



# **The New Zealand Kiwifruit Board**

**2006 / 2007**

**Annual Report**

**The New Zealand Kiwifruit Board** was established by Regulation 32 of the Kiwifruit Export Regulations 1999 and is known as **Kiwifruit New Zealand**

# Kiwifruit New Zealand's Annual Report

1 April 2006 to 31 March 2007

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References to "the Regulations" or "the Kiwifruit Export Regulations" in this report are references to the Kiwifruit Export Regulations 1999

References to "Zespri" in this report include Zespri Group Limited and Zespri International Limited

References to "Zespri's Export Authorisation" in this report are references to the Authorisation to Export Kiwifruit Granted to Zespri Group Limited by Kiwifruit New Zealand

References to "the Single Desk" or the "Single Point of Entry" are referring to Zespri having the right to export kiwifruit to all countries except Australia.

## **Kiwifruit New Zealand's Year**

During the year ended 31 March 2007 Kiwifruit New Zealand:

Kept in **contact with the Markets, Zespri Marketing Managers, Collaborative Marketers, Product Groups, Growers and Suppliers**

Monitored the **information flow** from Zespri

Monitored Zespri's **non core business assessments**, including for 12 month supply

Dealt with **complaints, enquiries and appeals**

Ensured **collaborative marketing returns** maintained at an acceptable level

Monitored Zespri's compliance with the **Kiwifruit Export Regulations**

### **Contact with Markets, Zespri Marketing Managers, Collaborative Marketers, Product Groups, Growers and Suppliers**

- Visits were made into the kiwifruit markets
- Meetings were held with the Zespri Marketing Managers
- Meetings were held with Collaborative Marketers
- Meetings were held with Product Groups, Growers and Suppliers during the year.
- Meetings were held with the Zespri Board and NZKGI Executive
- Regular reports were made to NZKGI's Forum and COKA.

### **Information Disclosure**

- Zespri's disclosure of information was monitored to ensure compliance with the Kiwifruit Export Regulations.
- Details of collaborative marketing for last season published by the Board to industry groups, including financial information as to the performance of the collaborative marketers

### **Non Diversification**

- Zespri's assessment of its activities and ownership / operation of assets was monitored and then reviewed by Kiwifruit New Zealand's Board. The diversified (non core) activities for which Zespri's resolution seeking shareholder approval was unchanged from previous years.
- Zespri Global Supply activities were monitored by Kiwifruit New Zealand.

### **Complaints and Inquiries**

- Three complaints were received during the financial year, and a further complaint was received after year end, and two inquiries conducted during the year.

- A number of informal enquiries resolved.

## Collaborative Marketing Results

- Increased collaboration with Zespri in market and logistics by some collaborative marketers
- Increased Grower return for the 2006-07 season on the previous season's return, but the returns of two collaborative marketing programmes were disappointing
- Kiwifruit collaborative marketing volumes and returns since 2000 are as follows:

| Season | Volume<br>(millions of trays) | Market Return*<br>(NZD millions) | Fruit Return **<br>(NZD millions) |
|--------|-------------------------------|----------------------------------|-----------------------------------|
| 2000   | 1.1                           | 7.2                              | 5.8                               |
| 2001   | 1.8                           | 12.2                             | 9.9                               |
| 2002   | 1.6                           | 14.5                             | 10.8                              |
| 2003   | 1.6                           | 16.8                             | 12.2                              |
| 2004   | 1.7                           | 14.1                             | 9.7                               |
| 2005   | 1.7                           | 10.8                             | 7.9                               |
| 2006   | 1.4                           | 12.0                             | 9.8                               |

\* "Market Return" is what is returned to the Grower Pools after all costs, freight, insurance, promotions, but before commissions, service costs and fruit incentives

\*\* "Fruit Return" (also Pool Return) is the Market Return less commission and service costs, and before fruit incentives.

