

UNDER

the Resource Management Act 1991 ("the Act")

AND

IN THE MATTER

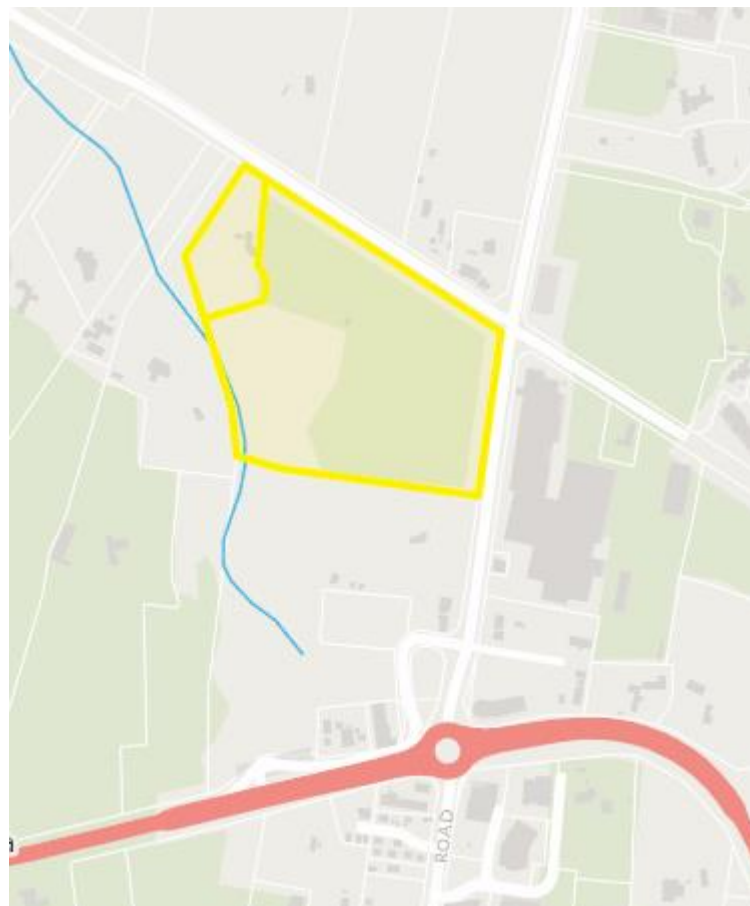
of a submission pursuant to Clause 6 of Schedule 1 of the Act in respect of **PRIVATE PLAN CHANGE 93** to the **WESTERN BAY OF PLENTY DISTRICT PLAN**

STATEMENT OF EVIDENCE OF DOUGLAS KIRK

1. INTRODUCTION

1.1 My name is Douglas Kirk. My family trust, the DCK Family Trust is the owner and operator of the Okaro Orchard which is located at 35 Armstrong Road. My family and I live in the neighbouring property at 49 Armstrong Road.

1.2 A plan showing the location of the orchard and my family home is shown below.



Purpose and scope of evidence

- 1.3 This statement of evidence summarises and expands on the concerns raised in the DCK Trust's submission on PC93 concerning the impacts of Plan Change 93 on Okaro Orchard and my home.
- 1.4 Specifically, my evidence will:
- (a) Provide an overview of my property and the Okaro Orchard (Section 3);
 - (b) Explain my position on PC 93 and consultation with the Applicant to date (Section 4);
 - (c) Address effects on Okaro Orchard (Section 5);
 - (d) Address effects on my home (Section 6);
 - (e) Address the waterway on the site and the opportunities to protect and enhance it (Section 7).
- 1.5 A summary of my evidence is contained in Section 2.

