

**In the Environment Court of New Zealand
Auckland Registry**

**I Te Koti Taiao O Aotearoa
Ki Tamaki Makaurau**

ENV-2022-AKL-

Under the Resource Management Act 1991 (the Act)

In the matter of an appeal under Clause 14(1) of the First Schedule of the Act

And in the matter of the decisions by Waikato District Council in respect of the proposed Waikato District Plan

Between **Waka Kotahi New Zealand Transport Agency**
Appellant

And **Waikato District Council**
Respondent

**Notice of appeal by Waka Kotahi New Zealand Transport Agency on the Proposed
Waikato District Plan**

Dated 1 March 2022

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Notice of appeal to Environment Court against decision on proposed plan

To: The Registrar
Environment Court
Auckland

- 1 Waka Kotahi NZ Transport Agency ('**Waka Kotahi**') appeals against the decisions of the Waikato District Council (the '**Respondent**') on the Proposed Waikato District Plan ('**Proposed Plan**').
- 2 Waka Kotahi made a submission (dated 9 October 2019) and further submission (dated 15 July 2019) on the Proposed Plan.
- 3 Waka Kotahi is not a trade competitor for the purpose of section 308D of the Act.
- 4 Waka Kotahi received notice of the decision on 17 January 2022.
- 5 The decision was made by the Respondent.

Provisions being appealed

- 6 The decisions that Waka Kotahi is appealing are the Respondent's decisions on the Proposed Plan that relate to noise and vibration near to the state highway.
- 7 In particular, Waka Kotahi appeals the Respondent's decisions on the following provisions:
 - a Amendments to the following rules:
 - i GRZ-S20;
 - ii LLRZ-S9;
 - iii SETZ- S10;
 - iv GRUZ-S13;
 - v RLZ-S11;
 - vi CORZ- S9;
 - vii FUZ – S9;
 - viii KLZ-R1; and

- ix MSRZ-S18.
- b Add new advice note to remaining zones not covered in (a) above.¹
- c Amendments to AINF-P27.
- d Add new permitted and restricted discretionary rules to the AINF (All Infrastructure) chapter to apply in all zones.
- e Show an effects area of 100m for noise and 40m for vibration on the planning maps to aid plan users to identify which properties are affected by the permitted and restricted discretion rules in the AINF chapter.

General reasons for the appeal

- 8 The general reasons for this appeal are that, in the absence of the relief sought, the Respondent's decisions:
 - a Will not promote the sustainable management of resources, and will therefore not achieve the purpose of the Act, including by not meeting the reasonably foreseeable needs of future generations;
 - b Will not promote the efficient use of natural and physical resources;
 - c Will not achieve the integrated management of the effects of the use, development or protection of land and associated natural and physical resources;
 - d Do not represent the most appropriate way of exercising the Respondent's functions, having regard to the efficiency and effectiveness of other reasonably practicable options, and are therefore not appropriate in terms of section 32 and other provisions of the Act;
 - e Do not adequately provide for the efficient function of the state highway network as a significant physical resource, and therefore a matter of national importance under Part 2 of the Act; and
 - f Will not assist the Respondent in achieving Part 2 of the Act by providing for the use of natural and physical resources in a way which enables people and communities to provide for their health and safety (section 5(2)) and the maintenance and enhancement of amenity (section 7(c)).

¹ Medium Density, Whaanga Coast, Local Centre, Town Centre, General Industrial, Horotiu Industrial, Heavy Industry, Open Space, Business Tamahere, Hopuhopu, Mercer Airport, Matangi, Rangitahi, Te Kowhai, TaTa zones.
9623292.1

