

## **KNZ Report for NZ Kiwifruit Producers**

### **2022 Producer Vote on extension of 12-month supply activities**

#### **1. Overview**

Kiwifruit New Zealand's ('KNZ') role is to monitor and enforce Zespri's compliance with the mitigation measures in the Kiwifruit Export Regulations 1999 ('Regulations'). The Regulations prohibit Zespri from carrying out any activities that are not its core business, unless those activities 'support core business', as defined in Regulation 10A, or are approved by a producer vote under Regulation 11 ('producer vote').

KNZ's function in the context of a producer vote is to monitor whether the process Zespri has carried out meets the requirements of Regulation 11. This includes ensuring producers are sufficiently informed to exercise their vote properly. This is important given Zespri is the primary source of information provided to producers.

Zespri has confirmed the process it intends to follow under Regulation 11 and has provided a copy of the information brochure to KNZ. KNZ has given Zespri advice on what is necessary to satisfy the regulatory test of "informed" (section 5 below). Zespri has been asked to provide information that is clear, balanced and based on fact or reasonable assumptions.

KNZ will monitor the voting process and the results and will continue its monitoring and enforcement functions based on the outcome of the vote.

#### **2. Background**

In March 2019, a producer vote was carried out and a resolution was passed (receiving more than the required 75% of support from producers) for Zespri to carry out the 12-month supply business ('2019 Producer Vote'). The approved activities for the 12-month supply business are growing, procuring and selling kiwifruit grown in overseas countries (excluding China and Chile), including use of Zespri owned PVRs, managing growing practices by overseas growers, managing supply chain from overseas growers to market and marketing and market development for fruit grown overseas.

KNZ developed a monitoring plan to identify the key parameters and commitments for the 12-month supply business activities approved by the 2019 Producer Vote. The plan was based on the materials provided to producers by Zespri and took into consideration the general understanding of producers of the ZGS activities being undertaken. Any deviation from the parameters outlined in the monitoring plan is likely to be outside the scope of the producer approval and a further approval would be required for those activities.

As Zespri is proposing amendments/extensions to some of the parameters of the 2019 Producer Vote activities, and those activities are not core business, ('Extended Activities') a further producer vote is required in respect of the Extended Activities.

If the required number of votes is obtained for this producer vote, KNZ will review and update its monitoring plan to include the Extended Activities and reflect changes to the parameters of the activities, the commitments made by Zespri and the risk mitigations in respect of the 12-month supply business activities.

### **3. Regulations**

As noted above a producer vote is required in respect of the Extended Activities. Under Regulation 11, Zespri must carry out a process in which all producers have been:

- (i) informed of the proposed activities; and
- (ii) asked to agree by vote to Zespri carrying out the proposed activities.

To carry out the Extended Activities Zespri must obtain the required proportion of votes in support of those activities and minimise, as far as is reasonably practical, the risks arising for producers who have not agreed to the proposed Extended Activities.

KNZ is required by Regulation 33 to monitor and enforce Zespri's compliance with Regulation 11. The intent of these provisions is to establish the appropriate level of control by producers over Zespri's engagement in activities that are not 'core business'. KNZ's role is not to decide the scope, direction, or scale of non-core activities. The decision about the desirability of an activity, its risks, or whether the benefits of an activity outweigh the risks involved are all decisions for producers. KNZ's role is to ensure that producer oversight is engaged, and producers have the information necessary to make an informed vote.

### **4. Process**

As set out above, KNZ's function is to monitor whether Zespri has carried out an appropriate process in accordance with Regulation 11. As part of this KNZ will monitor:

- the process by which Zespri intends to inform producers of the proposed activity, including the steps Zespri will take to ensure all producers receive the information in a timely manner in order to exercise their vote;
- whether sufficient information is provided to producers in a form that is clear in its presentation, to ensure producers are in a position to make an informed decision on the risks to their interests from the proposed activity;
- how the votes will be calculated and counted and whether the required proportion of votes has been obtained; and
- if the required proportion of votes has been obtained, whether Zespri has and continues to minimise, as far as reasonably practical, the risks arising for producers who have not agreed to the activity.

### **5. 'Informed'**

A high level of disclosure is required to meet the test of 'informed' because the proposed activities are outside Zespri's core business as mandated by the Regulations. The activity is more significant than a "business as usual" proposal and could carry significant implications for the industry and New Zealand kiwifruit producers.

For producers to be "informed" they need full disclosure of the proposed activities and any risks or benefits for producers as a result of undertaking those activities such that it would be sufficient for a prudent kiwifruit producer to reach an informed assessment. This includes consideration of the following matters:

- information should be clearly presented in a balanced and neutral manner;
- information should be accurate and not misleading (including the omission of any information);

- any factual assertions or projections should be supported by sufficient evidence and analysis to demonstrate robustness and key assumptions should be clearly identified;
- options should be considered, including the advantages and disadvantages of the various courses of action;
- producer interests affected by the proposed activities should be identified (noting that these may be different to the interests of Zespri and/or shareholders) and any risks and benefits to them should be explained in detail;
- information gaps should be identified and producers advised when reliable evidence is not available; and
- information as to how, if the vote is passed, Zespri would minimise, as far as reasonably practical, the risks arising for producers who voted against the activity.

Zespri has confirmed the process it intends to adopt to inform all producers of the proposed activities, this includes:

- circulating an information brochure to producers by email or post and publication on the Zespri website and *Canopy*;
- providing additional information and opportunities to engage on the producer vote through consultation and grower meetings; and
- establishing a dedicated producer vote website where relevant information is published, including FAQs.

## 6. Conclusion

KNZ has reviewed the information brochure prepared by Zespri in relation to the producer vote and has provided comments on the brochure, including areas for Zespri to consider amending to ensure producers have been provided with adequate information to allow them to exercise their votes in the manner contemplated by Regulation 11.

KNZ will monitor the voting process, and the results, and will continue its monitoring and enforcement functions based on the outcome of the vote.



Kristy McDonald ONZM QC  
**Chair**