

**BEFORE THE HEARINGS PANEL
AT PALMERSTON NORTH**

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of hearings on submissions concerning the Proposed One Plan notified by the Manawatu-Wanganui Regional Council

**SUBMISSIONS OF COUNSEL ON BEHALF OF
HORTICULTURE NEW ZEALAND
2 March 2010**

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INTRODUCTION

1. These submissions are made on behalf of Horticulture New Zealand).
2. The focus on these submissions is to pre-empt and comment on the legal issues that may arise out of the evidence presented by the witnesses for Horticulture New Zealand and more particularly the package they have presented to the Panel that would address the submission.

ISSUES COVERED

3. The following are the issues covered in this opinion:
 - Scope – is the package presented within scope to consider?
 - Incorporation by reference – are there any issues in light of the opinion by Mr Maassen as the referencing external documents?
 - The implications of having some material in the Regional Policy Statement section.

SCOPE

7. In the opinion provided by Mr Maassen to the Panel dated 26 January 2010 he covers the question of scope with which I concur.
8. To reiterate Mr Maassen's views I would like to make the following short submissions.
9. The law regarding the lawful scope of amendments which a local authority may make to proposed plans is well settled.¹

¹ *Countdown Properties (Northland) v Dunedin City Council* [1994] NZRMA 145, *Royal Forest & Bird Protection Society Inc v Southland District Council* [1997] NZRMA 408, *Noel Leeming Appliances Ltd v North Shore City Council (No.2)* [1993] 2 NZRMA 497, *Melanesian Mission Trust Board v Auckland City Council* [1997] NZED 383, *Network Tasman Limited v Tasman District Council (CO57/08)*, *General Distributors Limited v Waipa District Council*, High Court Auckland, CIV-2008-404-4857, Wylie J.

10. As noted by Mr Maassen the starting point is Part 1 of Schedule 1 of the Resource Management Act 1991 (RMA) which provides at clause 10(2):

The decision of the local authority may include any consequential alterations arising out of submission and any other relevant matters it considered relating to matters raised in submissions.

11. Caselaw provides that amendments to a proposed plan as notified are unlawful if they go beyond what is reasonably and fairly raised in submissions on the proposed plan. As stated by the High Court in *Countdown Properties (Northland) v Dunedin City Council*²:

The local authority ...must consider whether any amendment made to the plan change as notified goes beyond what is reasonably and fairly raised in submissions on the plan change... It will usually be a question of degree to be judged by the terms of the proposed change and of the content of the submissions.

12. The assessment of whether any amendment has been reasonably and fairly raised in the course of submission should be approached in a “realistic workable fashion rather than from the perspective of legal nicety”: see *Royal Forest & Bird Protection Society Inc v Southland District Council*. A local authority can consider the “whole relief package” signaled in the submissions³

13. It is acknowledged that adopting a “realistic workable” approach and considering the “whole relief package” does not allow a local authority to go beyond what was sought in submissions: see *General Distributors v Waipa District Council*⁴

14. I will now turn to apply these principles to the submissions and evidence made by Horticulture New Zealand (as detailed in the evidence of Mr Keenan).

² [1994] NZRMA 145 at 166

³ [1997] NZRMA 408 at 413

⁴ High Court, Auckland, CIV-2008-4-4-4857, Wylie J at para 63

15. As noted by Mr Keenan there has been much discussion, negotiation and mediation since Horticulture New Zealand made its submissions in September 2007.
16. In his Introductory Submissions at the beginning of the Proposed One Plan hearings Mr Maassen noted that "Helen Marr and her team have been, and continue to work assiduously to resolve issues with submitters. Plan making is an iterative process. HRC has always been, and remains willing to engage with submitters of goodwill interested in the sustainable management of the natural and physical resources of the region."⁵
17. As is clear from the evidence of the Horticulture New Zealand team a considerable amount of work has occurred since September 2007 to work with the Council staff and consultants to find a solution and response to the submissions made.
18. As a result Mr Keenan has presented you with a relief package that would resolve the issues in relation to the water quality provisions in the Proposed One Plan.
19. I have compared that relief package with the submissions made by Horticulture New Zealand in September 2007 and in my opinion you are fully entitled to conclude that the relief package does not go beyond what is reasonably and fairly raised in the submission. What the relief package does is offer up the detailed response to the submissions made. Such a detailed response was not able to be made in September 2007 due to the considerable work required. It is worth noting that there is more work needing to be done to validate some of the proposed solutions. In the context of water quality matters plan making is perhaps more iterative than in any other context due to the evolving nature of the science.

INCORPORATION BY REFERENCE

20. In relation to the relief package presented by Mr Keenan there are documents that are incorporated by reference. These are:
 - New Zealand GAP Nov 2009 Version 5.0 or New Zealand GAP (GLOBALGAP equivalent);
 - Code of Practice for Commercial Vegetable Growing in

⁵ Mr Maassen - Introductory Submissions to the Hearings Panel, paragraph 5)

the Horizons Region Jan 2010;

21. In his legal submission to the Panel dated 26 January 2010 Mr Maassen addressed the issue of documents incorporated by reference.
22. I do not need to elaborate on Mr Maassen's submissions as I concur with them in their entirety.
23. In the context of the documents referred to by Mr Keenan in the suggested amended rules the documents referred to exist and are clearly identified such that they fulfill the requirements in Part 3 of Schedule 1 of the RMA, in my submission.
24. The evidence acknowledges that such Codes and the New Zealand GAP will change over time and when they do the new versions will have to be referred in then operative One Plan by way of a plan change.

REGIONAL POLICY STATEMENT SECTION OF THE PLAN

25. In his evidence (paragraphs 69-75) Mr Keenan raises concerns about certain matters being included in the RPS section of the Proposed Plan.
26. The concerns are two-fold.
27. First, the provisions of the RPS ought to be setting the overall framework for the development of policy in district and regional plans.
28. Secondly, changes to a RPS can only be initiated by the regional council and the territorial authorities (clause 21(3) of Schedule 1). Therefore, for matters that are already being signaled for early change (as set out in Mr Keenan's evidence) it is far more appropriate to provide for these in the Plan section of the document.



HELEN ATKINS
Counsel for Horticulture New Zealand
(2 March 2010)