Reasons for appeal of particular provisions

- 9 Without limiting the generality of paragraph 8, the reasons of Waka Kotahi for appealing the noise and vibration provisions are:
- a Noise and vibration from state highways has the potential to cause adverse health for the occupants of sensitive land use activities located adjacent to the network.
 - b Exposure to noise and vibration from transportation networks should be managed to ensure compliance with the World Health Organisation ('WHO') guidelines² set out in *Environmental noise guidelines for the European region* in October 2018.
 - c Due to the nature of its operations, Waka Kotahi is unable to internalise all noise and vibration effects associated with existing state highways.
 - d There should be appropriate controls in the Proposed Plan to manage the health and amenity effects of the occupants of new and altered buildings containing sensitive activities that seek to establish adjacent to existing state highways.
 - e The noise provisions in the Proposed Plan (listed in paragraph 7 above) require sensitive land use to be set back 15m from the boundary of national routes and regional arterial routes and 25m to 35m (depending on the zone) from the Waikato Expressway in some zones. These distances are insufficient to protect the occupants of sensitive land use from the health and amenity effects associated with the state highway. Activities not complying with the setback rules automatically default to a restricted discretionary or discretionary (zone dependent) activity. This approach fails to adequately address the effects on the occupants of new or altered sensitive uses establishing near existing state highways.
 - f A noise and vibrations effects area is a more effective way of managing the effects on the occupants of new or altered sensitive users establishing near the state highway. A noise effects area of 100m from state highways and a vibration effects area of 40m from state highways is appropriate.
 - g New sensitive land use and alterations to existing sensitive land use within the noise and vibrations effects areas would be permitted subject to implementing mitigation to comply with the permitted activity standards. The permitted activity standards should also address indoor and outdoor noise and vibration consistent with the WHO Guidelines. A consent for a restricted discretionary activity would be required only

where compliance with the noise standards cannot be achieved through mitigation measures.

- h In summary, Waka Kotahi seeks the following amendments to the Proposed Plan:
- i Deletion of the existing setback rules for sensitive land use close to the state highway within the relevant zone chapters of the Proposed Plan.
 - ii Addition of a new advice note in all zone chapters of the Proposed Plan directing plan users to the new 'effects' area rules contained in the All Infrastructure chapter.
 - iii An addition to policy 27 in the All Infrastructure chapter to make it clear that reverse sensitivity effects include the potential adverse health and amenity effects on the occupants of new buildings containing sensitive land uses from existing state highway noise and vibration.
 - iv A new permitted activity rule in the All Infrastructure chapter for indoor noise which requires any new or altered sensitive land uses within an 'effects' area of 100m from the outer painted line marking of the state highway carriageway to achieve permitted activity standards relating to indoor design noise levels and mechanical ventilation (to be supported by a technical report).
 - v A new permitted activity rule for outdoor noise which requires any new or altered sensitive land uses in an outdoor living space within an 'effects' area of 100m from the outer painted line marking of the state highway carriageway to achieve permitted activity standards relating to outdoor noise levels (to be supported by a technical report).
 - vi A new permitted activity rule for vibration which requires any new or altered sensitive land uses within an 'effects' area of 40m from the outer painted line marking of the state highway carriageway to achieve permitted activity standards relating to vibration (to be supported by a technical report).
 - vii A new restricted discretionary rule for a new or altered sensitive land use that does not comply with the permitted rules, with specific matters of discretion relating to location, effects on health and amenity, and consultation with Waka Kotahi.
 - viii Changes to the Proposed Plan maps to show the effects area of 100m for noise and 40m for vibration to aid plan users in identifying which properties are affected.

Relief sought

- 10 Waka Kotahi seeks the following relief:
- a Amendments to the specified and any related provisions in order to address the reasons for the appeal set out in this notice as set out in **Annexure A**;
 - b Such further or alternative relief, or ancillary changes, that resolve the concerns set out in this notice of appeal; and
 - c Costs.
- 11 The following documents are attached to this notice of appeal:
- a Annexure A: Relief requested;
 - b Annexure B: A copy of the submission and further submission of Waka Kotahi on the Proposed Plan; and
 - c Annexure C A list of names and addresses of persons to be served with this notice of appeal; and
 - d Annexure D: A copy of the relevant parts of the decision.
- 12 Waka Kotahi agrees to participate in mediation or other alternative dispute resolution mechanism.

