

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Proposed Plan Change 1, and Variation 1 to Proposed Plan Change 1, to the Waikato Regional Plan

AND

IN THE MATTER of a further submission by **RUSHMORE LIMITED** under clause 8 of Schedule 1 of the Resource Management Act 1991 to Proposed Plan Change 1, and Variation 1 to Proposed Plan Change 1, to the Waikato Regional Plan

TO: WAIKATO REGIONAL COUNCIL

SUBMITTER: RUSHMORE LIMITED

**FURTHER SUBMISSION ON PROPOSED PLAN CHANGE 1 AND VARIATION 1
TO PROPOSED PLAN CHANGE 1
TO THE WAIKATO REGIONAL PLAN**

1. INTRODUCTION

1.1 Rushmore Limited ("Rushmore") makes the following further submission with respect to submissions made on:

- (a) Proposed Plan Change 1 ("PC1") to the Waikato Regional Plan ("WRP"); and
- (b) Variation 1 to PC 1 to the WRP ("V1").

(References to PC1 in this further submission are to be read as including a reference to both PC1 and V1).

2. RUSHMORE AND ITS INTEREST IN PC1

2.1 Rushmore is a registered New Zealand company. The sole director of Rushmore is Lawrence Stephen Mayne.

2.2 Rushmore owns approximately 85ha of land south of Matamata, within the Waihou-Piako Catchment Management Zone under the WRP. The majority of this land is currently leased to a third party and is used for commercial vegetable production.

- 2.3 Although the land is not located within the area covered by PC1, Rushmore recognises that the PC1 framework is likely to be applied to the wider Waikato Region (including its land) in the foreseeable future.
- 2.4 Accordingly, Rushmore has an interest in PC1 greater than the interest that the general public has, for the following reasons:
- (a) Rushmore's land is currently used for commercial vegetable production, which is one of the primary activities that PC1 seeks to set an appropriate planning framework for; and
 - (b) It is likely that a planning framework similar to that developed through PC1 will be applied to the Rushmore land in the foreseeable future.

3. **SUBMISSIONS ADDRESSED BY RUSHMORE'S FURTHER SUBMISSION**

- 3.1 This further submission addresses original submissions lodged by the following parties on PC1 and / or V1:
- (a) AS Wilcox and Sons Limited;
 - (b) Alexander and Glen Wilcox;
 - (c) Federated Farmers;
 - (d) Horticulture New Zealand;
 - (e) The Primary Land Users Group; and
 - (f) The Pukekohe Vegetable Growers Association Inc.
- 3.2 The details of the specific submission points that are addressed by this further submission and Rushmore's position on these submissions (i.e. support or oppose), are set out in the tables **attached** as **Annexure 1**.
- 3.3 In general, Rushmore supports the submissions listed in paragraph 3.1, to the extent that those submissions seek the following amendments to PC1:
- (a) The deletion of proposed Policy 3(b) from 3.11.3 – Policies of the WRP, which seeks to cap the area of vegetable production land on a property or enterprise basis.
 - (b) With regard to proposed Rule 3.11.5.5 of the WRP:
 - (i) Amendments to clarify that the controlled activity consent, and associated nitrogen reference point ("NRP"), are a land use consent

that attaches to the land in respect of which the consent has been granted.

- (ii) The deletion of standard (f), which seeks to cap the area of land used for commercial vegetable cropping on a property or enterprise basis.
 - (iii) The deletion of standard (g), which requires that if new land is to be used for commercial vegetable production, an equivalent area of land must be removed from commercial vegetable production, in order to comply with standard (f).
- (c) The deletion of the reference to vegetable production in proposed Rule 3.11.5.7(4) of the WRP, and drafting of a new rule that makes the creation of new vegetable production areas a restricted discretionary or discretionary activity.

