

TO: The Special Tribunal and Applicants

SUBMISSION ON: SUBMISSION ON AN APPLICATION TO THE MINISTER FOR THE ENVIRONMENT FOR A WATER CONSERVATION ORDER ON THE NGARURORO RIVER AND CLIVE RIVER PURSUANT TO SECTION 201(1) OF THE RESOURCE MANAGEMENT ACT 1991

NAME: Horticulture New Zealand (“HortNZ”)

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1. HortNZ’s submission, and the decisions sought, are detailed in the attached schedules:

- 1.1. HortNZ wishes to be heard in support of this submission.
- 1.2. The application and this submission cover a wide range of matters and there are potentially consequential amendments that will be required to give effect to the relief sought in this submission.

Decision sought:

- 1.3. Other changes or consequential amendments as necessary to give effect to the matters raised in this submission.

2. Background to HortNZ and its Resource Management Act 1991 (“RMA”) involvement:

- 2.1. HortNZ was established on 1 December 2005, combining the New Zealand Vegetable and Potato Growers’ and New Zealand Fruitgrowers’ and New Zealand Berryfruit Growers’ Federations.
- 2.2. On behalf of its 5,500 active grower members HortNZ takes a detailed involvement in resource management planning processes as part of its National Environmental Policies. HortNZ works to raise growers’ awareness of the RMA to ensure effective grower involvement under the Act, whether in the planning process or through resource consent applications. The principles that HortNZ considers in assessing the implementation of the RMA include:
 - The effects based purpose of the RMA;
 - Non-regulatory methods should be employed by councils;
 - Regulation should impact fairly on the whole community, make sense in practice, and be developed in full consultation with those affected by it;
 - Early consultation of land users in plan preparation; and
 - Ensuring that RMA plans work in the growers’ interests both in an environmental and sustainable economic production sense.
- 2.3. HortNZ works to raise growers’ awareness of the RMA to ensure effective grower involvement under the Act, whether in the planning process or through resource consent applications.



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3. Description of Horticulture in New Zealand and in the Hawkes Bay as it relates to the application for a Water Conservation Order (“WCO”)

