

IN THE LAND VALUATION TRIBUNAL
AT AUCKLAND

I TE TARAIPŪNARA WĀRIU WHENUA
KI TĀMAKI MAKĀURAU

Decision [2022] NZLVT 002

IN THE MATTER OF

an objection to valuation pursuant to
s 36 of the Rating Valuations Act 1998

BETWEEN

BUSHMERE TRUST

(ENV-2021-AKL-000055)

Objector

AND

GISBORNE DISTRICT COUNCIL

Respondent

Tribunal:

Judge J A Smith (Chair)
R Malone (Member – Special Appointment)
I McCarthy (Member – Special Appointment)

Hearing:

25 – 26 November 2021
Audio-visual link at Auckland Environment Court and Gisborne
District Court

Appearances:

T Mijatov for Bushmere Trust (**Bushmere**) (Audio-visual link in
Gisborne)
N Buxeda for Bushmere (Audio-visual link in Auckland)
H P Harwood and O J Maasen for Gisborne District Council
(**the Council**) (Audio-visual link in Gisborne)

Date of Decision: 1 February 2022

Date of Issue: 1 February 2022

DECISION OF THE LAND VALUATION TRIBUNAL

We conclude:

A: The capital value of this property at the time of the District revaluation was
\$2,800,000.00.



Bushmere Trust v Gisborne District Council

B: The kiwifruit licence is not an improvement to the land or for the benefit of the land.

C: Costs are reserved.

REASONS

Introduction

[1] The Bushmere Trust operates a small orchard on a property of 5.85 hectares at Bushmere Road. The property is adjacent to the Waipaoa River stop bank and is generally flat. It contains a two-storey dwelling, a large shed structure, small growing house, a shade house and a small dilapidated building. The land has planted SunGold (G3) and rootstock for future planting of Zespri Red kiwifruit, and some land is awaiting kiwifruit planting. The site has well established infrastructure for kiwifruit growing including water, tracks and support structures.

[2] The property consists of around 3.11 hectares of orchard canopy. The property has been operating as an orchard for a considerable period and converted from green kiwifruit to the gold kiwifruit G3 sometime prior to 2018.

The issue

[3] This objection turns on whether the value of the licence, which is personal to the Trust but which enables the grafting of the G3 kiwifruit onto generic rootstock, is part of the improvements to the land in terms of the Rating Valuations Act 1998 where the rating valuation has been conducted on the basis of capital valuation.

[4] From a rating perspective, the valuations of both the Council and the Trust are very close for the value of the land itself. They are also close on value of the buildings. Under the Market (Sales) Approach the following items have been agreed as to value levels:¹

- (a) Land value \$1,035,000.00;

¹ Joint Valuer Statement dated 24 November 2021.

- (b) Residential improvements \$275,000.00;
- (c) Productive buildings \$33,000.00;
- (d) Total agreed portion of Value \$1,343,000.00.

[5] This leaves some disputes around the other improvements:

- (a) related to the orchard infrastructure; and
- (b) rootstock value;

We conclude the parties were not far apart on all these matters. However, the most significant issue is whether the kiwifruit G3 licence value is part of the capital value of the property.

Parties' position

[6] The Council acknowledges that the kiwifruit G3 licences are personal to the Bushmere Trust, as are many other licences throughout the region. However as the fruit can only be grown on identified blocks of land, in this case on the Bushmere Trust property, the licence must be either transferred to the new owner (or a new contractor, or more properly a new contract entity between the new owner and Zespri), or the plant material grafted on to the rootstock removed and destroyed.

[7] The Council says that as a matter of practice, the new owner of the property obtains a new licence and therefore the value of that licence constitutes part of the improvements to the property. Any new landowner must enter into a new contract with Zespri to use the cultivars.

[8] The objector says that these are not improvements to the land as the licence is personal to the grower. Whilst the rootstock attached to the land is an improvement and has been valued as such, the value of the license itself only gives the right to grow the cultivar. It is not an improvement to the land but it is a purchase of intellectual property, as with a whole range of licences where businesses have the right to the use or make of a product. This includes other fruit licences such as avocado and apples

or in fact many other businesses that utilise the land for a number of purposes that include marketing rights or licences.

Other matters

[9] Beyond the issue as to whether or not this licence is an improvement to the land there are broader issues, some of which are within the purview of this Tribunal, at least in part, and others clearly not.

[10] The other major issue which arose as the Tribunal progressed through the hearing was:

- (a) whether in fact the valuation of the gold kiwifruit as a separate item to kiwifruit is permitted in terms of the Rating Valuations Rules 2008: version date 1 October 2010; and
- (b) whether if the Valuer-General is to change those rules, he must proceed to do so in accordance with the particular procedure set out in the Rating Valuations Act 1998.

[11] For our part we can only consider part of this question namely, whether or not the valuation has been processed in accordance with the Rating Valuations Rules 2008: version date 1 October 2010. It was common ground that the Valuer-General has not made a change to those rules in accordance with the Act. Put in a more pointed way, the question is whether the rules permit the District Council to create subcategories beyond those specified within the Rating Valuations Rules.

[12] In this case, there is a subcategory HK in the current rules providing for kiwifruit and the question is then whether or not various subtypes of kiwifruit can be separate subcategories. Similar arguments could be made in respect of varieties of avocados and apples and perhaps many other categories under the rules.

[13] The third major issue is whether or not the Council has proceeded in accordance with natural justice and in accordance with its statutory powers. That is the subject

of proceedings before the High Court and is not susceptible to consideration or decision by this Tribunal.

[14] Some of the history of this matter involves a meeting between the relevant Gisborne Council valuation contractors and the Valuer-General. However there is a dispute as to whether or not the Valuer-General agreed to the creation of the subcategory. There is a letter from the Valuer-General indicating that he did not make any ruling but there is no doubt that the Valuer-General subsequently certified the process undertaken by the Council as being appropriate. In our view, that is a matter for the High Court only.

[15] We are also aware that the High Court has already issued a decision in respect of the stay application in those proceedings, indicating its view as to the appropriate role of the Tribunal and the Court on appeal on valuation matters compared to the wider issues. It is useful in understanding the scope of this hearing to revisit that decision briefly.

High Court judgment

[16] The judicial review proceedings brought by New Zealand Kiwifruit Growers challenged the inclusion of Plant Variety Rights licences for gold kiwifruit, known as G3 licences, in the valuation of growers' land for the purposes of setting the rateable value of the land, and accordingly the rates.² The Court noted two claims were advanced in those proceedings:³

... The first is that, as a matter of law, the licences are not within the value of the land in accordance with the definitions in the Rating Valuations Act 1998 (the Act). On that basis they are irrelevant to the assessment of the value of the land, and the Council is alleged to have erred in adopting valuations that include the value of the licence as part of the value of the land. The second claim involves a breach of natural justice. In essence it is alleged that a new policy was adopted by the Council as a consequence of the Valuer-General publishing a statement in January 2021 to the effect that the value of the G3 licences should be included in rating valuations. It is alleged that it was procedurally improper for the Council to adopt that policy without giving growers the opportunity to be heard on that question.

² *New Zealand Kiwifruit Growers Inc v Gisborne District Council* [2021] NZHC 2198.

³ [2021] NZHC 2198 at [3].

[17] Initially in those proceedings it was suggested that the Tribunal's objection could be transferred to the Court and heard together with the judicial review proceeding. The High Court raised two concerns about that approach:⁴

... The first was that the High Court would be dealing with the objection proceeding removed to it without the benefit of a decision of the Tribunal. The second was that appeals from the Tribunal are heard by the High Court with the Court sitting with an expert valuer.⁵ But that valuer could not sit with the High Court Judge on the judicial review proceeding. ...

[18] Subsequently, the parties acknowledged that difficulty and there was an application for stay in the High Court.

[19] The stay was granted, pending further order of the High Court, to allow the issues to be addressed by the Tribunal in the Bushmere Road objection, and then on appeal to the High Court if necessary. Whether there remains utility in the judicial review proceedings would be a matter for the High Court in due course. The Court identified:⁶

The ultimate question involves the Court determining the way forward that best secures the fair and efficient consideration of the issues raised by these judicial review proceeding. I accept Mr Mijatov's point that a stay should not be granted unless there are good reasons to do so. But it is also relevant that this is only an application for a temporary stay. The right to pursue judicial review will remain. The only question is whether the applicant's appeal rights should be exercised first.

[20] The High Court, after considering various issues in relation to this matter, acknowledged that the question as to whether the G3 licence is an interest of the land did involve questions of law but also accepted that the issues either are, or may be, mixed questions of fact and law.⁷ The High Court noted that the Tribunal was equipped to address some of these more complex questions of fact and law.⁸

[21] It was clear to the High Court that the question of natural justice allegations was only for the High Court and not susceptible to consideration by the Tribunal or even

⁴ [2021] NZHC 2198 at [5].

⁵ Section 113.

⁶ [2021] NZHC 2198 at [15].

⁷ [2021] NZHC 2198 at [20].

⁸ [2021] NZHC 2198 at [21].

the High Court on appeal from the objection.

[22] For our part, we understand that the questions as to how the valuation was addressed by the Council, and the obligation under both the statute and the rules as to what value and the methodology to be adopted, are matters susceptible to decision by this Tribunal. Clearly, our decisions can be appealed either as mixed questions of fact or law on the application of those rules of the Rating Valuations Act or as questions of law under the Rating Valuations Act.

The statutory and regulatory background to rating

[23] Given the arguments that arise in this case reflect some of the other decisions that the Tribunal deal with, it is appropriate to go through the provisions that are relevant to this case and most rating valuation cases which the Tribunal is faced with.

[24] The Rating Valuations Act 1998 makes up the framework under which rating valuations are undertaken in New Zealand.

[25] Section 4 of the Act gives to the Valuer-General powers to maintain minimum standards to ensure consistent, impartial and equitable rating. Section 4(1)(c) and (d) provide for the Valuer-General both to monitor valuations undertaken by authorities and certify the results in due course.

[26] Section 5 of the Act enables the Valuer-General to set standards, specifications and methodologies for valuations in New Zealand. These do have regulatory effect as it is noted on the front of the version. There is a particular process provided for in s 5, and obligations in relation to new rules set out in s 5(3). They essentially require notification and consultation prior to promulgation, although there are certain exceptions to this obligation.

