

# **RESOURCE MANAGEMENT ACT 1991**

## **PROPOSED SELWYN DISTRICT PLAN**

### **HEARINGS OF SUBMISSIONS**

#### **RECOMMENDATIONS OF HEARING PANEL**

HEARING DATE: 28 MAY 2007

TOPIC: REPORT ON VARIATION 26  
HAZARDOUS SUBSTANCES

HEARING PANEL: Cr Kelvin Coe (Chair)  
Cr Lindsay Philps  
Dean Chrystal (External Commissioner)

1. **Submitters/Further Submitters** (appearances)

Lynette Wharfe, a consultant with The AgriBusiness Group on behalf of Horticulture New Zealand.

John Maber, of John Maber and Associates on behalf of Horticulture New Zealand.

2. In addition, letters and written submissions for presentation at the hearing were received from:

Helen Atkins, Legal Counsel to Horticulture New Zealand.

David Forrest, of Good Earth Matters on behalf of Rockgas.

3. The Panel's task was to consider submissions on both the Rural and Township volumes of the Proposed District Plan associated with Variation 26 - Hazardous Substances.

4. The Variation was notified on 14 October 2006 with submissions closing on 14 November 2006 and further submissions closing on 16 February 2007. A total of 7 submissions and 3 further submissions were received on Variation 26. Submissions received sought a range of outcomes; from the adoption of

the proposed variation through to amendments to the content of the provisions within the District Plan.

5. The Panel initially reviewed two officer reports prepared by Stephanie Styles and Russell Malthus pursuant to s42A of the Resource Management Act (RMA).

### **Introduction**

The purpose of Variation 26 is indicated as being to address the hazardous substances provisions within the District Plan which need updating, with the particular intention of ensuring consistency between the hazardous substances provisions in the two volumes of the Plan and between the Plan and other relevant documents (including HSNO legislation and the Natural Resources Regional Plan). This was sought through providing amendments to the existing objectives, policies, rules and appendices.

### **Overall Recommendation**

The Panel recommends that, subject to the amendments identified in this decision, Variation 26 be adopted by the Selwyn District Council.

## 1. SUBMISSIONS RAISING ISSUES OF SCOPE

1.1 The following submissions have been grouped together due to issues surrounding the scope of Variation 26 and whether these submissions should be considered as being ‘on’ the variation.

Submission & No.	Volume	Submission Point
LPG Association of NZ Inc 100.1	Rural	Amend Appendix 15 Quantity limit for class 2.1a be increased from 600kg to 4000kg.
Rockgas Limited 101.1	Rural	Amend appendix 15 Quantity limit for hazardous substance 2.1a be increased from 600kg to 4000kg.
IZone Project Team 95.1	Township	Amend explanation to Policy 3 by adding: "The threshold quantities in Appendix 9 for hazardous substances are highest for the Rolleston Business 2 Zone as depicted on the Outline Development Plan at Appendix 22 of the Township Volume, as this site is separated from the township".
IZone Project Team 95.2	Township	Amend Appendix 9 Add a further quantity limits column titled "Rolleston Business 2 Zone as depicted on the Outline Development Plan at Appendix 22 of the Townships Volume". Add the maximum limits in Ministry of Environment's Hazardous Facilities Screening Procedure for each hazardous substance in this additional column.
Horticulture New Zealand 102.26	Rural	Amend Rule VII 2.1 to Restricted Discretionary Activity and include the following list of matters to be considered: <ul style="list-style-type: none"> <li>• Storage site</li> <li>• Location (proximity to water and sensitive activities)</li> <li>• Construction materials</li> <li>• Spill containment (eg bunding)</li> <li>• Security</li> <li>• Ventilation and lighting</li> <li>• Signs and placards</li> <li>• Containers and labelling</li> </ul>
	<b>Further submissions</b>	<b>Support/Oppose</b>
	Federated Farmers of NZ (Inc)	Support
	Environment Canterbury	Oppose

### Discussion

1.2 The Panel had prior to the hearing been provided with a legal opinion from Mr Kerry Smith of Buddle Findlay. In essence that opinion was, based on case law, that none of the above submissions were ‘on’ the variation and the Panel “*would be justified in rejecting all of the submissions as being beyond the scope of the variation*”.

1.3 Whilst acknowledging the legal opinion Council officers provided assessments of decisions sought by the submitters. The assessments supported the changes sought by the LPG Association and Rockgas on the basis that there is less risk

from transport and transfer to bulk single-tank LPG facilities. The relaxed limit would still allow the Council to assess larger installations, and in any case storage exceeding 100kg is controlled by HSNO (Hazardous Substances and New Organisms Act) location test certification. Allowing a higher limit is also likely to reduce the number of installations with supply systems comprising multiple smaller cylinders, which have potentially a higher risk of failure than a single tank with dedicated controls.

- 1.4 Mr Malthus considered that it would be inappropriate to increase the quantity limits in the Rolleston Business 2 zone as sought by the IZone project Team as the limits in that zone were already significantly more relaxed than for other zones.
- 1.5 Mr Malthus also considered that the change in status sought by Horticulture NZ was never envisaged and that the Assessment Matters suggested would need to be expanded so that activities were fully assessed to establish the extent to which the proposed activity and the proposed site poses a risk to the environment.
- 1.6 The letter from Mr Forrest on behalf of Rockgas noted the Council officers support and suggested that if the Panel determined that the relief sought was not within the scope of the variation that the Council undertake a further variation as soon as practicable.
- 1.7 In reference to the scope issue, Ms Atkins on behalf of Horticulture NZ contended that submission 102.26 met the tests of the *Foodstuffs*<sup>1</sup> case in that it was a written submission and a reasonable member of the public who studied the submission had the opportunity to make further submissions on this submission.
- 1.8 The Panel initially considered the scope issue of the five submissions, and having reviewed the opinion of Mr Smith and the case law referred to within, in particular the tests set out in the *Clearwater*<sup>2</sup> case, considered that the submissions were all beyond the scope of Variation 26. Having said that the Panel had some sympathy for the submissions by Rockgas and the LPG

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<sup>1</sup> Foodstuffs (Otago Southland) Properties Limited v Dunedin City Council (1993) 2 NZRMA 497.

Association of NZ Inc and considered that the Council should look into this further.

**Recommendation 26.1**

**That for the above reasons the Council:**

- (a) Rejects submissions 100.1 by LPG Association of NZ Inc, 101.1 Rockgas Limited, 95.1 & 95.2 IZone Project Team and 102.26 Horticulture New Zealand and as it relates further submission 238F and accepts as it relates further submission 241F.**

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<sup>2</sup> Clearwater Resort Ltd and Canterbury Gold International Ltd v Christchurch City Council AP34/02 and AP35/02.

## 2. Relationship with the Hazardous Substances and New Organisms Act 1996 (HSNO) and NZS8409:2004 Management of Agrichemicals

Submission & No.	Volume	Submission Point
Tegal Foods 93	Rural and Township	Additional streamlining of the provisions of the District Plan in relation to Hazardous Substances to prevent duplication with requirements under HSNO or set out in the Regional Plan.
	<b>Further submissions</b>	<b>Support/Oppose</b>
	Horticulture NZ	Support in part/Oppose in part
Federated Farmers of New Zealand (Inc) 96.2	Rural and Township	Delay altering quantity thresholds and site requirements, until the requirements of the revised RPS and operational NRRP are known.
Federated Farmers of New Zealand (Inc) 96.10	Rural and Township	Proceed with amendments to provide consistency between the District Plan and HSNO legislation.
Federated Farmers of NZ (Inc) 96.12	Rural and Township	Remove quantity limits from Table 2 for substances where compliance with NZS8409:2004 can be demonstrated and for substances that require Location Test Certificates. Review the quantity threshold under the category "Any Other Toxic Substances", in Table 2 of the Rural Volume.
	<b>Further submissions</b>	<b>Support/Oppose</b>
	Environment Canterbury	Oppose
Horticulture New Zealand 102.1	Rural and Township	Make changes as sought in this submission, including exemptions for activities complying with existing regulations that address the issues.
Horticulture New Zealand 102.2	Rural and Township	That amendments sought in this submission related to HSNO are accepted.
Horticulture New Zealand 102.3	Rural and Township	That external documents, such as NZS8409:2004 Management of Agrichemicals, be incorporated into Variation 26 in an open and explicit manner. That reference to the Codes of Practice for the storage of Petrol and LPG be reinserted in to the Exceptions in Rule 2.3 in the Township Volume.
Horticulture New Zealand 102.4	Rural and Township	Make changes as sought in this submission, including exemptions for activities complying with existing regulations that address the issues, and readdress the appeal point ENVC 295F/04.

### Discussion

- 2.1 One of the key outcomes sought from the variation was to provide greater consistency with HSNO. It was the intention that the proposed changes provide this consistency whilst being consistent with the need to focus on the issues for Selwyn District.
- 2.2 Some submissions agreed that this consistency was necessary while others sought a greater or lesser degree of alignment with the HSNO provisions, in particular those from Horticulture NZ, sought substantial changes to the hazardous substances controls within the District Plan. These submissions

sought that rather than applying quantity limits, storage of agrichemicals be a permitted activity under NZS8409:2004 Management of Agrichemicals, or storage of Class 1-5 substances, where a current Location Test Certificate has been issued by a Test Certifier under HSNO.

2.3 The relationship of the District Plan with the HSNO and to NZS8409:2004 Management of Agrichemicals was therefore a key issue addressed at the variation hearing and also related to the outstanding reference on the District Plan lodged by New Zealand Vegetable and Potato Growers & New Zealand Fruitgrowers Federations (now Horticulture NZ).

