

28 April 2017

Clean Water Consultation 2017
Ministry for the Environment
PO Box 10362
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By email: watercomments@submissions.mfe.govt.nz

CLEAN WATER CONSULTATION: SUBMISSION BY SCALES CORPORATION LIMITED

Introduction

Scales Corporation Limited (Scales) operates a diversified agribusiness portfolio. Scales is a NZX Main Board listed company and in the S&P NZX 50 Index. We currently operate three divisions: Horticulture, Storage & Logistics, and Food Ingredients. We employ over 600 permanent staff and an additional 1,800 fixed term staff within the Horticulture division. Our horticulture companies include Mr Apple and Fern Ridge Produce Limited.

Mr Apple is New Zealand's largest, fully integrated grower, packer and marketer of apples. Mr Apple grows apples on more than 1,000 hectares of orchards in the Hawkes Bay and exports in excess of 4 million cartons of apples each year. Fern Ridge Produce Limited is a leading supplier, trader and marketer of produce to various global markets.

Scales has had the opportunity to review a draft of the Horticulture New Zealand (HortNZ) submission. It generally agrees and supports the HortNZ submission, but Scales also wished to make its own submission. We believe the issues are important enough to our businesses, and the wider community environments in New Zealand, to do so. We want our voice and opinion to be heard and considered and are grateful for the opportunity to make a submission.

The broad objectives of the Clean Water proposals are supported by Scales. We support initiatives to maintain and enhance New Zealand's environment, and particularly that of its waterbodies. However, we are concerned that businesses, such as our own, are not inadvertently and unfairly treated, for example through undermining existing investment, increasing uncertainty in the availability of water for irrigation going forward, and generating process and other costs that are disproportionate to the benefits.

Matters addressed

Scales is deliberately focusing its submission on just two key issues (one substantive and the other procedural), as follows:

The proposed inclusion of "food production and irrigation" as an "extractive use", rather than them being a "national value".

Process and timing concerns.

Food production and irrigation: a national value, not an extractive use

Scales has some understanding of the importance of the NPS Freshwater Management and the language used in it. Mr Apple, for example, was involved in the Board of Inquiry process

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considering Plan Change 6 to the Hawkes Bay Regional Plan and the Ruataniwha Water Storage Scheme. We have seen and experienced the complexity of that process, and the uncertainty it introduced in respect of our existing water takes, and the uncertainty it raised regarding the potential for future investment and growth in the horticultural sector. It was also resource intensive and costly. Not just the cost of external advisors, but internally, it diverted key resources away from managing and planning our business.

That process was in part about determining the meaning of the NPS Freshwater Management (at its then state of amendment), as well as how it was to be implemented in the Regional Plan and considered in the consent applications. We are aware of continuing litigation around how NPSs are to be interpreted, and to what extent they dictate the outcomes of consent applications in other contexts. This highlights the litigation uncertainty introduced by any change, particularly one which is unclear.

This current process has the potential to significantly change the way in which “food production and irrigation” interests are to be considered into the future.

At the moment, these activities are an “additional national value” to be considered (as appropriate in the circumstances) in addition to the compulsory national values of “ecosystem health” and “human health for recreation”. They currently appear with a large number of other “additional national values” and must be taken into account by Regional Councils when they are developing freshwater objectives. Those objectives then have significant weight in the development of rules and in any consent process.

The proposed removal of food production and irrigation from the “national values” and their placement into “extractive uses” has the effect of significantly “de-elevating” or “de-prioritising” those activities. It is also inconsistent with other proposed changes to better recognise the need to provide for “economic well being, including productive economic opportunities” (a proposed addition to Objective B1). The term “extractive uses” does not seem to appear in the objectives and policies, and so, despite having been defined, they sit in something of a policy vacuum. The concern is that food production and irrigation will be given less weight, and will therefore be disadvantaged in the future – or we will have to fight for recognition at every stage of any future process. Neither are attractive propositions.

It is unclear what the long-term practical consequences will be of identifying food production and irrigation as extractive uses rather than of national value, but Scales cannot see how it could ever achieve anything than disadvantage its operations, in particular horticulture, into the future. It does not appear as if this outcome was intended from the explanatory material. If it was not intended, then it needs to be rectified. If it was intended, then it needs to be clearly justified, and the anticipated outcomes clearly stated, so that the Minister understands the consequence of the change and its costs before deciding to proceed (or modify the proposal).

If there are legitimate concerns about currently having food production and irrigation as a national value, then a finer grained approach may need to be adopted. Not all food production activities have the same requirements or need for certainty of water supply – or will suffer the same losses if insufficient water is available. If water needs to be “rationed” or re-allocated in the future, then that should not necessarily be on a pro-rata basis across all “food production and irrigation” activities. Orchards require long term investment and certainty (it generally takes 5 years or more to reach full orchard production and obtain a return on investment), unlike annual crops which can be rotated or replanted the following year.

Scales requests urgent consideration of these issues, and clarification of the purpose and intended outcome arising from the proposed change, together with a clear identification of costs. In any event, further consideration should also be given to whether a blanket approach to all

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food production and irrigation, or a more nuanced approach that seeks to avoid disproportionate impacts, should be adopted.

Timing and process

Scales is concerned at what appears to be a short timeframe and condensed process, as well as the appropriateness of making change now.

The consultation document was released in late February. Submissions close at the end of April. So we have had just two months to try to understand, consult with wider industry bodies like HortNZ, and take advice on the implications of the changes. This is a significantly shortened process compared to that adopted in respect of the previous changes to the NPS Freshwater Management. While the RMA provides for a streamlined process to adopt or amend NPSs which does not involve the appointment of a board of inquiry and public hearings, if rights and interests are going to be significantly affected then there needs to be confidence in the process.

At the very least, we think a short further “round” of consultation and engagement is required, to provide feedback on the submissions and, to the extent that they have been taken into account, allow for final comment on the revised proposal. Community buy-in is critical, and allowing for this step would give all submitters a greater sense of fairness and participation.

Scales also raises the question of whether this is the right time, or mechanism, to impose further regulatory burden on the community through further amendments to the NPS Freshwater Management. The Resource Legislation Amendment Act 2017 has just been passed, and everyone will need to get to grips with the wide range of changes it has introduced. There is the potential to address many of the issues raised in the Clean Water package – but with greater thought and input – through the National Planning Standards. The proposed amendments feel rushed and give us some disquiet that they may have unintended or poorly evaluated consequences at a time when greater stability would better enable resources to be put into both the environment and economic growth, rather than process.

Yours faithfully



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