- Each year a benchmarking exercise is also carried out between the kiwifruit collaborative marketing programmes and similar Zespri programmes by region, country, and market and where appropriate fruit sizes. The results of the benchmarking averaged across classes and sizes of fruit are:

| Season | Collaborative Marketing<br>Return per TE | Zespri Return per TE |
|--------|--|----------------------|
| 2000   | 5.26                                     | 5.13                 |
| 2001   | 5.32                                     | 6.06                 |
| 2002   | 6.48                                     | 6.07                 |
| 2003   | 7.56                                     | 7.10                 |
| 2004   | 5.57                                     | 5.56                 |
| 2005   | 4.79                                     | 4.82                 |
| 2006   | 6.85                                     | 6.71                 |

- Kiwifruit New Zealand is working with Zespri both to lift collaborative marketing's performance and to ensure that collaborative marketing contributes to the global marketing of NZ kiwifruit.

## Monitoring

- Regular meetings held with Zespri at Board and Senior Executive level and Zespri's activities were monitored as required by the Kiwifruit Export Regulations.
- Market visits to Europe, North America and Asia were undertaken to provide the context for consideration of collaborative marketing applications and monitor Zespri's and collaborative marketers' activities.

## Zespri Export Authorisation Re-issued

- Zespri Export Authorisation was reviewed but not modified

## **Kiwifruit New Zealand's Role**

The Kiwifruit Industry Restructuring Act 1999 and Kiwifruit Export Regulations 1999 established on 1 April 2000 a new regulatory board, Kiwifruit New Zealand, and charged it with ensuring Zespri Group Limited and its subsidiaries comply with the single desk regulatory regime.

In undertaking its regulatory role, KNZ carries out the following activities:

- Authorises the export of kiwifruit by Zespri (except to Australia which from 2004 is regulated by the Horticultural Export Authority).
- May allocate part of the kiwifruit and kiwiberry crop for collaborative marketing, approves collaborative marketing programmes and assesses the performance of each collaborative marketing programme in comparison with similar Zespri programmes.
- Monitors Zespri's compliance with the Regulations and its Export Authorisation.
- Investigates any allegations of breaches of the Regulations and Zespri's Export Authorisation.
- Monitors Zespri's compliance with the non diversification rule which requires Zespri to seek the approval of the providers of capital before expanding its activities beyond activities necessary for the purchase and export of New Zealand grown kiwifruit.
- Investigates allegations made against Zespri that it has unjustifiably discriminated as between suppliers as to a decision on whether to purchase kiwifruit, or the terms of the purchase contract, where the discrimination cannot be justified on commercial grounds.
- Implementing an enforcement regime where if it is found that Zespri has discriminated between suppliers or has not complied with the Regulations by directing Zespri to remedy the breach, pay compensation or requiring Zespri to pay a financial penalty.
- Ensures that Zespri is disclosing information about its activities as required by the Regulations.
- May exempt Zespri from any requirement to publicly disclose certain commercially sensitive information.
- On complaint made to it or on its own initiative inquire into complaints about the application of the non-discrimination rule, the non-diversification rule, the information disclosure regime and collaborative marketing requirements.

KNZ has no commercial role.

## **Chairman's Report**

I reported last year on the significant change made to the administration of KNZ through disengaging from the previous joint arrangement with KGI. This year I can report that the disengagement has been implemented successfully and that KNZ is functioning as efficiently as the Board had anticipated.

The Board has completed and published a procedures manual to assist those having business with KNZ to better understand how issues for which it is responsible are to be addressed and complaints which growers wish to have investigated are handled. We understand that those who have used the manual have found it to be helpful. We intend to keep it updated regularly.

KNZ processed two major complaints during the year, both based on concerns that Zespri had discriminated against certain growers. Although the complaints were not upheld for the reason that the matters complained of applied equally to all growers and therefore there was no discrimination against some growers, it was considered appropriate to make some observations about the wider issues raised by the complaints to help the affected growers and Zespri. A brief summary of the outcome of the complaints appears elsewhere in this annual report.