2.4 Mr Malthus considered the proposition by Horticulture NZ to be inappropriate because:

- the Council's role is wider than just the matters covered by these two documents and should cover all relevant matters to the district;
- the other documents and legislation anticipate the district plan will also have a role to play in the control of hazardous substances;
- the use of quantity limits to control storage of hazardous substances is consistent with the current form of the district plan, other adjacent district plans, the NRRP, the RPS and the RMA; and
- the introduction of a completely new regime would mean that current Council staff would not be qualified to assess compliance of activities against such controls to determine permitted activity status, having major implications for the Council in resourcing and training.

2.5 The submission by Federated Farmers supported amendments to provide consistency between the District Plan and HSNO requirements 'provided threshold limits for resource consents are appropriate' and supports the Council's proposal not to adopt the "HFSP" (the Ministry for the Environment's Hazardous Facilities Screening Procedure), an alternative to setting threshold quantity limits in District Plans. As this was consistent with the tone of the variation, the Panel recommended this submission be accepted in part due to amendments resulting from other submissions.

2.6 Ms Wharfe indicated that Horticulture NZ were seeking reasonable and pragmatic solutions to the issues they had raised and considered that the

matters raised in their reference had not been addressed through the variation. Ms Wharfe said that this basic position underpinned all their submissions made on the Variation. In particular the submissions sought:

- Removal of quantity thresholds where appropriate mechanisms exist to address the relevant issues.
- Inclusion of NZS8409:2004 Management of Agrichemicals.
- Recognition that hazardous substances are a key component of rural activities in the Rural Zone.
- That the rules should give effect to an identified RM issue.
- Storage and disposal of substances should be permitted subject to a set of conditions - regardless of quantity.
- If the conditions cannot be met a consent is needed that should be assessed on clearly defined matters.

2.7 In respect of HSNO, Horticulture NZ considered that:

- The HSNO classification system does not need to be incorporated into the District Plan as it was developed for a different purpose.
- HSNO Group Standards provide a 'bottom line' for management of hazardous substances. Council may seek more stringent controls to address a specified issue.
- In terms of agrichemicals there is no group standard as NZS8409 is a Code of Practice approved by ERMA that sets out the means to comply with the regulations.
- As ERMA has accepted NZS8409 as an appropriate mechanism to address agrichemical issues it can also be a mechanism for TA's to use.
- New Zealand GAP (a food safety and quality assurance programme used by the majority of horticultural growers) incorporates NZS8409:2004 Management of Agrichemicals into the accreditation process and through this growers are able to meet both the market access and regulatory requirements through the one mechanism rather than two separate ones with similar objectives, but double the compliance requirements.

2.8 Ms Wharfe said that it was Horticulture NZ's contention that the Variation will lead to greater confusion because of the manner in which HSNO



classifications have been used in the Plan and that the duplication between legislation will increase compliance on users unnecessarily, thereby making the Variation more complex and difficult to implement.

- 2.9 She also indicated that Horticulture NZ had not sought to limit the Council's role. Rather they had sought that where no appropriate standard existed that quantity thresholds be applied, thereby recognising the extent of the Council role. She accepted that the district plan may have a role in the management of hazardous substances - but that role needed to be as a result of a clearly identified resource management issue and that the basis of the quantity thresholds was not effects based. She made the point that the RMA does not include quantity limits - rather that controls be effects based, nor does the RPS include quantity limits and the NRRP addresses matters under its jurisdiction and should not dictate the approach in a district plan. Nor do there appear to be thresholds in the NRRP rules - rather conditions about how and where hazardous substances may be used. The relevance of other district plans was also questioned. In Ms Wharfe view the key issue was what are the resource management issues in Selwyn District and what is the most appropriate way to address them.
- 2.10 She said that the regime that the Variation is seeking to implement is complex and confusing and that experience had shown us that few Councils had a clear understanding of HSNO and its classification system.
- 2.11 Ms Wharfe suggested that it could be taken from comments in the Heading Report that Horticulture NZ sought to change the HSNO controls. This is not the intent. Rather it sought to ensure that the HSNO controls apply as intended by the law and that if district councils choose to adopt them they do so appropriately for a relevant land use purpose. Seeking that NZS8409:2004 Management of Agrichemicals apply as a condition of a permitted activity does not change in any way the HSNO classifications and controls. Rather it is a means to comply with those controls.
- 2.12 Ms Wharfe and Mr Mabey went on to explain how the HSNO classification works, referred to duplication in the district plan and pointed out inaccuracies in the officers report. It was pointed out that there is no specific provision

requiring inclusion of HSNO classifications and regulations into a District Plan as they exist in law without any need for District Plans to be changed.

- 2.13 In response to the issue of the outstanding references, Ms Styles said that these were specifically addressed in an options paper to Council in 2005. Council decided to continue down the quantity limits path and the s32 (of the RMA) assessment was prepared on that basis.
- 2.14 The Panel acknowledged that the HSNO Act was the principal legislation for the control of hazardous substances, and accepted that the use of the HSNO classification system provided a basis for classifications under District Plans. Nevertheless, District Plans were also subject to other considerations including the provisions of the RMA, the RPS and the NRRP and were not limited in making plan provisions to the controls of HSNO. A District Council also has very specific powers and responsibilities for the control of hazardous substances in its District, but much more limited powers and responsibilities under HSNO.
- 2.15 It was accepted by the Panel that HSNO set national bottom lines and that the same controls apply regardless of where the site is located; while RMA controls depend on the local environment and the actual area in which the site is located. However, the Panel agreed that while the HSNO controls were targeted specifically at controlling hazards on or in the immediate vicinity of hazardous facilities, District Plans need to identify how neighbouring land use activities and the environment can be protected from the potential adverse effects and risk associated with such facilities. In other words District Plans may set stricter limits in the interests of local circumstances or concerns.
- 2.16 The Panel were also conscious of Mr Malthus's comments that the adoption of the HSNO thresholds would allow significant quantities of hazardous materials within the District without appropriate site controls in place and without the opportunity for assessment by the Council, would not provide any certainty for the determination of environmental risks and effects, and would not allow the Council to fulfil its obligations under the RMA in controlling hazardous substances.

- 2.17 In assessing this issue the Panel also noted that NZS 8409:2004 Management of Agrichemicals acknowledges in Appendix L that District Plans may apply more stringent controls than the Standard according to community aspirations and local effects. The standard contained instructions on the need to consult with Local Authorities to determine if a facility complied with the District Plan, or if the hazardous substances threshold limits of the Plan will be exceeded.
- 2.18 While acknowledging Ms Wharfe's comments that Horticulture NZ had not sought to limit the Council's role which may be wider than matters covered in NZS8409:2004, the Panel felt that a regime which adopted this code for some classes of substances and then had a different mechanism for other substances could create lead to the same sort of confusion that Horticulture NZ were suggesting the current regime provided. It also considered that adopting other instruments that were not intended to address environmental effects and the protection of the District's amenity issues could result in the Council not fulfilling its obligations under the RMA in controlling hazardous substances. The Panel did acknowledge however that Council officers could still take into consideration any compliance with such other controls when processing resource consent applications.
- 2.19 The Panel also acknowledged the potential for a new regime to require upskilling and training for Council staff, although they did not place great weight on this matter.
- 2.20 In conclusion, the Panel considered that the present regime in the district plan should be maintained, considering it to be no less confusing than any other mechanism. It felt that the issues the Plan sought to address were well defined and explained in the Hazardous Substances section and that in general there was sound resource management reasons for the quantity based system contained within the Plan. On this basis submissions were accepted in part and rejected.
- 2.21 Another of the key outcomes sought from the variation was to provide greater consistency between the District Plan and the RPS and NRRP. Ms Styles indicated that submissions generally agreed that such consistency is necessary

although some submissions sought changes that would be inconsistent with the RPS and/or NRRP provisions. Federated Farmers in particular, sought that there be a delay in altering the District Plan provisions until the requirements of the revised RPS and operational NRRP are known. The submission noted the intention by Ecan to revise the RPS and that the NRRP is in hearing stages.

2.22 Ms Wharfe made the point that the variation did not need to give effect to the existing RPS and would only need to do so once Environment Canterbury has reviewed and made operative a new RPS.

2.23 The Panel were aware of the current and future intentions for changes to these documents, however the timing of these was understood to be still some distance away. It agreed that to wait would potentially cause some considerable delay until these documents were confirmed. The Panel noted that the current variation was designed to improve consistency, whilst accepting that future changes may continue to be necessary in response to changes in the RPS and NRRP. It agreed it would be inappropriate to wait what could be a significant length of time to pursue a variation and on this basis rejected the submission.