[27] It is also clear from the Act as a whole that there are three methods of rating valuation in New Zealand these are:

- (a) capital value, being the value of land and improvements;

- (b) annual value, being the greater of rent reduced by 20 percent in the case of houses, buildings and other perishable property and 10 percent in the case of land and other hereditaments, or five percent of the capital value; or
- (c) land value only.

[28] Section 9(1) makes it clear that the valuation is to be current value of that property as defined in the capital value, annual value or land value as at the date. Each of these terms is defined in terms of the Rating Valuations Act. It is those definitions, particularly in relation to improvements, which are relevant in this case.

[29] The clearest exposition of these differences is curiously in s 20 of the Act. The definition of improvements includes and excludes certain specific items. The subject of this case is the inclusion of kiwifruit and various subspecies. Nevertheless, a number of other matters that might be considered improvements in general parlance are not included. Of particular importance in this case, the market value of any businesses associated with the land is not part of its value.

[30] It is clear that any valuation must comply with the rules, in this case the Rating Valuations Rules 2008: version date 1 October 2010. The only exception that the Valuer-General can provide for is the timing of compliance.

[31] Section 10 of the Act requires the information that forms the basis for evaluation be provided to the Valuer-General with the values. Section 11 provides for a certificate from the Valuer-General to be issued. There is no dispute in this case that such a report was provided to the Valuer-General and that he provided a certificate. Accordingly, any question as to whether or not that complied with the Act or Rules involve judicial review and a question of law.

Improvements and land value

[32] It is probably appropriate at this time to go through the definition of improvements in the Rating Valuations Act and its importance to the current case. Improvements include “all work done or material used at any time on or for the

benefit of the land by the expenditure of capital or labour, so far as the effect ... is **to increase the value of the land**". It explicitly excludes under definition of improvements: at (a)(iv) "the removal or destruction of vegetation, or the effecting of any change in the nature or character of vegetation."

[33] Notwithstanding this, s 20 deals with some of these other improvements. In particular, s 20(1) notes that "the value of any trees is not to be included in any valuation under this Act unless the trees are fruit trees, nut trees, vines, berryfruit bushes, or live hedges." Section 20(2), however, provides that the value of those items in s20(1) are not to be taken into account in the land value of any rating unit. Section 20(3) discusses the value of any minerals.

[34] Overall therefore we take from this that the vines (kiwifruit in this case) must be included in the improvement value, not the land value given s 20(2). This means that they would only be relevant if the Council adopted either a capital valuation or annual valuation approach to rating. We also conclude that vegetation is generally excluded but certain types of vegetation can be included as part of improvements to property in certain circumstances.

[35] The Council subsequently prepared a report indicating that they intended to include licenced kiwifruit as a separate subcategory.⁹ This was noted well into the report and was not highlighted as any part of the report in its introduction. However, it constitutes a major change from previous rating valuations which included kiwifruit as a separate category but not any subspecies or limited varieties.

[36] The Valuer-General subsequently certified the valuation methodology and report and the objection was filed by Bushmere.

The Objection Valuation

[37] On the valuation review required under ss 34 and 35, the valuer identified that there had been another licence for fruit grafted since the time of valuation, being red

⁹ Rating Valuation Report 2020: Gisborne District Council 1 September 2020 (13 November 2020) at pp 116 – 119 ('**Gisborne District Council Revaluation 2020**').

kiwifruit, and included these in his revaluation making a higher figure. However, the Council determination adopted the same figure for the purposes of the notified valuation and accordingly for current purposes, it is that valuation of \$4,100,000.00.

[38] The valuers in question have agreed on the value of the land \$1,035,000.00.

[39] In addition, I understand that the valuers agree that under the income approach, there are non-earning assets such as the house, surplus land (non-planted land) and buildings which have an agreed value of \$640,000.00, but this also includes some of the land value. The agreed portion of the value amounts to \$275,000.00 for residential improvements, \$33,000.00 for productive buildings, giving a total value without the kiwifruit blocks, shelter, fences and other improvements of \$1,343,000.00.

[40] It seems to also be generally agreed that the position for Bushmere was that the other improvements consist of other infrastructure of \$95,000.00 and planting and trellising \$1,340,000.00 to a total of \$1,435,000.00 or plus \$275,000 plus \$33,000.00 to a total of \$1,743,000.00 for all productive and non-productive improvements (excepting the G3 licence).

[41] We understand that although there was some minor differences on value, the value of the land and improvements (\$1,035,000 land plus \$ 1,743,000 for improvements excluding the kiwifruit G3 licence) was \$2,778,000.00 which we round to \$2,800,000.00.

[42] This leaves the value of the kiwifruit licence which was assessed by the Council Valuer Mr Inder indirectly. While agreeing to the \$1,343,000.00 in a joint witness statement, his evidence was the properties' capital value was \$4,400,000.00 based on the market approach. He included in this Red Kiwifruit.

[43] He is clear his improvements value of \$3,360,000.00 includes the house, buildings and other infrastructure including the vines themselves at \$3,008,000.00. This is shown more fully in his report of 12 October 2021 (the same date as his evidence). His solution includes \$100,000.00 of red kiwifruit planted after the

valuation date and allows \$2,908,000.00 for the 3.11 hectares of G3 kiwifruit.¹⁰ It is clear this includes the licence value and the other improvements. The house is shown as \$286,000.00 but was agreed by him at \$275,000.00. \$33,000.00 was also agreed for productive buildings.

[44] We conclude that the \$935,000.00/hectare shown by Mr Inder for G3 Kiwi Gold is not only for the physical improvements but also includes the value of the G3 kiwifruit licence.

[45] Given the level of clarity as to the value included for this property, we conclude the land is valued at \$1,035,000.00, the building and infrastructure for kiwifruit and the rootstock is \$1,743,000.00 rounded to \$2,800,000.00.

[46] Capital value was assessed by Mr Inder at \$4.1 million, less \$2.8 million for land and all improvements leaving \$1.3 million. \$1.3 million is thus the derived value of the kiwifruit G3 licence, being the amount in dispute. Over 3.11 hectares of canopy this is around \$420,000.00 per hectare.

[47] The issue is whether the \$1,300,000.00 value for the kiwifruit licence only is an improvement to the land or for the benefit of the land.

What is being sold for purpose of Capital Value rating valuation

[48] This led to an issue which was evident throughout the balance of this hearing, as to whether or not the putative sale for Rating Valuation being considered in this case was the sale of the orchard including plant, goodwill and the kiwifruit licence, or simply the sale of land and improvements to land (the capital value).

[49] To understand the way in which these issues intersect it is necessary to examine the structure for kiwifruit licences from Zespri and other licence sources, and the nature of the activity which is occurring on the land.

[50] It was clear to us from the evidence that there is a business operating on the site

¹⁰ See "A" at p 15.

of Bushmere orchard. It has been for some time. It previously involved growing trees including, more recently, persimmons. We understand there was a range of trees and vines over the years. Some have been more successful than others.

[51] Since Mr Tietjen has taken over the operation of the property, he has sought to obtain further G3 licences beyond that initially acquired by his parents. He has also removed persimmon trees and converted those, either by allowing it to lie fallow or planting rootstock for further cultivars of kiwifruit. He was successful in obtaining a R19 red kiwifruit licence in 2021. As he points out, there are other properties in the near vicinity including one almost opposite him which grows licenced apples. That property was recently valued for rating purposes as bare land. The Council witness told us this is an error and the Council's records did not show that the land had such a licence.

[52] Nevertheless, it is unclear how widespread this licence approach is and how properties have been valued. Clearly in respect of other farming activities, there are levels of activity which might involve either particular arrangements or licences or other privileges that might attach to the owner by contractual arrangement. The available supply of water is another important issue in the orchard industry and the recent change from long term water licences from 35 years, now down to five years, is another significant change in the way properties can operate.

Kiwifruit licence

[53] We now turn to consider the kiwifruit licence, a copy of which, in its general terms, is annexed as "A". In our view, this is not confidential although Zespri was anxious to maintain intellectual property. We cannot see that it is possible to analyse the arrangement without reference to at least a generic form of licence.

[54] From the licence, it is clear that the arrangement is personal to the contracting parties. Nevertheless, as the parties agree, the kiwifruit can only be grown on identified properties. Any sale of that property terminates the licence unless Zespri has agreed to a transfer. The licence can be transferred without it being connected to the property. There was some argument before the Tribunal that this was a rare event

and had only occurred within families. Nevertheless, at least one example was cited from several weeks before the hearing. Given the value of the licence, it appears that there may be more parties who see this as an alternative to growing the fruit.

[55] From the Tribunal's perspective, we believe the following elements of the contract are particularly important to understand the arrangement:

- (a) this contract with Zespri does not include any supply of the cultivars. It requires the grower to plant rootstock (which is generally available and could be used for a range of kiwifruit types including green kiwifruit and unlicensed or licensed kiwifruit).
- (b) it involves the owner finding and procuring cultivars to graft to the rootstock. Although Zespri might supply this, that is not clear from this contract. We understood it is not uncommon to source the cultivar from other growers. Of course, Zespri must approve of this transaction given that only cultivars from licensed growers could be sold to a new licensee.
- (c) the cost of that grafting is not included in the purchase of the licence nor is the cost of the cultivar. These are entirely at the growers' expense.
- (d) similarly, replacement of non-surviving cultivars and the like appear to be clearly in the hands of the grower and are not the responsibility of Zespri.

[56] Zespri simply gives a licence to grow with an obligation to do so or lose the licence. This is very similar to a resource consent granted under the Resource Management Act 1991 where the holder of the resource consent has the right but no obligation to undertake the work.

[57] The difference appears to be whether the right attaches to the land. The argument in this regard relates to the transfer provisions. Clearly on any sale of the land, the cultivars cannot be used by the new owner unless Zespri has then entered into a new contract with the new owner. We understand this must involve novation, in other words, there must be a signed contract between the new owner and Zespri. This then enables the existing owner to satisfy the conditions of his contract which

prohibit him from selling the property with the cultivars in place.

What does the orchardist pay for?