Directors have kept in touch with kiwifruit market conditions to ensure there is a good understanding of the circumstances against which collaborative marketing applications must be considered. More applications were received for the 2007 season and for a greater volume of fruit than last year. Some applications were not approved as collaborative marketing committees were not persuaded that the applications would have the effect of "increasing the overall wealth of New Zealand kiwifruit suppliers", a key requirement of the regulations establishing the collaborative marketing regime. Although some of the unsuccessful applications indicated there were possible new market entry opportunities, they were not presented in the context of that requirement or based on collaboration with Zespri.

Four appeals against decisions of the collaborative marketing committees were under active consideration at the end of the financial year and will be reported on during the coming year.

Collaborative marketing is an important marketing tool. Zespri has acknowledged that and has appointed designated staff to consider collaborative marketing proposals brought to it. Collaborative marketing is not just about getting authority to export New Zealand grown kiwifruit irrespective of the cost to kiwifruit suppliers. It is about collaboration with Zespri with the purpose of increasing the overall wealth of kiwifruit suppliers. This requires a broadly based consideration of Zespri's world-wide market strategies and the demands and profitability of alternative markets. Authority has been given to collaboratively market 2.2 million trays in the coming season.

My term of appointment to chair the KNZ Board is due to end in July 2007. The Board asked if I would be willing to undertake a further term and I have agreed to a further three year appointment. I have enjoyed my association with the kiwifruit industry and a very functional KNZ Board.

Sir Brian Elwood  
Chairman

## **Kiwifruit New Zealand's Regulatory Performance 1 April 2006 to 31 March 2007**

| <b>KNZ Function</b>  | <b>Relevant<br/>Regulation</b>      | <b>Performance</b>  |
|--|-------------------------------------|---|
| To authorise the export of kiwifruit by Zespri (except to Australia).  | Regulations 4, 5, 6, 7 and 33(1)(a) | Monitored during 2006/07  |
| To monitor and enforce the point of acquisition of title to kiwifruit which currently is at FOBS   | Regulations 5(c) and 33(1)(b)       | Compliance monitored during 2006/07.  |
| To monitor and enforce the terms and conditions of Zespri's export authorisation.  | Regulation 33(1)(b)                 | Monthly reports from and meetings with Zespri Group Limited plus the provision of relevant information  |
| To monitor and enforce the non-discrimination rule   | Regulations 9 and 33(1)(b)          | Compliance monitored during 2006/07. Two complaints investigated.   |
| To monitor and enforce the non-diversification rule  | Regulations 11 and 33(1)(b)         | Chief Executive monitored Zespri making its assessments and Zespri presented its assessments to KNZ's Board prior to seeking its shareholders agreement to some activities at Zespri's AGM  |
| To monitor and enforce the information disclosure requirements   | Regulations 12 to 14 and 33(1)(b)   | Monitored Zespri's compliance   |
| To determine collaborative marketing applications  | Regulations 24 to 31 and 33(1)(c)   | For the year ended 31 March 2007, 28 kiwifruit collaborative marketing programmes (2 inactive) operated into 14 countries. In a season restricted by fruit supply, the 14 collaborative marketers sold 1.4 million trays of kiwifruit. In addition, 5 kiwiberry collaborative marketing programmes operated into 11 countries.<br><br>For the year ended 31 March 2008, 26 kiwifruit collaborative marketing programmes were authorised into 18 countries, involving 13 collaborative marketers. Four collaborative marketing appeals were determined. In addition, 6 kiwiberry collaborative marketing programmes were authorised. |
| As a consequence KNZ will inquire into complaints about the application of the non-discrimination rule, the non-diversification rule, the information disclosure regime and collaborative marketing requirements | Regulation 33(1)(b)                 | A number of informal enquiries were received. Four complaints were received, one after year end. Two have been resolved. One is on hold until conflict of interest issues are resolved, and the other is being considered to determine whether it is a matter that KNZ can consider under the Regulations.  |

**Copies** of the Zespri Group Limited Export Authorisation and the Report on Collaborative Marketing Results for the 2006-07 season are available from Kiwifruit New Zealand on request.