#### **Recommendations 26.2**

**That for the reasons set out above, but subject to the consideration of matters arising in other submissions, the Panel recommends that the Council:**

- (a) Accept in part submissions 93 by Tegal Foods, 96.10 by Federated Farmers of New Zealand Inc and 102.1 & 102.2 by Horticulture New Zealand and as it relates, further submissions 180F.**
- (b) Reject submission 96.2 and 96.12 by Federated Farmers of New Zealand Inc and accept as it relates, further submission 241F.**
- (c) Reject submissions 102.3 and 102.4 by Horticulture New Zealand.**

### 3 ISSUES, OBJECTIVES AND POLICIES

Submission & No.	Volume	Submission Point
Horticulture New Zealand 102.8	Rural	Delete "waterbodies" from Issue 2. Delete issue 3 from the Rural Volume.
Horticulture New Zealand 102.9	Rural	Amend the definition reference to HSNO section 2.
	<b>Further submissions</b>	<b>Support/Oppose</b>
	Federated Farmers of NZ (Inc)	Support
Horticulture New Zealand 102.10	Rural	Amend Section "What are the Issues?" by: <ul style="list-style-type: none"> <li>Deleting 'depleted or' from the last sentence of the 1st paragraph.</li> <li>Deleting 'or controlled' from the 1st sentence of the 2nd paragraph.</li> <li>Amend the list of bullet points to only refer to matters of relevance to RMA jurisdiction.</li> <li>Reinsert the deleted paragraph commencing "Small quantities of hazardous substances..."</li> </ul>
	<b>Further submissions</b>	<b>Support/Oppose</b>
	Federated Farmers of NZ (Inc)	Support
Horticulture New Zealand 102.11	Rural	Amend 'Regulatory Controls' section as follows: <ul style="list-style-type: none"> <li>Include a list of specific hazardous substances and circumstances which Selwyn District Council manage.</li> <li>Delete 'use' from paragraph 5.</li> <li>Amend the last sentence of paragraph 5 to read: "In setting objectives, policies and rules for hazardous substances the Council must ensure the provisions are consistent with the RMA and Environment Canterbury Resource Management Plans. In addition consideration of the linkages between other legislation and regulations, such as HSNO, will be included as appropriate".</li> </ul>
	<b>Further submissions</b>	<b>Support/Oppose</b>
	Federated Farmers of NZ (Inc)	Support
Horticulture New Zealand 102.12	Rural	Amend 3.2 II Strategy as follows: <ul style="list-style-type: none"> <li>Delete 'large quantities of' from the 5th bullet point.</li> <li>Delete bullet point 4.</li> </ul>
	<b>Further submissions</b>	<b>Support/Oppose</b>
	Federated Farmers of NZ (Inc)	Support
Horticulture New Zealand 102.14	Rural	Amend 3.2 III – Objective (i) as follows: <ul style="list-style-type: none"> <li>Delete Objective 2</li> <li>Delete 'and amenity values of waterbodies' from Objective 3.</li> <li>Retain deleted Objective 1 to read: "Hazardous substances are recognised as an integral part of rural activities and are managed to ensure that they do not adversely affect the rural environment."</li> </ul>
	<b>Further submissions</b>	<b>Support/Oppose</b>
	Federated Farmers of NZ (Inc)	Support
Horticulture New Zealand 102.15	Rural	Amendments to the Explanations and Reasons to be consistent with the changes sought to the objectives. Deletion of the last sentence of the 1st paragraph.
	<b>Further submissions</b>	<b>Support/Oppose</b>
	Federated Farmers of NZ (Inc)	Support
Horticulture New Zealand 102.16	Rural	Amend Policy 1 to read: <ol style="list-style-type: none"> <li>Provide for hazardous substances to be stored in the rural area to enable rural land use to be undertaken without duplication in</li> </ol>

		<p>compliance requirements and based on use of best practices, relevant Codes of Practices, NZ Standards, requirements of other regulations (such as HSNO), and quantity thresholds where no other relevant options exist.</p> <p>b) Ensure hazardous substances are stored under conditions which reduce the risk of any leaks or spills contaminating land.</p>
	<b>Further submissions</b>	<b>Support/Oppose</b>
	Federated Farmers of NZ (Inc)	Support
Horticulture New Zealand 102.17	Rural	<p>Amendments to the Explanations and Reasons to be consistent with the changes sought to Policy 1.</p> <ul style="list-style-type: none"> <li>• Replace the 2nd paragraph of the Explanation and Reasons as follows:</li> <li>• "Policy 1 is implemented using a range of mechanisms, including rules with conditions for storing and disposing of hazardous substances in the rural area. Resource consents will be required where permitted activity standards are not able to be met. Council seek to avoid duplication of compliance requirements for activities".</li> <li>• Delete the 1st and 3rd sentences of the 3rd paragraph.</li> <li>• Amend the 2nd sentence of the 3rd paragraph as follows: "The classification system in Appendix 15 is based on the provisions of the HSNO legislation and will be used where no other appropriate option for managing specific classes of hazardous substances exists."</li> <li>• Amend references to Appendix 9 to Appendix 15.</li> <li>• Delete 'use' from the 1st sentence in paragraph 6.</li> </ul>
	<b>Further submissions</b>	<b>Support/Oppose</b>
	Federated Farmers of NZ (Inc)	Support
Horticulture New Zealand 102.18	Rural	<p>Amend methods for Policy 1 to include:</p> <ul style="list-style-type: none"> <li>• the use of best management practices, relevant Codes of Practices, NZ Standards, and requirements of other regulations.</li> <li>• NZS8409:2004 Management of Agrichemicals will be used as a means to achieve the objective and policy in respect to agrichemicals.</li> </ul>
	<b>Further submissions</b>	<b>Support/Oppose</b>
	Federated Farmers of NZ (Inc)	Support
Horticulture New Zealand 102.19	Rural	<p>Amend Policy 2 by:</p> <ul style="list-style-type: none"> <li>• Deleting point i), and,</li> <li>• Making consequential amendments to the Explanations and Reasons.</li> </ul>
	<b>Further submissions</b>	<b>Support/Oppose</b>
	Federated Farmers of NZ (Inc)	Support
	Environment Canterbury	Oppose
Horticulture New Zealand 102.20	Rural	<p>Include under Policies 4 and 5 - Methods: Advocacy. Support for implementation of the Agrecovery programme for disposal of agrichemical containers.</p>
	<b>Further submissions</b>	<b>Support/Oppose</b>
	Federated Farmers of NZ (Inc)	Support
Horticulture New Zealand 102.21	Rural	<p>Delete Environmental result 3 as it pertains to waterbodies.</p>
	<b>Further submissions</b>	<b>Support/Oppose</b>
	Federated Farmers of NZ (Inc)	Support
	Environment Canterbury	Oppose

## **Discussion**

- 3.1 The submission points received from Horticulture NZ include many that relate to the hazardous substances objectives and policies. They address a number of matters including errors and minor corrections. Where this was the case the Panel agreed to accept or accept in part the submission and no further comment is made here.
- 3.2 Submission 102.8 requested the deletion of Issue 3, which relates to the protection of amenity values of townships from the manufacture, storage or disposal of hazardous substances. The reason given was that the amenity value of townships is not a matter for inclusion in the Rural Volume of the Plan.
- 3.3 The Panel disagreed with this proposition because the amenity values of townships and rural areas are interrelated at the interface between the Living and Rural zones which adjoin each other. They considered that townships required protection from the potential effects of hazardous facilities in the Rural zone, particularly where they adjoin each other. While the Panel generally agreed with Ms Wharfe that people's perception of hazardous substances should not play a part in deciding about issues of amenity value, the reality was nevertheless that communities can have a negative view of hazardous substances and that this in turn impacts on their perception of amenity values. The Panel therefore recommend the replacement of word 'perceived' with 'potential' in the relevant bullet point under "What are the Issues?" and its consequential deletion in the explanation and reasons to the objectives (submission 102.15). Overall however, the Panel's view was that amenity values were an issue for consideration in the District Plan. On the basis of the above, they recommended the submission be accepted in part.
- 3.4 In relation to submission 102.10 the Panel agreed with the deletion of the words 'depleted or' in Section Two, section 3.2 -I (ii) ("What are the issues"), as the term is not in common use and its meaning is unclear in this context. The Panel however agreed with Mr Malthus that the word 'controlled' was entirely consistent with the wording in s31 of the RMA and should be retained; that the list of bullet points under "What are the Issues?" were within RMA jurisdiction; and that the reinstatement of the paragraph concerned was unnecessary. Overall the submission was accepted in part.

- 3.5 In relation to submission 102.11 the Panel agreed with Mr Malthus that it was unnecessary to include a list of specific hazardous substances and circumstances which the Council manage, as the statement in paragraph 5 of the regulatory controls section is quite clear on the scope of the Council's functions and the matters controlled under the District Plan. It also considered the addition proposed to the paragraph to be unnecessary as the present wording was broad enough to cover the intent of the proposed wording. The Panel did not accept that the word 'use' in this paragraph should be deleted in this instance. The submission was rejected.
- 3.6 The Panel agreed with the deletion of the words "large quantities of" (submission 102.12) from the 5<sup>th</sup> bullet point under Strategy, but for the reasons discussed previously, considered the 4<sup>th</sup> bullet point referring to amenity values should be retained. Overall the submission was accepted in part.
- 3.7 In relation to submission 102.14 and the deletion of Objective 2, the Panel considered (as it had in reference to submission 102.10) that protection of the health of livestock and other animals and flora and fauna fell within the Council's section 31 (of the RMA) functions and was therefore an appropriate inclusion in an objective. The Panel did however consider that the similarities between Objectives 2 and 3 warranted their amalgamation and any consequential amendments. The Panel agreed with Mr Malthus that the proposed rewording (by the submitter) of Objective 1 unjustifiably states that rural hazardous substances are always managed appropriately. It considered that there was potential for mismanagement and that the Council should seek to ensure appropriate management through its District Plan provision. Such a change would also be out of step with the general thrust of the Hazardous Substances part of the Rural section of the Plan. Overall the submission was accepted in part.
- 3.8 As previously discussed, the Panel accepted that the word 'perceived' should be deleted from the last sentence of the first paragraph of the Explanation and Reasons to the Objectives. However, the Panel, due to its previous decision on amenity values, considered that the sentence as a whole should remain (submission 102.15). Overall the submission was accepted in part.