Dated 1 March 2022



Christina Sheard
Counsel for Waka Kotahi New Zealand Transport Agency

Address for service of the Appellant:
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Private Bag 92101
Auckland 1142
Telephone: 09 375 1185
Email: christina.sheard@dentons.com
Contact person: Christina Sheard

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the part of the decision appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

Annexure A: Relief sought

Changes sought are in yellow highlight and strike-out/underline, against the provisions in the Decisions.

Rules in the following zones on Building setback – sensitive land use

- General Residential
- Large Lot Residential
- Settlement

<p>GRZ-S20</p> <p>LLRZ-S9</p> <p>SETZ- S10</p>	
<p>(1) Activity status: PER</p> <p>Where</p> <p>(a) any new building or alteration to an existing building for a sensitive land use shall be set back a minimum of:</p> <p>...</p> <p>(ii) 15m from the boundary of a <u>national route or regional arterial (excluding state highways)</u>;</p> <p>(iii) 25m from the <u>designated boundary of the Waikato Expressway</u>;</p> <p>...</p> <p>Advice note: <u>Additional rules applying to new sensitive land uses (including an alteration to an existing building resulting in an increase in floor area of a sensitive land use) establishing within 100m of the outer painted line marking of the state highway are contained in the All Infrastructure Chapter.</u></p>	<p>(2) Activity status where compliance not achieved: RDIS</p> <p>...</p>

Rules in the following zones on Building setback – sensitive land use

- General Rural
- Rural Lifestyle
- Corrections
- Future Urban

<p>GRUZ-S13</p> <p>RLZ-S11</p> <p>CORZ- S9</p> <p>FUZ – S9</p>	
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<p>(1)Activity status: PER</p> <p>Where</p> <p>(a)any new building or alteration to an existing building for a sensitive land use shall be set back a minimum of:</p> <p>...</p> <p>(ii)15m from the boundary of a national route or regional arterial (excluding state highways);</p> <p>(iii)35m from the designated boundary of the Waikato Expressway;</p> <p>...</p> <p>Advice note: Additional rules applying to new sensitive land uses (including an alteration to an existing building resulting in an increase in floor area of a sensitive land use) establishing within 100m of the outer painted line marking of the state highway are contained in the All Infrastructure Chapter.</p>	<p>(2)Activity status where compliance not achieved:</p> <p>...</p>
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Rule in the Kimihia Lakes Zone

<p>KLZ-R1</p>	
<p>(1)Activity status: PER</p> <p>Activity-specific standards:</p> <p>(a)all buildings and structures must comply with the following standards.</p> <p>(iv)A building must be setback a minimum of:</p> <p>(1)12m from the boundary of a road (excluding state highways)(except East Mine Road where it is located within the KLZ – Kimihia Lakes Zone);</p> <p>(iii)25m from the designation of the Waikato Expressway;</p> <p>...</p> <p>Advice note: Additional rules applying to new sensitive land uses (including an alteration to an existing building resulting in an increase in floor area of a sensitive land use) establishing within 100m of the outer painted line marking of the state highway are contained in the All Infrastructure Chapter.</p>	<p>(2)Activity status where compliance not achieved: RDIS</p> <p>Council’s discretion is restricted to the following matters:</p> <p>...</p> <p>(c)proximity to the road and Waikato Expressway</p>

Rule in the Motorsport and Recreation Zone

<p>MSRZ-S18</p>	
<p>(1)Activity status: PER</p> <p>Where:</p> <p>(a)A building or structure in all precincts identified on the planning maps must be set back at least:</p> <p>(ii)7.5m from the boundary of Hampton Downs Road; and</p> <p>(iii)25m from the designated boundary of the Waikato Expressway; and</p> <p>(iii)25m from the boundary of another zone</p> <p>...</p> <p>Advice note: Additional rules applying to new sensitive land uses (including an alteration to an existing building resulting in an increase in floor area of a sensitive land use) establishing within 100m of the outer painted line marking of the state highway are contained in the All Infrastructure Chapter.</p>	<p>(2)Activity status where compliance not achieved: RDIS</p> <p>...</p>

For each remaining zone not covered above³, add an advice note immediately before the permitted activity rules as follows:

Advice note: Additional rules applying to new sensitive land uses (including an alteration to an existing building resulting in an increase in floor area of a sensitive land use) establishing within 100m of the outer painted line marking of the state highway are contained in the All Infrastructure Chapter.