2. SUMMARY

Okaro Orchard

- 2.1 My family and I own and operate Okaro Orchard, which is located on the northern boundary of the site. The orchard is five hectares in size, with 3.5 canopy hectares (meaning the planted area) and produces gold kiwifruit for the export market. It is a highly productive orchard and makes a significant contribution to the local economy.
- 2.2 At present, the measures proposed in PC93 to manage the interface between the orchard and the plan change area are minimal and will be inadequate. That is not surprising to me given that despite the significant implications of PC93 for my land, the applicant has not made any great efforts to consult with me.
- 2.3 In considering the options available for management of the interface between the orchard and the site, the Council Officer's report appears to suggest that the applicant has reached agreement with me on measures to

manage the effects on the orchard.¹ To the contrary, no constructive discussions have been undertaken and no agreement has been reached.

Effects on Okaro Orchard

- 2.4 Land development and the operation of commercial activities immediately adjacent to the orchard has the potential to cause major issues for orchard operations including in particular in terms of:
- (a) Dust, which can adversely affect fruit quality resulting in fruit (potentially the whole crop) being rejected for export.
 - (b) Complaints as a result of spraying activities which disrupt the spraying schedule and therefore undermine productivity.
 - (c) Frost damage to the vines as a result of obstruction of air and light around the orchard from the presence of large buildings along the boundary.
 - (d) Insect incursions from pest species encouraged to the site by inappropriate planting.

Proposed solutions

- 2.5 Although I would much rather that PC93 did not proceed at all, I have tried to take a pragmatic approach to the proposal, recognising that there is demand for development in Te Puna. On that basis, I have worked with a technical kiwifruit production expert, Ethan England, and planning consultant, Simon Childs, to prepare a solution for the boundary that will minimise effects on the orchard and my property.
- 2.6 If a natural shelter belt is proposed by the applicant (and that is uncertain, because the application documents are inconsistent), I do not consider that this is an effective or appropriate solution because of the high maintenance requirements on both sides, which would likely prove impractical). I would need to remove the artificial shelterbelt in order to gain access to the natural shelter belt to maintain it. The artificial shelterbelt was installed at great cost and is a vastly superior solution for kiwifruit operations than natural shelterbelt (though it does little to mitigate the effects of development on my site).

1 PC93 Council Officer's Report, Topic 4.

- 2.7 The Applicant has proposed a setback rule for "sensitive activities". The setback rule will not offer a practical solution because the main risk of spray drift is from complaints, not actual harm arising from spraying. People typically become anxious about spraying activities even when the chemicals being applied are not harmful. If complaints are received, spraying companies are unlikely to want to service the orchard. This would render the orchard unviable.
- 2.8 On that basis, in my opinion, the only solution is the extension of the existing berm in the north western corner of the site along the entirety of the boundary with the orchard, as set out in Mr Childs' evidence. The berm would serve a number of functions, providing a buffer area that limits the risk of spray drift and dust incursion, screens the commercial development from my property while continuing to allow airflow from the site.
- 2.9 In addition, rules should be imposed to ensure that landscaping on the site avoids species which attract pest species such as passion vine hopper.

Waterways on the site

- 2.10 In the last 10 years, the occupier of the plan change area has undertaken a lot of earthworks, bringing hundreds of truckloads of fill onto the site. A large amount of fill has been deposited in the north western corner of the site. Since that fill has been deposited, we have seen the quality of the stream decline rapidly. It is now filled with sediment which runs down the stream past my property, and is in a very poor state.
- 2.11 Since notification of PC93, the Applicant has commissioned an ecology report and revised the proposed structure plan to avoid development over the stream. In my opinion, much more could be done to improve the health of the waterway, in particular by addressing the large amount of fill that has been moved onto the site. The removed fill might then be used to form the berm along the boundary with Okaro Orchard, thereby also addressing the adverse effects of development on the orchard.

3. OKARO ORCHARD - OVERVIEW

- 3.1 I am a descendent of the Armstrong family which has owned land at Armstrong Road since 1874. The Okaro Orchard was established 50 years ago by my father, and I purchased it 20 years ago. The orchard is five hectares in size, with 3.5 canopy hectares (meaning the planted area) and produces gold kiwifruit for the export market.

