of PMP – para. 190 – 195</p>	HortNZ submitted (769.131) on Rural Industry.	<p>HortNZ's submission sought to specifically include processing, packing and storage of primary products to ensure that they are classed as rural industry – the change of 'industry' to 'industrial process' has confused the issue further.</p> <p>HortNZ considered the National Planning Standard definition – "<i>means an industry or business undertaken in a rural environment that directly supports, services, or is dependent on primary production</i>" is much clearer.</p>	<p>Amend definition of Rural Industry to reflect the National Planning Standards definition of Rural Industry, OR amend Rural Industry as follows:</p> <p>means an industry or business industrial process, constructional engineers and roading and cartage contractors workshops or yards where either:</p> <p>(a) 75% of the total business is with the rural sector and/or coastal marine area;</p> <p>(b) The nature of the industry is such that it is inappropriately located within an urban or industrial zone.</p>
(n)	<p>Objective 15.1a</p> <p>Topic 13 - Full decision of PMP – para. 14 – 19</p>	HortNZ submitted (769.60) on Objective 15.1a and further submitted (on 339.26, 1090.28).	In HortNZ's view, the ability of catchments to provide for food production, should be recognised as a value in Objective 15.1a and Policy 15.1.1.	Amend Objective 15.1a to include reference to the values identified in Appendix 5 AND add to Appendix 5 'food production' as a value.

Appeal Point	Provision or Decision	Scope	Reason	Relief sought
			<p>The NPSFM provides for 'Irrigation, cultivation and food production' in Appendix 1 as Other National Values.</p> <p>In our view the limited range of values that are identified in Objective 15.1a and Policy 15.1.1, reduce the ability of the limit setting process to provide for the full range of community values.</p>	
(o)	<p>Policy 15.1.1</p> <p>Full decision of PMP – para. 39 - 45</p>	HortNZ submitted (769.062) on Policy 15.1.1	<p>Policy 15.1.1 sets out the that water quality will be managed for the listed purposes.</p> <p>Given that Policy 15.1.2 seeks to reflect the management purposes in Policy 15.1.1 when applying application of water quality standards and classifications it is important that all management purposes are set out in Policy 15.1.1.</p> <p>It is essential that Policy 15.1.1 robustly sets out the management purposes for the water bodies so that these are taken into account when implementing Policy 15.1.3.</p> <p>The NPSFM provides for 'Irrigation, cultivation and food production' in Appendix 1 as Other National Values.</p> <p>HortNZ seek inclusion of the need to manage water quality so that it is suitable for irrigation needs (to provide for food production).</p>	Amend Policy 15.1.1 (c) to include food production and add (e) other values identified for the water body.
(p)	<p>Method 15.M.1</p> <p>Full decision of PMP – no specific reference</p>	HortNZ submitted (769.065) on Method 15.M.1	It is important that the values of freshwater bodies are the basis of the management approach in objectives and policy.	<p>Amend Method 15.3.1:</p> <p><u>To identify, the values that the community places on freshwater bodies. These values will be used as the basis for establishing freshwater objectives and policy responses to manage the waterbodies.</u></p>