Amend AINF-P27 to read:

AINF-P27 Land transport network.

- (1) Avoid, remedy or mitigate effects of subdivision, use and development that would compromise:
 - (a) The road function, as specified in the road hierarchy;
 - (b) The access by emergency services and their vehicles; and
 - (c) The safety and efficiency, including the maintenance, upgrading, development and operation of the land transport network.

³ Medium Density, Whaanga Coast, Local Centre, Town Centre, General Industrial, Horotiu Industrial, Heavy Industry, Open Space, Business Tamahere, Hopuhopu, Mercer Airport, Matangi, Rangitahi, Te Kowhai, TaTa Zones.
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(2) Minimise reverse sensitivity effects (including health and amenity effects on the occupants of sensitive land use activities) on the land transport network through setbacks and design controls for noise sensitive land use activities established in proximity to existing transport corridors.

Add new rules to AINF – All Infrastructure:

<p>AINF-RX</p>	<p>Sensitive land use within 100m of state highway as shown on the planning maps (indoor noise)</p>	
<p>All zones within 100m of the outer painted line marking of a state highway</p>	<p>Any sensitive land use within 100m of the outer painted line marking of a state highway and is:</p> <ul style="list-style-type: none"> (i) a new building that contains a sensitive land use; or (ii) an alteration to an existing building resulting in an increase in floor area of a sensitive land use; or (iii) a new sensitive land use located in an existing building. <p>(1)Activity status: PER</p> <p>Activity-specific standards</p> <p>Must:</p> <p>(1)Be designed, constructed and maintained to achieve indoor design noise levels not exceeding the maximum values in Table 1; and</p> <p>(2)If windows must be closed to achieve the design noise levels in (1)(a)(i), the building is designed, constructed and maintained with a mechanical ventilation system that:</p> <ul style="list-style-type: none"> a)For habitable rooms for a residential activity, achieves the following requirements: <ul style="list-style-type: none"> (i)Provides mechanical ventilation to satisfy clause G4 of the New Zealand Building Code; and (ii)is adjustable by the occupant to control the ventilation rate in increments up to a high air flow setting that provides at least 6 air changes per hour; and (iii)provides relief for equivalent volumes of spill air; and (iv)provides cooling and heating that is controllable by the occupant and can maintain the inside temperature between 18°C and 25°C; and (v)does not generate more than 35 dB $L_{Aeq}(30s)$ when measured 1 metre away from any grille or diffuser. b)For other spaces, is as determined by a suitably qualified and experienced person. 	<p>(2)Activity status where compliance not achieved: RDIS</p> <p>Council’s discretion is restricted to the following matters:</p> <ul style="list-style-type: none"> a)Location of the building and outdoor space; b)The effects of the non-compliance on the health and amenity of occupants; and c)The outcome of any consultation with Waka Kotahi NZ Transport Agency. <p>Assessment Criteria</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> a)Whether the location of the building minimises effects; b)Alternative mitigation which manages the effects of the non-compliance on the health and amenity of occupants; and c)the outcome of