- 3.9 Submissions 102.16, 102.17 and 102.18 all relate in part to amendments to Policy 1 and subsequent changes and stem from earlier submissions. The Panel's recommendation in Section 2 of this decision to maintain the current regime and not rely on other regulatory controls and documents, including NZS8409:2004, means that those components of submissions relating to this issue are rejected. The submission points do however contain some other matters addressed in the following paragraphs.
- 3.10 In submission 102.16 an amendment is sought to remove contamination of water as a matter to be addressed by the Policy because that was addressed by the NRRP. Related submissions 102.19 and 102.21 seek the deletion of point (i) from Policy 2 and Environmental Result 3, which refer to and limit the disposal of hazardous substances near water bodies and wetlands, as this matter is also addressed in the NRRP. The Panel however accepted the conclusions of Mr Malthus that the District Plan must provide for protection of water from contamination by hazardous substances of all classes to be consistent with the NRRP and therefore rejected these submissions.
- 3.11 Submission 102.17 also sought deletion of the word 'use' in the first sentence of paragraph 6 which the Panel considered inappropriate as it was being used in the context of explaining the controls of other statutory authorities. There was also a correction identified in this submission with which the Panel agreed. Overall this submission was accepted in part.
- 3.12 Submission 102.18 also sought as a method under Policy 1 "the use of best management practices, relevant Codes of Practices, NZ Standards, and requirements of other regulations". Having reviewed the wording in the Explanation and Reasons to Policy 1, which refers to the Council giving due consideration to any other controls imposed by other legislation, the Panel considered it was appropriate to introduce better reference to that fact in the methods. It was therefore proposed to introduce under the bullet point "Other Legislation" the following:
- To enable consideration of best management practices, relevant Codes of Practices, NZ Standards, and requirements of other regulations.*
- 3.13 Overall the Panel recommended that submission 102.18 be accepted in part.

- 3.14 Horticulture NZ (submission 102.20) sought that specific mention is made of the Agrecovery programme for disposal of agrichemical containers. It was Mr Malthus's view that specific mention of one particular programme was unnecessary when the implementation methods cover disposal broadly. However, the Panel considered that it was appropriate to make reference to this programme given that it is an industry led initiative to address a resource management issue and had involvement from Environment Canterbury. It was recommended the submission be accepted.

### **Recommendations 26.3**

**That for the reasons set out above the Panel recommends that the Council:**

- (a) Accept submission 102.9 by Horticulture New Zealand.**
- (b) Accept submission 102.20 by Horticulture New Zealand and further submission 238F.**
- (c) Accept in part submission 102.8 by Horticulture New Zealand and further submission 238F.**
- (d) Accept in part submission 102.10 by Horticulture New Zealand and further submission 238F.**
- (e) Accept in part submission 102.12 by Horticulture New Zealand and further submission 238F.**
- (f) Accept in part submission 102.14 by Horticulture New Zealand and further submission 238F.**
- (g) Accept in part submission 102.15 by Horticulture New Zealand and further submission 238F.**
- (h) Accept in part submission 102.17 by Horticulture New Zealand and further submission 238F.**
- (i) Accept in part submission 102.18 by Horticulture New Zealand and further submission 238F.**
- (j) Reject submissions 102.11, 102.16, 102.19 and 102.21 by Horticulture New Zealand and as it relates further submission 238F and accept as it relates further submissions 241F.**

### **Amendments to Proposed Plan (Township Volume):**

1. In each Volume of the Plan, amend Section Two, section 3.2 I – Issues (i) (“What is a hazardous substance”) by changing the definition reference “...section 6 of the Hazardous Substances and New Organisms Act...” to read “...*section 2 of the Hazardous Substances and New Organisms Act...*”.
2. In each Volume of the Plan, amend Section Two, section 3.2 I – Issues (ii) (“What are the issues?”) by deleting the words 'depleted or' in the phrase ‘depleted or surplus agrichemicals or garden sprays’ in the last sentence in paragraph 1.
3. In each Volume of the Plan, amend Section Two, section 3.2 I - Issues (ii) (“What are the issues?”) by deleting the word 'perceived' in the tenth bullet point and replacing it with ‘*potential*’.
4. In each Volume of the Plan, amend, section 3.2 II Strategy by deleting the words ‘large quantities of’ from the 5th bullet point so that it reads:
  - *Ensuring that activities in the district that use or produce hazardous substances have appropriate disposal plans.*
5. In each Volume of the Plan, delete Objective 3 and amend Objective 2 so that it reads:

*To ensure that adequate measures are taken during the manufacture, storage and disposal of hazardous substances to avoid, remedy or mitigate any adverse effects to the health of livestock and other farm animals, to domestic animals, to flora and fauna, and to the life-sustaining capacity and amenity values of waterbodies, land and soil resources.*
6. In each Volume of the Plan, amend the first sentence of the second paragraph of the Explanation and Reasons to the Objectives by changing ‘3’ to ‘2’ so that it read:

*“Objectives 1 and 2 ...”*
7. In each Volume of the Plan, amend the last sentence of the first paragraph of the Explanation and Reasons to the Objectives by deleting the word ‘perceived’.

8. In the Rural Volume of the Plan only, in the Explanation and Reasons for Policy 1 change the reference of Appendix 9 to Appendix 15.
9. In each Volume of the Plan under Policy 1, add to the Method “Other Legislation” as follows:
  - Other Legislation      *To enable consideration of best management practices, relevant Codes of Practices, NZ Standards, and requirements of other regulations.*  
  
To address specialist areas of health and safety
10. In the Rural Volume of the Plan only, add into the Advocacy method after Policies 4 and 5 the following:  
  
*“Support initiatives such as the Agrecovery programme for disposal of agrichemical containers”.*

## 4 DEFINITIONS

Submission & No.	Volume	Submission Point
Federated Farmers of NZ (Inc) 96.7	Rural and Township	Not to broaden the definition of hazardous substances
	<b>Further submissions</b>	<b>Support/Oppose</b>
	Environment Canterbury	Oppose
Horticulture New Zealand 102.36	Rural	Amend Appendix 15 by including a definition for agrichemical as follows: Agrichemical: Any substance, whether inorganic or organic, human-made or naturally occurring, modified or in its original state, that is used in agriculture, horticulture or related activity, to eradicate modify or control flora and fauna. For the purpose of NZS8409:2004, agrichemicals do not include fertilisers, vertebrate pest control products and oral nutrition compounds.
	<b>Further submissions</b>	<b>Support/Oppose</b>
	Federated Farmers of NZ (Inc)	Support
	Environment Canterbury	Oppose

### Discussion

- 4.1 The variation sought to clarify the situation in respect of the definition of hazardous substances within the Plan aligning it with the definition in the Resource Management Act and ensuring consistency across the Plan.
- 4.2 Federated Farmers sought that the definition used in the Plan be aligned with HSNO rather than the RMA (which is a broader definition) as the submission is concerned that the broader definition introduces uncertainty.
- 4.3 Ms Styles indicated that there was the potential for some uncertainty, but considered this was resolved through more detailed provisions within the rules and appendices. Mr Malthus also made the point that there needed to be greater flexibility within the Plan than within HSNO to deal with other matters that may be deemed hazardous within the local context eg radioactive material, which is not covered by HSNO but is commonly addressed within district plans.
- 4.4 The Panel agreed that the definition of hazardous substances in the variation should be maintained and rejected the submission.
- 4.4 The submission by Horticulture NZ dealt with definitions and terminology in relation to agrichemicals and pest control. Mr Malthus proposed a new definition to address these matters.
- 4.5 Ms Wharfe did not support the proposed new definition, indicating that the definition in NZS8409:2004 had been adopted by many district and regional

council's and that there were problems in terminology and the substances referred in the proposed definition. She indicated that Horticulture NZ were opposing the same definition in the NRRP.

- 4.6 The Panel acknowledged that the definition of hazardous substances under the Resource Management Act is broader than that of HSNO and as a result the Plan should reflect this fact. The Panel considered that the word 'registered' should be changed to 'classified', however it was not convinced of the need to delete reference to Vertebrate Toxic Agents. It considered that the definition was provided for in terms of the district plan and its role and function in relation to land use and associated sensitivity issues which need to be addressed. The definition was designed to cover a range of different substances, and the Panel accepted that while these may be controlled elsewhere by other mechanisms, that was not a reason for narrowing the definition for the purposes of the district plan. It accepted the changes proposed by Mr Malthus subject to the amendment referred to above. The submission was accepted in part.

