

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 2 September 2020

For the Director-General of Conservation:

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INTRODUCTION

1. Legal submissions on behalf of the Director-General of Conservation ('DOC') set out the list of further information to be provided from the Applicants and/or NRC.¹ We understand this information has been requested by Commissioners.² The information is of such importance, that submitters should be given sufficient opportunity to comment on it. We submit that this would be necessary to fulfil the requirements of natural justice.
2. DOC considers the following further information *also* needs to be provided by the Applicants:
 - a. location and type of sensitive surface waterbodies;
 - b. assessment of effects on each sensitive waterbody including indigenous species they support; and
 - c. proposed monitoring parameters and plan for sensitive waterbodies.
3. DOC's position is that there is insufficient information to grant the consents. The range of options for the decision-makers, appears to be as follows:
 - a. Grant consents with comprehensive GMCP/GMCP's that enable a staged level of abstractions (e.g. start at 25%) to commence while an existing environmental 'baseline' is established and with the ability to suspend abstractions if 'Objective 1' of the GMCP(s) is compromised.
 - b. Grant consents but require a minimum 12 month baseline monitoring and assessment of effects that establish tipping points of sensitive waterbodies and confirm trigger levels before new abstractions start at relevant bores.

¹ Legal submissions for DOC 2 September 2020 at paragraph [2].

² Note that this list may exclude matters that have been requested by the Commissioners but are more relevant to issues raised by other submitters (such as, for example, the non-derogation issue).

- c. Adjourn the hearing until the information set out in paragraphs 1 and 2 of this Memorandum is provided.
 - d. Decline consents if the information in paragraphs 1 and 2 of this Memorandum cannot be provided.
4. DOC's position remains that the consents be declined (option d.). It is currently entirely unclear to DOC, whether the information sought in paragraph 2, can be provided within the timeframe of an adjournment.
5. We note there may be other options such as granting some but not all of the consents. To date, the analysis has been at the 'global' level. DOC would still require further information on individual applications, and affected areas, in order to ensure effects on sensitive waterbodies and species are avoided for individual consent applications. As stated in our legal submissions, although some applications provide some information, there are deficiencies and no individual AEE's were updated following the February 2020 model re-run.

Dated this 2nd day of September 2020

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