

**BEFORE THE NORTHLAND REGIONAL COUNCIL**

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** 22 resource consent applications for new Water Permits for the taking and use of groundwater and 2 applications for changes to consent conditions of current Water Permits from the Waihopo, Houhora, Other, Motutangi, Waiparera, Paparore, Waipapakauri, Ahipara, and Sweetwater aquifer management sub-units of the Aupōuri Aquifer, Northland

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**MEMORANDUM OF COUNSEL ON BEHALF OF THE APPLICANTS**

**DATED 18 March 2021**

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**BROOKFIELDS  
LAWYERS**

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**May it please the Hearings Panel:**

1. Counsel for the Applicants thanks the Panel for the opportunity to propose a way forward in light of the Memorandum of Counsel on behalf of the Director-General of Conservation (**DoC**) of 15 March 2021. This memorandum:
  - a) Responds briefly to the core propositions at paragraphs 8-10 of the DoC memorandum;
  - b) Seeks directions.

**RESPONSE TO DOC MEMO****DoC paragraph 8 – Ground truthing of wetland AOIs**

2. The Applicants' position is that ground truthing of areas of interest (**AOI**) after the grant of consent is appropriate given the purpose for which AOI were identified. AOI were identified on the basis that the areas are subject to a moderate to high degree of risk if drawdown of the shallow aquifer occurs as a result of deeper groundwater pumping. The methodology for defining this was as described in the WWLA memorandum to the Commissioners of 7 September 2020<sup>1</sup>.
3. The purpose of the ground truthing exercise is to confirm via a site visit that identified AOIs are indeed natural wetlands worthy of further monitoring under the GMCPs. This task will take no longer than a 2-3 days for all the identified AOI across the Aupouri Peninsula. The purpose of this task is to either retain or exclude the AOI's identified. This can properly happen pursuant to the GMCPs after the grant of consent. The methodology for determining whether AOIs are natural wetlands worthy of monitoring will be the subject of planning conferencing and addressed in the GMCPs in accordance with the natural wetland identification protocols of the National Policy Statement for Freshwater Management 2020.

**DoC paragraph 9 – Level of agreement on tasks**

4. With respect, paragraph 9 of the DoC memorandum exaggerates the extent of disagreement as to the relevance or appropriateness of tasks. A consolidated table of tasks and their status is **annexed** to this memorandum. This table was marked "without prejudice" to reflect the fact that not all tasks are agreed between the parties as requiring completion.<sup>2</sup> Most tasks were agreed to be relevant and were undertaken.

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<sup>1</sup> The level of drawdown between 0 to 0.1 m was subsequently changed from low to moderate risk. Mr Williamson did not agree with this change with as indicated in paragraph 2 of JWS dated 22 September 2020.

<sup>2</sup> While the table is without prejudice it is not confidential.

The few that were not agreed, and the reasons for the disagreement are clearly documented in the annexed table. If the Commissioners consider that any of the tasks which are not agreed by the Applicants are indeed warranted, then directions are respectfully sought to require those tasks to be undertaken within stated timeframes.

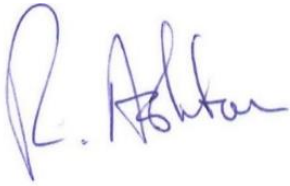
#### **DoC paragraph 10 – Sufficiency of information to consider adaptive management**

5. Paragraph 10 of the DoC memorandum identifies an area of fundamental disagreement as between the Applicants and DoC. The Applicants' position is that there is an adequate evidential foundation to have a reasonable assurance that adaptive management will sufficiently reduce uncertainty while adequately managing any remaining risk. The Applicants consider there to be sufficient baseline data and a robust conceptual model, and that any gaps in knowledge can be adequately addressed through the GMCPs. There is strong evidence to establish that the surface water features and threatened species DoC seeks to protect will not experience any effect unless any such effects propagate from the deep aquifer to the shallow aquifer. The GMCP monitoring regime is intensively focused on the hydrogeological effects in both aquifers, hence providing the early time warning 'canary in the mine'.

#### **DIRECTIONS SOUGHT**

6. The Applicants therefore respectfully request directions on the following basis:
  - a) The Commissioners direct any outstanding tasks in the annexure that would materially inform their determination to be completed within stated timeframes;
  - b) If no further tasks are directed, then the parties' planners are to conference on the following basis:
    - i. Updated GMCPs are to be circulated by the Applicants by **24 March 2021**;
    - ii. Counsel (and NRC's agent) are to agree a list of matters to be addressed at planning conferencing by **26 March 2021**;
    - iii. Conferencing to occur between 29-31 March, facilitated by Ms Oliver, with a joint witness statement to be filed by **1 April 2021**.

**DATED** this 18<sup>th</sup> day of March 2021

A handwritten signature in blue ink, appearing to read 'R. Ashton'. The signature is written in a cursive style with a large initial 'R'.

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**Andrew Green / Rowan Ashton**  
Counsel for the Applicants

## **Annexure – Consolidated Tasks Table**