3.2 Okaro Orchard is a highly productive orchard, which makes a significant contribution to the local economy. Over the course of a year we employ a large number of people, including pruners, pickers, spraying contractors, as well as supporting downstream industries such as truckers and packhouses. At certain times of the year there can be upwards of 50 people on the site. Assuming conditions at the orchard stay the same, I would expect similar projections for next year.

3.3 Kiwifruit land in the Bay of Plenty is in very high demand, particularly that planted in gold kiwifruit. The report by PGG Wrightson Real Estate attached as **Attachment A** records that:

"obtaining an orchard already growing gold kiwifruit is virtually impossible. Competition can become extreme for those few that come on the market. Otherwise, every orchardist we talk to asks if they can buy bare land. Because the crop is in such strong demand, suitable bare land is also at a premium."

3.4 That report is dated March 2021, but in my opinion, remains reflective of the status quo.

Interface with the plan change area

3.5 The plan change area adjoins the southern boundary of the orchard along a length of 180m. Kiwifruit vines are planted up to 5m from the boundary. The 5m strip was left to allow a future driveway up to a new dwelling that I planned to build on the property for my son. If the dwelling was not built, I was going to take the vines right up to the boundary (which I could do without the need for authorisation).

3.6 There was previously a natural shelterbelt of *Cryptomeria japonica* along the boundary. This was burnt down a few years ago without my consent. The natural shelter belt was replaced, at my cost, with an artificial shelter belt, at a cost of approximately \$100,000. While the circumstances which led to the need to replace the natural shelter belt were unwelcome, the significant investment that I have made in its replacement has been worthwhile because as a protection for kiwifruit, artificial shelter belt performs far better than natural shelterbelt.

The plan change area

3.7 The evidence of Annaliese Michel states at paragraph 3 that the plan change area was purchased from me and my family in 2005, with the implication that as one of the owners I would have received a share of the sale price. That is not the case. At the time of the sale, I had already sold my share of

the land and had no involvement in its sale. As I was not the owner at that point, the proceeds of the sale were split between three of my siblings.

- 3.8 Ms Michel's evidence also states² that at the time of the sale, approximately half of the site was zoned Commercial. That is not correct – the area of the site around the Te Puna Memorial Hall zoned Commercial is substantially less than half of the site. The site was therefore sold by my siblings as primarily rural zoned land and there was certainly no expectation that commercial development would inevitably follow. In order to allow that, a defensible plan change was required and the applicant's inability to achieve that in the intervening years is the applicant's responsibility.

4. **POSITION ON PC 93 AND CONSULTATION**

- 4.1 As a matter of principle, I am disappointed that PC 93 has been proposed without broader consideration of the future of Te Puna. My intention has always been to continue to operate the kiwifruit orchard, but I also acknowledge that the plan change reflects demand for change in Te Puna.
- 4.2 As explained in Mr Childs' evidence, there has been some work undertaken to develop a comprehensive structure plan for Te Puna. I think it is unfortunate that this work has not been completed and therefore we have piecemeal plan change proposals like PC93.
- 4.3 My concern is that PC 93 will undermine existing agricultural activities at Okaro Orchard while also potentially undermining future development of my land – which might be my only option if the development does indeed render kiwifruit production unviable.
- 4.4 Nevertheless, I have tried to take a pragmatic approach to the plan change by trying to find solutions which will allow the orchard to continue to operate with minimal impact. Mr Childs has developed some proposed amendments to PC93 which are intended to address the key risks to the orchard arising from PC 93.

Consultation with the applicant

- 4.5 At present, the measures proposed in PC93 to manage the interface between the orchard and the plan change area are minimal and will be inadequate. That is not surprising to me given that despite the significant implications of

2 Evidence of Michel, paragraph 4.

PC93 for my land, the applicant has not made any great efforts to consult with me.

