

Mark Caldwell-8225

From: Emma Richardson-5474
Sent: Monday, 25 January 2010 8:41 a.m.
To: Mark Caldwell-8225
Subject: FW: Further submissions by email PPC 23 and PPC 58

Attachments: FUSU MDC#18 PPC23 & #23 PPC58_NMPHS .pdf; FUSU MDC PPC23 sub19 PPC58 sub 24_MDC planner.pdf; FUSU MDC PPC23 sub 16 & PPC58 sub 20_Hort NZ.pdf; FUSU MDC PPC23 sub8 & PPC58 sub 10_MDC NZwinegrowers.pdf; FUSU MDC PPC58 sub 22_Waihopai Holdings Ltd.pdf; FUSU template for MDC PPC23 sub17 & PPC58 sub 21_Bruckel.pdf; FUSU MDC PPC23 sub 11 & PPC58 sub15_Richard Karn.pdf; FUSU MDC PPC23 sub 20 & PPC58 sub 25_Wither Hills.pdf

From: Vern Goodwin [mailto:noise@chch.planet.org.nz]
Sent: Thursday, 21 January 2010 3:58 p.m.
To: FrostFans
Subject: Further submissions by email PPC 23 and PPC 58

Council has asked for Further Submissions to be made as a separate form for each original submission. Council has indicated service by email is permitted in its notification re Further Submissions.

Sender:
V.C. Goodwin email noise@chch.planet.org New Zealand
Environmental Noise Analysis and Advice Service, Ministry of Health

 Direct Dial: +64 3 388 8536
 Mobile: 027 435 3269
 Virtual Fax: 0832 68899
 PO Box 18-885, Christchurch, 8641, New Zealand

for Further Submitter

Public Health Service
Nelson Marlborough District Health Board
PO Box 647,
NELSON 7040
Attention Geoff Cameron
email : <geoff.cameron@nmdhb.govt.nz>
DDI : ph 03 5461541

To:
Attention: Environmental Policy Group
Marlborough District Council
PO Box 443
BLLENHEIM 7240

Fax : (03) 520 7496

Attached are separate forms for our Further Submissions on the following original Submitters.:

Public Health Service, Nelson Marlborough District Health Board

Principal Planner Marlborough District Council

Horticulture NZ

New Zealand Winegrowers

Waihopai Holdings Limited

Paul Brückel

Richard Karn

Wither Hills

25/01/2010

**FURTHER SUBMISSIONS IN SUPPORT OF OR IN OPPOSITION TO
SUBMISSIONS MADE ON A PUBLICLY NOTIFIED PROPOSED PLAN CHANGE
UNDER CLAUSE 8, OF THE FIRST SCHEDULE TO THE RESOURCE
MANAGEMENT ACT 1991**

For council use Participant No

Submission Point No.

File Ref.

W045-15-58 & M135-15-23

Date received stamp

To the Marlborough District Council

This is a Further Submission by

Nelson Marlborough District Health Board Public Health Service

on Proposed Plan Change 23 (PPC23) to the Marlborough Sounds Resource Management Plan and Proposed Plan Change 58 (PPC58) to the Waiau Awatere Resource Management Plan

1. These Further Submissions are based on the Summary of Submissions and copies of original Submissions published by Council.
2. This Further Submission relates to the Submitter named below and the particular part or point of their Submission supported or opposed is described below together with the parts of the Submission we seek be allowed or disallowed.
3. The reasons for support or opposition are described below
4. We will wish to be heard in support of these Further Submissions at any hearing but are not prepared to consider presenting a joint case with other submitters.

Dated at Nelson this 20th day of January 2010

GE Cameron

Designated by the Director General of Health under s.7A of the Health Act 1956
For and on behalf of Public Health Service, Nelson Marlborough District Health Board

Address for service

Geoff Cameron
Senior Health Protection Officer
Public Health Service
Nelson Marlborough District Health Board
PO Box 647, Nelson 7040
email : <geoff.cameron@nmdhb.govt.nz>
DDI : ph 03 5461541

DETAILS OF FURTHER SUBMISSION ON A SUBMISSION BY:

Submitter: ~~Public Health Service, Nelson Marlborough District Health Board~~ ?

Submitter number 18 PPC23 & 23PPC 58

1. **Submission point 14 particular parts PPC 23 clause 30.2.7.1.2 (stated in error as 36.2.7.1.2) and PPC58 clause 30.2.9.1.2 and Appendix K clause 2.3.3.3**
is supported in part and should be allowed
Reasons The Submission contains a typographical error stating "NZS 6802:2008" instead of NZS6801:2008 as is obvious from the context. Submission sought to correct title of NZS6801:2008 which had been incorrectly shown in Proposed Plan Change clauses as "NZS 6801:2008 Acoustics –Measurement of sound" The correct title is NZS 6801:2008 Acoustics-Measurement of environmental sound."

**FURTHER SUBMISSIONS IN SUPPORT OF OR IN OPPOSITION TO
SUBMISSIONS MADE ON A PUBLICLY NOTIFIED PROPOSED PLAN
CHANGE UNDER CLAUSE 8, OF THE FIRST SCHEDULE TO THE
RESOURCE MANAGEMENT ACT 1991**

| | |
|------------------------|-----------------------------|
| <i>For council use</i> | Participant No |
| | Submission Point No. |
| | W045-15-58 & M135-15-23 |
| | Date received stamp |

To the Marlborough District Council

This is a Further Submission by

Nelson Marlborough District Health Board Public Health Service

on Proposed Plan Change 23 (PPC23) to the Marlborough Sounds Resource Management Plan and Proposed Plan Change 58 (PPC58) to the Waiau Awatere Resource Management Plan

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Public Health Service
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PO Box 647, Nelson 7040
email : <geoff.cameron@nmdhb.govt.nz>
DDI : ph 03 5461541

Submitter: Principal Planner Marlborough District Council
Submitter number 19 for PPC23 & 24 for PPC 58
See below or attached schedule

| Decision sought point | PPC23 clause | PPC58 clause | Stance | Reasons |
|-----------------------|--|---------------|---------------------------------|---|
| 3 | Not stated Addition of new rule Establishing specific information requirements for resource consent applications | As for PPC 23 | supported and should be allowed | Provision of information will enable assessment of the necessary parameters and identify the extent of likely effects |