#### **Recommendations 26.4**

**That for the reasons set out above the Panel recommends that the Council:**

- (a) Accept in part submission 102.36 by Horticulture New Zealand and as they relates further submissions 238F and 241F.**
- (b) Reject submission 96.7 by Federated Farmers of New Zealand (Inc) and accept as it relates further submissions 241F.**

#### **Amendments to Proposed Plan:**

1. In each Volume of the Plan, amend the definition sections to include the following definition:

***Agrichemical** means any substance or mixtures of substances, whether inorganic or organic, biological, man-made or naturally occurring, modified or in its original state, that is prepared or manufactured and used to eradicate or control flora and fauna. This includes any pesticide, herbicide, fungicide, insecticide, piscicide, vertebrate pest control chemical, or other biocide, or any genetically modified organism or animal remedy classified under the Hazardous Substances and New Organisms Act 1996 and the Agricultural Compounds and Veterinary Medicines Act 1997. For the avoidance of doubt, it does not include fertilisers or lime and other soil conditioners, or animal effluent.*

## 5 STORAGE/USE

Submission & No.	Volume	Submission Point
Federated Farmers of NZ (Inc) 96.5	Rural and Township	Proceed with the proposal to focus on storage and not to control the use of hazardous substances.
	<b>Further submissions</b>	<b>Support/Oppose</b>
	Horticulture NZ	Support
Horticulture New Zealand 102.5	Rural and Township	Retain deletion of use of hazardous substances throughout the variation. Ensure that all references to 'use' are deleted in the variation.
	<b>Further submissions</b>	<b>Support/Oppose</b>
	Federated Farmers of NZ (Inc)	Support

### Discussion

5.1 One of the approaches taken by the variation was to focus on *storage* of hazardous substances rather than the *use* of these. While submissions generally support this approach some have identified that in places in the new variation text, reference has continued to be made to “use” and that this should be amended. The Panel reviewed these and, as discussed in Section 3 of this decision, considered that in the places referenced the utilisation of the word ‘use’ is made within the context of description and discussion and formed explanation that was necessary for the understanding of the Plan. It considered not further amendments were needed.

### Recommendations 26.5

**That for the reasons set out above the Panel recommends that the Council:**

- (a) Accept submission 96.5 Federated Farmers of New Zealand (Inc) and as it relates further submission 180F.**
- (b) Reject submission 102.5 Horticulture New Zealand and as it relates further submission 238F.**

## 6 NOTES AND RULE VII

Submission & No.	Volume	Submission Point
Federated Farmers of NZ (Inc) 96.1	Rural and Township (Note 8 and Note 6)	Delete the proposed statement that Environment Canterbury be consulted about "any activity involving the use, disposal, discharge or transportation of a hazardous substance"
	<b>Further submissions</b>	<b>Support/Oppose</b>
	Environment Canterbury	Oppose
Federated Farmers of NZ (Inc) 96.6	Rural	Retain the exemption from Rule VII for the disposal of empty containers disposed of in accordance with manufacturer's instructions.
	<b>Further submissions</b>	<b>Support/Oppose</b>
	Environment Canterbury	Oppose
Horticulture New Zealand 102.22	Rural	Amend permitted activities - storage: point 1 as follows: The storage of any hazardous substance if all of the following conditions are met or the activities meet the requirement for an exclusion in 1.5 Add point 1.5 to permitted activities - storage. 1.5 The following activities are excluded from the requirements of this rule: <ul style="list-style-type: none"> <li>Storage of agrichemicals which complies with Section 4 and Appendix L of NZS8409:2004 Management of Agrichemicals.</li> <li>Storage of Class 1-5 substances where a current Location Test Certificate has been issued by a Test Certifier under HSNO.</li> </ul>
Horticulture New Zealand 102.23	Rural	Amend Rule VII - Storage 1.1 as follows: The quantity of each class or subclass or hazardous substances listed in Appendix 15 Table 2 complies with the maximum storage quantities set out in Appendix 15 Table 2.
Horticulture New Zealand 102.24	Rural	Amend note 3 to read: Where a substance has more than one HSNO class or subclass applied the quantity limit for storage as a permitted activity will be based on the most restrictive threshold in Appendix 15, Table 2 for that substance. For instance a substance with 6.1A and 9.1B classifications would be based on the 6.1A quantities as 9.1B permits 5000 litres and 6.1A permits 1000 litres. 6.1A is the more restrictive threshold in Table 2 so that is the threshold to be used.
Horticulture New Zealand 102.25	Rural	<ul style="list-style-type: none"> <li>Specify the substances which are not managed by Environment Canterbury and limit Rule VII - Storage 1.4 to those substances.</li> <li>Delete the term 'waterway' and replace with 'surface waterbodies'.</li> </ul>
Horticulture New Zealand 102.27	Rural	Amend Rule VII Permitted Activities to include for Disposal after Transport as follows: Disposal of any hazardous substances subject to the following conditions: <ul style="list-style-type: none"> <li>The hazardous substance is disposed of in accordance with manufacturers instructions.</li> <li>Disposal of agrichemicals complies with Section 6 of NZS8409:2004 Management of Agrichemicals.</li> <li>Disposal of hazardous substances meets the requirements of the Hazardous Substances (Disposal) Regulations.</li> </ul>
	<b>Further submissions</b>	<b>Support/Oppose</b>
	Federated Farmers of NZ (Inc)	Support
Horticulture New Zealand 102.28	Rural	<ul style="list-style-type: none"> <li>Amend Rule VII - Hazardous Substances, Transport to be Transport on waterbodies.</li> <li>Replace the term 'waterway' with 'waterbodies'.</li> </ul>
	<b>Further submissions</b>	<b>Support/Oppose</b>
	Federated Farmers of NZ (Inc)	Support



## Discussion

- 6.1 Federated Farmers (submission 96.1) requested the deletion of Note 8 which precedes the Living Zone and Business zone rules in the Township Volume, and of Note 6 which precedes the Rural Zone rules. In their view the purpose of the Notes is to require consultation with Environment Canterbury over proposed activities. The Panel considered however that the Notes were for advisory purposes to inform people that Environment Canterbury also has rules which control hazardous substances and that they should check to see if their activity also required resource consent from that authority. It did however consider the final sentence of the Note to be strongly worded and felt that it would be better reworded to read:
- “Further enquires should be made with Environment Canterbury”.*
- 6.2 On the basis of the above the Panel recommended that the submission be accepted in part.
- 6.3 Federated Farmers (submission 96.6) requests that the exemption for the disposal of hazardous substance containers when they are disposed of in accordance with the manufacturer’s instructions should be retained. This had been identified by the Council’s Hearings Panel on the Proposed Plan as an issue to be resolved. Federated Farmers queries this change and requested both more information and the retention of the exemption.
- 6.4 An example of where the manufacturer’s instructions for disposal are inadequate was provided by Environment Canterbury in their further submission in opposition. Dow AgroSciences NZ, the manufacturers of Applaud 25W, an insect growth inhibitor, do not instruct the user to triple rinse the container before disposal (which is a requirement of NZS 8409:2004 Management of Agrichemicals, the Standard which is being promoted by Horticulture NZ as an acceptable default compliance method for the avoidance of adverse environmental effects of agrichemicals). Mr Malthus further checked this on the company’s website which also showed that the disposal instructions for this product are ambiguous, in that they imply that empty containers can be disposed of by burying in soil and not in a landfill. Those same instructions are given for at least one other of the company’s products, Fenamite miticide.

- 6.5 Having reviewed this issue closely the Panel reached a view that the manufacturers instructions could not be relied on all of the time to ensure that appropriate disposal methods were followed and therefore it was inappropriate to put them up as being the answer in terms of disposal of containers. The Panel also noted that if the triple rinse instructions were followed through then the container was no longer a hazardous substance and therefore not subject to the disposal rules. The submission was rejected.
- 6.6 Submission 102.22 sought amendment of Rule VII, 1 Storage to exclude the storage of agrichemicals from all quantity limits and site controls if such storage complies with specified sections of NZS8409:2004. The submission also requests such an exemption for Class 1 to 5 substances that have a current HSNO Location Test Certificate. Two associated submissions, Submissions 102.39 and 102.41 (addressed in the next section) request deletion of the quantity limits for Classes 1 to 5 in Appendix 15 where activities have such certification.
- 6.7 As discussed previously in section 2 of this decision, the Panel did not accept the approach which removed the quantity thresholds where another potential mechanism existed such as NZS8409:2004. As a result it is recommended that these submissions are rejected.
- 6.8 Submission 102.23 sought amendment to Rule VII - Storage 1.1 to ensure that the provision only relates to those substances identified in Appendix 15. Mr Malthus supported the change, considering that rewording was necessary to clearly state that only the subclasses identified in Appendix 15 are controlled by the Plan rules. He suggested however that the words 'class or' should be deleted from the proposed amendment, as the threshold quantity limits apply to subclasses and not classes of substance. The Panel agreed with the changes proposed and recommended the submission be accepted in part.
- 6.9 Submission 102.24 sought amendment to Note 3 to provide greater clarity. The Panel agreed with the revised wording, noting that Mr Malthus had again recommended the removal of the words 'class or', and recommended the submission be accepted in part.

- 6.10 Submission 102.25 requested that in Rule VII 1.4 controlling setbacks from waterways, the term “waterway” be changed to “waterbody” for consistency with the NRRP. The Panel supported this change. The submission also requests that the setback should apply only to hazardous substances that are not managed by Environment Canterbury. Again the Panel supported this change in the interests of avoiding duplication. However, it considered that some of the amendments proposed by Mr Malthus in relation to the Township volume either were unnecessary because ‘waterbody’ was already referred to in Rule 6.1.4, or beyond the scope of the submission in terms of the reference to Silent File area, Wahi Taonga site, Wahi Taonga Management Area, or Mahinga Kai site, which were not already in the rule. Overall the submission was accepted.
- 6.11 Submission 102.27 raises concerns about Note 4 at the commencement of Rule VII - Hazardous Substances. Rule VII, 6.1 makes the use of any land or facilities to dispose of any hazardous substance a non-complying activity. The Note for Rule VII, 6.1 states that any disposal of solid waste must comply with Rule VIII Waste Generation, Storage and Disposal. Note 4 states that Rule VII does not apply to the disposal of any hazardous substance by use of it in accordance with the manufacturer’s instructions.
- 6.12 Horticulture NZ considers that Note 4 has no regulatory status, and has requested that the amendments, identified in the table above, be made to Rule VII to provide for Disposal after Transport of hazardous substances.
- 6.13 Mr Malthus indicated he did not support the first and second bullet points proposed by the submitter because manufacturer’s instructions and NZS 8409:2004 Management of Agrichemicals commonly state that:
- the disposal of hazardous substances must comply with the requirements of territorial local authorities, prompting the disposer to return to the Council to determine the appropriate disposal method, or
  - simply to ‘dispose to landfill’, which is no longer an option in Canterbury.
- 6.14 He went on to comment that as with the disposal of empty containers, manufacturers’ instructions cannot be relied upon referring again to the

unsatisfactory or inappropriate disposal methods of Dow AgroSciences, which state:

**Disposal**

Contaminated material must be disposed of in accordance with National, Regional and District requirements.