4. **SUMMARY OF RUSHMORE'S POSITION ON PC1**

- 4.1 Rushmore generally supports the overall purpose and guiding principles of PC1. In particular, Rushmore supports the approach in PC1 of dealing with commercial vegetable production in separate policies and rules, as this recognises that the activity is inherently different from other agricultural industries.
- 4.2 However, Rushmore considers that amendments are needed to reflect the relative scale and importance of this industry, which has been recognised in the WRP as critically important for the Waikato Region and nearby metropolitan areas.
- 4.3 In this regard, commercial vegetable production has the following unique characteristics which set it apart from other Waikato industries such as dairy and livestock production:
- (a) Commercial vegetable production makes up a small proportion of the total area of land used in the Waikato Region for agricultural production. As such, it is a minor contributor to the total volume of contaminants that are discharged within the Waikato Region.
 - (b) Crop rotation is of critical importance for the vegetable production industry, as this prevents disease and maintains soil health. Thus for commercial vegetable production to remain viable, it must have the flexibility to easily establish and disestablish (or regularly rotate) the areas used for vegetable production.
- 4.4 To that end, the proposed provisions related to commercial vegetable production from PC1 that are addressed in this further submission are:

- (a) Policy 3 in 3.11.3 – Policies: Tailored approach to reducing diffuse discharges from commercial vegetable production systems.
- (b) Rule 3.11.5.5 Controlled activity rule – Existing commercial vegetable production.
- (c) Rule 3.11.5.7 Non-complying activity rule – Land use change.

4.5 Rushmore's position in respect of each of those is as follows.

Policy 3 – Reducing diffuse discharges from commercial vegetable production

4.6 Rushmore opposes proposed Policy 3(b) in 3.11.3 – Policies, which seeks to cap the area of land that can be used for commercial vegetable production by a property or enterprise. Such a policy fails to recognise the relative scale and importance of the industry for the Waikato Region.

4.7 This policy may also have the unintended consequence of reducing land value. A property that has not been used to its maximum potential during the baseline period (i.e. 2006 to 2016) will be at a significant disadvantage when compared to other properties that have been used, perhaps unsustainably, to their maximum potential. In effect, this policy may reward properties and enterprises that have (potentially unsustainably) maximised production, and disadvantage those who have applied best practices and periodically retired areas to promote soil re-generation.

Rule 3.11.5.5 – Controlled Activity Rule - Existing Commercial Vegetable Production

4.8 Rushmore supports existing vegetable production being given a controlled activity status. However, proposed Rule 3.11.5.5 is not workable in its current form. Accordingly, Rushmore seeks that the proposed rule be amended as follows.

- (a) Clarify that the resulting consent is a land use consent in accordance with section 9 of the Resource Management Act 1991 ("RMA"), not a discharge consent under section 15 of the RMA, for the following reasons:
 - (i) The primary purpose of the proposed rule is to authorise the 'use of the land'. The regulation of contaminant discharge is simply an associated or secondary purpose of the provision.
 - (ii) The calculation of an accurate and functional NRP (attached to the consent) is influenced by the biophysical characteristics of a site. It is therefore appropriate and necessary that the resulting consent is a land use consent which attaches to the site, rather than a discharge consent

which can be transferred from site to site. To provide otherwise would be nonsensical.

- (b) Delete proposed Rule 3.11.5.5(f), which caps the area of land available to be used for commercial vegetable production. As discussed above, such a cap is inappropriate given the small proportion of land in the Waikato Region that is currently used for commercial vegetable production and the critical importance of this industry to the Waikato Region as a whole.
- (c) Delete proposed Rule 3.11.5.5(g), which requires existing vegetable cropping land to be retired if an enterprise wishes to use a new area for vegetable production, for the following reasons:
 - (i) The establishment of new commercial vegetable cropping areas should be addressed in a separate rule, not through a standard that forms part of a controlled activity rule regarding *existing* commercial vegetable production.
 - (ii) As currently drafted, this provision (together with the proposed cap on vegetable production land) may render some leasehold properties 'orphan' sites, i.e. it will no longer have consent to be used for commercial vegetable production, as a result of standard crop rotation practices. The realisation of such a scenario would have unreasonable and untenable financial implications, particularly for lessors.

Rule 3.11.5.7- Non Complying Activity Rule – Land Use Change

4.9 Rushmore opposes:

- (a) The proposed capping of land available for commercial vegetable production; and
- (b) The creation of new vegetable cropping land requiring consent as a non-complying activity.

4.10 Under the proposed rule framework from PC1, the statutory tests from section 104D of the RMA that must be met in order to obtain consent for a non-complying activity would make it unreasonably (and inappropriately) difficult to create new vegetable production areas. Further, the significant time and cost associated with obtaining consent for such an activity will unfairly disadvantage small enterprises, which are often a critical source of fresh and inexpensive produce for local communities.