Continued from page 1

| Decision sought point | PPC23 clause | PPC58 clause | Stance | Reasons |
|-----------------------|---|--|--|--|
| 4 | throughout | throughout | opposed and should be disallowed | Submitter is factually wrong, 2008 editions of NZS6801:2008 and NZS 6802:2008 use LAeq dB abbreviation, not dBA Leq |
| 5 | 30.2.7 Amends paragraph to include "maintenance" | 30.2.9 and Appendix K 2.3.3 As for PPC 23 | supported and should be allowed | "Maintenance" should be part of the description of the activity to which the proposed rules apply |
| 6 | 30.2.7.1.1 i) Specifies date defining term existing | 30.2.9.1.1 ii) and Appendix K 2.3.3.2 ii) As for PPC 23 | supported and should be allowed | Specifying date removes uncertainty. |
| 7 | 30.2.7.1.3 Seeks add words "except for maintenance purposes" | 30.2.9.1.3 and Appendix K 2.3.3.4 As for PPC 23 | opposed and should be disallowed | Amendment allows usage for purposes other than frost protection ie crop drying, or which will potentially increase exposure duration off-site to adverse noise effects. |
| 8 | 30.2.7.2 (a)-(d) Amends text of sub clauses so that it is clear that the focus of attention throughout the rules is individual frost fans. | 30.2.9.2 (a)-(d) And Appendix K 2.3.3.5 3 (a)-(d) | supported in part and should be allowed in part except for (b) | Improved wording reduces legal uncertainty which promotes sustainability, except for sub-clause (b) use of "any frost fan" is supported In sub-clause (b) "speed" and "frost fan" used together are inadequate and inherently uncertain in meaning for reasons given in submissions by this submitter. See this submitters submission paragraph 19 re PPC23 and PPC58. |
| Not stated | 30.2.7.2 (b) Submitter says the rule would be improved if it referred specifically to the speed at which the frost fan is operated. | 30.2.9.2, and Appendix K 2.3.3.5 (b) Submitter says the rule would be improved if it referred specifically to the speed at which the frost fan is operated. | Opposed and should be disallowed | The relief sought is not actually listed under the heading "I seek the following decision from the local authority" It is not clear exactly what relief is sought. |
| 9 | n/a | 30.2.9.1.4 Identifies inconsistency in PPC re inclusion of Marlborough Ridge Zone in rule | Support and should be allowed | Avoids internal inconsistency within rules and conflict between new Rule 30.2.91.1.4 and provisions made for Appendix K |

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CHANGE UNDER CLAUSE 8, OF THE FIRST SCHEDULE TO THE
RESOURCE MANAGEMENT ACT 1991**

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|---|
| <p><i>For council use</i> Participant No</p> <p>Submission Point No.</p> <p>File Ref.</p> <p>W045-15-58 & M135-15-23</p> <p>Date received stamp</p> |
|---|

To the Marlborough District Council

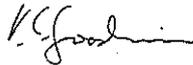
This is a Further Submission by:

Nelson Marlborough District Health Board Public Health Service

on Proposed Plan Change 23 (PPC23) to the Marlborough Sounds Resource Management Plan and Proposed Plan Change 58 (PPC58) to the Waiiau Awatere Resource Management Plan

1. These Further Submissions are based on the Summary of Submissions and copies of original Submissions published by Council.
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Dated at Nelson this 20th day of January 2010



for

GE Cameron

Designated by the Director General of Health under s.7A of the Health Act 1956
For and on behalf of Public Health Service, Nelson Marlborough District Health Board

Address for service

Geoff Cameron
Senior Health Protection Officer
Public Health Service
Nelson Marlborough District Health Board
PO Box 647, Nelson 7040
email : <geoff.cameron@nmdhb.govt.nz>
DDI : ph 03 5461541

DETAILS OF FURTHER SUBMISSION ON A SUBMISSION BY:

| | |
|---------------------------------------|--|
| Submitter: Horticulture NZ | Submitter number 16 for PPC23 & 20 for PPC 58 |
| See below or attached schedule | |

| SCHEDULE OF FURTHER SUBMISSIONS | | | |
|---|---------------------|---------------------|----------------------------------|
| Decision sought point | PPC23 clause | PPC58 clause | Stance |
| Item before first Bullet point e page 4 | Not stated | Not stated | opposed and should be disallowed |
| Reasons | | | |
| Submission lacks the specificity required for a valid submission, fails to identify parts of Proposed Plan Change affected, fails to specify the specific decision sought in relation to parts of the proposed Plan Change, and fails | | | |

to state permitted activity rule suggested.

| Decision sought point | PPC23 clause | PPC58 clause | Stance |
|---|--------------|--------------|----------------------------------|
| 1 st Bullet point item under heading "Decision sought" on page 4 | Not stated | Not stated | opposed and should be disallowed |

Reasons Submission lacks the specificity required for a valid submission, fails to identify parts of Proposed Plan Change affected, fails to specify the specific decision sought, proposes an unjustifiably lax noise limit, an inadequate separation distance from the notional boundary of a dwelling on another site.

| Decision sought point | PPC23 clause | PPC58 clause | Stance |
|---|--|---------------|----------------------------------|
| 2 nd Bullet point item under heading "Decision sought" on page 4 (ePage 116) | Not stated Seeks to restrict frost fan operation based on temperature | As for PPC 23 | opposed and should be disallowed |

Reasons Submission lacks the specificity required for a valid submission, fails to identify parts of Proposed Plan Change affected, fails to specify the specific decision sought, inadequately describes how or where temperature should be assessed, and would permit use of frost fans for activities other than frost mitigation eg drying crops except for the contradiction provided by the 5th bullet point (see below).

| Decision sought point | PPC23 clause | PPC58 clause | Stance |
|---|--|---------------|---|
| 3 rd Bullet point item under heading "Decision sought" on page 4 (ePage 116) | Not stated Seeks insulation of new dwellings affected | As for PPC 23 | Support in part and should be allowed in part |

Reasons Although submission lacks the specificity required for a valid submission, fails to identify parts of Proposed Plan Change affected, fails to specify the specific decision sought, and fails to specify details of dwelling insulation provisions sought with degree of specificity required for a rule, the concept is in accord with other submissions including submissions by Public Health Service so that extent it is supported.