[58] We are satisfied that the document is clear that what is purchased is the right to grow the fruit and to market through Zespri, though clearly in part the arrangement is to repay Zespri for the intellectual property in the fruit itself. However, there are also marketing and husbandry obligations to ensure that both Zespri and the grower maximise returns. There is a strong element of cooperation in the document.

[59] We also understand from the agreed evidence between the witnesses, including Mr Tietjen, that gold kiwifruit, G3, is a better producer. Accordingly, not only is the price received by Zespri and the grower higher but the amount of fruit produced from the vines is greater. This is in part why this particular cultivar has been so successful. Nevertheless, it is clear that the Tietjen family have attempted to use other cultivars with less success and many have been replaced by the G3. Green kiwifruit itself is unlicensed and has continued to be a relatively strong performer although it does not yield either the same price or the same volume of fruit. All kiwifruit cultivars can use the same rootstock although the newer rootstock is intended to be PSA resistant.

[60] The purchase arrangement is by tender process. Zespri chooses, from acceptable parties, the highest tenders within a cut-off point. The mean tender price along with a range of accepted tender prices are published, which probably led to the significant interest by District Councils in the subsequent sales. Essentially, the licensees have been paying somewhere between \$400,000.00 to \$600,000.00 per canopy hectare for the licence over the last few years.

[61] In the case of Bushmere, there are approximately 3.11 hectares which were purchased prior to 2018. That value can only be realised in two ways mainly by:

- (a) continuing to own the property and reap the benefits of the extra value from the fruit; or
- (b) tailor a transfer either by selling it to an acceptable third party or by the new owner of the property obtaining a contract to continue production from

Zespri. Although it does not appear that Zespri is obliged to grant such new contract to any purchaser, it is clearly both in their interest and the new owners' interests to continue with the production from the orchard.

[62] We have concluded that there is no property transferred as a result of this (there is no physical property, rootstock or cultivars transferred) and the licensee has the right to grow the licenced fruit, mainly the intellectual property, and of course the benefits that accrue from the marketing by Zespri.

[63] Mr Tietjen gave an example of the issue of what is purchased. Mr Tietjen advised that he had been assisting another owner but had been less successful with the adoption of G3 with low production. The prospect of sale of the licence led them to regraft green kiwifruit onto the rootstock. That owner transferred the licence to a third party. Mr Tietjen himself said he had been unable to purchase any of the licenced G3 kiwifruit in recent tenders and instead had succeeded with one tender for red kiwifruit.

Licensing arrangements for kiwifruit

[64] There are a number of different varieties of kiwifruit, some being more successful than others. There are kiwifruit berries which Ms Cameron said is not a cultivar owned by Zespri. There were earlier cultivars such as hairless, which had problems with storage. There are other new varieties being developed by Zespri and we suspect by others, some of which are already to market and some which may come to market in future. More generally, we understand that the intellectual property licence approach has been adopted for several other species of fruit, most particularly in this area apple, particularly the Envy brand. There are also other licenced varieties and unlicensed varieties.

[65] Ms Cameron advised that some particular species of fruit, and we suspect vegetable, were higher priced to purchase the seed or cultivar or produce. Thus, any return on the development cost was received by selling the cultivar or other seed or produce.

[66] It seems to be agreed that the cost of the kiwifruit rootstock is the same whether the grafted cultivar is green kiwifruit, or G3, or in fact any of the other various species available.

[67] It is also agreed that it is the rootstock that attaches to the land and that it is possible to regraft different species or cultivars on to the vines. Mr Tietjen, of course, described such an example but we understand his rootstock was previously carrying green kiwifruit.

[68] It is also clear that G3 gold requires higher trellising and fencing than other species and therefore, there is a higher value of improvements when growing those species. It seems to be accepted that this is reflected in the value for the improvements of around \$1,743,000.00 to \$1,765,000.00.

[69] The Council adopted a value of \$4.1 million which they supported at the hearing and defended Mr Inder's capital value for that sum. Given our conclusion of the other values of \$2,800,000.00 the issue is whether the \$1,300,000.00 for the G3 licence (as opposed to rootstock or other improvements) is an improvement to the land on or for the benefit of the land under the Rating Valuations Act definition of "improvements". The matter is one of principal rather than value per hectare.

Improvements

[70] Clearly, the value of the kiwifruit vines or any intellectual property and licences cannot be a part of the land value by virtue of s 20(2).

[71] We have concluded that the value of vegetation itself is generally excluded by virtue of the definition of improvements, particularly the exclusion under (iv) of the removal or destruction of vegetation, or the effecting of any change in the nature or character of the vegetation. However, s 20 introduces kiwifruit vines as vines, in s 20(2) on the basis of an improvement to land.

[72] Given that the Gisborne District Council utilises capital value as its rating base, kiwifruit vines can constitute part of the improvement value and therefore, contribute

to the overall capital value. The parties agreed that this is the approach the Council has adopted.

[73] We agree that the rootstock is the part of the vine attached to the land and should be included in the valuation of the property. It is not clear from the s 20(2) wording whether “kiwifruit vines” includes any grafted forms but given the value of the grafted forms are roughly similar for all types of kiwifruit, we understand that nothing particular turns on that. Thus, the cost of establishing a kiwifruit vine is similar whether G3 or green kiwifruit. The rootstock is the same. Accordingly, we understand that the value of rootstock and the grafted vine is included in valuation of improvements as if it were an unlicensed cultivar. Thus, the value of the kiwifruit vines is included but not the value of the licence.

Conclusion

[74] Overall, we have concluded that the value of the licence is not part of the improvements TO THE LAND or for the benefit of the land. Alternative cultivars could be used and in fact may very well be a choice of the owner from time to time.

[75] We conclude that whether the cultivars will be successful or not is irrelevant to the question of the licence and for intellectual property price paid at the time.

[76] Although we agree that broadly over time the value of the licence may reflect its profitability, this is unknown at the time the owner purchases the licence and grafts the cultivar. As has been clear from other cultivars, not all have been successful. Essentially, we have concluded that the decision to utilise the cultivar is part of the decision for the business operation of the orchard and it is a cost of that operation rather than the ownership of the land itself. It is similar to decisions about whether to use more costly but effective machinery or install plant.

Rating valuation rules

[77] We move on now to consider the rating valuation rules because we appreciate that the question is whether or not the licence constitutes an improvement to the land.

Law on improvements

[78] There are a number of cases that were quoted to us which relate to annualised value. Annual value, of course, can include the rental the property would receive if it was on the open market for rent. This has included the question of a hotel keeper's licence linked to that land, and whether that can be included for the purpose of that annual value. We have concluded that those cases are unhelpful because they include an element of the business aspect which is not utilised for capital value. For capital value "improvements" do not include the value that the business might receive operating on the site. In essence, that is what this change is attempting to include.

[79] The case of *McKee v Valuer-General*¹¹ was cited by the respondent as an example that if the market value of the property was \$4,100,000.00 then the difference between the land value and the market value must represent the value of improvements. We have concluded that on a proper analysis of *McKee*, it is clear that the improvements being considered were not all those aspects of the business making up the estate. It clearly did not include other things such as vehicles, stock in trade and the like.

[80] Again, we consider that this highlights the distinction between the two parties as to the sale of the orchard business versus the sale of the property itself. We note in particular that we understand that the IRD has recently required those values to be itemised. We suspect this may be because of continuing concerns around the delineation between the elements of the business versus the elements of the property.

[81] This distinction was also pursued in the Land Valuation Tribunal in the 1959 *Re Wright's Objection*¹² under the Maori Vested Lands Administration Act 1954. This again raises the issue of how to identify whether every element between the capital value and land value represents the improvements. The Tribunal noted it is common for valuers to list the improvements and to attempt to value each improvement separately with a view to showing the aggregate total value of the individual improvements equals the difference between the unimproved value and the capital value. This is said to provide a useful check on the soundness of value as assessments of the capital and

¹¹ *McKee v Valuer-General* [1971] NZLR 436 (CA).

¹² *Re Wright's Objection* [1959] NZLR 920.

unimproved value, but its use as a check depends on the extent to which values placed on individual improvements can be relied on as accurate.

[82] Similarly, *Re 110 Martin Street, Upper Hutt* was relied upon the respondent, particularly.¹³

A valuer must disregard improvements when assessing the unimproved value of land, and assess the capital value of land by reference to what it would realise in the open market. The valuer is entitled to assume that the difference between these two values is the value of the improvements and it is neither necessary nor desirable to attempt to value the improvements individually or collectively.

[83] *Re 110 Martin Street, Upper Hutt* involved the consent to construct a building. The Court concluded that any enhancement of the value to the property merged with the value of the building and therefore is incapable of separate assessment. In that case, the capital value was agreed between the parties.

[84] Thus, the question still arises whether the licence is an improvement to the LAND or a separate element of the valuation of the orchard as a whole. We use the word ‘orchard’ to separate it from the property value. We consider the orchard in this case would have a number of features including not only the property but the licence which the new owner might be capable of obtaining, the plant, machinery and staff on the site which make up the ongoing orchard operation. Curiously enough the valuers acknowledge that they had adjusted the sale prices they analysed for plant and stock in hand etc. One witness mentioned the stock that might be held by the orchard and goods stored. Accordingly, we do not consider the *110 Martin Street* case advances the question as to whether or not the licence forms part of the business of the orchard or part of the value of the improvements to the land.

[85] In this regard, there is a decision of the Privy Council, *Toobey's v Valuer-General*¹⁴ from New South Wales which may have some interest although it involved licenced premises and the basis of valuation was unimproved land. It does contain some commentary which might be of guidance to the Tribunal in this case. It is clear that

¹³ *Re 110 Martin Street, Upper Hutt* [1973] 2 NZLR 15 (CA) at headnote 3.

¹⁴ *Toobey's Limited v Valuer General* (1924) 25 SR (NSW) 75 (22 December 1924).

this relates only to the unimproved land values.¹⁵ However, the Court noted that the figure for the value was comprised of three elements.¹⁶ First, the bare land itself, second the buildings they themselves constructed appropriate for the licenced premises, and third “the enhanced value due to the fact that the land and buildings in question are not only suitable for licenced premises but are in fact licenced premises”.