## Financial Summary 1 April 2006 to 31 March 2007

|  | <b>2006-07</b>       | <b>2005-06</b>       | <b>2004-05</b>         |
|--|----------------------|----------------------|------------------------|
|  | \$NZ                 | \$NZ                 | \$NZ                   |
| <b><u>Income</u></b>   |                      |                      |                        |
| Regulation 39(a) from Zespri International Ltd   | 316,975              | 349,013              | 315,000                |
| Regulation 39(b) from Collaborative Marketing  | 145,334              | 83,444               | 149,279 <sup>(4)</sup> |
| Interest and Miscellaneous Income  | 2,916 <sup>(1)</sup> | 1,687 <sup>(1)</sup> | 7,363                  |
| <b>Total Income</b>  | <b>465,225</b>       | <b>434,144</b>       | <b>471,642</b>         |
| <b><u>Expenditure</u></b>  |                      |                      |                        |
| Kiwifruit New Zealand Board  | 190,420              | 158,586              | 165,916                |
| Kiwifruit New Zealand Executive  | 101,967              | 102,919              | 166,632                |
| Collaborative Marketing (exclg overheads)  | 115,957              | 62,733               | 100,937                |
| Operations   | 6,522                | 33,590               | 14,873                 |
| Administration and Overheads   | 35,734               | 40,750               | 33,425                 |
| <b>Total Expenses</b>  | <b>450,600</b>       | <b>398,578</b>       | <b>481,783</b>         |
| <b>Net Surplus to Accumulated Funds</b><br>(After tax, prior period adjustment and Non-deductible expenses deducted) | <b>14,625</b>        | <b>35,566</b>        | <b>(10,141)</b>        |
| <b><u>Accumulated Funds</u></b>  |                      |                      |                        |
| Opening Funds  | 40,306               | 4,740                | 14,881                 |
| Net Surplus for Year   | 14,625               | 35,566               | (10,141)               |
| <b>Total Funds as at Year End</b>  | <b>54,931</b>        | <b>40,306</b>        | <b>4,740</b>           |

### **Reconciliation of Zespri Funding with Zespri accounts and actual KNZ expenses:**

|  | <b>2006-07</b>        | <b>2005-06</b>       | <b>2004-05</b>     |
|--|-----------------------|----------------------|--------------------|
|  | <b>NZ\$000</b>        | <b>NZ\$000</b>       | <b>NZ\$000</b>     |
| Funding as reported in Zespri Accounts   | <b>315</b>            | <b>380</b>           | <b>315</b>         |
| 2006 Surplus carried forward from 2005-06  | 23                    |                      |                    |
| Refunded to Zespri after year end  | (28)                  | (31)                 | -                  |
| Regulation 39(a) funding from Zespri as per KNZ accounts                               | <b>310</b>            | <b>349</b>           | <b>315</b>         |
| General funding transferred from one year to another by<br>KNZ (net (surplus)/deficit) | 7                     | (23)                 | 10                 |
| Actual funding by Zespri used each year  | <b>317</b>            | <b>326</b>           | <b>325</b>         |
| Collaborative marketing fees and interest  | 134 <sup>(1)(2)</sup> | 73 <sup>(1)(3)</sup> | 157 <sup>(4)</sup> |
| KNZ actual costs (including collaborative marketing)                                   | <b>451</b>            | <b>399</b>           | <b>482</b>         |

- Notes:**
- (1) Net of income tax (\$944 in 2006-07).
  - (2) Made up as follows: interest (net of income tax) and collaborative marketing fees \$148,000, less \$14,000 collaborative marketing funding carried forward to 2007-08.
  - (3) Net of \$12,000 collaborative marketing funding carried forward to 2006-07.
  - (4) Includes \$55,000 carried over from the 2003-04 (previous) financial year.