- 4.6 I only became aware of the existence of PC 93 on 22 December 2021 when I received a letter from the Council about the notification of the plan change. The letter was redirected having been misaddressed to an unrelated PO Box number. No direct contact was received from the Applicant. Since then, I have made some efforts to meet with the Applicant to try to resolve the issues.
- 4.7 We have met twice since notification of the plan change. These meetings were not a success and I felt that the applicant was not willing to listen to my concerns. As recorded in Mr Collier's evidence, the applicant unilaterally sent me a draft agreement which provided for my written approval to the plan change request on the basis that a no complaints covenant would be imposed on the site in relation to orchard operations. I did not sign that agreement because it did not address the majority of my concerns.
- 4.8 At the second meeting, the applicant indicated a willingness to work with me to revise the plan provisions to address the effects on my property and operations but I have not seen any changes which achieve this.

The Council Officer's Report

- 4.9 In considering the options available for management of the interface between the orchard and the site, the Council Officer's report appears to suggest that the applicant has reached agreement with me on measures to manage the effects on the orchard.³ To the contrary, as noted above, no constructive discussions have been undertaken and no agreement has been reached. I am therefore completely bewildered as to how Ms Price could have reached that conclusion, as I certainly have not ever given that impression.
- 4.10 The result of that apparent error is that the Council Officer's report does not properly interrogate the potential adverse effects of the development on my property and I note that the Council does not appear to have received any technical advice on this issue.
- 4.11 The Council Officer's report also suggests that as a result of consultation with me, an additional landscape strip is proposed along the northern boundary of the site. That is not shown on the structure plan, and I am unclear exactly

3 PC93 Council Officer's Report, Topic 4.

what treatment is proposed for my boundary. The original application states that:⁴

"the Applicant has decided that additional shelter belts are to be included in the Structure Plan in order to ensure that there is minimal risk of spray drift and has proposed a non-complying activity status for sensitive activity(ies) within Area A. Please refer to the Spray Drift Report in Appendix H for more detail."

4.12 The spray drift report prepared by Fruition states:

It is recommended to get the burnt shelter of Okaro orchard replaced. Natural shelter is the best protection against spray drift leaving the property.

4.13 Versions of the structure plan included in the ITA and Infrastructure Report show shelter belt along my boundary but that is not identified on the latest version of the structure plan.⁵

4.14 The remainder of this statement of evidence explains the potential risks posed by commercial development in close proximity to the orchard.

5. **EFFECTS OF PC93 ON KIWIFRUIT OPERATIONS**

5.1 As set out in detail in the evidence of kiwifruit technical expert, Ethan England, the production of export quality kiwifruit requires the existence and maintenance of a range of precise physical conditions.

5.2 Currently, the orchard is surrounded by mainly rural activities which have not posed a risk to kiwifruit production, apart from some minor dust issues from the plan change site which have been managed through the use of water spraying.

5.3 Land development and the operation of commercial activities immediately adjacent to the orchard has the potential to cause major issues for orchard operations including in particular in terms of:

- (a) Dust, which can adversely affect fruit quality resulting in fruit (potentially the whole crop) being rejected for export.
- (b) Complaints as a result of spraying activities which disrupt the spraying schedule and therefore undermine productivity.

4 Aurecon report, page 29.

5 Integrated Transport Assessment page 2 and Infrastructure Servicing Assessment, page 6.

- (c) Frost damage to the vines as a result of obstruction of air and light around the orchard from the presence of large buildings along the boundary.
 - (d) Insect incursions from pest species encouraged to the site by inappropriate planting.
- 5.4 Mr England's evidence addresses the technical concerns arising in respect of these issues. I also address these concerns based on my 20+ years of experience as a kiwifruit producer.