[86] We accept that this can only obliquely assist us given it was a discussion about unimproved value. Nevertheless, it demonstrates to us that there can be other elements of value which are not reflected in either land value or improvements to the land under the Rating Valuations Act. They may enhance the value of the activity, in this case the orchard, but they are not part of the value of the land or improvements to it – but rather the associated business.

[87] Further the case of *Telereal Trilium Ltd v Hewitt*¹⁷ is again only obliquely of assistance to the Tribunal but at [34] of that decision the Court notes the purpose of ratings is to provide a fair and equal standard as between different classes of hereditaments and as between different classes hereditaments in the same class. This in our view, gives rise to the question as to how the valuation rules work. The valuation rules are mandatory and to this extent, they set out a basis upon which properties can be valued as between the various elements. We move on to consider that in a moment.

[88] On the fundamental issue we conclude the licence does not form part of an improvement to the land and rather represents another aspect of the value of the business just as other plant, machinery, staff arrangements and the like may perform particular benefits and values to a purchaser.

The conformity principle

[89] Clearly the Rating Valuations Rules are intended to provide specified methods to provide for rating valuations. More importantly, we consider having reviewed them

¹⁵ (1924) 25 SR (NSW) 75 at p 76.

¹⁶ (1924) 25 SR (NSW) 75 at p 77.

¹⁷ [2019] UKSC 23.

that they also represent a clear intent to indicate to ratepayers the basis upon which valuations are conducted and their values will be assessed.

[90] The arrangements are very prescriptive. We do not wish to attach the entire set of Rating Valuations Rules but it is clear they reflect the three types of rating available, namely capital value and annual value (which are treated with similar rules) and land value. We deal only with those relating to the way in which properties have been identified, nominated and valued.

[91] The rules commence by identifying different approaches for capital value and annual value. It is those we will deal with. Rule 2.3.1 (d) and (e) represent the two ways in which improvements might be addressed; (d) requires a brief description of other improvements; (e) refers to a site plan required for rural areas that includes, (i) land contour and cover and their respective areas and (vii) any other significant improvements.

[92] Rule 3 relating to audit information requires that the documents prepared must contain all information and USE the codes specified from Appendix A to H to the Rules. We have taken this to be mandatory given the use of the word ‘must’, and the prescriptive word and nature of the approach used in the wording.

[93] Rule 4.3.2 provides that where capital value or annual value is maintained, for buildings and other improvements the revaluation basis must be adopted as appropriate. Subsequently, the revaluation basis requires a written copy with all property categories and where applicable subcategories then refers us to the appendices A to H.

[94] Under Appendix A to H, we deal only with those that are directly relevant. In this case Appendix C requires identification of land use with C.2 zoning being rural which is relevant and C.3 the actual property use also being relevant. C.3.4 speaks about the relevant activity as rural industry under 1 at the primary level, and as a secondary level code under 5 (market gardens and orchards).

[95] Appendix D relates to residential and lifestyle category properties and speaks of

mass data, general views and contour. D.8 moves with more particularity to require other improvements using the codes set out in Table 17. Those of course involve at that stage only ‘Yes’ or ‘No’ as to other improvements.

[96] In F.2.3, there are five categories of rural character. Given the small size of this site, it was agreed that it was either horticulture kiwifruit category A, B or C. It was identified in the Council records as B.

[97] Appendix F begins to become more particular, given the more specific categorisations for valuation purposes. Table 18 would identify this property as ‘H’ for horticulture, its secondary character which might regard it as more specific activity is in Table 19. Of the choices available, there appears be little argument that it would be ‘K’ for kiwifruit as a subcategory of horticulture. [This is the approach from the work sheets and describes HK]. F.3 requires a summary sheet.

The Valuation Report

[98] The Gisborne Rating Valuation Report 2020 was prepared on 13 November 2020 by Lewis Wright to support the revaluation. The document is around 180 pages long and starts with general overviews including changes to capital value.

[99] Importantly, horticulture is the group identified in terms of the change in capital value. We were not directed to any particular introductory paragraphs which identify the change in approach in respect of G3 kiwifruit. It is not noted at the commencement of the document.

[100] The discussion around kiwifruit commences as part of the horticultural section at 19.6.¹⁸ It discusses the kiwifruit licence in the following terms:¹⁹

- Growers cannot bid on a licence without the intention of planting the following growing season. **Reinforces the “use it or lose it” component.**
- The licence is tied to the **valuation reference** of the property and is transacted inclusive of land and buildings.

¹⁸ Gisborne District Council Revaluation 2020 at p 116.

¹⁹ Gisborne District Council Revaluation 2020 at p 116.

- Growers who intend to sell the licence will need to remove the kiwifruit vines. **SunGold or other licenced kiwifruit cannot be grown without a licence.**

[101] The meaning of those provisions was not explained to the Tribunal by the relevant witnesses particularly Mr Inder who we understand was a party to the report.

[102] The report states:²⁰

Rating Valuers perspective and approach

The starting point is the **definition of the capital value** under the rating valuation. The rating valuation must align to what an orchard would sell for on the valuation date. This is inclusive of the kiwifruit licence but exclusive of any crop proceeds, machinery, and plant.

The licence is inherent and fundamental in the value of the property. It is important to consider the “highest and best use”, and the licence is effectively a licence to operate a SunGold or other licenced kiwifruit orchard.

The definition of improvements under the Rating Valuations Act 1998 in relation to any land, means all work done or material used at any time on or for the benefit of the land by the expenditure of capital or labour, so far as the effect of the work done or material used is to increase the value of the land and its benefit is not exhausted at the time of valuation.

The addition of the “licence” unlocks the value and potential of any given property. The licence is “work done on or for the benefit of the land by the expenditure of capital”. The licence “attaches” and is complementary to the other improvements (as defined under the RVA) such as the vines and structures. The licence like the vines and structures is permanent in nature.

For rating values (under the definition of the value of improvements) it is proposed to value the grafted rootstock, structures, infrastructure, overhead canopy, and the licence.

[103] The report goes on to say that it has not separated the licence from the vines, structures and canopy per hectare rate.

[104] From the reports, it is clear:

- (a) that the capital value is what the “orchard” would sell for on the valuation dates.²¹ This is what the “orchard” would sell for. They exclude from that price crop proceeds, machinery, and plant but include the licence; and

²⁰ Gisborne District Council Revaluation 2020 at pp 117 – 118.

²¹ Gisborne District Council Revaluation 2020 at p 117.

- (b) the licence becomes the highest and best use but only where it is obtained and held. One assumes where it is not held then it is no longer the highest and best use.

[105] More fundamentally our difficulty is that approach is not accorded to any of the categories in the current rules. This approach is subject to the legal issues as to whether or not the licence is an improvement to the land.

[106] The more fundamental issue from our perspective is that it is not the subject of the rules which takes effect as regulations. On the face of it, these are mandatory. The sub-categorisation of kiwifruit into green kiwifruit, gold kiwifruit (and we assume a number of other varieties in due course) is not provided for directly.

[107] We were told that subdivisions were provided in respect of other fruit but interestingly, the approach of the valuers in this case was to deal with old apple orchards and new apple orchards. They tell us that new apple orchards include the licenced fruit. There was no evidence produced to us to show that that was the case. The only example of new fruit was the revaluation across the road from the subject site as unimproved land. As we understand it, the highest and best use approach must be to value land according to its highest and best use not its unimproved value. This would essentially mean that all land would be valued to kiwifruit licence standards even though it could not be utilised for that because of the very limited licences available. Such an approach shows the inconsistency of using a limited right as a highest and best use. The individuation of property values becomes increasingly complex if land values include the value of the business. There is no general market to compete or compare.

Connection with natural justice issues

[108] This issue in a sense links to the legal issue which we did not address at this hearing. This relates to meetings which took place between the valuers and the Valuer-General in September 2020 and the subsequent certification of the valuation including the inclusion of the G3 kiwifruit gold in 2021. On the face of it, any change to the rules would require the consultation process under s 5. It appears to be

common ground that this did not occur. The question then is whether or not the Council valuers or the Valuer-General have the power to create further sub-categorisation without a change to the rules.

[109] Overall, our view on the categorisation, not the natural justice issue, is that this would require a change to the rules whatever the merits. We must say that the connection of the highest and best use makes this approach difficult because of the assumed theoretical position that everyone could hold a kiwifruit gold licence when they could not.

[110] Even if it is intended to only reflect the sales that occurred by those who have it, this seems to be a specialised use reinforcing our view that it is probably part of the value of the orchard business as a whole rather than an improvement to or for the benefit of the land.

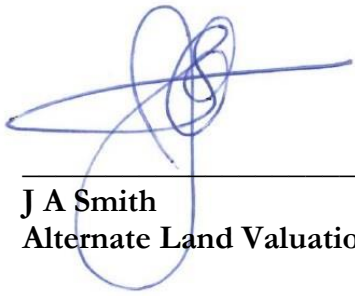
Outcome

[111] For the reasons we have discussed:

- (a) we have concluded that the capital value of this property for the District revaluation under the Rating Valuations Act is \$2,800,000.00. Being land value of \$1,035,000.00 and improvements of \$1,743,000.00 rounded up to \$1,765,000.00; and
- (b) that the kiwifruit licence is not an improvement to or for the benefit of the land. This includes:
 - (i) that it represents a speculative investment by the owner with the prospect of increasing income from the orchard business;
 - (ii) the licence cannot be transferred with the property and requires a new contract with the licence holder, Zespri; and
 - (iii) the licence can and has in certain cases been transferred and the cultivars removed from the rootstock. Rootstock is still available to be utilised by the other non-licenced species or other licenced species of

kiwifruit.

[112] It is unclear whether there is any ability for this Tribunal to order costs for such a case. However, the Tribunal reserves the opportunity for the parties to seek costs if necessary. Given that this matter is likely to be addressed at the same time as the judicial review, it would appear appropriate that the Tribunal reserves any question of cost until the appeals are resolved. Application is not encouraged in any event.