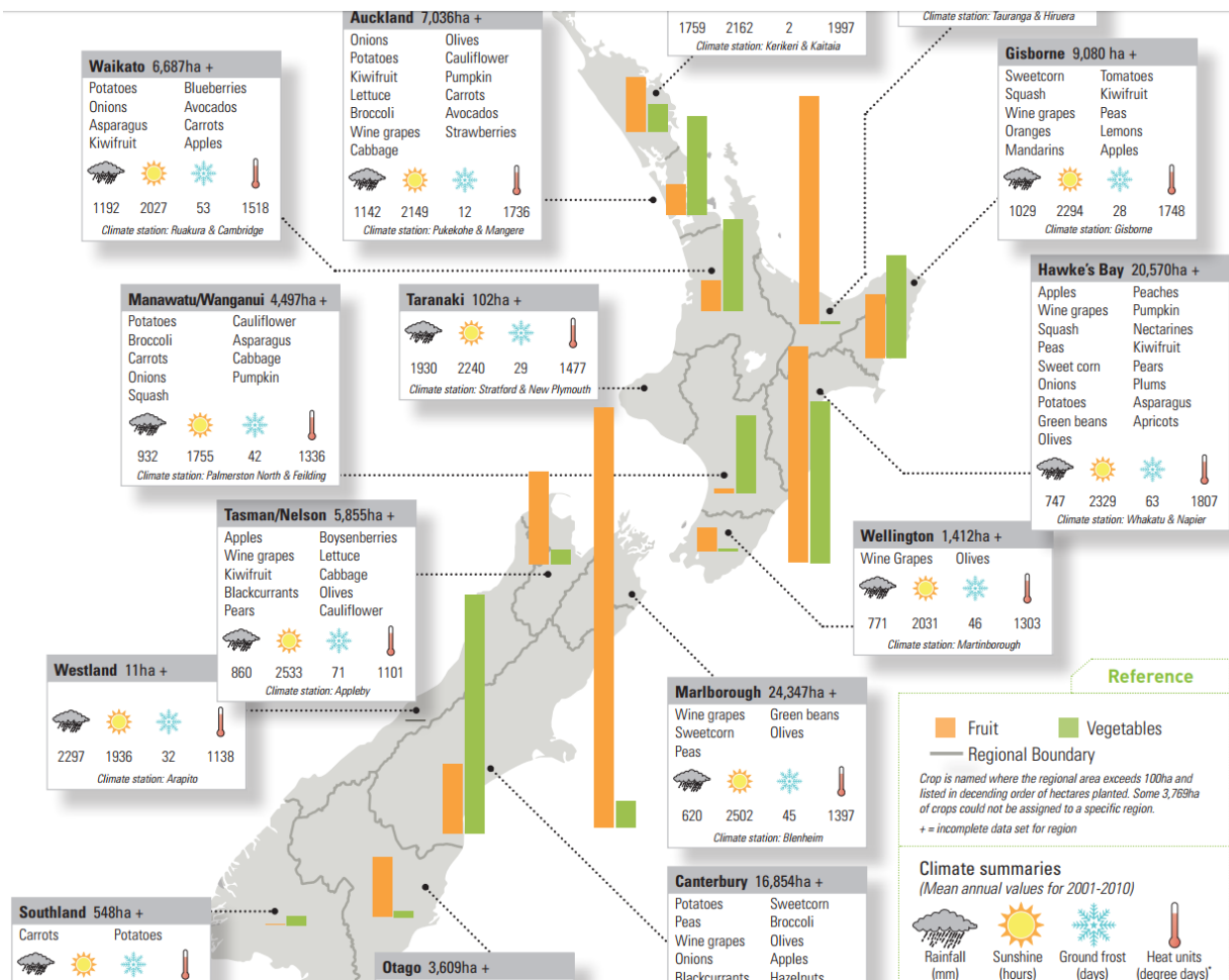
Background – New Zealand overview

- 3.1. In 2016 the value of New Zealand horticultural products exceeded NZ \$8 Billion for the first time. This total includes more than \$5 Billion worth of exports, an increase of 52% on 2010 figures. Horticulture contributed 10.3% of New Zealand’s merchandise exports for the year. The value contribution has increased substantially, and mostly within an unchanged land area footprint of around 127,000 ha.
- 3.2. Efficient production systems, cultivars and strong branding and marketing all contribute to the industry’s success while exports of kiwifruit, wine and apples dominate; New Zealand’s crops are diversifying. Onions, peas, frozen potato and avocado exports are now each with more than \$80 million per annum in addition export value of blueberries has doubled and cherry exports have tripled since 2010.
- 3.3. The continued success of New Zealand’s horticultural export industry, alongside the significant values of domestic production, are founded on the keen understanding of market needs and the delivery of high-quality, safe, sustainable produce that meets the needs of customers.
- 3.4. While exports are often focused on premium sections of the market, domestic production capacity is also increasing as the demand and desire for locally grown food increases. For domestic markets, there is significant concern over price pressure on the price of fruit and vegetables and the sector is mindful of what customers can afford.
- 3.5. Water is a critical resource for horticultural production. The high value crops produced require highly reliable water for irrigation and food preparation post- harvest.

Horticulture in Hawkes Bay

- 3.6. Horticulture in the Hawkes Bay is iconic and a key contributor to New Zealand food chains as well as the Hawkes Bay community it supports.
- 3.7. Fruit and vegetable production from the Hawkes Bay is critical to both the domestic and export sectors. Roughly 12,000 ha of fruit production sits within the region, making it the second-largest fruit production region in New Zealand. There is also nearly 9000 ha of vegetable production, making it the second largest growing region for vegetables within New Zealand. (See Fig 1, Plant and Food Data 2016).
- 3.8. A significant critical mass of fruit and vegetable production within Hawkes Bay sits within the catchment of the waters covered by this WCO application, along with significant processing and post-harvest facilities.
- 3.9. There has been some difficulty calculating exact values and areas given that the WCO application does not identify all the areas covered by the application, particularly in relation to the connected groundwater.

Fig 1 Showing data from Plant and Food on horticultural production in 2016.