4.11 On this basis, Rushmore seeks that the creation of new vegetable production areas should be either a restricted discretionary or a discretionary activity. This would allow

for the establishment of new vegetable production land in appropriate circumstances, subject to sufficient oversight from the Waikato Regional Council.

5. **GROUNDS FOR RUSHMORE’S FURTHER SUBMISSION**

5.1 Rushmore supports the relief sought in the submissions that are supported in part in Annexure 1, on the basis that amending PC1 in accordance with that relief:

- (a) Would represent the most appropriate provisions in terms of section 32 of the RMA; and
- (b) Will promote the sustainable management purpose, and the principles, of the RMA.

5.2 Without limiting the generality of the foregoing, the submissions which Rushmore supports in part (as identified in Annexure 1) are supported on the basis that the amendments sought in those submissions:

- (a) Will assist to achieve the outcomes sought by Rushmore as set out in Section 4 above, particularly insofar as they will:
 - (i) Improve the workability, fairness and practical application of PC1; and
 - (ii) Enhance flexibility and reduce the potential adverse social, economic and cultural effects of PC1 on the horticultural sector.
- (b) Will assist Waikato Regional Council to carry out its functions under the RMA so as to achieve the purpose of the Act.
- (c) Will:
 - (i) Appropriately give effect to all applicable higher order planning instruments, including the Vision and Strategy for the Waikato River (Te Ture Whaimana o Te Awa o Waikato), the National Policy Statement for Freshwater Management 2014, all other national policy statements and national environmental standards and the Waikato Regional Policy Statement; and
 - (ii) Not be inconsistent with any directive policies or constraints from such higher order instruments.
- (d) Will better enable people and communities to provide for their social, economic and cultural wellbeing and for their health and safety, including by:

- (i) Recognising iwi relationships with the Waikato and Waipā Rivers, together with other associated waahi tapu and taonga.
- (ii) Ensuring the maintenance and enhancement of amenity values, the intrinsic values of ecosystems and the quality of the environment with respect to the Waikato and Waipā River catchments.

6. **RUSHMORE WISHES TO BE HEARD**

6.1 Rushmore wishes to be heard in support of this further submission and intends to present at the hearing of submissions on PC1.

DATED this 17th day of September 2018

RUSHMORE LIMITED

by its solicitors and duly authorised agents

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ANNEXURE 1 - SUBMISSIONS ADDRESSED BY RUSHMORE'S FURTHER SUBMISSION

TABLE 1: SUBMISSIONS ON PLAN CHANGE 1

No.	Name of Original Submitter	Original Submitter ID	Address of Original Submitter	Provision	Submission Point ID	Support or Oppose?	Summary of reasons
1	A S Wilcox & Sons Ltd	73142	Brent Wilcox 58 Union Road Pukekohe 2678	Policy 3	PC1-4310	Support in part	Support the amendment of proposed Policy 3 to allow for the creation of new vegetable production areas.
2	A S Wilcox & Sons Ltd	73142	Brent Wilcox 58 Union Road Pukekohe 2678	Rule 3.11.5.5	PC1-4318	Oppose	Oppose retaining proposed Rule 3.11.5.5 in its current form.
3	A S Wilcox & Sons Ltd	73142	Brent Wilcox 58 Union Road Pukekohe 2678	Rule 3.11.5.7	PC1-4318	Support in part	Support amending proposed Rule 3.11.5.7 to make the creation of new vegetable production areas a restricted discretionary activity, rather than a non-complying activity.
4	Federated Farmers of New Zealand	74191	Nikki Edwards PO Box 447 Hamilton 3240	Policy 3	PC1-10817	Support in part	Support the deletion of proposed Policy 3(b), which seeks to put a cap on the area of commercial vegetable production.
5	Horticulture New Zealand	73801	Astra Foster PO Box 10-232 Wellington 6143	Policy 3	PC1-10052	Oppose in part	Oppose the introduction of an offset mechanism for non-point discharges. The offset mechanism proposed by Horticulture New Zealand is broad, includes no detail of how effects will be offset, and therefore is completely unworkable in its current form. Providing for offsets will only provide another layer of complexity when transferring resource consents to other properties and the rotating of crops, the latter being an integral part of commercial vegetable production.
6	Horticulture New Zealand	73801	Astra Foster PO Box 10-232 Wellington 6143	Rule 3.11.5.5	PC1-10117	Oppose in part	Oppose retaining proposed Rule 3.11.5.5(f) and (g) in its current form.