| Decision sought point | PPC23 clause | PPC58 clause | Stance |
|--|--|--------------|---|
| 4 th Bullet point item under heading "Decision sought" on page 5(ePage 117) | Not stated Measurement and assessment standards | As for PPC23 | Support in part and should be allowed in part |

Reasons Although the submission lacks the specificity required for a valid submission, gives the wrong title to NZS6801:2008 and fails to identify parts of Proposed Plan Change affected, the content is in accord with other submissions including submissions by Public Health Service so that part is supported.

| Decision sought point | PPC23 clause | PPC58 clause | Stance |
|---|--|---------------------|---|
| 5 rd Bullet point item under heading "Decision sought" on page 5 (ePage 117) | Not stated Seeks restriction of frost fan operation | As for PPC23 | Support in part and should be allowed in part |

Reasons Although the submission lacks the specificity required for a valid submission, and fails to identify parts of Proposed Plan Change affected the content is in accord with other submissions and nullifies the implication of the 2nd bullet point (see above) that frost fans can be used for non-frost mitigation activities such as crop drying so that part is supported.

continued

| Decision sought point | PPC23 clause | PPC58 clause | Stance |
|--|--|--------------|--------------------------------------|
| Paragraph under 5 rd Bullet point item under heading "Decision sought" on page 5 (ePage 117) | Not stated Seeks to establish restricted discretionary rule | As for PPC23 | Oppose and should be not be allowed. |
| <p>Reasons The submission lacks the specificity required for a valid submission, and fails to identify parts of Proposed Plan Change affected or state where the proposed rule would be inserted, further the list of bullet point items under the subject paragraph are inadequately worded and subject to submissions by others for improved amending text.</p> | | | |

| Decision sought point | PPC23 clause | PPC58 clause | Stance |
|--|---|--|--|
| Paragraph under 5 rd Bullet point item under heading "Decision sought" on page 5 (ePage 117) | 36.1.3.4.2.6 Seeks to retain dwelling insulation | 30.1.4.2.4 and Appendix K 2.2.11.1 As for PPC23 | Support in part and should be allowed in part. |
| <p>Reasons Although the submission lacks the specificity required for a valid submission, and fails to identify parts of Proposed Plan Change affected, and fails to specify adequate details of dwelling insulation provisions sought with degree of specificity required for a rule, the content in principle is in accord with other submissions and to that extent it is supported.</p> | | | |

**FURTHER SUBMISSIONS IN SUPPORT OF OR IN OPPOSITION TO
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PLAN CHANGE UNDER CLAUSE 8, OF THE FIRST SCHEDULE TO
THE RESOURCE MANAGEMENT ACT 1991**

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| <i>For council use</i> | Participant No |
| | Submission Point No. |
| | W045-15-58 & M135-15-23 |
| | Date received stamp |

To the Marlborough District Council

This is a Further Submission by

Nelson Marlborough District Health Board Public Health Service

on Proposed Plan Change 23 (PPC23) to the Marlborough Sounds Resource Management Plan and Proposed Plan Change 58 (PPC58) to the Waiapu Awatere Resource Management Plan

1. These Further Submissions are based on the Summary of Submissions and copies of original Submissions published by Council.
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Dated at Nelson this 20th day of January 2010

GE Cameron

Designated by the Director General of Health under s.7A of the Health Act 1956
For and on behalf of Public Health Service, Nelson Marlborough District Health Board

Address for service

Geoff Cameron
Senior Health Protection Officer
Public Health Service
Nelson Marlborough District Health Board
PO Box 647, Nelson 7040
email : <geoff.cameron@nmdhb.govt.nz>
DDI : ph 03 5461541

| | |
|--|---|
| Submitter: New Zealand Winegrowers | Submitter number 8 for PPC23 & 10 for PPC 58 |
| See below or attached schedule | |

SCHEDULE OF FURTHER SUBMISSIONS

| Decision sought point | PPC23 clause | PPC58 clause | Stance |
|---------------------------|--------------|---|----------------------------------|
| Primary relief (ePage 33) | Withdrawal | Submission Point: 30 withdrawal | opposed and should be disallowed |

Reasons. Delay is not justified and does not promote sustainable management. Science re measurement of frost fans is well established and little more will be gained through more monitoring. Policy action is required now to replace inadequate current plan provisions.

continued

| Decision sought point | PPC23 clause As mislabelled by submitter | PPC58 clause As mislabelled by submitter | Stance |
|--|---|---|----------------------------------|
| Alternative relief Noting submitter has mislabelled PPC numbers in their submission Rural zones Rural Residential Zone (ePage 34) | Rural 3 and 4 Zones 30.1.4.2.3 Appendix K new 2.2.11(a)-(b) Proposes alternative wording of noise rule clauses | Submission Point: 47 Rural 1 and 2 Zones New 36.1.3.4.2.3, Proposes alternative wording of noise rule clauses | opposed and should be disallowed |
| <p>Reasons. Wording "all frost fans operating cumulatively" will render impractical enforcement and monitoring, contrary to purposes of the Act. Noise limit is too lax and not subject to adjustment for special audible characteristics as provided in PPC proposed assessment method, ie NZS 6802:2008. Effect will be more noise off-site with increased adverse noise effects and no incentive for adoption of better technology to reduce noise at source. The title for NZS 6801:2008 is incorrect. No basis for assessment, ie assessment standard such as NZS6802:2008, is cited rendering application of the proposed rule uncertain and incapable of enforcement. There are problems with the measurements stated "at" certain locations for reasons explained in the submissions of the Public Health Service See paragraph 12 PPC 23 and PPC 58 submissions.</p> | | | |

| Decision sought point | PPC23 clause As mislabelled by submitter | PPC58 clause As mislabelled by submitter | Stance |
|---|---|---|----------------------------------|
| Alternative relief Amend Rule 2.2.11(a) (ePage 34) | Rural 3 and 4 Zones new Rule 30.1.4.2.5 Rural Residential Zone new Rule 31.1.5.1 (a) &(c) Appendix K new Rule 2.2.11.1 (a)-(c) Proposes alternative wording of PPC clauses re reverse sensitivity | Rural 1 and 2 Zones New 36.1.3.4.2.6 (a)-(c) Proposes alternative wording of PPC clauses re reverse sensitivity | opposed and should be disallowed |
| <p>Reasons.. Rewording fails to address defects better address by other submitters , cites out-of-date standard, purports to obligate a building rather than a person to produce certification, fails to address need for standard to be met with doors and windows closed or to address alternative ventilation. Wording inferior to that proposed by Public Health Service submission.</p> | | | |