The nature of horticultural businesses

- 3.10. Horticultural businesses range from small, family businesses focused on growing and supplying produce, to very large businesses that incorporate the full range of activity from growing; through to marketing of their produce. Horticulture involves very significant investments in land and infrastructure, such as growing and harvesting plant and machinery, processing sites and equipment and such ancillary services as freighting capability etc.
- 3.11. Due to local and international market requirements for consistent quality and year-round supply often production is integrated across New Zealand regions. Often production is focused around the available high-quality land and the major processing centres located in the Heretaunga Plains, including Heinz Wattie's Group and McCain's alongside others. Because production is employment intensive, these processing plants are close to the major cities and towns within Hawkes Bay.
- 3.12. Production across regions is required for the timing of products to market. As an example, Hawkes Bay production of apples is complemented by production from Tasman to provide both early and late offerings, without this security of supply to markets over the season, both regions could be significantly affected.

The nature of the land required

- 3.13. The type of soil required to grow horticultural crops varies but in general deep, free draining soils with good access to water are required. The horticultural footprint for this reason is much smaller than other primary sectors despite the significant value; because of the finite extent of versatile land to support production. Less than 5% of NZ is suitable for horticultural production.
- 3.14. The Heretaunga Plains are a precious resource because of the extent of Class I to III soils in the lower Ngaruroro and other “TANK”¹ catchments. The conjunction of these soils with high sunlight hours makes the Hawkes Bay a highly valued food bowl for the country. Few regions can compete with the growing conditions; and there are many crops that rely on the favourable conditions for their timing into domestic or export markets.

Horticultural involvement in local planning processes

- 3.15. HortNZ has been involved in almost all the local planning processes that affect growers that have been initiated by District and Regional Councils for the last 15 years. This has included such things as large-scale water consent reviews in the Ngaruroro catchment, changes to land use planning controls seeking to protect scarce soil resources, RPS Plan Change 5, Tukituki Plan Change 6 and the application to the Board of Inquiry for the Ruataniwha Dam.
- 3.16. Over the last 5 years HortNZ has supported the local community of growers to represent themselves in the TANK collaborative process set up to give effect to the NPS 2014², recognising that local communities should be at the forefront of determining limits to resource use and the important values for the community. HortNZ has maintained membership of the TANK Technical Advisory Group, and has actively partnered with Hawkes Bay Regional Council and other local companies and organisations to produce research into economic values, water use, environmental footprint, ecological assessments and provision of data for catchment modelling.
- 3.17. As a member of the Land and Water Forum, HortNZ is no stranger to collaborative processes aimed at finding solutions to “wicked” problems. The collaborative environment requires compromise and strong relationships. Growers and other representatives of community have invested serious quantities of time and effort in collaboration on the TANK group over the last 5 years. HortNZ considers that it would be counterproductive not to support the effort of the community in the TANK process.
- 3.18. HortNZ has been involved in other WCO applications – most recently the application for the Hurunui River, so we were aware that the application had the potential to deconstruct the TANK process by predicating some of the outcomes being developed by the community. From this perspective HortNZ has the same view as the Council; that we would have preferred to see the NPS-related processes finish prior to the application being considered. HortNZ is of the view that as a regulatory instrument, a WCO is not well equipped to regulate or manage some of the many values present within the catchment and areas of connected groundwater. Our assessment of the supporting documents and application for an Order provided by the applicants has confirmed our view regarding this, particularly for the lower catchment of the Ngaruroro River below Whanawhana where community values are more strongly juxtaposed.
- 3.19. HortNZ does however recognise the importance of the Ngaruroro River, the Hawkes Bay economy, and the Heretaunga Plains community. There is little argument regarding the nature of the outstanding values in the upper catchment. We agree there is a benefit in

¹ TANK refers to the Tutaekuri, Ahuriri, Ngaruroro and Karamu catchments.

² The NPS 2014 has recently been replaced by a newly gazetted NPS for freshwater that will be referred to from here on in within this submission as the NPS for freshwater 2017.

protection of these values and ensuring that activities in the lower river are managed to support these values.