A copy of Kiwifruit New Zealand's audited accounts is available on request.



## **Chief Executive's Report**

Kiwifruit New Zealand strives to ensure it meets the needs of industry participants within the parameters of the Kiwifruit Export Regulations 1999. In the year ended 31 March 2007, KNZ activity included consideration of 42 kiwifruit and six kiwiberry collaborative marketing applications for the 2007 season, four collaborative marketing appeals, three formal complaints (of which two have been determined), three separate in market visits, development and monitoring of information disclosure, and a review of Zespri's export authorisation, the Zespri Supply Agreement, and monitoring of the activities in which Zespri are involved.

### **Collaborative Marketing**

2007 saw the second year of the new collaborative marketing regime implemented during 2006. Further changes were made, with the objective of making collaborative marketing more effective. Closer collaboration between collaborative marketers and Zespri is being encouraged wherever possible.

Fruit returns from collaborative marketing were up at NZ\$9.8m in the 2006-07 year. Compared to Zespri, the result per tray sold also improved. Zespri and its collaborative marketing manager have been instrumental in this success, collaborating in the development and operation of programmes, and contributing to their success through marketing expertise, promotional support, and the sharing of its logistics arrangements.

Kiwifruit New Zealand constantly monitors collaborative marketing to ensure that it is making a positive contribution to the kiwifruit Industry. We will continue to focus on encouraging performance in all programmes.

### **Monitoring and Enforcement**

During the year, Kiwifruit New Zealand monitored Zespri's compliance with the non discrimination, the non diversification and information disclosure rules. All potential diversification activities were evaluated and reviewed by the Kiwifruit New Zealand Board. Monitoring of Zespri's twelve month supply activities was increased. The diversified (non core) activities for which Zespri's will put to its shareholders at its Annual General Meeting in July 2007 were unchanged from previous years.

### **Complaints**

Three complaints were received during the year from suppliers (including growers). Two of these have been dealt with and determinations issued. Copies of these determinations are available on request. However, one has not, due to potential implication of KNZ in the complaint in its former role of the New Zealand Marketing Board, and will not until this is clarified. During the year, a number also approached the Chief Executive with their concerns, not necessarily related directly to KNZ's jurisdiction, to see whether they can be resolved without entering into the formal complaints process.