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To the Marlborough District Council

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Nelson Marlborough District Health Board Public Health Service

on Proposed Plan Change 23 (PPC23) to the Marlborough Sounds Resource Management Plan and Proposed Plan Change 58 (PPC58) to the Waiou Awatere Resource Management Plan

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For and on behalf of Public Health Service, Nelson Marlborough District Health Board

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DDI : ph 03 5461541

Submitter: ~~Waihopai Holdings Limited~~

Submitter number 22 for PPC 58

See below or attached schedule

SCHEDULE OF FURTHER SUBMISSIONS

| Decision sought point | PPC58 clause | Stance |
|---|--------------|----------------------------------|
| Submission Point: 67 (a)-(d) and items under headings "either "and "or" (ePage 13) | Not stated | opposed and should be disallowed |
| Reasons. Submissions lacks specificity required for a valid submission, and fails to identify parts of PPC affected, seeks three types of decision including withdrawal and proposes an invalid alternative, failing to specify the rules in full in the submission as required to be legally valid, and proposes a lax noise limit. | | |

FURTHER SUBMISSIONS IN SUPPORT OF OR IN OPPOSITION TO SUBMISSIONS MADE ON A PUBLICLY NOTIFIED PROPOSED PLAN CHANGE UNDER CLAUSE 8 OF THE FIRST SCHEDULE TO THE RESOURCE MANAGEMENT ACT 1991

To the Marlborough District Council

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on Proposed Plan Change 23 (PPC23) to the Marlborough Sounds Resource Management Plan and Proposed Plan Change 58 (PPC58) to the Waiau Awatere Resource Management Plan

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| For council use | Participant No |
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| W045-15-58 & M135-15-23 | |
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GE Cameron

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For and on behalf of Public Health Service, Nelson Marlborough District Health Board

Address for service

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Public Health Service, Nelson Marlborough District Health Board

PO Box 647, Nelson 7040

email : <geoff.cameron@nmdhb.govt.nz> DDI : ph 03 5461541

| | |
|---------------------------------------|--|
| re Submitter: Paul Brückel | Participant # 1 for PPC 23 and # 21 for PPC58 |
| See below or attached schedule | |

| SCHEDULE OF FURTHER SUBMISSIONS | | | |
|---|---|---------------------------------------|-----------------------------------|
| Decision sought point | PPC23 clause | PPC58 clause | Stance |
| Not stated Pages 4 and 5 (ePages 4 & 5) | New rule 36.2.7 (mis-labelled in PPC23 as 30.2.7.1) | New Rule 30.2.9 an Appendix K 2.3.3.2 | Opposed and should be disallowed. |
| Reasons: While stating the adjusted noise limit within body of the rule might appear to enhance certainty about which noise limit applies, the submission overlooks that assessment under NZS6802:2008 is based on a Rating Level and the noise limit is not adjusted in the manner provided in NZS6802:1991 which is the basis for assessment under the current frost fan rules in the District. Thus the literal application of the amendment proposed would actually complicate application of the assessment method specified and thereby create legal uncertainty allowing technical defences in enforcement proceedings which would not otherwise be viable. | | | |

Continued from page 1

| SCHEDULE OF FURTHER SUBMISSIONS | | | |
|--|---|---------------------------------------|--|
| Decision sought point | PPC23 clause | PPC58 clause | Stance |
| Not stated Pages 4 and 5 (ePages 4 & 5) | New rule 36.2.7 (mis-labelled in PPC23 as 30.2.7.1) | New Rule 30.2.9 an Appendix K 2.3.3.2 | Supported in part and should be allowed in part. |
| <p>Reasons: Reference to “cumulative frost fan noise” while appearing to address the issue of cumulative effects, actually complicates measurement and assessment under this rule, allowing introduction of legal defences in enforcement proceedings that would otherwise not exist. Cumulative effects are not limited to sources only on a site of interest and proving off-site sources where not a significant contributor to fan noise from a particular site would be impracticable if not impossible during monitoring. However the intent to ensure noise emissions from all fans operating on a site rather than noise from a single fan is assessed is a valid point The rule should be amended in a slightly modified form to state “noise from frost fan operation on any site shall not exceed....etc”</p> <p>Thus either one or several frost fans operating on a site can be subject to the noise limit in the rule and this addresses the issue of cumulative effects without the problems attendant on the wording proposed by the submitter.</p> | | | |

FURTHER SUBMISSIONS IN SUPPORT OF OR IN OPPOSITION TO SUBMISSIONS MADE ON A PUBLICLY NOTIFIED PROPOSED PLAN CHANGE UNDER CLAUSE 8 OF THE FIRST SCHEDULE TO THE RESOURCE MANAGEMENT ACT 1991

To the Marlborough District Council

This is a Further Submission by

Nelson Marlborough District Health Board Public Health Service

on Proposed Plan Change 23 (PPC23) to the Marlborough Sounds Resource Management Plan and Proposed Plan Change 58 (PPC58) to the Waiau Awatere Resource Management Plan

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| <i>For council use</i> | Participant No |
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for

GE Cameron

Designated by the Director General of Health under s.7A of the Health Act 1956

For and on behalf of Public Health Service, Nelson Marlborough District Health Board