Dust

- 5.5 I am particularly concerned about the dust associated with the development of the site and also dust that may be associated with operations, given that it is very uncertain what type of commercial development might locate on the site.
- 5.6 In southerly winds, dust from the site could enter the orchard, with consequent catastrophic impacts on productivity. If dust particles lodge under the calyx of the fruit, it will be rejected for export at the grading stage of the production process.
- 5.7 In fact, the discovery of foreign matter under the calyx of kiwifruit can result in an entire crop being rejected for export. When the product is going over a grading table, it is impractical to inspect every fruit – so if any significant amounts of dust are found the whole crop potentially could be rejected.

Spray drift

- 5.8 Production of kiwifruit for export requires spraying of insecticide and other agrichemicals periodically throughout the year. Spraying of Okaro Orchard is undertaken by contractors who visit the site as required.
- 5.9 Spraying needs to be undertaken at the appropriate times which are dictated by wind speed and direction and insect infestation. It is also dictated by the schedule imposed by the spraying contractors. Spraying contractors service a large number of orchards in the region, deal with temperature sensitive chemicals and are also constrained by weather conditions. Therefore, they need to operate by allocating each orchard a strict time for spraying.

- 5.10 The "Spray Drift Assessment" prepared by Bryce Morrison of Fruition⁶ and filed as part of the plan change request states that in light of prevailing winds the most significant risk in terms of spray drift is from the orchard at 648 SH2. However, the Okaro Orchard is significantly closer to the proposed development area than that orchard.
- 5.11 I note the proposal in the plan change request to include a setback for sensitive activities such as childcare centres, but I do not consider that this is a practical solution because the main risk is from complaints, not actual harm arising from spraying.
- 5.12 People typically become anxious about spraying activities even when the chemicals being applied are not harmful. While the risk of actual harm arising from spray drift is relatively low the more pressing concern for me is the very real possibility of complaints from the public.
- 5.13 I therefore agree with the conclusion in the Fruition report that "*the most significant issue is the anxiety experienced by some people regarding spray drift.*" However, I do not agree that this can be easily resolved by provision of information boards or communication to the site administrator "if such a person exists".⁷
- 5.14 First, the types of developments which could locate on the boundary are relatively broad and it is therefore unclear whether members of the public might be accessing that area. Keeping people informed about spraying activities when there is a lot of coming and going from the site would be very difficult, particularly when it is not clear whether there would in fact be a site administrator. As such, I consider that the risk of complaints would be very high.
- 5.15 The impact of receiving complaints is that spraying contractors will be reluctant to service the orchard if they cannot be assured of neighbours' safety. Contractors are also under threat of prosecution if spray drift occurs. Ultimately, the result would be that spraying contractors see Okaro Orchard as too difficult a site and therefore not worth their time. That would have catastrophic consequences for the productivity of the orchard.

6 Spray Drift Assessment of Te Puna Springs Proposal, 23 Te Puna Road, Fruition, March 2018.
7 Fruition Spray Drift report, page 13.

Air and light circulation – risk of frost pockets

- 5.16 Another major concern is the possibility that large tilt slab buildings will be constructed right on the boundary, blocking air flow around the orchard.
- 5.17 The problem is that to grow successfully, air needs to be able to circulate around the orchard. Both natural and artificial shelterbelts are therefore designed to achieve this. The artificial shelter belt comprises fabric screening, the purpose of which is to reduce the velocity of the wind passing through the orchard. The material is permeable and designed to allow light and air to pass through it.
- 5.18 My understanding of the structure plan is that much of the development area is focussed on the northern part of the site because of the presence of streams in the middle and southern areas of the site. The orientation of the site means that it appears likely that the sides or backs of the buildings would be facing the orchard.
- 5.19 At Okaro Orchard, cold air typically descends off the Minden hills and flows through the orchard, exiting through the permeable shelter belt. If the cold air in the orchard cannot escape, it will sit in the orchard, causing what is known as a frost pocket. Frost pockets cause major damage to the vines, particularly during August - November when the flower buds are developing. If the temperature in the orchard drops below zero, the flowers will go black and fall off, thereby resulting in the loss of that year's entire crop, and potentially some of the following year's crop as well.