Appeal Point	Provision or Decision	Scope	Reason	Relief sought
				<i>To identify, on an ongoing basis, the uses and values supported by specific rivers, lakes, wetlands, aquifers and coastal waters. These values, including the spiritual and cultural values of Marlborough's tangata whenua iwi, will be identified in the MEP</i>
(q)	Appendix 5 Full decision of PMEP – para. 112-114	HortNZ submitted (769.135) on Appendix 5	HortNZ's submission sought to include food production in the FMU's listed (right). While it is acknowledged that the Council is undertaking a process to set cumulative limits (the s42A report noting the view that food production may be added to the FMU's specified) – it is not clear or certain that in setting cumulative limits will include "establishing FMUs with associated values" in the context of the PMEP. We also note that Appendix 5 is important in terms of water allocation, not just water quality.	Amend Appendix 5, to add 'food production' as a value to the following FMU's listed on the table 'Other water resources': Benmorven FMU Brancott FMU Omaka Aquifer FMU Omaka River FMU Riverlands FMU Southern Springs FMU Wairau Aquifer FMU Add 'food production' as a value to Schedule 1: 6 Awatere Lower and other Water Resource Units where food production is undertaken.
(r)	Policy 15.3.4 (Air) and 16.3.10 (Discharges to Land) Topic 14 - Full decision of PMEP – para. 81 - 90	HortNZ submitted (769.70) on Policy 15.3.4	A blanket 'avoid' spray drift policy is unrealistic and not practical. The policy should focus on adverse effects and implementing best practice. The approach to managing agrichemicals is focused on using best practice and exercising reasonable care to minimising spray drift, the proposed change we seek better reflects that and is focused on effects. The decision states: "86. Most parties to the policy, while acknowledging that some spray drift was unavoidable when dealing	Amend Policy 15.3.4 and Policy 16.3.10 to: <u>Manage the use of agrichemicals by adopting best practice methods of application and exercising reasonable care to minimise the potential for off-target drift.</u>

Appeal Point	Provision or Decision	Scope	Reason	Relief sought
			<p><i>with agrichemicals and fertilisers, need to employ best practice, recognising that complete internalisation of effects within a property is not always possible.</i></p> <p><i>87. In our view, the word 'minimise' informs the policy, prompting users to use best practice to avoid/remedy the difficulties with spray drift. 'Minimise' is the strongest term to use in the context of such a high level policy."</i></p> <p>This policy has been duplicated in Chapter 16 (Waste and Discharges to Land), in addition to Chapter 15 (Air), it is unclear why the policy is in the plan twice (particularly when the rules only refer to discharge of agrichemicals onto or onto land).</p>	
(s)	<p>3.3.24.4, 3.3.25.2, 3.3.27.7</p> <p>Full decision of PMEP – no specific reference</p>	<p>HortNZ made a submission on 3.3.23, 3.3.25 and 3.3.26 (previous numbering)</p>	<p>This permitted activity standard prescribes an amount of total cumulative nitrogen that may applied in kg N/ha/year, in relation to fertiliser application into or onto land. This applies alongside equivalent clauses applicable to the application of compost or solid agricultural waste (3.3.26.2), discharge of agricultural liquid waste (3.3.27.7) or dairy effluent (3.3.29) into or onto land.</p> <p>A maximum N/ha/yr is an arbitrary input standard and does not take into account plant uptake and a range of factors relating to nutrient management and best practice. This approach is not effects based. Further, this figure is based on an input approach for pasture, which is not suitable for horticulture.</p> <p>In our view requiring growers not to exceed the reasonable nitrogen requirements of the crops being grown is likely to result in a better water quality outcome than setting a 200kg N/hectare/year input limit.</p>	<p>Delete 3.3.24.4, 3.3.25.2, 3.3.27.7</p> <p>OR amend to:</p> <p><i>The total cumulative nitrogen (N) loading from all discharges on the areal extent of land to be used for the discharge must not exceed 200 kg N/hectare/year (excluding N from direct animal inputs). <u>the reasonable nitrogen requirements of the crop being grown</u></i></p>