Address for service

Geoff Cameron, Senior Health Protection Officer

Public Health Service, Nelson Marlborough District Health Board

PO Box 647, Nelson 7040

email : <geoff.cameron@nmdhb.govt.nz> DDI : ph 03 5461541

re Submitter: 
See below or attached schedule

Participant # 11 for PPC 23 and # 15 for PPC58

| SCHEDULE OF FURTHER SUBMISSIONS | | | |
|--|--|---|---------------------------------|
| Decision sought point | PPC23 clause | PPC58 clause | Stance |
| Not stated | 20.2.7.1.2 Relates to measurement time interval in use of NZS6802 for assessment. | 30.2.9.1.2 and Appendix K 2.3.3.3 Relates to measurement time interval in use of NZS6802 for assessment. | Oppose and should be disallowed |
| <p>Reasons: The key problem with the proposal is that it would imply to users that a minimum of 2 fan mast head rotations were the key determinant of the appropriate measurement time interval required to be assessed and for some fans this might mean a measurement would be significantly less than 15 minutes and require use of the more complex detailed assessment method to the determine the Rating Level, rather than the simple method. In less common situations when a frost fan is operated for a short duration or monitoring staff are only able to be present for a short duration and must use a measurement time interval less than 15 minutes, Council staff need the ability to make the most of possibly short duration fan operation to measure the sound level and the detailed assessment method enables this and details in the standard are adequate without restriction of the kind</p> | | | |

proposed by this submitter. Best practice for measurement in fact requires derivation of an appropriate measure of central tendency and regard to variance based on analysis of a set of measurement data. Study of actual field measurements by ENAAS for a variety of types of frost fans demonstrates that a 15 minute measurement time interval is adequate for frost fan noise and it should be appreciated that this may take significantly longer than 15 minutes to obtain because of pauses and back erasures to exclude contamination by other sound sources, eg helicopters, fixed wing aircraft, and road traffic.

Overall the submission creates more problems than it resolves.

**FURTHER SUBMISSIONS IN SUPPORT OF OR IN OPPOSITION
TO SUBMISSIONS MADE ON A PUBLICLY NOTIFIED PROPOSED
PLAN CHANGE UNDER CLAUSE 8, OF THE FIRST SCHEDULE TO
THE RESOURCE MANAGEMENT ACT 1991**

| | |
|------------------------|-------------------------|
| <i>For council use</i> | Participant No |
| | Submission Point No. |
| | W045-15-58 & M135-15-23 |
| | Date received stamp |

To the Marlborough District Council

This is a Further Submission by

Nelson Marlborough District Health Board Public Health Service

on Proposed Plan Change 23 (PPC23) to the Marlborough Sounds Resource Management Plan and Proposed Plan Change 58 (PPC58) to the Waiou Awatere Resource Management Plan

1. These Further Submissions are based on the Summary of Submissions and copies of original Submissions published by Council.
2. This Further Submission relates to the Submitter named below or in the attached schedule and the particular part or point of their Submission supported or opposed is described below or in the attached schedule together with the parts of the Submission we seek be allowed or disallowed.
3. The reasons for support or opposition are described below or in the attached schedule
4. We will wish to be heard in support of these Further Submissions at any hearing but are not prepared to consider presenting a joint case with other submitters.

Dated at Nelson this 21st day of January 2010

for
GE Cameron

Designated by the Director General of Health under s.7A of the Health Act 1956
For and on behalf of Public Health Service, Nelson Marlborough District Health Board

Address for service

Geoff Cameron
Senior Health Protection Officer
Public Health Service
Nelson Marlborough District Health Board
PO Box 647, Nelson 7040
email : <geoff.cameron@nmdhb.govt.nz>
DDI : ph 03 5461541

Submitter: ~~Wither Hills Vineyards Marlborough Limited~~
Submitter number 20 for PPC 23 and 25 for PPC58
See below or attached schedule

SCHEDULE OF FURTHER SUBMISSIONS

| Decision sought point | PPC23 clause | PPC58 clause | Stance |
|-----------------------|--|--------------|----------------------------------|
| 14 | As a whole seeks Plan Change be declined | As for PPC23 | Opposed and should be disallowed |

Reasons:

Claim that PPCs are a "short term fix" for Council overlooks that the problem has been growing over a decade and is inadequately addressed by current plan provisions. Certainty rather than "uncertainty" as Submitter asserts will result from new PPCs relating to use of frost fans. Submitter criticises method to achieve objectives re productivity of land and viticulture but in doing so neglects other factors in s.5 (2) of the Act..

One of the reasons given by the submitter at paragraph 10 (c) relates to adequacy of s.32 report and quotes as an example the topic of special audible characteristics in frost fan noise, but erroneously assumes that such a matter is a topic without inherent variability reflected in the quoted remarks from the s.32 report .

**Further Submission in Support of or Opposition
to a Submission on Plan Change 58 to the
Wairau/Awatere Resource Management Plan or
Plan Change 23 to the Marlborough Sounds Resource
Management Plan**

Office Use

Participant No

Submission Point No

Name/Organisation

RICHARD KARN

File Ref

W045-15-58 & M135-15-23

Contact Name
(If different from above)

Address for
Service:

2 NOTT ST

WESTSHORE

NAPIER 4110

Date Received Stamp

Phone Number

06 - 8355792

Submissions Close:

4.00 pm Thursday
21 January 2009

Fax/Email

rikarn@xtra.co.nz

Return your submission to:

Marlborough District Council
PO Box 443
Blenheim 7240

Attention: Mark Caldwell

Fax: (03) 520 7496

E-Mail:

frostfans@marlborough.govt.nz

I have attached pages to this submission

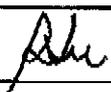
Do you wish to be heard in support
of your submission?

YES NO

If you wish to be heard & others make a similar submission, would
you be prepared to consider presenting a
joint case?

YES NO

Signature:



Date:

19 Jan 2010

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20 JAN 2010

YOU SUPPORT OR OPPOSE
MARLBOROUGH
DISTRICT COUNCIL

PLEASE USE A SEPARATE FORM FOR EACH ORIGINAL SUBMISSION

Submission Number Supported or Opposed

23

Do you Support or Oppose this original submission?

SUPPORT OPPOSE

Name of Original Submitter to which the further submission relates:

Nelson Marlborough DHB Public Health Service

Address of Original Submitter to which this further submission relates: (at back of Summary of Submissions).

PO Box 647 NELSON

How To Make A Further Submission: Anyone is welcome to make a further submission, either as an individual or on behalf of an organisation. You may use this form or prepare your own submission so long as you are careful to provide all of the information identified on this form. [These information requirements are per Form 6 of the Resource Management (Forms, Fees and Procedures) Regulations 2003]. If you run out of room, please continue on a separate page. When preparing your further submission you need to include the following:

The particular parts of the submission I support (or oppose) are: [clearly indicate which parts of the original submission you support or oppose, together with any relevant provision of the proposal].

