

**IN THE MATTER OF** the Resource Management Act 1991  
**AND**  
**IN THE MATTER OF** 24 applications by the Aupouri Aquifer Water User Group to the Northland Regional Council to take groundwater from the deep shell bed aquifer of the Aupouri Peninsula (REQ.596300).

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**RESOURCE MANAGEMENT ACT 1991**  
**MINUTE #5**  
**INDEPENDENT HEARING PANEL**

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1. Since the hearing in August/September last year, and in terms of the additional work Commissioners directed in Minutes #2 and #3 on 7 and 16 September 2020 respectively, the Hearing Panel has received updated memoranda on behalf of the Applicant, the Department of Conservation and the Northland Regional Council as follows:
  - (a) Joint Memorandum of WWLA<sup>1</sup> on behalf of the Applicants, Northland Regional Council and the Director-General of Conservation dated 22 December 2020;
  - (b) Memorandum of WWLA on behalf of the Applicants dated 5 February 2021;
  - (c) Memorandum of Counsel on behalf of the Applicants dated 2 March 2021;
  - (d) Memorandum on behalf of the Director-General of Conservation dated 15 March 2021; and
  - (e) Memorandum of Counsel on behalf of the Applicants (including a task progress update summary) dated 18 March 2021.
2. The Panel has also received the following expert Joint Witness Statements (JWS):
  - (a) JWS: Hydrologists dated 22 September 2020;
  - (b) JWS: Task 1 – Surface Water and MALF (with attachment relating to Agreed Tasks) dated 11 December 2020;
  - (c) JWS: Tasks 9(d) & (e) – Requests for Additional Modelling and Sampling (with attachment relating to Kaimaumu GMCP assessment) dated 11 December 2020;
  - (d) JWS: Hydrogeology, freshwater and ecology dated 14 December 2020;
  - (e) JWS: Task 6 – List of Areas of Interest for Potential Wetlands Risk Analysis (with map attachments relating to Land Cover and Wetland Risk – Excluding High Producing Grassland) dated 16 December 2020; and
  - (f) JWS: Task 9(f) – Threatened Species dated 16 December 2020.
3. While we understand that disagreement remains between the applicant and the

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<sup>1</sup> Williamson Water & Land Advisory Ltd

Director-General of Conservation over the need or otherwise to complete certain tasks before planning conferencing commences, we have reviewed those areas of disagreement (as summarised in the 18 March 2021 progress update) and have concluded that, without prejudice to the parties positions and in light of the time that has elapsed since the hearing was adjourned, the respective planning witnesses should now conference on the latest proposed set of draft conditions with a view to providing the Hearing Panel with their best advice on those, should we be minded to grant consent.

4. Lest there be any misunderstanding, we note that we have not yet determined whether consent to some or all of the applications is possible, and anticipate further legal submissions in due course on the question of adaptive management, the National Policy Statement (and Environmental Standards) on Freshwater Management, and the recently settled Water Use, Allocation and Quantity section(s) of the Northland Regional Plan.
5. We also note that expert conferencing appears to have been joined by persons who neither appeared nor give evidence at the hearing, and leave to do so was not obtained from the Hearing Panel for that purpose. We require formal confirmation of those extra persons' qualifications and experience, and a statement confirming their adherence to the expert witness code of conduct if we are to permit their (further) participation.
6. Accordingly, we direct NRC to arrange facilitated expert planning conferencing with those parties that have provided planning evidence as soon as is practicable. That conferencing is to focus on the latest set of draft conditions to be provided by the Applicant and as agreed with NRC. Matters of agreement and disagreement, and reasons for the latter, are to be formally recorded but the set of annotated draft conditions to be provided to the Hearing Panel following conferencing should include all necessary conditions (and which may include conditions precedent). The planners are not required to determine whether adaptive management is itself at issue – that is a matter to which the Hearing Panel will turn its mind subsequently.
7. The Hearing Panel assumes that the various JWS filed represent a complete record of the necessary opinions. However, for the avoidance of doubt, should the conferencing planners require clarification on technical points not otherwise covered in those JWS, the relevant technical experts (i.e. who have appeared before us or satisfy paragraph 5 above) may be consulted but shall not participate directly in the conference. Any such clarification sought is to be at the discretion of the expert conference facilitator. Further directions may be sought from the Hearing Panel if that is required.
8. Any correspondence relating to this Minute is to be sent through Ms Alissa Sluys, Hearing Administrator, Northland Regional Council, [alissas@nrc.govt.nz](mailto:alissas@nrc.govt.nz) .



David Hill  
Chair, Hearing Panel  
24 March 2021