Appeal Point	Provision or Decision	Scope	Reason	Relief sought
			As the limit setting process has yet to be completed, it is important that the plan caters enables the versatility of soils to grow a range of crops.	
(t)	3.3.24.5 Full decision of PMP – para. 96 - 106	HortNZ submitted (769.104) on 3.3.23	3.3.24 (previously 23) is the permitted activity standards that apply to the storage and application of fertiliser or lime into or onto land. HortNZ supported the notified provision for reasonable care to be taken. The decision amendment is unworkable and unachievable because it is a blanket 'no-drift' approach that does not work in practice. An approach of ensuring that all reasonable care is taken (equivalent to the clause inserted for lime) is suitable to manage adverse effects.	Amend 3.3.24.5: <u>All reasonable care must be exercised with</u> the application of fertiliser must not result in so as to ensure that the fertiliser or lime must does not passing beyond the legal boundary of the area of land on which the fertiliser or lime is being applied.
(u)	3.7.5 Disposal of hazardous waste into or into land (other than lawfully established hazardous waste landfill) Full decision of PMP – no specific reference	HortNZ further submitted on Fonterra Co-Operative Group Ltd's submission (1251.135) on 3.7.6 (previous numbering)	A definition for hazardous substances was added in the decision version of the plan. The definition of hazardous waste is very broad, this therefore implies that the disposal of agrichemicals is a prohibited activity.	Amend the definition of hazardous substances (or provide thresholds within the definition) to provide clarification that disposal of agrichemicals in accordance with NZS 8409:2004 is not subject to this prohibited activity rule.
(v)	Objective 15.4 Full decision of PMP – no specific reference	HortNZ submitted (769.71) on Objective 15.4	HortNZ recognises the vital importance of healthy soils, however an objective of maintain and enhance is not always appropriate. All of the policies, apart from 15.4.5, have a focus on 'maintaining' the soil resource. Control of animal pests in Policy 15.4.5, is the only identified action to 'enhance' soil quality.	Amend Objective 15.4 to either: Maintain and <u>or</u> enhance the quality of Marlborough's soil resource. OR Maintain and <u>where necessary</u> enhance the quality of Marlborough's soil resource.
(w)	3.3.14 Cultivation	HortNZ submitted (769.10) on 3.3.13 (previous numbering).	Horticulture NZ has developed Erosion and Sediment Control guidelines for use in vegetable cropping situations and includes a range of mechanisms that can be used, depending on site specific matters. The	Amend Standard 3.3.13.5 and include a new standard to provide for rotational cropping (and consequential amendment to Chapter 4):

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	Full decision of PMEP – no specific reference		PMEP policy framework supports the use of industry developed guidance and inclusion in the standard for cultivation is an appropriate application of this approach. For vegetable growers it will be difficult to meet Standard 3.3.13.5 as ground is cultivated in a rotation. Therefore, an alternative condition is sought for vegetable cropping.	<p>3.3.14.5 On completion of the cultivation, a suitable vegetative cover that will mitigate soil loss, must be restored on the site so that, within 24 months the amount of bare ground is to be no more than 20% greater than prior to the cultivation taking place, <u>except where 3.3.14.7 applies.</u></p> <p><u>3.3.14.7 For cultivation that is undertaken for rotational cropping the activity will use mechanisms to minimise sediment run-off to water in accordance with industry good management practice guidelines.</u></p> <p><u>Note: Industry Good Management Practice guidelines include Erosion & Sediment Control Guidelines for Vegetable Production (Horticulture NZ 2004), or subsequent versions.</u></p>
(x)	<p>Minor upgrading definition</p> <p>Full decision of PMEP para. 87</p>	HortNZ submitted (769.126) and further submitted on submissions on (232.38, 1198.155) minor upgrading.	<p>HortNZ supported the notified definition of minor upgrading, in that it did not include an increase in the voltage of the line. Minor upgrading of an electricity line is a permitted activity (2.39.4) with no permitted activity conditions. Therefore, the parameters of this activity are effectively determined by the definition.</p> <p>HortNZ's concern is the restrictions on a landowner resulting from voltage increase, specifically setbacks set under the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34: 2001) which correspond to voltage e.g. in Table 1 (Minimum Safe Distances between Buildings and Overhead Electric Line Support Structures), a 11kV to 33kV circuit voltage required a 2m setback from a pole and a 6m setback from a tower (pylon). This is increased to 6m and 9m, respectively when for voltages between 33kV</p>	<p>Amend minor upgrading definition to reinsert the following:</p> <p><u>Minor upgrading does not include an increase in the voltage of the line unless the line was originally constructed to operate at the higher voltage but has been operating at a reduced voltage.</u></p>