J A Smith

Alternate Land Valuation Tribunal Chairperson (for the Tribunal)



"A"



SAMPLE

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ZESPRITM SUNGOLD

Gold3 Variety Licence



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PARTIES

1. ZESPRI GROUP LIMITED ("ZGL")
2. <<dsl_partydisplayname>>

("Grower")

BACKGROUND:

- A. ZGL owns the Gold3 kiwifruit variety, more specifically described in Appendix 4, together with all associated proprietary and plant variety rights to such variety.
- B. ZGL has agreed to grant the Grower limited rights to grow this Plant Material within the Licensed Area and to sell the Fruit resulting from it strictly in accordance with this Agreement.

AGREEMENT:

ZGL grants to the Grower, and the Grower accepts, a licence to grow Plant Material within the Licensed Area and to sell the Fruit resulting from it strictly in accordance with the terms and conditions set out in this Agreement.

EXECUTION:

Signed for and on behalf of
ZESPRI GROUP LIMITED by

Signed for and on behalf of
the GROWER by

Signature of Authorised Signatory

Signature of Authorised Signatory

Name

Name

Position

Position

Date

Date

Bid number:

Licence serial number:



TERMS OF LICENCE

1. Definitions

- 1.1 In this Agreement, unless the context otherwise requires:

“Agreement” means this licence agreement (including all Appendices) as amended from time to time.

“Amendment Notice” has the meaning given in clause 17.8.

“Appendix” or “Appendices” means the appendices and any attachments as annexed to this Agreement, as replaced or superseded from time to time with the written consent of both parties.

“Brand” means any trade mark, trade name, logo or other identifier of the Variety or Fruit which ZGL may select or approve from time to time, with the written consent of both parties.

“Fruit” means all fruit grown from Plant Material in the Grower’s possession or control.

“Grower” means the Grower described on page 1 of this Agreement and includes its personal representatives, permitted assigns and successors in title.

“Lessee” means that person in possession or control of the kiwifruit orchard on the Property (not being the Owner) by virtue of any lease, management contract or other arrangement and/or who has responsibility for growing the Plant Material and Fruit within the Licensed Area.

“Owner” means the person(s) whose name appears on the certificate(s) of title for the Property.

“Plant Material” means all plants and plant material of the Variety which are able to be propagated (but does not include the Fruit of the Variety).

“Property” means the land described and identified in Appendix 4.

“PVR” means the plant variety rights applied for

and/or owned by ZGL, or any person to whom those rights are transferred, under the Plant Variety Rights Act 1987 in respect of the Variety.

“Variety” means the variety and any male pollinisers described and identified in Appendix 4.

“you” or “your” is a reference to the Grower.

“ZGL” means Zespri Group Limited as established pursuant to the Kiwifruit Industry Restructuring Act 1999 and includes its successors and assigns.

2. What the Grower can do

- 2.1 ZGL gives you the non-exclusive right during the term of this Agreement to acquire Plant Material solely for the purposes of growing that Plant Material within the Licensed Area and nowhere else, to use such Plant Material to produce Fruit, and, subject to ZGL’s prior written consent, to sell or transfer Plant Material to other licensed growers of the Variety. These rights are granted to you strictly subject to the terms set out in this Agreement.

3. The Term of this Agreement

- 3.1 The rights given to you begin on the date of execution of this Agreement by both parties and continue until the earliest of the following dates::
- (a) the last day of the term of the PVR;
 - (b) the date that ZGL enters into a new Zespri Gold3 Variety Licence with a new owner of the Property under clause 12, or with another grower as a result of sale or transfer of all licence rights under clause 13; or
 - (c) the date this Agreement is terminated under clauses 4.1, 14, 16 or 17.8(d).

4. “Use it or Lose it”

- 4.1 Notwithstanding any other provision of this Agreement, but subject to clause 4.2, this Agreement will terminate automatically on the “Plant/Graft By Date” specified in Appendix 4 unless planting and/or grafting of Plant Material on all or substantially all of the Licensed Area has been completed to ZGL’s satisfaction prior to that date.
- 4.2 If, due to extraordinary circumstances, you have been unable to complete planting and/or grafting of Plant Material to ZGL’s satisfaction by the deadline specified in clause 4.1, you may apply to ZGL for an extension of time, provided that such application is submitted to ZGL in writing prior to that deadline. ZGL may grant an extension of the deadline at its sole and absolute discretion, and ZGL may attach additional terms and conditions to the grant as it sees fit. You agree to be bound by any such decision by ZGL.
- 4.3 In addition to the limitation in clause 4.1, ZGL will not approve the sale or transfer of any portion of the licence to third parties under clause 13 unless and until:
- (a) planting and/or grafting of Plant Material on all or substantially all of the Licensed Area has been completed to ZGL’s satisfaction; and
 - (b) all money owing to ZGL in respect of the original allocation of this licence has been paid in full.

5. What the Grower is required to do

- 5.1 Subject to clause 5.2, you must purchase all your Plant Material from ZGL or one of its licensed suppliers.
- 5.2 Notwithstanding clause 5.1, you may also obtain Plant Material from another licensed grower of the Variety, provided that you and that grower have obtained ZGL’s prior written consent.
- 5.3 ZGL will endeavour to supply you with your requirements for Plant Material but is only obliged to do so if you are complying with all the terms of this Agreement and if there is sufficient suitable Plant Material available.
- 5.4 You must supply all Fruit to ZGL, except for any Fruit which is rendered unsaleable and/or destroyed on the Property or which is expressly authorised by ZGL for supply or sale to a third party in a written agreement between you and ZGL.

- 5.5 The terms of sale for all Fruit (including non-export quality Fruit) will be as provided in an agreement for the supply of kiwifruit entered into between you and ZGL in respect of your Fruit from time to time.
- 5.6 You must co-operate with any entity or person(s) appointed by ZGL to monitor its licensing of the Variety and Plant Material and the sale and distribution of Fruit. You must:
- (a) comply with all reasonable requirements of this entity or person(s) which are consistent with the terms of this Agreement, including any requirement to provide information relating to Plant Material and the sale and distribution of Fruit; and
 - (b) keep up-to-date, accurate and complete records and books of account containing all information relating to the sale or distribution of Fruit reasonably required to calculate and verify any royalty payable to ZGL or to any third party.
- 5.7 You must promptly supply to ZGL all information that ZGL reasonably requires to establish and maintain a grower database and to assist ZGL to forecast short and medium term production of Fruit, including, without limitation, plant numbers, block structures and orchard practice.
- 5.8 If you are the Lessee of the Property then prior to signing this Agreement (and as a condition precedent to ZGL granting you your rights under this Agreement), you must ensure that the Owner is aware of the terms of this Agreement and accepts such terms by delivering to ZGL the attached “Acknowledgement of Owner Form for Leased Property” in Appendix 3 executed by the Owner. In the event that the Owner does not sign such Form, you will be liable for any act or omission of the Owner that would have constituted a breach of the obligations the Owner would have assumed had such Form been signed.

6. Payment of Royalty

- 6.1 During the term of this Agreement, ZGL may charge a royalty at a rate no higher than that set out in Appendix 4. Any such royalty shall otherwise be determined under, and calculated and paid in accordance with, the agreement for supply of kiwifruit entered into between you and ZGL for the relevant season.

7. Limits on what the Grower can do under this Agreement

7.1 In order to protect the interest of ZGL in the Variety and the PVR, you must comply with the following requirements:

- (a) You must not grow any Plant Material on or above any land other than the Licensed Area. ZGL or its nominated agent shall be entitled to enter the Property or any other land under your control on which Plant Material is located and remove any Plant Material that is not growing within the Licensed Area.
- (b) You must not allow anyone (including yourself, your employees and contractors) to propagate any Plant Material or attempt in any way to multiply the Variety except with the prior written consent of ZGL, other than for the purposes of cultivating Plant Material within the Licensed Area, or for the purposes of selling or transferring Plant Material to another licensed grower of the Variety as permitted under clause 2.1.
- (c) You must not obtain any Plant Material from anyone other than ZGL, its licensed suppliers, or other licensed growers of the Variety in accordance with the procedure set out in clause 5.2. You must not source any Plant Material from outside New Zealand without ZGL's prior written consent.
- (d) You must not sell, dispose of, export or otherwise provide any Plant Material or Fruit whatsoever to any person other than ZGL or a person who has prior written approval from ZGL.
- (e) You must not do anything at all in respect of the Variety and the PVR except as expressly permitted by this Agreement.
- (f) You must not allow anyone related to or controlled by you (including yourself, your employees and contractors) to contest or challenge in any way the ownership of rights in the Variety and the PVR by ZGL.
- (g) You must not allow anyone related to or controlled by you (including yourself, your employees and contractors) to carry out any research or seek to obtain any rights of ownership in respect of any plant variety which is the same as or similar to or derived from the Variety.
- (h) You must not do anything which might prejudice the rights of ZGL in respect of the Variety and the PVR.

- (i) You must use reasonable endeavours to ensure that each employee and service provider (e.g. sprayers, pruners, pickers and coolstore operators) who comes into contact with Plant Material and Fruit, does not do anything which might endanger the rights of ZGL in respect of the Variety and the PVR.
- (j) You must ensure that any person who deals with the Fruit or who takes possession or control of the Fruit is subject to similar obligations to those that apply to you, including under, but not limited to, clauses 5.4, 5.5, 5.6 and this clause 7.1 of this Agreement.

8. Ownership of Brand

- 8.1 You acknowledge that ZGL is the exclusive owner of all rights relating to the Brand and that this Agreement does not confer on you any licence to use the Brand.

9. Ownership of the Variety and PVR

- 9.1 You acknowledge that ZGL is the owner of all rights in respect of the Variety and the PVR.
- 9.2 If you create or discover any improvement or development to the Variety (including any sport or mutation), you must immediately disclose this to ZGL. You acknowledge that all rights in any such improvements or developments will be owned by ZGL. You must sign all documents and do all things reasonably required by ZGL in order to ensure that it can establish and maintain these ownership rights.

10. Infringement by other Parties

- 10.1 You must contact ZGL as soon as you become aware that any other person/s is infringing any rights in the Variety and/or the PVR (for example, by propagating Plant Material or selling Fruit to third parties without the permission of ZGL).
- 10.2 ZGL will be solely responsible for dealing with all infringement issues but you agree to give ZGL reasonable assistance in order to protect the interests of ZGL and ZGL's licensed growers.