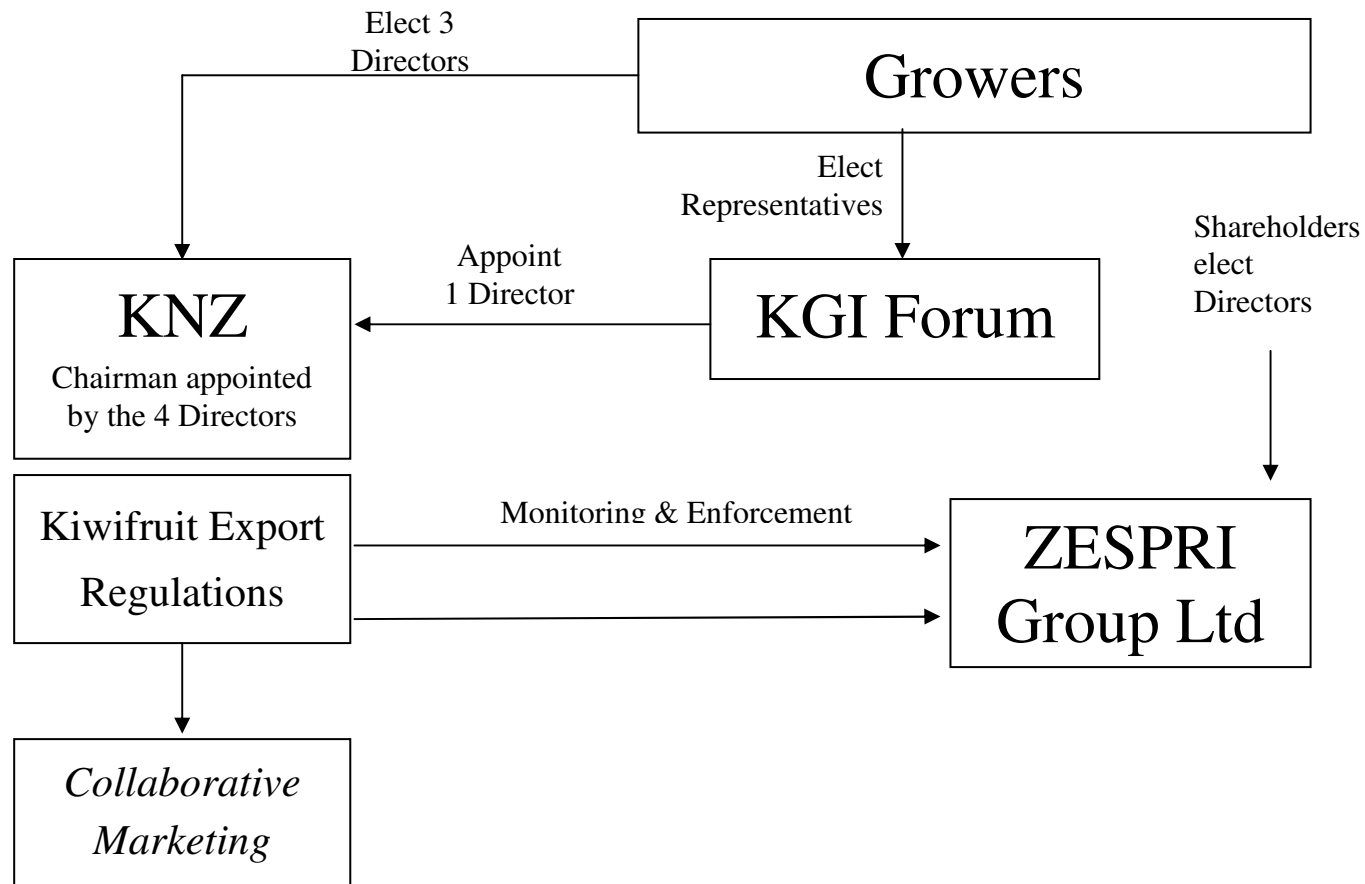
### **Finance**

In the year ended 31 March 2007, the cost of Kiwifruit New Zealand general operations to the grower Pools (excluding collaborative marketing costs), declined by \$9,000. As required by the Regulations, the cost of collaborative marketing was met by the fees to collaborative marketers, and those costs increased by \$61,000 to \$134,000, largely as a result of the increased collaborative marketing volumes approved for the 2007 season.

I would like to thank all in the industry for the help and cooperation that I have received over the last year.

Richard Procter  
**Chief Executive**

## Regulatory Structure



## **Complaint Determinations Issued by Kiwifruit New Zealand**

During the year, Kiwifruit New Zealand ("KNZ") has issued Determinations in respect of two complaints received from two separate Growers.

Mr Barry Bartling lodged a complaint with KNZ that Zespri had discriminated against him in paying differing amounts to growers whose fruit brix and dry matter falls within certain levels. Further to the complaint, KNZ ruled there was no discrimination by Zespri, and if there was, it was discrimination justified on commercial grounds. Nevertheless, KNZ expressed reservations about the way that the TZI and related STP regime had been designed and explained, and further expressed the view that further refinement is justified, a process already underway by Zespri, in consultation with the industry.