The reasons for my support (or opposition) are: [give reason.].

I seek that the whole (or part) [describe part] of the submission be allowed (or disallowed): [give precise details.].

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My submission relates to ~~(circle one of the following)~~ **BOTH**

Plan Change 58 to the Wairau/Awatere Resource Management Plan

Plan Change 23 to the Marlborough Sounds Resource Management Plan

Any submission received by the Council is considered to be public information.

Supported or
Opposed Section
e.g. General

Details of your further submission including reasons for supporting or opposing and whether you seek that whole or part of the submission be allowed (or disallowed).

e.g. I support the proposed change xx because ... and seek all be allowed.

| | |
|----------------------------|---|
| <p>Point 13 page 8</p> | <p>The submitter makes a very valid point here. Measuring the noise accurately of a quiet fan at 300m is difficult to achieve when there are other noise sources present.</p> |
| | <p>If a test is done during a mid-winter frost, in the middle of the night, with no other fans running then accurate data can be obtained. However if compliance testing is being done during the frost season, the risk of pollution from other fans running is high. Any extraneous noise must be at least 10dB lower than the noise being measured, to not have a cumulative effect of more than 0.5 dB on the noise data.</p> |
| | <p>I have experienced this when trying to do a 300m noise test on a FrostBass C49 fan when an American 2 blade fan, over 2km away was significantly polluting the noise test. In addition traffic noise is often within the 10dB threshold of a quiet fan. Hence, I endorse the submitter's recommendation.</p> |
| <p>Point 14 page 9</p> | <p>The submitter has made a typographical error on the second line. The reference to NZS 6802:2008 should read NZS 6801:2008 ↑</p> |

Note: A copy of this submission must be served, within five (5) working days after making the Further Submission to the Marlborough District Council, on the person who made the original submission.

Submitter addresses can be found at the back of the Summary of Submissions document.



PO Box 10232, Wellington 6143
 Level 2, Huddart Parker Building
 Post Office Square, Wellington 6011
 Phone +64 4 472 3795
 Fax +64 4 471 2861
 Web www.hortnz.co.nz
 Email info@hortnz.co.nz

**Further Submission on
 Plan Change 58 to the Wairau/ Awatere Resource Management Plan
 and
 Plan Change 23 to the Marlborough Sounds Resource Management Plan**

(Closing date: Thursday 21 January 2010 4pm)

To: Marlborough District Council
 PO Box 443
 Blenheim 7240

Attn Mark Caldwell

Fax: 03 520 7496
 Email: frostfans@marlborough.govt.nz

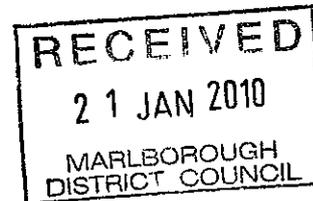
Full Name of Further Submitter:
 Horticulture NZ

Full Postal Address:
 P O Box 10 232
 Wellington

Attn: Chris Keenan

Telephone Number: 04 470 5669

Fax Number: 04 471 2861



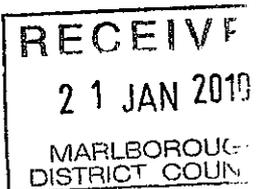
I do wish to be heard in support of my submission

If others make a similar submission, I **would not** be prepared to consider preparing a joint case with them at any hearing.

.....
Signature of person making submission or person authorised to sign on behalf of person making submission.

Date: 21 January 2010

| Submitter | Sub No. | Plan Provision | Support/ Oppose | Reason |
|--|---------|---------------------------------|--------------------|---|
| Kevin Little | 16.68 | Additional provisions sought | Oppose | A 550 metre setback from dwellings for safety reasons is overly conservative. |
| K & S Stringer | 37.14 | Additional provisions sought | Oppose | A banning of 2 blade frost fans is opposed. A grower must be able to put in the type of fan that best suits the needs of the property and crop as long as the noise standards are able to be met. |
| Nelson Marlborough DHB Public Health Service | 23.83 | Additional provisions sought | Oppose | The plan should provide for use of frost fans in all frost events and not draw a distinction between advection frost events. |
| Netherwood Lodge Trust | 5.19 | Additional provisions sought | Oppose | Water is only suitable for frost protection in some situations and the plan should not regulate a priority for one form of protection over others. |
| NZ Winegrowers | 10.49 | App K Marlborough Ridge Zone | Support in part | Horticulture NZ submission supports the need for provisions relating to construction of new dwellings but considers that the additional changes sought by the submitter to Rule 2.2.11.1 clarify the use of frost fans in the Marlborough Ridge Zone. |
| Paul Bruckel | 21.39 | App K Marlborough Ridge Zone | Oppose | A limitation of months that frost fans can be used is not necessarily suitable for horticultural crops. The temperature of 0.75 degrees is too low and will result in frost damage occurring. |
| Clintondale Trust – Whyte Trustee Company Ltd | 12.119 | Whole Plan Change | Support in part | Use of LIM's as a means of advising prospective residents of the likelihood of disturbance form primary production activities in the rural zones is a proactive way to address the issues of reverse sensitivity. |
| NZ Winegrowers | 10.30 | Whole Plan Change | Support | Use of LIM's as a means of advising prospective residents of the likelihood of disturbance form primary production activities in the rural zones is a proactive way to address the issues of reverse sensitivity. |
| NZ Winegrowers | 10.46 | Section 32 Report | Support | The lack of information raises concerns about the rationale on which the Plan Change is based. |
| Nelson Marlborough DHB Public Health Service | 23.84 | Definitions | Support in part | A frost fan does not control frost but rather seeks to control the effects of the frost. |
| Malcolm Maclean | 13.54 | Definitions | Oppose | The rules are designed for devices that are fixed to the ground in a set point. |
| Clintondale Trust – Whyte Trustee Company Ltd | 12.102 | Wind machines for frost control | Support in part | The clarification of where the 2 degrees is recorded is appropriate. |