11. Access to Licensed Area

- 11.1 You must allow representatives of ZGL to enter onto the Property and any other land under your control for the purposes of access to the Licensed Area and any other place or premises where you

carry out any business relating to the Variety so that ZGL can assess whether you are complying with the terms of this Agreement, for auditing all Plant Material and Fruit on the Property and, if applicable, to enforce its rights under this Agreement or at law.

- 11.2 In addition, if you are carrying out or discover any improvements or developments to the Variety then ZGL or its representatives may, at any reasonable time, enter upon the Property and the Licensed Area or any other land under your control in order to take such samples of the improved or developed Plant Material and Fruit as they consider necessary. If the taking of such samples results in a demonstrable loss of production of Fruit, ZGL will first agree and provide fair compensation to you.
- 11.3 You agree to grant to ZGL, upon request by ZGL, a licence (which, where your interest in the Property is registered at Land Information New Zealand, shall be by way of an easement) in such a form as ZGL may reasonably require, permitting ZGL and its representatives to enter the Property for the purposes of this clause 11 and clause 16.2. Where you are obliged by this clause to grant an easement, you agree to take all steps necessary to facilitate the registration by ZGL of such easement against the title to the Property. You agree that ZGL may lodge a caveat against the Property in order to protect the rights granted to it under this clause 11 and/or clause 16.2.

12. Change of Ownership of the Property

- 12.1 If you are the Owner of the Property and it is sold or transferred to any other person while it contains Plant Material and/or Fruit, you agree to notify ZGL immediately upon concluding an agreement for sale and purchase of the Property, and to include as a condition to completion of such transaction, delivery to ZGL of a Transfer Application Form – Sale or Transfer of Property executed by you and the new owner. ZGL agrees that all your rights and obligations under this Agreement shall temporarily pass to the new owner for a period of 30 days after the transfer (or such longer period as may be agreed by ZGL in writing) pending approval by ZGL and completion of a new Zespri Gold3 Variety Licence agreement between ZGL and the new owner. If you permit ownership of the Property to be transferred or sold without complying with this clause, then you will remain liable to ZGL under this Agreement, including liability for any act or omission of a new owner that would, if done by you, constitute a breach or non-observance of the obligations under this Agreement.

- 12.2 You must give ZGL at least 10 working days prior written notice of any sale or transfer of the Property to a new owner. You must also let ZGL know as soon as practicable if there have been any other changes to the Property (for example, where there has been a subdivision, a disposition of existing rights or the creation of new rights in respect of the Property) which may affect the interests of ZGL under this Agreement.
- 12.3 Notwithstanding any other provision of this Agreement, ZGL may refuse to enter into a new Zespri Gold3 Variety Licence agreement with any new owner in the event that any money remains owing by the Grower to ZGL in relation to this Agreement.
- 12.4 This Agreement will terminate upon the completion of a new Zespri Gold3 Variety Licence agreement between ZGL and the new owner.
- 12.5 For the purpose of this Clause 12, a change in control or beneficial ownership of the Owner shall constitute a transfer of the property.

13. Sale of Transfer of Licence Rights

- 13.1 If you agree to sell or transfer some or all of your rights to grow Plant Material and to produce Fruit to any other person ("the Transferee"), you must obtain ZGL's approval and ensure that such transfer is in accordance with the terms of the Gold3 Transfer Application Form – Sale or Transfer of Licence Rights (as set out in Appendix 2), and that completion and delivery to ZGL of such form by the Transferee is a condition of the transfer agreement. ZGL agrees to issue a temporary licence to the Transferee, for a period of 30 days or such longer period (as may be agreed by ZGL in writing) pending completion of a new Zespri Gold3 Variety Licence agreement between ZGL and the Transferee. If you do not comply with this clause then you will remain liable to ZGL under this Agreement, including liability for any act or omission of the Transferee that would, if done by you, have constituted a breach or non-observance of the obligations under this Agreement. For the avoidance of any doubt, ZGL will not approve any transfer of rights under this clause 13 for so long as:
- (a) any money remains owing by the Grower to ZGL in relation to this Agreement; or
 - (b) all or substantially all of the Licensed Area has not been planted and/or grafted with Plant Material to ZGL's satisfaction by the original licensee.

ZGL will however consider approving written applications for transfers of small unused licence parcels provided that:

- (c) the parcel does not exceed 10 percent of the Licensed Area or 0.5 hectares, whichever is the lesser; and
- (d) the transfer price is no more than the price paid by the original licensee under the licence application process on a per hectare basis (evidence of this must be supplied upon application).

13.2 If you are transferring all of your rights under this licence to the Transferee, this Agreement will terminate on the completion of a new Zespri Gold3 Variety Licence agreement between ZGL and the Transferee. If you are transferring your rights under this licence in respect of only part of the Licensed Area to the Transferee, the Licensed Area will be reduced accordingly on the completion of a new Zespri Gold3 Variety Licence agreement between ZGL and the Transferee, and you must remove sufficient Plant Material to meet the requirements of clause 7.1(a) in respect of the reduced Licensed Area, and commission an updated GPS survey map showing the reduced Licensed Area for inclusion in Appendix 4 which shall be duly amended to reflect such reduction in Licensed Area.

13.3 The Grower and ZGL agree that the provisions of this clause 13 are to enable bona fide transfers of licence rights to growers who wish to produce Fruit, and are not intended to allow speculative trading in licence rights. Accordingly, notwithstanding anything else in this Agreement, ZGL may, at its sole discretion refuse to issue any new licences under clause 13.1 in the event that either you or the Transferee (or any person determined by ZGL in its sole discretion to be associated with you or the Transferee) have been, or would be as a result of any transfer under this clause 13, both a transferor and a transferee of licence rights in the Variety.

13.4 For the purpose of this Clause 13, a change in control or beneficial ownership of the Grower shall constitute a transfer of the Grower's rights to grow Plant Material and to produce fruit.

14. Decommmercialisation of the Variety

14.1 Notwithstanding any other provision of this Agreement, ZGL may at any time elect to withdraw the Variety from commercial production for any reason. Withdrawal of the Variety from commercial production includes cessation of granting new licences for production of the Variety; cessation

of marketing and promotion of the Variety; and removal or destruction of all licensed Plant Material. Any election by ZGL to withdraw the Variety from commercial production under this clause 14.1 will not constitute a breach of this Agreement, but will be a terminating event in accordance with clause 14.2.

14.2 In the event that ZGL decides to withdraw the Variety under clause 14.1:

- (a) this Agreement will terminate with effect from 30 June following the date on which ZGL gives notice to the Grower of its decision in accordance with clause 17.10, and clause 16 will apply (including ZGL's rights to remove Plant Material under clause 16.2);
- (b) upon termination of this Agreement pursuant to clause 14.2(a), ZGL will pay the Grower as follows:
 - (i) an amount calculated at the rate of \$5,000 (inclusive of GST) per hectare of Licensed Area, provided that no more than four whole years have elapsed between the date of the original allocation of this licence by ZGL and the effective date of termination of this Agreement; and
 - (ii) an additional amount (if any), being a percentage of the price paid by the Grower to ZGL upon the original allocation of this licence by ZGL, calculated by reference to the table below:

Number of whole years elapsed between the date of original allocation of licence by ZGL and the effective date of termination of this Agreement	Percentage of price originally paid by the Grower that ZGL will pay to the Grower under this clause 14.2 (b)(ii)
0	100%
1	80%
2	60%
3	40%
4	20%
5 or more	0%

For the avoidance of any doubt, no payments will be due to the Grower under clauses 14.2(b)(i) or (ii) if five or more whole years have elapsed between the effective date of original allocation of this licence by ZGL and the effective date of termination of this Agreement.

- (c) ZGL's liability to the Grower as a result of its decision to withdraw the Variety shall be limited to the amounts specified in this clause 14.2, which the parties agree is a genuine pre-contractual estimate of the loss and damages the Grower will suffer as a result of ZGL's decision under clause 14.1, and the Grower agrees that it shall have no other claim against ZGL, whether arising in any way out of this Agreement, or out of any pre-contractual statements made prior to this Agreement, or in tort, or otherwise at law, arising in any way out of such decision.
- 14.3 In the event that a decision is made by the relevant New Zealand authorities not to grant the PVR to ZGL, then this Agreement shall terminate with effect from the 30th of June following the date of publication of such decision by the New Zealand authorities. Such event shall not constitute a breach of this Agreement by ZGL.
- 14.4 In the event that this Agreement is terminated under clause 14.3:
- (a) clause 16.2 will apply;
 - (b) upon termination of this Agreement, ZGL will pay the Grower:
 - (i) if and only if ZGL exercises its rights to remove Plant Material under clause 16.2, an amount calculated at the rate of \$5,000 (inclusive of GST) per hectare of Licensed Area; and
 - (ii) in any case, the price paid to ZGL upon the original allocation of this licence by ZGL; and
 - (c) ZGL's liability to the Grower as a result of termination of this Agreement under clause 14.3 shall be limited to the amounts specified in this clause, which the parties agree is a genuine pre-contractual estimate of the loss and damages the Grower would suffer as a result of such termination, and the Grower agrees that it shall have no other claim against ZGL in respect of or resulting from such termination or the cultivation of the Variety by the Grower.
- 14.5 ZGL may set off any amounts owing by it to the Grower under clauses 14.2 or 14.4 against any amounts owing by the Grower to ZGL in relation to this Agreement.
- 14.6 In the event that this Agreement is terminated under clauses 14.2(a) or 14.3, the parties agree to meet and discuss in good faith whether, in respect of the Licensed Area, any opportunity exists for the Grower to enter into a new licence agreement with ZGL for another kiwifruit variety. For the avoidance

of any doubt, this clause 14.6 does not create any legal obligation on ZGL to grant further licences to the Grower.

15. Changes to ZGL and Assignment to ZGL Subsidiaries

- 15.1 If at any time the PVR or the business undertaken by ZGL is transferred (by whatever means) to another entity, then all the rights and obligations of ZGL under this Agreement shall pass automatically to that entity.
- 15.2 Without limiting clause 15.1, ZGL may assign all the rights and obligations under this Agreement to any wholly owned subsidiary of ZGL, and there will be no need for you to enter into any other agreement or do anything to ensure that this is the case (including giving your consent). ZGL will give you at least 10 working days advance notice of any such assignment.

