

BEFORE THE NORTHLAND REGIONAL COUNCIL

under: the Resource Management Act 1991

in the matter of: Resource consent applications by the Te Aupōuri Commercial Development Ltd, Far North Avocados Ltd, P McLaughlin, NE Evans Trust & WJ Evans & J Evans, P & G. Enterprises (PJ & GW Marchant), MP Doody & DM Wedding, A Matthews, SE & LA Blucher, NA Bryan Estate, SG Bryan, CL Bryan, KY Bryan Valadares & D Bryan (Property No 1), MV Evans (Property No 2), MV Evans (Property No 1), Tuscany Valley Avocados Ltd (M Bellette), NA Bryan Estate, SG Bryan, CL Bryan, KY Bryan Valadares & D Bryan (Property No 2), Tiri Avocados Ltd, Valic NZ Ltd, Wataview Orchards (Green Charteris Family Trust), Mate Yelavich & Co Ltd, Robert Paul Campbell Trust, Elbury Holdings Ltd (C/- K J & F G King) for new groundwater takes from the Aupōuri aquifer subzones: Houhora, Motutangi and Waiharara and applications by Waikopu Avocados Ltd, Henderson Bay Avocados Ltd, Avokaha Ltd (c/- K Paterson & A Nicholson), KSL Ltd (c/- S Shine), Te Rarawa Farming Ltd and Te Make Farms Ltd for increased existing consented takes from the Aupōuri aquifer subzones: Houhora, Motutangi, Sweetwater and Ahipara.

Memorandum of Counsel for the Director-General of Conservation 29 September 2020

For the Director-General of Conservation:

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1. This purpose of this Memorandum is to raise concerns, on behalf of the Director-General of Conservation ('DOC'), that it appears the Commissioners Directions are not being followed.

'Task List'

2. An initial 'Task List' was provided by Mr Williamson and Ms Letica in a Memorandum to Commissioners dated 4 September 2020. Task 6 on that list stated "*Potential Wetlands Risk Analysis*".
3. To that List, the Commissioners in their in their Direction #2 (paragraph 4), added some other tasks.
4. The Commissioners also stated:

"...in consultation with the Department of Conservation and the Northland Regional Council to prepare and submit a jointly agreed schedule of tasks and a timeline for that work for our agreement by no later than Monday, 28 September 2020. We also invite those persons to advise and identify whether all or some of that work could be completed as part of an adaptive management set of conditions."

Task 6 (Wetlands)

5. The Commissioners Direction #3, related particularly to Task 6 (wetlands analysis). DOC technical experts have been involved in expert conferencing in relation to Task 6. The Joint Witness Statement dated 22 September 2020 has been filed accordingly (signed by DOC technical experts).

Wider Task List

6. DOC queried what was occurring with the wider task list.¹ As no further engagement was identified for this matter, DOC was

¹ Queries were made by Ms Nardia Yozen (DOC) to Alissa Sluys (Hearings Administrator) and on Friday 25 September from Mr D West to B Hughes.

then surprised to receive Statement of Supplementary Evidence of Mr J Williamson on 28 September 2020, not only adopting Mr Williamson's (and Commissioners) tasks but also addressing them substantively. Unfortunately, DOC has not been consulted on this wider set of tasks. Counsel addresses a way forward below.

Planning conferencing

7. The Commissioners Direction #3 stated the following in relation to planning involvement:

[5(b)] When that plan is sufficiently developed², planners for those parties are to confer to determine whether, in their opinion, the plan is sufficient for the purpose outlined in paragraph 4 above³, or could be with further indicated refinement, and advise the Panel accordingly.

[5(c)] Progress toward that end should be advised as part of the jointly agreed schedule of tasks and timeline required by paragraph 6 of Minute and
8. DOC queried what was occurring with this planning involvement.⁴ Naturally DOC was keen to be involved. DOC was advised at short notice that the planners were to conference on the same day as the technical experts (22 September). DOC advised that DOC's planner could not attend on that particular day. DOC was assured that the planners in attendance (Ms Letica and Ms Kane) would be silent observers only and that the planning conferencing directed by Minute #3 at paragraph 5(b) would not occur on that day.⁵

² This referred to the agreed plan to address the wetland issue.

³ Paragraph 4 stated "... The Panel requires the parties' relevant experts to agree an overall plan for resolving this issue and then to be advised whether that plan is sufficient in itself for incorporation as an adaptive management condition (if granted) or, alternately, could be implemented and completed within a reasonable time period and the results confirmed before final decisions are made on the applications." (Emphasis).

⁴ Queries were made by Ms Nardia Yozen (DOC) to Alissa Sluys (Hearings Administrator) on 17 September and 21 September 2020.

⁵ Advice from Alissa Sluys (Hearings Administrator) 22 September 2020.

9. DOC was then surprised to receive (yesterday) a letter that purports to be an Expert Conferencing statement between NRC Consultant Planner and Applicant's Consultant Planner on this very matter. It is gratifying that Ms Letica and Ms Kane agree with the proposed next steps and have signalled that incorporation into the GMCP can occur. DOC has not agreed to this. At this time, it is premature to comment on whether incorporation into the GMCP is going to be acceptable to DOC.

Steps

10. DOC is now working through the Supplementary Statement of evidence provided by Mr Williamson (dated 28 September) and anticipates being able to provide a response on the adequacy of the wider task list Tasks, within 5 working days (by 6 October 2020).
11. If further planning conferencing is to occur, DOC's planning expert would appreciate having the opportunity to be involved. The current approach does not appear to be collaborative. DOC does not agree with the assumption that *"once a short list has been established and agreed upon, conditions and measures in the GMCP's can then be developed to formalise specific monitoring requirements and adaptive management responses"*.

Dated this 29th day of September 2020



S Ongley/L Sutherland
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for the Director-General of Conservation