No.	Name of Original Submitter	Original Submitter ID	Address of Original Submitter	Provision	Submission Point ID	Support or Oppose?	Summary of reasons
7	Horticulture New Zealand	73801	Astra Foster PO Box 10-232 Wellington 6143	Rule 3.11.5.7	PC1-10169	Oppose in part	Oppose retaining the non-complying activity status associated with the creation of new commercial vegetable production areas.
8	Primary Land Users Group	71427	Attn: Peter Buckley, Bruce Cameron and Andy Loader PO Box 913 Pukekohe 2340	Rule 3.11.5.5	PC1-11178	Support in part	Support the deletion of proposed Rule 3.11.5.5(f) and (g).
9	Pukekohe Vegetable Growers Association Inc	74220	Attn: Brent Wilcox and Nicky Swan PO Box 462 Auckland 2340	Policy 3	PC1-7780	Support in part	Support the request that the policy be amended to reflect the essential nature of the commercial vegetable production industry and the requirement for land use flexibility. Support the deletion of proposed Policy 3(b), which seeks to cap the area of commercial vegetable production.
10	Pukekohe Vegetable Growers Association Inc	74220	Attn: Brent Wilcox and Nicky Swan PO Box 462 Auckland 2340	Rule 3.11.5.5	PC1-7803	Support in part	Support the deletion of proposed Rule 3.11.5.5(f). Support the amendment of proposed Rule 3.11.5.5 to clarify how vegetable production is transferred from site to site, and how the NRP is to apply to retired land.
11	Pukekohe Vegetable Growers Association Inc	74220	Attn: Brent Wilcox and Nicky Swan PO Box 462 Auckland 2340	Rule 3.11.5.7	PC1-7806	Support in part	Support the introduction of a new rule which provides that the creation of new vegetable production land is a restricted discretionary activity.
12	Wilcox, Alexander Greer and Glen Andrew	73026	64 Union Road Pukekohe 2678	Rule 3.11.5.5	PC1-6912	Support in part	Support the deletion of proposed Rule 3.11.5.5(f). Support the amendment of proposed Rule 3.11.5.5 to clarify how land will be removed and retired, leasehold land will be addressed and whether NRP will be allocated to retired land.
13	Wilcox, Alexander Greer and Glen Andrew	73026	64 Union Road Pukekohe 2678	Rule 3.11.5.7	PC1-6913	Support in part	Support the request that the Rule's activity status should be amended to discretionary or restricted discretionary activity.

TABLE 2: SUBMISSIONS ON VARIATION 1 TO PLAN CHANGE 1

No.	Name of Original Submitter	Original Submitter ID	Address of Original Submitter	Provision	Submission Point ID	Support or Oppose?	Summary of reasons
1	Horticulture New Zealand	73801	Astra Foster PO Box 10-232 Wellington 6143	Policy 3	V1PC1-1595	Oppose in part	Oppose the decision requested in accordance with the submitter's PC1 submission PC1-10052 (see table 1, row 5 above).
2	Horticulture New Zealand	73801	Astra Foster PO Box 10-232 Wellington 6143	Rule 3.11.5.5	V1PC1-1639	Oppose in part	Oppose decision requested in accordance with the submitter's PPC1 submission PC1-10117 (see table 1, row 6 above).
3	Horticulture New Zealand	73801	Astra Foster PO Box 10-232 Wellington 6143	Rule 3.11.5.7	V1PC1-1603	Oppose in part	Oppose the decision requested in accordance with the submitter's PPC1 submission PC1-10169 (see table 1, row 7 above).
4	Federated Farmers of New Zealand	74191	Nikki Edwards PO Box 447 Hamilton 3240	Rule 3.11.5.7	V1PC1-705	Support in part	Support the request that the creation of new commercial vegetable areas should be amended to be restricted discretionary activity.