Dust, spray drift and frost pockets – proposed solution

- 5.20 In my opinion, the only way that the risks posed by dust and spray incursions into and out of the orchard can be managed is by way of an effective barrier. The barrier needs to allow air flow and light penetration while preventing spray drift.
- 5.21 If a natural shelter belt is still proposed (and as noted at paragraphs 4.11-4.13 above, that is uncertain), I do not consider that this is an effective or appropriate solution because of the high maintenance requirements – natural shelter belt needs to be carefully maintained to ensure that it does not itself have adverse impacts on the vines. Sufficient space would be needed to trim the trees from both sides, which I do not believe is available because of the presence of my artificial shelterbelt. Also, natural shelter belt takes nutrients from the soil which would otherwise be taken up by the kiwifruit vines.

5.22 On that basis, in my opinion, the only solution is a landscaped berm along the entirety of the boundary with the orchard, as set out in Mr Childs' evidence. The berm would serve a number of functions, providing a buffer area that limits the risk of spray drift and dust incursion, screens the commercial development from my property while continuing to allow airflow from the site.

Passion vine hopper

5.23 Finally, I also have concerns about landscaping within the plan change area encouraging pest species onto the site. This is an issue of major concern to kiwifruit producers, and it is disappointing that the applicant has made no attempt to address it.

5.24 Kiwifruit vines are highly susceptible to attack from an Australian pest species, the Passion Vine Hopper. Passion Vine Hoppers secrete a sugary honeydew substance which attracts a fungus called Sooty Mould. This mould can cover the entire plant with 'black soot' and cause stunted growth, reduced plant vigour and poor fruiting.

5.25 Passion Vine Hoppers have a very broad host plant range, including a large number of non-edible plants which are typically used in residential and commercial landscaping. It is therefore critical that plant species for landscaping in the plan change area are carefully selected so as not to encourage them or any other potentially invasive or damaging species of organisms.

5.26 As recorded in Mr England's evidence, guidance is available to assist in the selection of plant species to limit the risk of insect incursions. Given the proximity of Okaro orchard to the site, in my opinion, it is important that this is followed in the development of the plan change area.

6. EFFECTS ON MY PROPERTY

6.1 My home is located on the highest part of my property, overlooking the site. My wife and I have lived there for 30 years and had always intended to stay over the long term.

6.2 The rural character of the surrounding area is one of the most important things about our home. Our outdoor living space faces the site and in summer we spend a lot of time outdoors, enjoying the rural outlook and quiet neighbourhood. Our back yard slopes down to the site. We keep

animals towards the bottom and therefore spend a lot of time on this part of our property. The environment is beautiful and peaceful.

- 6.3 I am very concerned that all of this will be lost when the site is developed. If not properly controlled, our peace will be completely shattered as a result of noise from people coming and going and commercial operations such as the sound of forklifts reversing. Light pollution is another significant concern, particularly from 24-hour security lighting.
- 6.4 I had also planned to build another house in the south west corner of the orchard for my son to live in while he runs the orchard. This is the only part of the site that is flat and therefore suitable for a building platform. The property would however be very close to the commercial development in the plan change area so now I do not think that the plan is tenable. No one would want to live in a house right next to huge commercial buildings.

7. **WATERWAYS ON THE SITE**

- 7.1 I have lived at Armstrong Road for over 30 years. My family has been there for generations. The stream that runs from the spring in the plan change area runs past my property and those of my neighbours. For many years, it was used by residents for recreational activities including swimming and feeding the resident eels.
- 7.2 In the last 10 years, the occupier of the plan change area has undertaken a substantial amount of earthworks, bringing large amounts of fill onto the site. The evidence of Fiona Wilcox records (at paragraph 13) that:

The existing unmanaged vegetation within the site has been modified many times during the past 20 years or so as a result of earthworks, track creation, vegetation clearance, and weed control.