16. Termination

- 16.1 Without limiting any other rights that either party has at law, this Agreement:
 - (a) may be terminated by either party by written notice to the other party if the other party breaches any of the terms of this Agreement and, if capable of remedy, fails to remedy the situation within 30 days of receiving written notice requiring it to do so;
 - (b) may be terminated immediately by ZGL if you go out of business, become bankrupt, become unable to pay your debts, or (if you are a company) you go into receivership or liquidation, or if you try to assign your rights under this Agreement without complying with clause 17.6;
 - (c) may be terminated by ZGL by written notice to you in the event that any money remains owing by you to ZGL in relation to this Agreement after the relevant due date for payment of such money; or
 - (d) may be terminated in accordance with clauses 4.1, 12, 13, 14 or 17.8(d).

Notwithstanding any termination of this Agreement, your obligations (and, as the case may be, those of the Owner) pursuant to clauses 5.4, 6.1, 7.1, 11 and 16.2 shall not merge or cease on such termination, and such clauses and any obligations accrued under them prior to or after termination shall continue in full force and effect.

- 16.2 If this Agreement is terminated for any reason then, if requested by ZGL in writing, you must immediately destroy or return to ZGL or its nominee all Plant Material and Fruit on the Property or which is within your possession or control. If you fail to comply with this clause within seven days from being requested to do so, then ZGL or its representatives shall be entitled to enter the Property and any other land under your control on which Plant Material is located in order to remove or destroy such Plant Material and Fruit without further notice to you, without consent being required from any other person and without liability for any compensation or damages being payable to you or to any other person.

17. General Legal Requirements

- 17.1 With the exception of any relevant application documentation which shall continue to bind ZGL and the person to whom this licence was originally allocated, this Agreement represents the entire agreement of the parties in respect of the licensing of the Variety and the use of Plant Material and Fruit in respect of the Licensed Area. Without limiting this, this Agreement supersedes all previous trial agreements and other licence agreements (in writing or otherwise) between the parties relating to the Variety on the Property.
- 17.2 Each party to this Agreement must keep confidential all information which it receives about the other party except where this information is known publicly other than as a result of the other party breaching its obligations of confidentiality. You must keep confidential all information you receive from ZGL about or which relates in any way to the Variety, the PVR, the Plant Material and/or the Fruit, except where such information has been published by ZGL.
- 17.3 Production of kiwifruit, and in particular commercialisation of a new variety of kiwifruit, is inherently risky and subject to the vagaries of climate, soil and as yet undiscovered or unknown attributes of the Variety and its performance on orchard, through the supply chain and in the market. ZGL makes no warranties, express or implied, to you, and you agree that in entering into this Agreement you are not relying on any statement or representation made by ZGL or its staff or agents, concerning the vigour of the Plant Material, production of Fruit, production of Certified Organic Fruit, disease freedom or susceptibility, commercial viability of the Variety, the likely returns to the Grower from the production of Fruit including Certified Organic Fruit, or the future value of the rights granted

under this Agreement. You agree that all implied warranties of merchantability or fitness for a particular purpose are hereby excluded.

ZGL shall not be responsible for any loss of profits, economic or other consequential loss you or any other party may incur as a result of the operation of this Agreement, cultivation by you of the Variety, or your exercise of any of the other rights granted to you under this Agreement.

- 17.4 Any payments made by a party will, unless otherwise agreed and specified by the parties, be exclusive of goods and services tax and any other applicable taxes. These taxes will be paid by the party making the payment at the rate which is applicable at the time.
- 17.5 The parties will attempt to resolve any dispute between them in a co-operative and amicable manner prior to recourse to any other form of dispute resolution including litigation. If the parties cannot agree on any matter arising from this Agreement or its interpretation, then either party by notice in writing to the other can submit the dispute to mediation by a single mediator. If the parties cannot agree on a mediator within five working days of this written notice then either party can request the chairperson of the New Zealand division of LEADR (LEADR NZ) to appoint a mediator. The parties shall set the guidelines for the mediation, but if they cannot agree within a reasonable time then the mediator will set them. Nothing in this clause shall prevent a party from seeking urgent interlocutory relief in any Court.
- 17.6 You must not assign or transfer any or all of your interests under this Agreement to any other party without the prior written consent of ZGL and only as set out in clause 12 or clause 13. ZGL's rights to assign its interests under this Agreement are set out in clause 15.
- 17.7 This Agreement is to be governed by New Zealand law.
- 17.8 ZGL shall have the right to make amendments to this Agreement using the process described in this clause 17.8, but only where such amendments are intended by ZGL to apply to all licence agreements for the Variety in New Zealand that are substantially the same as this Agreement ("Variety Licences"):
- (a) ZGL must give you and all other holders of Variety Licences written notice of any proposed amendment ("Amendment Notice"). Upon receipt of an Amendment Notice, you and all other holders of Variety Licences shall

have 3 months during which you must notify ZGL in writing whether or not you approve of the amendment.

- (b) If ZGL does not receive written approvals from the holders of Variety Licences who together hold Licensed Area that exceeds 70 percent of the total Licensed Area held by all holders of Variety Licences within such 3 month time period, then the amendment proposed in the Amendment Notice shall be defeated and shall have no further legal effect.
 - (c) At the end of the 3 month period, if the 70 percent threshold in clause 17.8(b) has been reached, then the proposed amendment shall be deemed to be approved, and (subject to clause 17.8(d)) all Variety Licences including this Agreement shall be amended by the relevant Amendment Notice, such amendment taking effect 3 months after the date it was deemed to be approved, or at such later time as may be specified in the Amendment Notice.
 - (d) If an amendment is deemed to be approved under clause 17.8(c), you may, no later than 3 months after that event, notify ZGL in writing that you do not accept the amendment ("Non-Acceptance Notice"). If you give a Non-Acceptance Notice to ZGL, then this Agreement shall be terminated with immediate effect, and clause 16.2 shall apply.
 - (e) For the avoidance of doubt, the amendment processes under this clause 17.8 do not prevent you from selling or transferring your licence rights or the Property at any time in accordance with clauses 12 or 13.
- 17.9 If any one or more of the provisions of this Agreement, or the applicability of any such provision to a specific situation, shall be held invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity of all other provisions of this Agreement and all other applications of any such provision shall not be affected thereby.
- 17.10 Any notice required to be given by ZGL to you under this Agreement shall be deemed to have been given upon the expiry of two business days after posting a copy of the notice to the last postal address for you that is known to ZGL at the time of sending.

GOLD3**APPENDIX 1: GOLD3 TRANSFER APPLICATION FORM –
SALE OR TRANSFER OF PROPERTY**

(Refer to clause 12.1 in this Zespri Gold3 Variety Licence)

PROPERTY DETAILS:**KPIN NUMBER****VALUATION NZ NUMBER****PROPERTY ADDRESS****POSTCODE****TO: ZESPRI GROUP LIMITED (“ZGL”)****FROM**(*“Existing Owner”*)**AND FROM**(*“New Owner”*)**NEW OWNER’S
CONTACT ADDRESS****POSTCODE****CONTACT PERSON****TELEPHONE NUMBER****MOBILE NUMBER****EMAIL ADDRESS****THE NEW OWNER CONFIRMS THE TRANSFER WILL BE EFFECTIVE AS OF***(insert date)*

In consideration of ZGL allowing the existing Zespri Gold3 Variety Licence between ZGL and the Existing Owner (“the Existing Agreement”) to continue on a temporary basis with the New Owner:

- (a) The New Owner:
- (i) confirms its understanding of the terms of the Existing Agreement and any Amendment Notices issued within the last six months of the date of signature of this Form (if any) and acknowledges receipt of copies of each;
 - (ii) agrees to comply with, and shall be liable under, the terms and conditions of the Existing Agreement as the “Grower” as if it were an original party thereto;
 - (iii) agrees, as soon as is practicable, and at the request of ZGL, to enter into a new Zespri Gold3 Variety Licence (such agreement to be in its then current form and as amended by any relevant Amendment Notice) in respect of the Property; and
 - (iv) agrees that should it not enter into a new Zespri Gold3 Variety Licence with ZGL within 30 days or such longer period as may be agreed by ZGL in writing, for any reason, then (notwithstanding clauses 5.4, 6.1, 7.1, 11.1 and 16.2 of the Existing Agreement which shall remain binding on the New Owner) any temporary rights granted to the New Owner hereunder shall cease; and
 - (v) confirms it has undertaken the appropriate due diligence to ensure that the planted area does not exceed the Licensed area as stated in Appendix 4.
- (b) The Existing Owner:
- (i) warrants to ZGL and to the New Owner that, as at the date of execution of this document, the part of the Property on which Plant Material and Fruit is growing does not exceed the boundaries or the total area specified as the Licensed Area in the Existing Agreement;
 - (ii) warrants to the New Owner that as at the date of execution of this document no money remains owing by the Existing Owner to ZGL in relation to the Existing Agreement.

