

5 May 2017

Miriam Taris  
Chief Executive Officer  
Western Bay of Plenty District Council  
Private Bag 12803  
Tauranga 3143

Dear Miriam,

**Re: Submission on rentals for encroachments on Council land**

Please find attached a submission on the draft policy for rentals on encroachments on Council land. We were made aware of this policy by a grower who had received notification from the Council that the policy was under consideration. However, NZKGI was not directly contacted by the Council to obtain our views on the policy.

Organisations that represent the regional interests of growers other than kiwifruit may not be aware of the draft policy and therefore may not have made a submission. We note that Horticulture NZ as representatives of all horticultural growers in the Western Bay support the intent of the NZKGI submission.

I would appreciate an opportunity to meet with you to discuss this proposed policy in more detail. We feel this would have been beneficial before the policy was drafted and made available for public comment. Regardless, I would like to learn more about the Council's reasoning behind the policy and explain our rationale for opposing the policy, particularly with regards to the setting of market rates.

Please let me know when it would be suitable to meet with you to discuss. The Avocado Growers Association would like to join us for this meeting as the issues and our views are similar.

Kind regards,



Nikki Johnson  
Chief Executive Officer

## **SUBMISSION ON DRAFT POLICY ON RENTALS FOR ENCROACHMENTS ON COUNCIL LAND**

**TO:** Western Bay of Plenty District Council

**SUBMISSION ON:** Draft Policy on Rentals for Encroachments on Council Land

**NAME:** New Zealand Kiwifruit Growers Inc (NZKGI)

**ADDRESS:** PO Box 4246  
Mount Maunganui South 3149

1. NZKGI's submission are detailed in the following sections:
  - A. The setting of market rental rates for different types of land use through the Council's annual Schedule of Fees and Charges;
    - I. Market rates & use of land
    - II. Kiwifruit varieties
    - III. Orchard maturity
    - IV. Area resulting in significant benefit
  - B. Discount to market rates
  - C. Terminating the licence to occupy or lease
  - D. Staged period of implementation
  - E. Timing of the draft policy.
2. NZKGI wishes to be heard in support of this this submission.
3. NZKGI would not gain an advantage in trade competition in making this submission.
4. Background to NZKGI

NZKGI was formed in 1993 to give kiwifruit growers their own organisation to develop a secure and stable kiwifruit industry. NZKGI represents 2,600 kiwifruit growers and gives growers their own voice in industry and government decision making.

NZKGI works to advocate, protect and enhance the commercial & political interests of New Zealand kiwifruit growers. Approximately 80% of New Zealand's kiwifruit crop is grown in the Bay of Plenty, generating approximately \$1.6 billion annual revenue to the region, contributing a significant proportion of the regions GDP. The kiwifruit industry is also a major regional employer, providing employment for up to 12,000 of the region's residents.

**A. The setting of market rental rates for different types of land use through the Council's annual Schedule of Fees and Charges**

**I. Market Rates & Use of Land**

The [Draft schedule of fees and charges 2017-2018](#) states 'the rental is based on the use of the land' and lists different types of land usage including forestry, dairy, horticulture and kiwifruit.

NZKGI is concerned that the proposed market rental rates for different types of land use are based on the value of crops planted on the land instead of the value of bare land. This is illustrated through the Council applying separate rental rates to kiwifruit - gold, kiwifruit - green, avocados and then horticulture itself. All of the aforementioned land uses constitute horticulture use and therefore should be subject to the same market rental rate. Further, the market rate should reflect the uncertainty of future use of that land. Given that the Council could terminate the license to occupy or lease the land at any time, only the value of bare land should be considered.

It is submitted that the Council has gone beyond the scope of 'use of land' in setting the market rental rates based on the value of crops on the land. Given that the Council has not contributed to any investment in land improvements, ongoing maintenance or licensing relating to the right to grow a variety, this appears unjustified.

NZKGI submits that the market rental rates proposed by the Council for kiwifruit are excessive and should be based on bare land value.

**II. Kiwifruit Varieties**

NZKGI strongly opposes the setting of different market rental rates for different kiwifruit varieties.

While the profit derived from Gold and Green kiwifruit may be different at this point in time, the 'use of the land' is the same and therefore they should be subject to the same market rental rate. Any difference in profit derived from this use of land is already addressed through the purchasing of a license to which the Council has not contributed to so should therefore not benefit from.

**III. Orchard Maturity**

The establishment of a kiwifruit orchard takes years, often during which no benefit is derived. NZKGI submit that it would be arbitrary and in contradiction of the policy's objective for the Council to charge a market rental rate when the occupier is not receiving a significant private benefit from the use of the land.

**IV. Area Resulting in Significant Benefit**

NZKGI requests clarification from the Council on how they will determine the area the market rental rates will apply to and whether they will take into account nearby land

use on privately owned land to measure this or whether the *unformed road or reserve* must specifically be planted for horticulture purposes. NZKGI submit that a charge ‘part thereof’ must be applied regardless.

#### **B. Discount to market rates**

NZKGI does support in part the Council’s application of discounts to the market rates. Feedback from various kiwifruit growers has advised that they have been maintaining paper roads on their property for upwards of 30 years with no benefit to the orchard profitability. The efforts of these growers should be recognised and NZKGI submits that this would therefore result in the market rent to kiwifruit growers being cost neutral due to their ongoing efforts maintaining the land on Council’s behalf.

#### **C. Terminating the licence to occupy or lease**

The draft policy sets out the Council’s ability to terminate the licence if the Council wish to use the *unformed road or reserve*, for any other public purpose, to be determined by the Council’s sole discretion. NZKGI asks for clarification on the application of this approach and whether Council’s sole discretion will take into account an individual orchards stage or the expenditure involved with its development. If no consideration is given to the land use and economic impact when terminating the license to occupy or lease, then it is inappropriate to take into economic return of the land use when setting market rentals.

#### **D. Staged period of implementation**

As this is a new policy, NZKGI supports that implementation and the application of any rental charges be applied over a period of up to 3 years as stated in the draft policy. NZKGI seeks clarification from the Council around the stages of implementation of this policy.

#### **E. Timing and nature of the draft policy**

NZKGI is concerned that the Council undertook no direct consultation with NZKGI as representatives of kiwifruit growers during the development of this policy. NZKGI has a good relationship with the Council and regularly discusses issues of mutual concern. The short timeframe for public consultation on this policy has compromised our ability to respond. It is also noted that the timing of this consultation falls in the middle of harvest, being the busiest time of year for kiwifruit growers and we may not have been able to identify all those who are impacted by the draft policy.