4. Overarching position of HortNZ

- 4.1. HortNZ supports the application for an Order in the Ngaruroro River above Whanawhana; but opposes the application for the Order for the river below Whanawhana. We also oppose the application applying to connected groundwater of the Ngaruroro River, and consider that the application does not define the nature or extent of the groundwater proposed to be covered by the Order.
- 4.2. Should the Tribunal determine that the application is appropriate for the lower river, HortNZ opposes the range of controls and prohibitions suggested within the Draft Order for the stretch below Whanawhana Cableway. We would propose an alternative range of controls be considered that are more targeted to the protection of the food, beverage and fibre production values that are so important to the Hawkes Bay and NZ communities.
- 4.3. We consider that food, wine and fibre production are integral values that help to construct the cultural identity of the Heretaunga Plains community. Any proposed WCO should consider the protection of those values because they are outstanding, both nationally and regionally.
- 4.4. We also consider the application has failed to consider the needs of primary and secondary industry appropriately. HortNZ considers the application may have an unintended effect on existing lawful activities due to the concurrent running of a process to give effect to the NPS 2017. This is the first instance of a WCO being considered alongside the NPS 2017. In our view; there are risks to lawfully established activities that will be compounded by the subsequent limitations placed on the process for giving effect to the NPS.
- 4.5. The applicants have stated a view that water quantity limits are currently being breached and that the overallocation will need to be phased out. However, the RRMP limits referred to in the application are not NPS compliant and are likely to change as a result of the TANK process being conducted to give effect to the NPS 2017.

5. Legal requirements of the RMA for applicants and submitters

Identification of waterbodies by the applicant

- 5.1. Section 201 of the RMA requires any application for a WCO to identify the water body concerned. HortNZ has reviewed the application and is having great difficulty understanding the extent of it, due to the poor identification of the connected groundwater the application is covering.
- 5.2. Section A of the application adequately identifies surface water the application applies to in figures 1 to 4. However, there is no map identifying the extent of connected groundwater, so it is very difficult for the applicant to describe the effect of the application, and it is very difficult for submitters to respond to the application.
- 5.3. Recent work conducted by Hawkes Bay Regional Council on groundwater shows that it is very difficult to isolate connected groundwater to any of the 3 significant waterbodies that make up the groundwater resource under the Heretaunga Plains, and an assumption could be made that the application applies to all groundwater takes within the Heretaunga Plains.
- 5.4. The maps within the application do not align with the current scientific understanding of hydraulically connected groundwater. It could be that the submitters only intend groundwater within the narrow corridor identified in the maps to be included within the Order, however the text does not align with the maps if this is the case.

Decision sought

- 5.5. Delete the references to groundwater within the Draft Order, and delete any controls in the Draft Order relating to groundwater.
- 5.6. Require the applicant to identify the extent of groundwater controlled by the Order, and to reassess the effect of the Order on lawfully established extraction for primary and secondary industry in the Heretaunga Plains.

Parts of the proposed Order supported by the submission

- 5.7. Section 205 of the RMA allows the submitter to support a modified Order. HortNZ would support an Order that applied only to the upper section of the Ngaruroro River above the Whanawhana Cableway. The reasons for this preference are set out below:
 - 5.7.1 The waters above the Cableway are, to a large extent, free of modification and could be described as being in their natural state. The purpose of WCOs in section 199(2)(a) of the RMA, allows the preservation of such waters.³
 - 5.7.2 The restrictions and prohibitions proposed for the river above Whanawhana are within the scope provided for in section 200 of the RMA.
 - 5.7.3 In addition, there are values for food, beverage and fibre production that HortNZ considers are outstanding in the lower river section. Preservation of the current natural state above Whanawhana may assist with preservation of these outstanding food and fibre production values.

Decision sought

- 5.8 Modify section 4 of the proposed Order to include recognition for the importance of the water body for the protection of outstanding food, beverage and fibre production values associated with production in the catchment below the Whanawhana Cableway, as is provided for in RMA section 199(2)(b)(v).
- 5.9 Approve the application for the Order as it applies to the Ngaruroro River upstream of the Whanawhana Cableway, as long as it is amended in accordance with the relief sought in section 5.8 of this submission.

Parts of the proposed Order opposed by the submission

- 5.10 Section 205 of the RMA allows the submitter to oppose the making of an Order. HortNZ opposes the application for an Order as it is proposed to apply for the Ngaruroro River below the Whanawhana Cableway. The reasons for this preference are set out below:
 - 5.10.1 The waters below the Cableway are not free of modification and could not be described as being in their natural state. While it is agreed by the submitter that RMA section 199 provides for the protection of characteristics which any water body has or contribute to, which are considered to be outstanding, it does not consider that the Order is necessary for the following reasons:
 - 5.10.1.1 The application has been lodged prior to the conclusion of the community led process to give effect to the NPS for freshwater 2017. The NPS 2017 is a more appropriate tool to manage the more widely contested set of values and

³ HortNZ notes that there is primary production within the catchment above the Whanawhana Cableway. Consideration needs to be given to the needs of primary production that is lawfully established. HortNZ has not considered in-depth the needs of primary production in this part of the catchment because it is not related to horticultural activity and analysis of the needs of this primary production is outside the expertise or mandate of the organisation.

characteristics present in the lower river section below Whanawhana Cableway. In our view, the application for an Order could fetter the process for giving effect to the NPS 2017; because it does not appropriately recognise all of the significant characteristics related to freshwater.