| Submitter | Sub No. | Plan Provision | Support/ Oppose | Reason |
|--|---------|---|-------------------------------|---|
| NZ Winegrowers | 10.34 | Wind machines for frost control | Support | Clarification that maintenance can be carried out when the temperature is more the 2 degrees is supported. |
| Nelson Marlborough DHB Public Health Service | 23.86 | Noise sensitive activities | Oppose in part | While the requirements for noise insulation are supported they need to be written in a way that are readily understandable rather than in technical language. |
| Nelson Marlborough DHB Public Health Service | 23.88 | Erection and use of frost fans | Oppose | Frost fans should be able to be operated as a permitted activity subject to meeting conditions. |
| Nelson Marlborough DHB Public Health Service | 23.93 | Standards and terms | Support in part | There needs to be clarification as to when maintenance and testing can be done. |
| NZ Winegrowers | 10.47 | Noise | Support | For the reasons set out by the submitter. |
| Fairhall Downs Estate Wines (Stuart Smith) | 17.74 | Operation | Oppose in pt Support in pt | The rules should be generic to apply to any use of frost fans. Specifying months of use is a limitation for future crops. The clarification of where the 2 degrees is recorded is appropriate. |
| Malcolm Maclean | 13.58 | Operation | Oppose | The temperatures sought would lead to crop damage as the threshold of 1 degree is too low. |
| Nelson Marlborough DHB Public Health Service | 23.91 | Operation | Oppose in pt | While clarification is supported any review of the requirements should be subject to a Plan Change process. |
| Paul Bruckel | 21.41 | Operation | Oppose | The limitations of times and temperature are not appropriate across a wider range of crops. |
| Fairhall Downs Estate Wines (Stuart Smith) | 17.79 | Location to Residential and Marlborough Ridge Zones | Support | Dependence on meeting the decibel limit is supported. |
| Nelson Marlborough DHB Public Health Service | 23.92 | Location to Residential and Marlborough Ridge Zones | Oppose | An arbitrary distance of 1 km is not effects based. |
| NZ Winegrowers | 10.48 | Location to Residential and Marlborough Ridge Zones | Support | Dependence on meeting the decibel limit, rather than an arbitrary setback is supported. |

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| Submitter | Sub No. | Plan Provision | Support/ Oppose | Reason |
|----------------|---------|--|--------------------|---|
| Michael Hyson | 28.133 | Matters over which Council will exercise control | Oppose | Any change to conditions of consent must be through a s128 review of conditions of consent. |
| NZ Winegrowers | 10.50 | Matters over which Council will exercise control | Support | Any review of the requirements should be subject to a Plan Change process. |

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-FORM 6 OF RESOURCE MANAGEMENT ACT 1991-

**FURTHER SUBMISSION ON PUBLICLY NOTIFIED PROPOSAL
FOR POLICY STATEMENT OR PLAN**

To: Marlborough District Council
PO BOX 443
BLENHEIM 7240

Further Submission on: Proposed Plan Changes 23 and 58 – Use of Wind Machines for Frost Protection

Submitter: New Zealand Winegrowers (NZW).

The further submission of NZW is as follows:

NZW support the submissions made by the following parties:

- Buttergill Farm (2003) Limited (Geoff Van Asch) – Submitter 5 & 7
- Dashwood Corner Vineyard Limited (Geoff Van Asch) – Submitter 6 & 8
- Little Oasis Vineyard Limited (Geoff Van Asch) – Submitter 7 & 9
- Fairhall Downs Estate Wines (Stuart T Smith) – Submitter 13 & 17
- Guy Lissaman – Submission 24 & 33
- Jane Buckman and John Kershaw – Submitter 25 & 34
- Blair Gibbs – Submitter 26 & 35
- Waihopai Holdings Limited (Amy Murphy) – Submitter 22
- Jane Buckman and John Kershaw – Submitter 34

Specifically, NZW note that all the submitters above raise similar concerns to those raised by NZW in its primary submission and the recommendations therein.

NZW also submit in opposition to the submissions made by the following parties:

- Des Ashton – Submitter 1
- Geoffrey Handley – Submitter 2
- Richard Karn – Submitter 11 & 15
- Nelson Marlborough DHB Public Health Service – Submitter 18 & 23
- Peter Constantine – Submitter 19 & 24
- Richard Ryan – Submitter 21 & 26
- Glenys Parsons – Submitter 22 & 29
- Gary B Jones – Submitter 23 & 31
- David Kerr – Submitter 3
- Netherwood Lodge Trust (Adele Dawkins) – Submitter 5
- Netherwood Lodge Trust (Lindsay Dawkins) – Submitter 6
- Kathryn Deane Rees – Submitter 11
- Janet & Wayne Boyce – Submitter 36
- Kevin Eaton and Sara Stringer Submitter 37

Specifically, NZW oppose the above submissions as they support proceeding with the proposed plan changes as notified and in some cases seek more stringent controls. NZW seek the withdrawal of the plan changes in the first instance, or alternatively the amendments set out in its primary submission.

In addition, the following submissions are opposed for the specific reasons outlined below:

C J Smith – Submissions 03 / 02 and Paul Bruckel – Submission 17 / 21

Submitter 'Smith' raises a number of concerns that are unsubstantiated. Firstly, on page two of this submission, the submitter seeks an amendment to the proposed definition of 'frost fan' to include the drive unit. The concern appears to be that the noise from the drive unit (engine) is not considered holistically in the measurement of noise emitted by frost fans.

All measurements of frost fans by acoustic specialists do in fact, already consider the noise of the engines. Over the years modifications have been made to the exhaust silencers on some machines to specifically reduce this component of frost fan noise.

The submitter also opposes proposed Rule 30.1.4.2.4 in regards to noise sensitive activities.

NZW disagrees with the rationale of the submitter's statements as the measurement of noise with closed windows and purported requirements for mechanical ventilation.

NZW submits that mechanical ventilation systems are not necessary to address the effects of frost fan operation, and from a practical perspective it is likely that windows will generally not be open on cold frosty nights when the frost fans operate. .

Submitters 'Smith' and 'Bruckel' seek an additional control be imposed requiring the supervision and manual switch on of frost fans.

NZW oppose this suggestion. Some vineyards cover a significant area and may also consist of a number of blocks in geographically separate locations within the Marlborough District.

The submission fails to acknowledge the physical locations of vineyard operations. While monitoring and visitation to individual sites may occur during frost protection, it is neither reasonable nor practicable to be required to manually turn on and supervise individual frost fans.