**Small spill:** Bury contaminated material at an approved landfill. Puncture top, bottom and sides of containers and bury below 500mm in soil.

**Large spill:** Wait for advice from Dow AgroSciences (NZ) Ltd.

- 6.15 Mr Malthus also did not support the third suggested bullet point, because the Hazardous Substances (Disposal) Regulations specify only that hazardous substances must be disposed of either by treatment which changes the characteristics or composition of the substance so that the substance is no longer a hazardous substance, or by exporting the substance, or in some cases by discharging the substance into the environment so that it degrades. He said that the environmental effects of such methods are not taken into consideration by the regulations, other than the avoidance of risk of explosion and ignition. Any treatment or handling facility for disposal of hazardous substances could give rise to a wide range of effects or potential hazards, including discharges of fumes and odours and risk of spillage or fire, and it is appropriate that such activities should have non-complying status under Rule VII, 6.1.
- 6.16 Having reviewed these comments the Panel agreed Mr Malthus, considering that it was inappropriate to make the changes proposed in the submission for the reasons outlined above. It recommended the submission be rejected.
- 6.17 Submission 102.28 requests that the heading “Transport” to Rule VII, 3 be changed to read “Transport on waterbodies” as the text of the rule relates only to the transport of hazardous substances by boat or other craft over waterbodies. The Panel accepted that this was an appropriate amendment. The submission also requests that the term “waterway” be changed to “waterbodies”, which has been commented previously with regard to submission 102.25 and was accepted by the Panel.
- 6.18 The submissions by Horticulture NZ generally relate to amendments sought to Rule VII of the Rural Volume of which a number have been accepted. These

include text changes to ensure clarity in the explanation of the rule. The Panel noted that where these changes occur to the Rural Volume under these submissions, it is also important to make these changes to the Townships Volume as consequential amendments, to ensure that consistency is retained.

#### **Recommendations 26.6**

**That for the reasons set out above the Panel recommends that the Council:**

- (a) Accept in part submission 96.1 Federated Farmers of New Zealand (Inc) and as it relates further submission 241F.**
- (b) Reject submission 96.6 Federated Farmers of New Zealand (Inc) and accept as it relates further submission 241F.**
- (c) Accept submission 102.25 by Horticultural New Zealand.**
- (d) Accept in part submissions 102.23 and 102.24 by Horticultural New Zealand.**
- (e) Accept submission 102.28 by Horticultural New Zealand and as it relates further submission 180F.**
- (f) Reject submissions 102.22 and 102.27 by Horticultural New Zealand and as it relates further submission 180F.**

#### **Amendments to Proposed Plan (Rural and Township Volume):**

1. Amend Townships Rule 2 - Rules for Business Zones - Permitted Activities - Storage 2.1.1 to read:  
*The quantity of each subclass of hazardous substances listed in Appendix 9 Table 2 complies with the maximum storage quantities set out in Appendix 9 Table 2.*
2. Amend Townships Rule 6 – Rules for Living Zones - Permitted Activities - Storage 6.1.1 to read:  
*The quantity of each subclass of hazardous substances listed in Appendix 9 Table 2 complies with the maximum storage quantities set out in Appendix 9 Table 2.*
3. Amend Rural Rule VII – Permitted Activities - Storage 1.1 to read:  
*The quantity of each subclass of hazardous substances listed in Appendix 15 Table 2 complies with the maximum storage quantities set out in Appendix 15 Table 2.*

4. Amend Note 3 at the commencement of Townships Rule 2 and Townships Rule 6 to read:  
  
*Where a substance has more than one HSNO subclass applied the quantity limit for storage as a permitted activity will be based on the most restrictive threshold in Appendix 9, Table 2 for that substance. For instance a substance with 6.1A and 9.1B classifications would be based on the 6.1A quantities as 9.1B permits 5000 litres and 6.1A permits 1000 litres. 6.1A is the more restrictive threshold in Table 2 so that is the threshold to be used.*
5. Amend Note 3 at the commencement of Rural Rule VII – Note 3 to read:  
  
*Where a substance has more than one HSNO subclass applied the quantity limit for storage as a permitted activity will be based on the most restrictive threshold in Appendix 15, Table 2 for that substance. For instance a substance with 6.1A and 9.1B classifications would be based on the 6.1A quantities as 9.1B permits 5000 litres and 6.1A permits 1000 litres. 6.1A is the more restrictive threshold in Table 2 so that is the threshold to be used.*
6. Amend Note 8 at the commencement of Townships Rule 6 and Townships Rule 2 and Note 6 at the commencement of Rural Rule VII by deleting the last sentence and replacing it with the following:  
  
*Further enquires should be made with Environment Canterbury*
7. Amend the Townships Rules 6.2 and 6.6 and the Rural Rules 3 and 4.1 so that the heading “Transport” reads “*Transport on waterbodies*” and the term “waterway” is changed to “*waterbodies*” in the text of the Rules.
8. Amend Rural Rule VII 1.4 to read:  
  
1.4 A hazardous substance is not stored:  
  
1.4.1 Within 20m of any *waterbody* or any wetland which adjoins a *waterbody*; and  
  
1.4.2 In any area shown on the Planning Maps as a Silent File area, Wahi [Cl 16(2), 1st Sch RMA] Taonga site, Wahi [Cl 16(2), 1st Sch RMA] Taonga Management Area, or Mahinga Kai site.  
  
*Note: Rule 1.4 shall apply only to hazardous substances that are*  
  
*(i) substances other than those that are listed in Policy 1(a)(ii) of Chapter 17 of the Canterbury Regional Policy Statement; and*  
  
*(ii) substances that are listed in Policy 1(a)(ii) of Chapter 17 of the Canterbury Regional Policy Statement and are transported by means other than through a pipe.*  
  
*The substances listed in Policy 1(a)(ii) of the RPS are:*  
  
*(a) Pesticides.*  
  
*(b) Chlorinated solvents*  
  
*(c) Timber preservatives*  
  
*(d) Petroleum products*

*(f) Substances containing the following chemicals: arsenic, cadmium, chromium, cyanide, lead, mercury, nickel or selenium.*

9. Amend Townships Volume Rule 6.1.4 by adding beneath the rule the following:

*Note: Rule 6.1.4 shall apply only to hazardous substances that are*

- (i) substances other than those that are listed in Policy 1(a)(ii) of Chapter 17 of the Canterbury Regional Policy Statement; and*
- (ii) substances that are listed in Policy 1(a)(ii) of Chapter 17 of the Canterbury Regional Policy Statement and are transported by means other than through a pipe.*

*The substances listed in Policy 1(a)(ii) of the RPS are:*

- (a) Pesticides.*
- (b) Chlorinated solvents*
- (c) Timber preservatives*
- (d) Petroleum products*
- (f) Substances containing the following chemicals: arsenic, cadmium, chromium, cyanide, lead, mercury, nickel or selenium.*

## 7 APPENDICES 9 & 15

Submission & No.	Volume	Submission Point
Federated Farmers of NZ (Inc) 96.9	Rural and Township	The proposed amendment is supported only if the classes of hazardous substances table is maintained to be consistent with HSNO Hazardous Substances Regulations.
Horticulture New Zealand 102.29	Rural	Rename Appendix 15 as 'Storage of Hazardous Substances'. Rename Table 1 as 'Classification of Hazardous Substances addressed in this Plan'. Rename Table 2 as 'Land Use Quantity Limits for storage of classes of Hazardous Substances'.
	<b>Further submissions</b>	<b>Support/Oppose</b>
	Federated Farmers of NZ (Inc)	Support
Horticulture New Zealand 102.30	Rural	Amend Appendix 15 by including a Note at commencement of Table 2 as follows: HSNO classes or subclasses not listed in Table 2 are exempt from the quantity limit requirement of Rule VII - Storage 1.1 and Table 2.
Horticulture New Zealand 102.31	Rural	Amend Appendix 15 by replacing "Manufacturer's Safety Data Sheets (MSDS)" with "Safety Data Sheets (SDS)"
	<b>Further submissions</b>	<b>Support/Oppose</b>
	Federated Farmers of NZ (Inc)	Support
Horticulture New Zealand 102.32	Rural	Amend Appendix 15 by changing the 2nd bullet point to read: Where a substance has more than one HSNO class or subclass applied the quantity limit for storage as permitted activity will be based on the most restrictive threshold for that substance in Appendix 15 Table 2.
	<b>Further submissions</b>	<b>Support/Oppose</b>
	Federated Farmers of NZ (Inc)	Support
Horticulture New Zealand 102.33	Rural	Amend Appendix 15 by: <ul style="list-style-type: none"> <li>Reformatting the table to be clear and less confusing.</li> <li>Deleting the UN class column.</li> <li>Identifying the source of the Health and safety hazard data.</li> </ul>
	<b>Further submissions</b>	<b>Support/Oppose</b>
	Federated Farmers of NZ (Inc)	Support
Horticulture New Zealand 102.34	Rural	Amend Table 1 Flammable Liquids of Appendix 15 so petrol is shown as 3.1A but that 3.1B HSNO controls apply.
	<b>Further submissions</b>	<b>Support/Oppose</b>
	Federated Farmers of NZ (Inc)	Support
Horticulture New Zealand 102.35	Rural	Amend Appendix 15 by deleting reference to 'pesticides'.
	<b>Further submissions</b>	<b>Support/Oppose</b>
	Federated Farmers of NZ (Inc)	Support
Horticulture New Zealand 102.37	Rural	Amend Appendix 15 by: <ul style="list-style-type: none"> <li>Deleting HSNO "Controlled substances" and replace with "Fumigant gases and vertebrate poisons".</li> <li>Amending the descriptions to read: Fumigant gases (e.g. chloropicrin, methyl bromide) and vertebrate poisons (e.g. cyanide baits, 1080).</li> </ul>
	<b>Further submissions</b>	<b>Support/Oppose</b>
	Federated Farmers of NZ (Inc)	Support