- 5.10.1.2 As the application states in a number of locations, the values sought to be protected in the lower river exist under the current environment of authorisations and lawfully established activities. So; there is no reason for the Order to apply in the lower river. There is also a protection mechanism in the NPS 2017 that will not allow for any further degradation (the requirement to maintain and improve freshwater).
- 5.10.1.3 There is insufficient consideration of the needs of primary and secondary industry within the application. RMA section 217 requires that no WCO shall affect or restrict any resource consent granted or any lawful use established in respect of the water body is made. There has been some consideration of existing consents within the application, but no consideration of how the application will affect any lawful established for the Order is made.
- 5.10.1.4 It has not been adequately proved within the application that the values sought for protection in the lower river meet the threshold for identification as outstanding values. As an example of this, the application seeks to apply the threshold of 1% or more of the individuals in the population of one species or subspecies of water bird⁴, as opposed to the 5% threshold that has been used in previous WCO decisions to denote national significance. HortNZ is commissioning ecological evidence in relation to how outstanding values proposed within the lower river actually are. This evidence will be made available to the Tribunal.
- 5.10.1.5 The allocable flows provided within the application, and the minimum flows specified in clause 9 of the proposed Order will result in significant reductions in the reliability of supply for existing lawfully established activities and consented uses. The reduction in reliability of supply will not maintain the existing land use, and it is likely that lower value activities will supplement existing use over time.
- 5.10.1.6 It is distinctly possible that the lower value activities would worsen water quality issues. An economic analysis of reductions in reliability for the lower Tukituki presented maize and corn as likely alternatives, with these crops presenting greater risk of discharge than many of the current land uses requiring high reliability.
- 5.10.1.7 The regional policy statement, the regional resource management plan and the district plans all contain significant provision to preserve the versatile land of the Heretaunga Plains for food, beverage and fibre production due to the significance of this resource for the Hawkes Bay community. The WCO will potentially render this versatile land unviable the current range of uses that make it unique and important to the Hawkes Bay community's social, cultural and economic well-being.

Decision sought

- 5.11 Parts of the Order that apply to the section of the river below Whanawhana Cableway should be deleted in their entirety, including all controls and prohibitions.

⁴ Paragraph 104 of the application.

6 Additional matters where the application is deficient

- 6.1 HortNZ considers the application to be a deficient in a number of areas. HortNZ considers that there is not enough assessment from the applicants in the following areas:
- 6.1.1 Definition of the extent of hydraulically connected groundwater proposed to be covered by the Order.
 - 6.1.2 What the effect of the Order will be on lawfully established activities that do not require consent, in accordance with section 217 (1) of the RMA.
 - 6.1.3 Evidence demonstrating the validity of the statement in para 368 of the application that the catchment can be considered to be overallocated.
 - 6.1.4 Information on how the applicants see the Order interacting with controls implemented under the NPS 2017, particularly in relation to the requirements of section 207 (b) RMA.
 - 6.1.5 A practical economic assessment of the effects on primary and secondary industry of the controls under the proposed Order, particularly in relation to the specified flows and allocation limits in part 9 of the proposed Order.
 - 6.1.6 An assessment of how the application has regard to the NPS Freshwater 2017, that has been gazetted since the application was lodged.

Decision sought

- 6.2 The Tribunal recognise these deficiencies in the application and grant the amendments to the Order requested in this submission.

Planning Assessment

7 The submitter makes the following comments on deficiencies in the Planning Assessment of the applicants

- 7.1 HortNZ considers the application to be a deficient in the statutory assessment required under section 207(c) RMA whereby the relevant provisions of every national policy statement, New Zealand coastal policy statement, regional policy statement, regional plan, district plan and any proposed plan are to be considered.
- 7.2 The planning assessment for the Ngaruroro WCO accompanying the application examines a number of statutory documents and HortNZ notes a lack of information relative to parts of that assessment as follows.