Malcolm Maclean – Submitter 10 / 13 and Paul Bruckel – Submitter 17 / 21

Submitter 'Maclean' raises concern about the noise decibel limits being related to only one fan operating at a time and opposes proposed Rule 30.1.4.2.4 because the 30 dB LAeq noise limit does not consider the cumulative noise of all fans operating.

NZW consider that the decibel limits should be inclusive of all frost fans on a property operating simultaneously. This removes any ambiguity about the assessment of the noise generated.

However, NZW also note on the basis of previous acoustic assessments obtained that the issue of cumulative effects of frost control fans operating is negligible.

Both submitters 'Maclean' and 'Bruckel' oppose the minimum start up temperature of 2 degrees Celsius for frost fans and suggest that this should be reduced to 1 degree Celsius and 0.75 degrees Celsius respectively.

NZW oppose both these proposed decreases in start up temperature. Some wind machines have specific warm up and warm down practices that occur prior to the blades of the machines becoming

capable of operating. In some cases, frost fans may take up to five minutes to warm up before the blades are operational.

In this time, the temperature can continue to drop rapidly. By beginning the warm up procedure at 2 degrees there is sufficient time for the machines to become operative before a frost event is initiated. If the start up temperature is reduced to 1 or 0.75 degrees, the chance that vineyard crops will be damaged by a quick moving frost is increased.

Further, provided that the noise emitted from frost fans is a reasonable level (reasonable level being defined by the outcome of this Plan Change) then the benefits of specifying start up temperatures is considered negligible because the effects (noise), will be adequately controlled by the decibel levels specified within the applicable Plan.

K Little – Submitter 12 / 16 and Paul Bruckel – Submitter 17 / 21

Submitter 'Little' seeks to have all frost fans fitted with an auto shut off mechanism which disables the machines during periods of wind. Submitter 'Bruckel' seeks similar controls to be incorporated on all two bladed frost fans. The purpose of the submitter's suggestions is to alleviate safety concerns as well as reduce the intensification of noise [in the direction of wind travel].

The NZW Wind Machine Code of Practice recommends the avoidance of the use of frost fans at wind speeds in excess of 7kmh.

Furthermore, the manufacturers of Orchard –Rite Frost Fans categorically state in their Owners Manual "Do not run a wind machine in windy conditions (4mph maximum). Operation in windy conditions can cause the fan and tower to vibrate violently resulting in damage/or breakage to the fan, tower, drive train, top gear box...."

In addition, from a practical perspective it is not necessary to operate frost fans in wind speeds in excess of 8kmh as such climatic conditions would not be conducive to a frost settling.

Incorporating such an automatic shut-off mechanism rule within the Plans is therefore considered unpractical and unnecessary, as restrictions on operations during certain wind speeds already occurs in practice.

Submitter 'Little' also suggests there should be a 550 metre setback from dwellings to "alleviate any further worries about being in the kill zone" if the machines have a catastrophic mechanical failure. No evidence has been provided to suggest that such an event meets the threshold of a potential "effect" under the definition of s2 of the Resource Management Act 1991. NZW therefore oppose this suggestion.

Hyson Family – Submitter 28

This submitter on page two of their submission queries why the attenuation of sound through a dwelling is considered to be 25 decibels which they consider to be a high level of attenuation.

NZW has previously obtained acoustic assessments which have considered the results of noise studies that identified the relative attenuation of sound through dwellings.

As a result of such studies it is considered that attenuation of to 30 dB LAeq through the façade of a dwelling is a reasonable assumption.

For the above reasons, NZW disagree with the submitters proposed Rule 30.2.9.11 that cumulative noise levels should not exceed 45 dB LAeq at the notional boundary.

Additionally, the submitter states a number of situations where they have measured the attenuation of noise at their home from a frost control fan and operating wind speeds.

These examples are not supported by any evidence or information on the level of noise at the notional boundary of the Hyson's property nor any mention of the environment in which the testing was conducted, the equipment used or standards referred to including whether the measurement was conducted with windows open. NZW accordingly submit that the statements are unsubstantiated.

NZW disagrees with the statement by the submitter on page four that "Bitter experience from the Marlborough and Hurunui District has shown operators keep these machines running despite lack of wisdom in doing so". The statement is incorrect and unsubstantiated.

The submitter attached a report from Rikan Aeromarine Limited that states that the noise signature of a frost fan taken on a calm night varies significantly when an ambient wind (less than 10km/h) occurs. Specifically the report states "*The noise output becomes very spiky with sudden, random jumps in noise, of up to 10dB.*"

The author of the report has illustrated that the noise signature of a 2009 model FrostBoss C-49 frost control fan at 100 metres from the observer both on a calm night and a night with ambient wind. While these illustrations show approximate 10 decibel spikes in the noise there is no actual reference to what the decibel readings are.

Furthermore, NZW submits that a more appropriate measurement position to illustrate the potential noise fluctuations would be 300 metres, which is the proposed minimum setback of a frost control fan from a dwelling on a separate property under the proposed plan changes.

The submitter also suggests that new rules be incorporated into the Plans requiring compulsory "excessive wind" shut down switches be installed requiring the machines to stop operating in winds above 8km/h.

In response to this suggestion NZW reiterates the comments made above in response to submissions 12 / 16 'Little' and 17 / 21 'Bruckel'.

The submitter on page two also suggests a new rule be imposed requiring that new frost fans be positioned within a minimum safety zone calculated for a specific configuration of frost fan [in relation to a dwelling house].

It is considered that including reference to a "minimal safety zone" is ambiguous and would lead to debate as to what is appropriate. The submitter has not suggested any specific setbacks and has not supported these comments with reference to any evidence. Therefore, this proposal is opposed by NZW.

- **In Summary**

Plan Change 23 & 58 as notified and the amendments sought by the submitters opposed by NZW do not achieve the purpose of the Resource Management Act 1991.

- 5. The submitter wishes to be heard in support of this further submission.**
- 6. If others make a similar submission, the submitter will consider presenting a joint case with them at a hearing.**



Sean Dent

On behalf of New Zealand Winegrowers

Date

21/01/10

Address for Service:

New Zealand Winegrowers
PO Box 90276
Victoria Street West
Auckland 1142