Appeal Point	Provision or Decision	Scope	Reason	Relief sought
			<p>to 66KV and 8m and 12m respectively for voltages exceeding 66kV.</p> <p>By permitting minor upgrading, effects on the landowner are not considered through a consent process.</p>	
(y)	<p>2.3.16 -standards that apply to Rule 2.2.17 [R] Damming water and the subsequent use of that water</p> <p>Full decision of PMP para. 26-29</p>	HortNZ further submitted opposing Transpower's submission (1198.72-74).	<p>Clause 3 does not relate to the management of water – this is a regional rule, not a land use rule.</p> <p>As HortNZ understands it, Transpower was seeking to address their concerns about potential access restrictions and foundation compromise as a result of reticulation and storage of water (and sought changes to 2.39 Network Utilities). However, these concerns are addressed by rules for earthworks and structures in the National Grid elsewhere in the Plan.</p> <p>E.g. Standard 3.3.52.2 (c) 'irrigation equipment used for agricultural or horticultural purposes including the reticulation and storage of water where it does not permanently physically obstruct vehicular access to a National Grid support structure'.</p>	<p>Delete 2.3.16.3:</p> <p>The damming of water and operation of their associated reticulation lines shall not occur within the National Grid Yard.</p>
(z)	<p>2.17.2 Discharge of aquatic agrichemical to waterbody</p> <p>Full decision of PMP – no specific reference</p>	HortNZ submitted (769.84) on 2.17.2	<p>Discharge of agrichemicals into water can have adverse effects, including those on downstream users (e.g. those taking water for irrigation purposes).</p> <p>HortNZ recognises that there are agrichemicals will need to be used in water to address aquatic pests but seeks to ensure that where agrichemicals are being discharged into water that best practice is used to ensure that there are no adverse effects, including on downstream users of the water. There is a need to ensure that those undertaking such discharges are adequately trained and competent.</p> <p>Whereas the rules for the discharge of agrichemicals to land include the requirement for application to be</p>	<p>Amend 2.17.2, by adding an addition permitted activity standard:</p> <p><u>2.17.2.X The applicator must hold a GROWSAFE Registered Chemical Applicators Certificate (National Certificate in Agrichemical Aquatic strand) or be under the direct supervision of person holding this certificate.</u></p> <p>OR provision of a similar nature which provides a minimum training/competency requirement.</p> <p>AND add the following permitted activity standard:</p>

Appeal Point	Provision or Decision	Scope	Reason	Relief sought
			carried out in accordance with Sections 3.5 and 5.5 of NZS 8409:2004, there is not an equivalent requirement that applies to the discharge to water.	<u>2.17.2.X Where spraying is occurring in a publicly accessible location, appropriate notification signage shall be placed within the immediate vicinity of the spraying prior to commencing and maintained until spraying has ceased.</u>
(aa)	2.17.11 Discharge of agrichemical to water in Drainage Channel Network or the Floodway Zone Full decision of PMEP – no specific reference	HortNZ submitted (769.85) on 2.17.11	As above.	Amend 2.17.11, by adding an additional permitted activity standard: <u>2.17.11.X The applicator must hold a GROWSAFE Registered Chemical Applicators Certificate (National Certificate in Agrichemical Aquatic strand) or be under the direct supervision of person holding this certificate.</u> OR provision of a similar nature which provides a minimum training/competency requirement.
(bb)	2.12.11 Discharge of an agrichemical to water (Drainage Channel Network Activity) Full decision of PMEP – no specific reference	HortNZ made a further submission on Marlborough District Council (91.76)	The discharge of agrichemicals to water for the control of aquatic vegetation as part of a Drainage Channel Network Activity is provided for by Rule 2.16.11 (with permitted activity conditions). This rule (2.12.11) does not have any permitted activity conditions. It's inclusion in this chapter adds confusion to the multitude of agrichemical rules in the Plan.	Delete 2.12.11
(cc)	2.14.10 Discharge of an agrichemical into or onto land (Drainage Channel Network Activity)	HortNZ submitted on 2.14.10.	Agrichemical use is critical to horticultural growers who both use, and can be affected by, other agrichemical applications.	Amend 2.14.10, by adding an additional permitted activity standard: <u>2.14.10.X Except for hand-held application of agrichemicals, the applicator must hold a GROWSAFE certificate or be under the</u>