- 7.3 She also records that these earthworks have modified the stream channels. I am unaware of whether resource consent was held for those earthworks, which have been extensive. Much of this has been deposited on the boundary with 49 Armstrong Road. This has altered the flow of the stream and we have seen water quality decline rapidly. The stream is now filled with sediment, and in a very poor state.
- 7.4 I was surprised and disappointed to see no mention of the stream in the notified version of the plan change. It was only referred to in passing as a "small drain" and it appeared that the intention was to enable development over the top of it. Following the lodgement of a number of public submissions, including my own, which raised concerns about that, the

Applicant has commissioned an ecology report and revised the proposed structure plan to avoid development over the stream.

- 7.5 In my opinion, these are positive steps but I think that much more could be done to improve the health of the waterway, in particular by addressing the large amount of fill that has been moved onto the site and putting the stream back to its original position.
- 7.6 The removed fill might then be used to form the berm along the boundary with Okaro Orchard, thereby also addressing the adverse effects of development on the orchard.

Doug Kirk

30 June 2022

ATTACHMENT A
REPORT BY PGG WRIGHTSON REAL ESTATE, MARCH 2021



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Property Express - New heights for Bay of Plenty kiwifruit

March 2021

Bay of Plenty kiwifruit land has been fiercely sought after since the PSA crisis tapered off in 2015.

That trend is increasing further as rural property's most heavily demanded class becomes even more highly prized in the Covid low interest rate era.

Dave McLaren of PGG Wrightson Real Estate, Te Puke says recent developments around green kiwifruit show the strength of the demand.

"Interest in green kiwifruit has lifted considerably, with strong market indications that green orchards can be worth up to \$700,000 per canopy hectare. However, there is a big qualification with that price: any orchard in green kiwifruit has to tick the right boxes for infrastructure, location, altitude and microclimate that will suit a switch to growing the gold variety.

"Anyone looking to continue to operate such an orchard as a going concern valued at \$700,000 is unlikely to make much money with green vines in the ground. Any sale at that price assumes a new owner will apply to convert it to gold at Zespri's next licence tender, this autumn.



"Industry expectation suggests a gold licence will cost \$500,000 per hectare this year. Starting with a \$700,000 per hectare green orchard, adding the licence, plus another \$100,000 to convert from green to gold brings the budget to \$1.3 million, slightly less than the sale price of the best located gold orchards. Buying green, cutting over and converting to the more lucrative variety seems the best, if not the only way for those in the industry to extend their gold orchard holdings," says Dave.

Dave McLaren's colleague Stan Robb believes the kiwifruit property market will remain elevated.

"Obtaining an orchard already growing gold kiwifruit is virtually impossible. Competition can become extreme for those few that come on the market. Otherwise, every orchardist we talk to asks if they can buy bare land.

"Because the crop is in such strong demand, suitable bare land is also at a premium. Industry understanding is that some large blocks, currently in dairy, are lined up to change hands for conversion to kiwifruit, subject to securing licences. This is likely to amount to between 400 and 500 hectares of new orchards. A dairy farm suitable for kiwifruit probably commands three or four times what it is worth for milking cows," says Stan.

Paul Wiltshier is Bay of Plenty Area Sales Manager for PGG Wrightson subsidiary FruitFed Supplies. He says kiwifruit orchardists are looking forward to harvest.

"Plenty of rain in early February eased the consternation of those growers without irrigation. With picking beginning in March, we are set for a favourable harvest this year. Gold orchards are forecast to produce around average fruit quantities, while some green orchards look set to crop heavily.

"Apprehension around the labour shortage due to Covid and border restrictions is a concern to many, and those issues need to be addressed. So long as they can be, orchardists are positive about the future," says Paul.

[Dave McLaren \(/agent/david-mclaren/\)](#)

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