Mr Gordon Wakefield lodged a complaint with KNZ that Zespri had discriminated against him by removing suppliers (growers) and their elected representatives direct negotiating rights with Zespri on financial and monetary decisions which affect growers' incomes, by handing those rights to decision making bodies, with a predominance of post harvest and Zespri representatives. As the same 2006 Supply Agreement was offered to each supplier, KNZ was satisfied there was no discrimination by Zespri, and if there was, it was discrimination justified on commercial grounds. In making its decision however, KNZ noted that the way that the ISG and IAC were constituted can be seen to underpin the concerns of the complainant, whereby the composition and voting rights of those committees particularly may result in a substantially different balance of negotiating power than existed in the process of arriving at the terms and conditions of the 2006 Supply Agreement. Grower concerns were therefore understandable. These could be remedied by growers in the negotiation of the Supply Agreement. However, if the communication systems are not in place for growers to keep abreast of the supply agreement negotiations, and channels available for growers to be heard, then it is understandable for grower suppliers to feel alienated.

Copies of both Determinations are available from the KNZ Offices (telephone number (07) 572 3685).

## **Collaborative Marketing Appeal Determinations Issued by Kiwifruit New Zealand**

Although the Regulations establish Zespri as the sole authorised exporter of New Zealand grown kiwifruit outside Australia the Regulations provide for the making of applications for collaborative marketing approvals for the export of such kiwifruit by others. Export of New Zealand grown kiwifruit to Australia is regulated under the Horticulture Export Authority Act 1987 and is outside KNZ's jurisdiction. KNZ may require Zespri to enter into *collaborative marketing arrangements* with other people or organisations, obtaining a collaborative marketing approval from KNZ, for the purpose of increasing the overall wealth of New Zealand kiwifruit suppliers.

Under the provisions of the Regulations, KNZ can regulate its own procedures in a way that is consistent with the rules of natural justice. For collaborative marketing, KNZ allows appeals against decisions made by it, to be heard by those Directors not involved in the original decision that lead to the appeal.

In 2007, KNZ received 42 kiwifruit and six kiwiberry applications for collaborative marketing arrangements, of which 33 were approved. Of the applications declined, four were appealed. These appeals were heard, and determinations issued. In all four cases, the original decisions were upheld.

Under the Regulations collaborative marketing programmes must:

- (a) Increase the overall wealth of the New Zealand kiwifruit suppliers.; and
- (b) Be "collaborative", that is being based on collaboration rather than being competitive with Zespri.

In all four appeals considered, the applications did not demonstrate that these requirements had been met.

## **List of Members and Staff**

Kiwifruit New Zealand is comprised of the Chairman and four grower elected members who serve for three year terms. Growers elect three of the members, and the fourth grower elected member is appointed by the New Zealand Kiwifruit Growers Incorporated. The four members appoint the Chairman. The Kiwifruit Export Regulations 1999 require the Chairman to be fully independent of the kiwifruit industry. During the year, Sir Brian Elwood and Hendrik Pieters were both appointed for further three year terms.

### **Kiwifruit New Zealand:**

|                        |                  |  |
|------------------------|------------------|--|
| Chairperson            | Sir Brian Elwood | (Term expires in July 2010)                |
| Deputy Chairperson     | Hendrik Pieters  | (Term as member expires in September 2009) |
| Members                | Mark Bayly       | (Term expires in September 2008)           |
|                        | Ian Greaves      | (Term expires in September 2007)           |
| NZKGI Appointed Member | Ruth Lee         | (Term expires in June 2008)                |

### **Kiwifruit New Zealand Executive:**

|                          |  |
|--------------------------|--|
| Chief Executive          | Richard Procter  |
| Administration Assistant | Jo Bigham (for Jo Cunningham while on maternity leave) |

### **Kiwifruit New Zealand offices are at:**

Zespri Building  
400 Maunganui Road  
Mount Maunganui, 3116

**Phone** 07 572 3685

**Fax** 07 572 5934

### **Postal Address:**

PO Box 4683  
Mount Maunganui South, 3149

## **Procedures Manual**

A procedures manual is available on request. The procedures manual is designed to provide general advice and guidance on the role and function of Kiwifruit New Zealand Board and its application of the Kiwifruit Export Regulations 1999. It will be updated and revised from time to time. The procedures manual includes KNZ's Code of Conduct for the Conflicts of Interest, and Code of Conduct for trades in Kiwifruit Company Securities.