Appeal Point	Provision or Decision	Scope	Reason	Relief sought
	Full decision of PMP – no specific reference		<p>HortNZ supports reliance on NZS 8409:2004 as best practice, however seeks more specific requirements for notification and training.</p> <p>The section regarding notification states that notification shall also be in accordance with any regulatory requirements of the local authority – this implies that a rule would be more specific.</p> <p>Similarly, for competency it is important to clearly state the training/competency requirement within the plan for certainty. Training is an important part of ensuring best practice agricultural application.</p>	<p><u>direct supervision of a person holding a GROWSAFE certificate.</u></p> <p>OR a provision of a similar nature which provides a minimum training/competency requirement.</p> <p>AND include a specific permitted activity condition stating the notification requirements for agricultural application adjacent to sensitive areas.</p>
(dd)	<p>Include permitted activity rules for a biosecurity response</p> <p>Full decision of PMP – Para 46</p>	HortNZ submitted (769.80, 769.90, 769.84, 769.85) seeking biosecurity provisions	<p>A biosecurity incursion could have significant adverse effects on the wellbeing of the district, particularly horticulture, and inappropriate management of such incursions can result in the unintended spread of pest species.</p> <p>Only when a biosecurity emergency is declared by the Governor-General on the recommendation of a Minister, can the emergency provisions in the Biosecurity Act 1993 override the RMA provisions. Such a declaration has never been made (e.g. in the 2009-2010 PSA incursion that significantly affected the kiwifruit sector. In this case, only a Chief Technical Officer declaration was made so regional and district plan requirements needed to be met which presented challenges in terms of timely and appropriate destruction of material).</p> <p>The policy framework clearly recognises the issue of pest incursions and the effect this could have on the primary production sector. The decision includes exceptions from some of the permitted activity conditions applicable to non-indigenous vegetation clearance; however, the amendment we seek also</p>	<p>Include the following permitted activity rule in 2.7, 2.12:</p> <p><u>Removal of vegetation infected by unwanted organisms as declared by Ministry for Primary Industries Chief Technical Officer or an emergency declared by the Minister under the Biosecurity Act 1993</u></p> <p>Including the following permitted activity rule in 3.1:</p> <p><u>Burial, spraying, burning or removal of vegetation infected by unwanted organisms as declared by Ministry for Primary Industries Chief Technical Officer or an emergency declared by the Minister under the Biosecurity Act 1993</u></p>

Appeal Point	Provision or Decision	Scope	Reason	Relief sought
			captures associated activities and a rule to enable removal of vegetation in, on, over or under the bed of a lake or river. The rules proposed would only apply in very limited situations, but are important in enabling a timely response.	

Advice to recipients:

How to become a party to proceedings

You may be a party to the appeal if you made a submission or further submission on the matter of this appeal.

To become a party you must:

- within 15 working days after the period for lodging a notice of appeal ends lodge a notice of your wish to be a party to the proceedings (in Form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant
- Within 20 working days after the period for lodging a notice of appeal ends serve copies of your notice on all other parties

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in [section 274\(1\)](#) and [Part 11A](#) of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see Form 38).

How to obtain copies of documents relating to the appeal

The copy of this notice served on you does not attach a copy of the appellants submission or the decisions appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any question about this notice contact the Environment Court in Christchurch.

APPENDIX A - Copy of the Appellant's submission and further submission to which this appeal relates.

APPENDIX B - Name and address of persons to be served with a copy of this notice

A copy of this appeal will be served on the Council electronically by email to:
Kaye.McIlveney@marlborough.govt.nz.

The Environment Court Minute dated 15 April 2020 waives the requirement for an appellant to serve a copy of an appeal notice on submitters and provide associated information to the Registrar.