*Authorised Signatory for Existing Grower**Authorised Signatory for New Grower**Date**Date*

APPENDIX 2: GOLD3 TRANSFER APPLICATION FORM – SALE OR TRANSFER OF LICENCE RIGHTS (NO SALE OF LAND)

GOLD3

(Refer to clause 13 in this Zespri Gold3 Variety Licence)

EXISTING GROWER/PROPERTY DETAILS:

KPIN NUMBER	<input type="text"/>		
VALUATION NZ NUMBER	<input type="text"/>		
PROPERTY ADDRESS (“Existing Property”)	<input type="text"/>		
	<input type="text"/>	POSTCODE	<input type="text"/>
TRANSFER FROM (“Existing Owner”)	<input type="text"/>		
VARIETY	<input type="text"/>		

NEW GROWER/PROPERTY DETAILS:

TRANSFER TO	<input type="text"/> (“New Grower”)		
KPIN NUMBER	<input type="text"/>		
VALUATION NZ NUMBER	<input type="text"/>		
PROPERTY ADDRESS (“New Property”)	<input type="text"/>		
	<input type="text"/>	POSTCODE	<input type="text"/>
NEW GROWER CONTACT ADDRESS	<input type="text"/>		
	<input type="text"/>	POST CODE	<input type="text"/>
CONTACT PERSON	<input type="text"/>		
TELEPHONE NUMBER	<input type="text"/>	MOBILE NUMBER	<input type="text"/>
EMAIL ADDRESS	<input type="text"/>		

APPLICATION DETAIL:

APPLICATION TYPE <i>(delete one)</i>	<input type="text"/> FULL TRANSFER / PARTIAL TRANSFER		
TOTAL EXISTING LICENSED AREA	<input type="text"/>		
LICENSED AREA TRANSFERRED	<input type="text"/>		
LICENSED AREA REMAINING ON EXISTING PROPERTY AFTER TRANSFER	<input type="text"/>		
EFFECTIVE DATE OF TRANSFER	<input type="text"/>	(“Completion Date”)	
TERMS AND CONDITIONS (OVERLEAF)			

GOLD3**APPENDIX 2: GOLD3 TRANSFER APPLICATION FORM – SALE OR TRANSFER OF LICENCE RIGHTS (NO SALE OF LAND)**

(Refer to clause 13 in this Zespri Gold3 Variety Licence)

TERMS AND CONDITIONS:

1. The Existing Grower confirms it will transfer its rights under the existing Zespri Gold3 Variety Licence ("the Existing Agreement") in full/part (delete one) in respect of the Existing Property with effect from the Completion Date subject to:
 - (a) Zespri Group Limited ("ZGL") agreeing to the transfer of the Existing Grower's rights to the New Grower;
 - (b) ZGL agreeing to issue a temporary licence to the New Grower for the Variety in respect of the New Property for LICENSED AREA TRANSFERRED as described above. This licence will be subject to the terms and conditions of the Existing Agreement, including the terms set out below, and will terminate on the New Grower entering into a new Zespri Gold3 Variety Licence with ZGL in respect of the LICENSED AREA TRANSFERRED on the New Property or as determined by ZGL;
 - (c) the New Grower, at the request of ZGL, obtaining a GPS map of the area where Plant Material will be planted and/or grafted on the New Property (which must not exceed the LICENSED AREA TRANSFERRED as described above), and entering a new Zespri Gold3 Variety Licence (such agreement to be in its then current form) in respect of the New Property; and
 - (d) the termination or amendment of the Existing Agreement, as applicable.
2. Both the Existing Grower and the New Grower agree:
 - (a) the New Grower confirms its understanding of the terms of the Existing Agreement and any Amendment Notices issued within the last six months of the date of signature of this Form (if any) and acknowledges receipt of copies of each;
 - (b) the New Grower agrees to comply with, and shall be liable under, the temporary licence issued by ZGL, including the terms and conditions of the Existing Agreement as the "Grower" as if it were an original party thereto, pending the entering into of a new Zespri Gold3 Variety Licence with ZGL or the termination of the temporary licence by ZGL;
 - (c) both parties confirm their understanding of the Licence Rights Transfer Process and the Licence Transfer Terms and Conditions specified by ZGL from time to time, relating to the transfer of Kiwifruit Variety Licence Rights;
 - (d) the Existing Grower will remove the relevant Plant Material by the Completion Date or 31 August of the next year after the date of approval of the application and advise ZGL of completion;
 - (e) the New Grower will plant Plant Material only within the LICENSED AREA TRANSFERRED described above, and shall do so no earlier than after the Existing Grower has removed all Plant Material, and no later than 31 August of the next year after the date of approval of the application and issue of the Temporary Licence and shall advise ZGL of completion;
 - (f) the New Grower agrees, as soon as is practicable, and at the request of ZGL, to enter into a new Zespri Gold3 Variety Licence (such agreement to be in its then current form) in respect of the New Property; and
 - (g) the New Grower agrees that should it not enter into a new Zespri Gold3 Variety Licence with ZGL when required by ZGL for any reason or if ZGL does not agree to the transfer of the Existing Grower's rights under the Existing Agreement to the New Grower, then the temporary licence shall cease and the New Grower will immediately remove any Plant Material it has planted on the New Property.
3. The Existing Grower warrants to the New Grower that, as at the date of execution of this document, no money remains owing by the Existing Grower to ZGL in relation to the Existing Agreement..

*Authorised Signatory for Existing Grower***NAME****DATE***Authorised Signatory for New Grower***NAME****DATE****TEMPORARY LICENCE ISSUED BY ZESPRI GROUP LIMITED ON THE TERMS SET OUT ABOVE:****ZESPRI GROUP LIMITED***Authorised Representative
Signature***NAME****DATE**

APPENDIX 3: GOLD3 ACKNOWLEDGEMENT OF OWNER FORM FOR LEASED PROPERTY

GOLD3

(Refer to clause 5.8 in this Zespri Gold3 Variety Licence)

PROPERTY DETAILS:

KPIN NUMBER
VALUATION NZ NUMBER
PROPERTY ADDRESS
POSTCODE
TO: ZESPRI GROUP LIMITED ("ZGL")
FROM ("Grower")

AND FROM ("Owner")

**OWNER'S CONTACT
ADDRESS**
POSTCODE
CONTACT PERSON
TELEPHONE NUMBER
MOBILE NUMBER

LEASE DETAILS:

COMMENCEMENT
**EXPIRY DATE OF
CURRENT TERM**

RENEWAL TERM(S) AND RENEWAL DUTIES (IF ANY)

TERMS AND CONDITIONS:

In consideration of ZGL entering into or (as the case may be) allowing the continuance of a Zespri Gold3 Variety Licence with the Grower ("the Licence"), the Owner:

- (a) confirms its understanding and acceptance of the terms of the Licence (as amended from time to time) and acknowledges receipt of a copy;
- (b) agrees that the rights granted to the Grower under the Licence are vested exclusively in the Grower, and that accordingly the Grower may elect to remove the Plant Material from the Property and, with ZGL's consent, transfer the Licence to another property or to another grower for use on another property; *(continued overleaf)*

Bid number:

Licence serial number:

GOLD3**APPENDIX 3: GOLD3 ACKNOWLEDGEMENT OF OWNER
FORM FOR LEASED PROPERTY (CONTINUED)**

(Refer to clause 5.8 in this Zespri 2020 Gold3 Variety Licence)

- (c) agrees to comply with, and shall be liable under, all of the terms of the Licence as the “Grower” as if it were an original party thereto where the Grower has ceased to perform its obligations under the Licence, where the Licence has been terminated for any reason by ZGL or where any lease or management contract of the Property with the Grower or any other right of use or occupation of the Property has been terminated by the Owner or not renewed and Plant Material and/or Fruit remains on the Property or within the Owner’s possession or control;
- (d) agrees to notify ZGL in writing as soon as practicable after any event mentioned in the previous clause has occurred;
- (e) agrees if requested by ZGL to provide ZGL with a copy of any lease or management contract between the Owner and the Grower in respect of the Property;
- (f) in the event that the Owner intends to sell or otherwise transfer the Property:
 - (i) agrees to ensure that it is a condition of any sale and purchase or transfer agreement in respect of the Property that the new owner or transferee signs an Acknowledgement of Owner Form substantially the same as this one; and
 - (ii) agrees to remain liable to ZGL under the Licence in the event that a new owner or transferee does not sign such Form, including liability for any act or omission of such new owner or transferee that would, if done by the Owner, have constituted a breach or non-observance of the obligations under this Agreement;
- (g) grants its permission (such grant being irrevocable) at all times during the term of the Licence to enable the representatives of ZGL to enter the Property and any other land under its control on which Plant Material is located for the purposes of clauses 11 and 16.2 of the Licence; and
- (h) confirms that no compensation or damages shall be payable to the Owner by virtue of ZGL lawfully enforcing its rights under clauses 11 and/or 16.2 of the Licence.

Authorised Signatory for Existing Grower

*Authorised Signatory for New Grower***NAME**

NAME

DATE

DATE

APPENDIX 4: GROWER, VARIETY AND LICENCE DETAILS

GOLD3

KIWIFRUIT VARIETY DETAILS:

NAME OF VARIETY		NEW ZEALAND PLANT VARIETY RIGHT NO.	
ROYALTY RATE			
MALE POLLINISER NAME(S) (if any)			
MALE POLLINISER NEW ZEALAND PLANT VARIETY RIGHT NO(S) (if any)			
KPIN NUMBER		EFFECTIVE DATE OF THIS APPENDIX 4	
NAME OF GROWER			
DETAILS OF CONTACT PERSON			
STATUS OF GROWER IN RESPECT OF THE PROPERTY			

Note: If you are a Lessee then you and the Property Owner must complete and sign an acknowledgement of owner form (see Appendix 3).

As at the effective date of this Appendix 4, the Licensed Area within which such Plant Material must be grown, under the Zespri Gold3 Variety Licence between ZGL and the Grower (the "Agreement"), is set out below. This Appendix 4 shall supersede any existing Appendix 4 and shall be deemed to form part of the Agreement from the Effective Date set out above. All terms defined in the Agreement and used in this Appendix 4 shall have the same meanings as set out in the Agreement.

PLANTING/GRAFTING BY DATE:

Under clause 4.1 of the Agreement, the Agreement shall terminate unless planting and/or grafting of Plant Material on all or substantially all of the Licensed Area has been completed to ZGL's satisfaction by:

PROPERTY AND LICENSED AREA IDENTIFICATION DETAILS:

ADDRESS OF PROPERTY			
VALUATION NZ NUMBER			
BOUNDARIES OF LICENSED AREA AND POSITION OF LICENSED PLANTS: See attached GPS Survey Map.			
LICENSED AREA		DATE OF GPS SURVEY MAP	
LAST AUDIT DATE			
Signed for and on behalf of ZESPRI GROUP LIMITED by:		Signed for and on behalf of the GROWER by:	
NAME		NAME	
POSITION		POSITION	
DATE		DATE	

Note: A GPS Survey Map of the Licensed Area forms an essential part of this Appendix 4 and must be attached prior to execution. The Licensed Area shall be the amount stated as the Licensed Area above, to be planted/grafted within the area shown on the attached map. An updated GPS map may be provided by ZGL during its audit following planting/grafting.

Bid number:

Licence serial number:



Zespri Grower Support Services
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