Horticulture New Zealand 102.38	Rural	Amend Appendix 15 by stating what substances 'other toxic substances' include.
	<b>Further submissions</b>	<b>Support/Oppose</b>
	Federated Farmers of NZ (Inc)	Support
Horticulture New Zealand 102.39	Rural	Amend Appendix 15 by deleting quantity limits for HSNO classes 1-5.
	<b>Further submissions</b>	<b>Support/Oppose</b>
	Environment Canterbury	Oppose
Horticulture New Zealand 102.40	Rural	Amend Appendix 15 Table 2 providing for gases to be measured as m <sup>3</sup> . (If quantity limits for HSNO classes 1-5 are not deleted).
Horticulture New Zealand 102.41	Rural	Amend Appendix 15 by deleting quantity limits for Flammable Liquids where a current Location Test Certificate has been issued by a Test Certifier under HSNO.
	<b>Further submissions</b>	<b>Support/Oppose</b>
	Environment Canterbury	Oppose
Horticulture New Zealand 102.42	Rural	Amend Appendix 15 to include: <ul style="list-style-type: none"> <li>• Include the exclusion for storage of agrichemicals where it complies with Section 4 and Appendix L of NZS8409:2004 Management of Agrichemicals as sought in relation to Rule VII - storage, permitted activities.</li> <li>• Clarify how the level of 1000kg/litres was determined.</li> </ul>
	<b>Further submissions</b>	<b>Support/Oppose</b>
	Environment Canterbury	Oppose
Horticulture New Zealand 102.43	Rural	Amend Appendix 15 by deleting Ecotoxic substances from Table 2.
	<b>Further submissions</b>	<b>Support/Oppose</b>
	Federated Farmers of NZ (Inc)	Support
	Environment Canterbury	Oppose

## Discussion

- 7.1 Federated Farmers in submission 96.9 supported the deletion of reference to “the United Nations Recommendations on the Transport of Dangerous Goods, 7th Revised Edition, or its subsequent revisions” but “only if the classes of hazardous substances table is maintained to be consistent with HSNO Hazardous Substances Regulations”. The Panel acknowledged this support but noting that the HSNO classification system had been used in the Plan for those classes and subclasses of hazardous substances which the Council has an interest in controlling. It recommended the submission is accepted in part.
- 7.2 Submission 102.29 by Horticulture NZ sought to rename Appendix 15, Table 1 and Table 2. The Panel could see no reason for renaming these titles and recommended the submission be rejected.

- 7.3 Submission 102.30 sought the inclusion of a Note at commencement of Table 2. The change was supported by Mr Malthus, as the Note provides greater clarity and avoids any confusion on the status of activities that are not ‘caught’ by the threshold limits, but to which the other requirements in Rule 1 still apply. The Panel agreed with the inclusion of the Note and recommended the submission be accepted.
- 7.4 Submission 102.31 sought the replacement of "Manufacturer's Safety Data Sheets (MSDS)" with "Safety Data Sheets (SDS)" in the notes before Table 1 in Appendix 15 of the Rural rules. The Panel supported this amendment, as the term “Safety Data Sheets (SDS)” is consistent with HSNO, and recommended the submission be accepted.
- 7.5 Submission 102.32 sought to amend the 2nd bullet point (in the opening comments to Table 1) as indicated in the table above.
- 7.6 Mr Malthus supported this change, commenting that it provided greater clarity and certainty of interpretation. However he suggested that the words ‘class or’ should not be included, as the threshold quantity limits apply to subclasses and not classes of substance. The amendment would therefore read:
- Where a substance has more than one HSNO subclass applied the quantity limit for storage as permitted activity will be based on the most restrictive threshold for that substance in Appendix 15 Table 2.*
- 7.7 The Panel accepted this amendment was appropriate, including the change proposed by Mr Malthus, noting that a change to Appendix 9 of the Township volume was also necessary, and recommended that the submission be accepted in part.
- 7.8 Submission 102.33 sought that Table 1 be reformatted so as to be clear and less confusing; the UN class column be deleted; and that the source of the Health and Safety Hazard data be identified.
- 7.9 Mr Malthus supported the reformatting of Table 1 so that it would be clear the examples given are not intended to correlate to the HSNO class, or the Description, or the Health and Safety Hazard but are simply there as examples of the types of substance that may fall within the stated classes of substances. The Panel considered the most appropriate means of doing this was to delete

the Examples column as these were already in Table 2 which is the key working table.

- 7.10 Mr Malthus also supported the deletion of the UN class column as it is not equivalent to the HSNO system and retaining it is likely to cause confusion. He suggested this would also give appropriate weight to the HSNO classification system.
- 7.11 Mr Malthus noted that the Health and Safety Hazard data used in Appendix 15 was sourced from the Ministry for the Environment's Land Use Planning Guide for Hazardous facilities Appendix A: HFSP Rating Criteria for Hazardous Substances.
- 7.12 The Panel accepted that it was appropriate to make the changes proposed above in the submission and recommended it be accepted.
- 7.13 Submission 102.34 sought the amendment of Table 1 Flammable Liquids so that petrol is shown as 3.1A but that 3.1B HSNO controls apply on the basis that Class 3.1B controls have been applied to petrol, which is a Class 3.1A substance. Mr Malthus considered this to be unnecessary, as the revision by ERMA relates to HSNO test certification which is a statutory requirement and does not need to be spelt out in the Plan.
- 7.14 Mr Maber suggested that it was not clear what the limits applied to as neither limit matches that found in the HSNO regulations.
- 7.15 The Panel were satisfied that the current references to petrol did not need amending noting that when they referred to Table 2 the quantity thresholds were the same for Class 3.1A and 3.1B. They recommended the submission be rejected.
- 7.16 Submission 102.35 sought the deletion of the term 'pesticides' where it is included as a subcategory of Toxic substances in Tables 1 and 2 of Appendix 15 of the Rural Volume as the term 'Agrichemicals' also includes 'pesticides'. Mr Malthus noted that the new definition of 'Agrichemical' includes 'pesticide' and 'vertebrate pest control chemical'. He indicated that the term 'pesticide' is in common use, and appears a number of times in the RPS and Chapter 4 of the NRRP. He considered its retention in the District Plan should

not cause any confusion. The Panel agreed with the retention of the term ‘pesticides’ and recommended that the submission be rejected.

7.17 Submission 102.37 seeks the deletion of the term ‘Controlled Substance’ pointing out that it is not an accurate and nor was the descriptor helpful. It requests the use of the alternative term ‘Fumigant gases and vertebrate poisons’ and that the descriptor be amended to read; Fumigant gases (e.g. chloropicrin, methyl bromide) and vertebrate poisons (e.g. cyanide baits, 1080). The Panel supported this change as it considered it made it clearer what types of chemicals are being controlled by the Plan. It recommended the submission be accepted.

7.18 Submission 102.38 requests that Tables 1 and 2 of Appendix 15 should state what substances “other toxic substances” include. Mr Malthus explained that for the purposes of the Plan, toxic substances are defined by the thresholds of toxicity for classes 6.1A, 6.1B, 6.1C and 6.1D that are detailed in Table 1 of Appendix 15. To assist with the interpretation and administration of the Plan, in Table 2 of Appendix 15 toxic substances that are within those subclasses have been sub-grouped generically and threshold quantity limits have been applied to each group. The subgroup “Any other toxic substances” includes any toxic substance of classes 6.1A, 6.1B, 6.1C and 6.1D that is not in any of the other subgroups. Mr Malthus suggested that for clarity, this could be included as an advisory note which read:

*<sup>1</sup> Any other toxic substance means any toxic substance of classes 6.1A, 6.1B, 6.1C and 6.1D that is not in any of the other sub groups of toxic substances.*

7.19 The Panel considered that the above note would clarify what “Any other toxic substances” was meant to cover and would satisfy the submission. It recommended the submission be accepted in part.

7.20 Submission 102.39 and 12.41 sought to amend Appendix 15 by deleting both the quantity limits for HSNO classes 1-5 and the quantity limits for Flammable Liquids where a current Location Test Certificate has been issued by a Test Certifier under HSNO. As previously discussed in Section 2 of this decision the Panel has rejected this approach. It therefore recommended that both submissions be rejected.