National Policy Statement Freshwater Management (2014)

- 7.3 The submission has already noted information deficiencies on how the applicants see the Order interacting with controls implemented under the NPS 2017, particularly in relation to the requirements of section 207 (b) RMA. Furthermore, there is no assessment of how the application has regard to the NPS Freshwater 2017, that has been gazetted since the application was lodged.

New Zealand Coastal Policy Statement (2010)

- 7.4 Because the Ngaruroro WCO application covers the Ngaruroro River from source to the inland limit of the coastal marine area, connected to the Waitangi Estuary, which receives the flows of the Ngaruroro, Clive and Tutaekuri Rivers before discharging into Hawke's Bay, the NZCPS Is relevant to the process for determining a WCO.

- 7.5 HortNZ agrees with the applicant that the NZCPS is relevant and that integrated management of these resources is consistent with the requirement for regional councils. What is not clarified in the assessment is why an Order over the entire Ngaruroro is required or the best method to achieve the NZCPS objectives.
- 7.6 Importantly Objective 6 of the NZCPS enables people and communities to provide for their social, economic and cultural wellbeing and their health and safety, through subdivision, use and development, recognising (amongst a range of matters) that the protection of the values of the coastal environment does not preclude use and development in appropriate places and forms, and within appropriate limits. Those limits have or are being set through regional and district planning processes.

Regional Resource Management Plan (2006) - Operative Regional Plan, RPS and Plan Change 5

- 7.7 The applicants have stated a view that water quantity limits are currently being breached and that the over allocation will need to be phased out. However, the RRMP limits referred to in the application are not NPS compliant and are likely to change as a result of the TANK process being conducted to give effect to the NPS 2017.
- 7.8 Of particular concern is the statement in the assessment that the analysis does not address Plan Change 5. It is understood that Plan Change 5 is beyond challenge in relation to the Values and that this is a critical assessment in the determination on progressing with a WCO in whole or part for the Ngaruroro.
- 7.9 It is also noted that the assessment considers that the objectives of most relevance to the application in the RPS section of the RRMP are objectives 25 and 27, relating to surface water quantity and quality. A thorough assessment would also consider how the WCO achieves Key RPS Objectives 1, 2 and 3:

OBJ 1: To achieve the integrated sustainable management of the natural and physical resources of the Hawke's Bay region, while recognising the importance of resource use activity in Hawke's Bay, and its contribution to the development and prosperity of the region.

OBJ 2: To maximise certainty by providing clear environmental direction.

OBJ 3: To avoid the imposition of unnecessary costs of regulation on resource users and other people.

Hawkes Bay District Plan 2003

- 7.10 The assessment makes the comment that Rangitikei, like Taupo District to the north and Central Hawkes Bay to the East, declare a passing administrative interest in the Ngaruroro River in its upper extent. That is primarily because these sites are extremely remote, have no infrastructure, are primarily in Department of Conservation or private Maori trust control (with no access), and are in their natural state. It is agreed in terms of the upper extent, where a WCO is supported.
- 7.11 The lower extent is contained within the territorial boundaries of the Hawkes Bay District and a statutory planning document that as noted in the assessment, has an overall emphasis on the needs of communities and industry. The assessment focuses on how the Plan does (or does not) reference to the values and associated techniques for the protection of the remote natural values inherent in the Kaweka Ranges and Ngaruroro River. The deficiency in the assessment is a lack of recognition and assessment of the values and importance of water to meet the needs of the district's primary and secondary industry and of the community (as per s207(b) in the lower extent of the Ngaruroro).

- 7.12 Of relevance to the assessment is the need to consider how the WCO achieves or is necessary given methods in the district plan to achieve:

OBJECTIVE RZ05: To promote the integrated and sustainable management of natural and physical resources including water.

POLICY RZP15: Work collaboratively with the Regional Council to achieve improved water quality and efficient use of water.

Explanation: The National Policy Statement for Freshwater Management seeks improved integration between the management of freshwater and the use and development of land within the catchments. This will occur by developing collaborative management techniques with the Regional Council.

OBJECTIVE PPO2: To provide for flexibility in options for the use of versatile land.

POLICY PPP7 Provide for industrial and commercial activities in the Plains Production Zone with limits on scale and intensity to protect soil values, water values and rural character.

Decision sought

- 7.13 The Tribunal recognise these deficiencies in the application and grant the amendments to the Order requested in this submission.

Ends