- 7.21 Submission 102.40 sought the amendment of Appendix 15 Table 2 - flammable gases, to provide for gases to be measured as m<sup>3</sup> because the HSNO requirements provide for gases as m<sup>3</sup> (cubic meters) whereas kg (kilograms) has been used in the Plan. Mr Malthus noted that such a change is not supported by HSNO. He indicated that Schedule 3 of the Hazardous Substances (Classes 1 to 5 Controls) Regulations 2001 shows that most common gases are quantified by mass (i.e. kg), while less common 'permanent gases' (i.e. those with a critical temperature not exceeding minus 50degrees C e.g. Oxygen) are quantified by volume (i.e. m<sup>3</sup>). To be fully consistent with HSNO, Class 2.1.2A (e.g. aerosols) should be quantified by litres Aggregate Water Capacity, any other non-permanent gas by kg, and any permanent gas by m<sup>3</sup>. He considered this would be unnecessarily complex and confusing for the purposes of the Plan.
- 7.22 The Panel agreed that the term kg should be retained and recommended that the submission be rejected.
- 7.23 Submission 102.42 sought to include the exclusion for storage of agrichemicals where it complies with Section 4 and Appendix L of NZS8409:2004. As previously discussed in Section 2 of this decision the Panel has rejected this approach. Submission 102.42 also requested clarification on how the level of 1000 kg/litres was determined for the threshold quantity limit for Agrichemicals/pesticides. Mr Malthus noted that the 1000kg/litres threshold was carried over from the pre- Variation provisions of the Plan. Mr Maber queried this stating that the 1000 litres previously related to 7.1b – toxic and infectious substances. As no actual decision was sought here the Panel could not take this matter any further. Overall it is recommended that the submission be rejected.
- 7.24 Submission 102.43 requested the deletion of Ecotoxic substances from Appendix 15 Table 2, on the grounds that the control of such substances is already controlled by Environment Canterbury. Whilst noting the Environment Canterbury role in this matter, the Panel considered that the District Plan should provide for the protection of water from contamination by hazardous substances of all classes in order to be consistent with the NRRP. On this basis it was recommended that the submission be rejected.

### **Recommendations 26.7**

**That for the reasons set out above, but subject to the consideration of matters arising in other submissions, the Panel recommends that the Council:**

- (a) Accept in part submission 96.9 by Federated Farmers of New Zealand (Inc).**
- (b) Accept submission 102.30 by Horticulture New Zealand.**
- (c) Accept submission 102.31 by Horticulture New Zealand and as it relates further submission 238F.**
- (d) Accept in part submission 102.32 by Horticulture New Zealand and as it relates further submission 238F.**
- (e) Accept submission 102.33 by Horticulture New Zealand and as it relates further submission 238F.**
- (f) Accept submission 102.37 by Horticulture New Zealand and as it relates further submission 238F.**
- (g) Accept in part submission 102.38 by Horticulture New Zealand and as it relates further submission 238F.**
- (h) Reject submissions 102.29, 102.34, 102.35, 102.39, 102.40, 102.41, 102.42 and 102.43 by Horticulture New Zealand and as it relates further submission 238F and accept as it relates further submission 241F.**

### **Amendments to Proposed Plan (Rural and Township Volume):**

1. In Appendix 9 of the Townships Volume and Appendix 15 of the Rural Volume, amend Tables 1 and 2 by including a reference Note 1 to the subgroup "Any other toxic substances" which states:  
  
*<sup>1</sup> "Any other toxic substances" means any toxic substance of classes 6.1A, 6.1B, 6.1C and 6.1D that is not in any of the other sub groups of toxic substances.*
2. Include a new Note at commencement of Table 2 of Appendix 9 in the Townships Volume and Table 2 in Appendix 15 in the Rural Volume to read:  
  
*HSNO classes or subclasses not listed in Table 2 are exempt from the quantity limit requirement of Rule VII - Storage 1.1 and Table 2.*
3. In the opening comments to Table 1 in Appendix 9 of the Townships Volume and Table 1 in Appendix 15 of the Rural Volume, replace "Manufacturer's Safety Data Sheets (MSDS)" with "Safety Data Sheets (SDS)".

4. In the opening comments to Table 1 in Appendix 9 of the Townships Volume amend the 2nd bullet point to read:  
*Where a substance has more than one HSNO subclass applied the quantity limit for storage as permitted activity will be based on the most restrictive threshold for that substance in Appendix 9 Table 2.*
5. In the opening comments to Table 1 in Appendix 15 of the Rural Volume, amend the 2nd bullet point to read:  
*Where a substance has more than one HSNO subclass applied the quantity limit for storage as permitted activity will be based on the most restrictive threshold for that substance in Appendix 15 Table 2.*
6. Amend Table 1 in Appendix 9 of the Townships Volume and Table 1 in Appendix 15 of the Rural Volume by:
  - a. removing the Examples column
  - b. removing the column for UN Class; and
  - c. Including *Land Use Planning Guide for Hazardous facilities Appendix A: HFSP Rating Criteria for Hazardous Substances: Ministry for the Environment* as the source for the column headed Health and safety hazard.
7. Amend the second column of Tables 2 of Appendix 15 of the Rural Volume and Tables 2 of Appendix 9 of the Townships Volume so that the term ‘*HSNO Controlled Substances*’ and its subsequent descriptor is changed to read:  
*Fumigant gases and vertebrate poisons*  
*Fumigant gases (e.g. chloropicrin, methyl bromide) and vertebrate poisons (e.g. cyanide baits, 1080).*
8. Amend the third column of Tables 2 of Appendix 15 of the Rural Volume and Tables 2 of Appendix 9 of the Townships Volume so that the term ‘*HSNO Controlled Substances*’ reads:  
*Fumigant gases and vertebrate poisons*

## 8. SUBMISSIONS IN SUPPORT

Submission & No.	Volume	Submission Point
Environment Canterbury 99.1	Rural and Township	That Variation 26 be approved as notified.
	<b>Further submission</b> Horticulture New Zealand	<b>Support/Oppose</b> Oppose
Federated Farmers of NZ (Inc) 96.4	Rural and Township	Support consistency between the Rural Volume and the Township Volume of the District Plan.
Federated Farmers of NZ (Inc) 96.8	Rural	Proceed with the amendment to Rule 2.3(a) and 2.3(b) as proposed.
Federated Farmers of NZ (Inc) 96.11	Rural and Township	Exclude LPG from site contaminant provisions in both volumes of the district plan.

### Discussion

8.1 The Panel acknowledged that the above submissions had been lodged supporting either the whole variation or parts of it, however, apart from specific submission 96.11, considered that they could only be accepted in part on the basis that changes to provisions of the Plan dealt with in this hearing were to be made.

### Recommendations 26.8

**That for the reasons set out above, but subject to the consideration of matters arising in other submissions, the Panel recommends that the Council:**

- (a) Accept in part submission 99.1 by Environment Canterbury and further submission 180F.**
- (b) Accept submission 96.11 by Federated farmers of New Zealand (Inc).**
- (c) Accept in part submissions 96.4 and 96.8 by Federated Farmers of New Zealand (Inc).**



## 9. GENERAL SUBMISSIONS

Submission & No.	Volume	Submission Point
Federated Farmers of NZ (Inc) 96.3	Rural and Township	Do not pursue consistency at the cost of not having quantity thresholds and site requirements which are the most appropriate for Selwyn District.
Federated Farmers of NZ (Inc) 96.13	Rural and Township	Maintain existing use rights, where existing use is inconsistent with the threshold quantities in Table 2, Rural and Township Volumes.
Horticulture New Zealand 102.6	Rural and Township	Reconfigure and format the variation so that it is clear and easy to follow, including page number and header rollovers.
Horticulture New Zealand 102.7	Rural and Township	The consequential changes are made to the Plan as a result of decisions sought in this submission.

### Discussion

- 9.1 Federated Farmers (96.3) is concerned that the variation should not pursue consistency at the cost of not having quantity thresholds and site requirements which are the most appropriate for Selwyn District. The Panel considered that the variation provided a suitable balance between consistency and dealing with local issues and recommend that the submission be accepted in part.
- 9.2 The Federated Farmers submission seeking the maintenance of existing use rights appeared to relate to where an existing activity was established and the threshold limits change under this variation, then the previous threshold quantities should be retained. As discussed by Ms Styles, this is the essence of existing use rights provided under Section 10 of the Resource Management Act 1991. Any activity lawfully established would continue to maintain existing use right as a permitted activity. Likewise, an activity established by way of resource consent, may continue subject to any conditions of that consent, despite subsequent district plan changes.
- 9.3 On the basis that existing use rights are provided for under the Resource Management Act 1991, the Panel considered that the submission be accepted in part in so far as this is an existing situation that does not require amendment to the district plan.
- 9.4 The Horticulture NZ submissions raised the need to carry out formatting changes, correct errors or undertake consequential changes as a result of responding to submissions. The Panel accept that these were needed where appropriate and recommended that these submissions be accepted in part subject to any amendments that may result from other submissions.

**Recommendations 26.8**

**That for the reasons set out above, but subject to the consideration of matters arising in other submissions, the Panel recommends that the Council:**

- (a) Accept in part submissions 96.3 and 96.13 by Federated Farmers of New Zealand (Inc).**
- (b) Accept in part submissions 102.6 and 102.7 by Horticultural New Zealand.**