	<p>3)A report is submitted by a suitably qualified and experienced person to the council demonstrating compliance with clauses X above (as relevant) prior to the construction or alteration of any building containing a sensitive land use.</p> <p>Table 1</p> <table border="1"> <thead> <tr> <th data-bbox="423 468 829 569">Occupancy/activity</th> <th data-bbox="829 468 1081 569">Maximum road noise level Note 1 LAeq(24h)</th> </tr> </thead> <tbody> <tr> <td colspan="2" data-bbox="423 569 1081 636"><i>Building type: Residential</i></td> </tr> <tr> <td data-bbox="423 636 829 703">Sleeping spaces</td> <td data-bbox="829 636 1081 703">40 dB</td> </tr> <tr> <td data-bbox="423 703 829 770">All other habitable rooms</td> <td data-bbox="829 703 1081 770">40 dB</td> </tr> <tr> <td colspan="2" data-bbox="423 770 1081 837"><i>Building type: Education</i></td> </tr> <tr> <td data-bbox="423 837 829 905">Lecture rooms/theatres, music studios, assembly halls</td> <td data-bbox="829 837 1081 905">35 dB</td> </tr> <tr> <td data-bbox="423 905 829 972">Teaching areas, conference rooms, drama studios, sleeping</td> <td data-bbox="829 905 1081 972">40 dB</td> </tr> <tr> <td data-bbox="423 972 829 1039">Libraries</td> <td data-bbox="829 972 1081 1039">45 dB</td> </tr> <tr> <td colspan="2" data-bbox="423 1039 1081 1106"><i>Building type: Health</i></td> </tr> <tr> <td data-bbox="423 1106 829 1173">Overnight medical care, wards</td> <td data-bbox="829 1106 1081 1173">40 dB</td> </tr> <tr> <td data-bbox="423 1173 829 1241">Clinics, consulting rooms, theatres, nurses' stations</td> <td data-bbox="829 1173 1081 1241">45 dB</td> </tr> <tr> <td colspan="2" data-bbox="423 1241 1081 1308"><i>Building type: Cultural</i></td> </tr> <tr> <td data-bbox="423 1308 829 1375">Places of worship, marae</td> <td data-bbox="829 1308 1081 1375">35 B</td> </tr> </tbody> </table> <p>Note 1: The design road noise is to be based on measured or predicted external noise levels plus 3 dB.</p>	Occupancy/activity	Maximum road noise level Note 1 LAeq(24h)	<i>Building type: Residential</i>		Sleeping spaces	40 dB	All other habitable rooms	40 dB	<i>Building type: Education</i>		Lecture rooms/theatres, music studios, assembly halls	35 dB	Teaching areas, conference rooms, drama studios, sleeping	40 dB	Libraries	45 dB	<i>Building type: Health</i>		Overnight medical care, wards	40 dB	Clinics, consulting rooms, theatres, nurses' stations	45 dB	<i>Building type: Cultural</i>		Places of worship, marae	35 B	<p>any consultation with Waka Kotahi NZ Transport Agency</p>
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AINF-RX	Sensitive land use within 100m of state highway as shown on the planning maps (outdoor noise)	
All zones within 100m of the outer painted line marking of a state highway	<p>Any outdoor space that is required for a sensitive land use (including an outdoor living space) required by another rule in the plan that is within 100m of the outer painted line marking of a state highway.</p> <p>(1)Activity status: PER</p> <p>Activity-specific standards</p>	<p>(2)Activity status where compliance not achieved: RDIS</p> <p>Council's discretion is restricted to the following matters</p>

	<p>a)the required outdoor space is to be designed and maintained to achieve noise levels not exceeding the maximum values in Table 2; and</p> <p>b)A report is submitted by a suitably qualified and experienced person to the council demonstrating compliance with clauses X above prior to the construction or alteration of any building to which the outdoor living space relates.</p> <p>Table 2</p> <table border="1" data-bbox="431 720 1101 890"> <thead> <tr> <th data-bbox="431 720 776 821">Activity</th> <th data-bbox="776 720 1101 821">Maximum road noise level Note 1 LAeq(24h)</th> </tr> </thead> <tbody> <tr> <td data-bbox="431 821 776 890">Required Outdoor Space</td> <td data-bbox="776 821 1101 890">57 dB</td> </tr> </tbody> </table> <p>Note 1: The design road noise is to be based on measured or predicted external noise levels plus 3 dB.</p>	Activity	Maximum road noise level Note 1 LAeq(24h)	Required Outdoor Space	57 dB	<p>a)Location of the building and outdoor space;</p> <p>b)The effects of the non-compliance on the health and amenity of occupants; and</p> <p>c)The outcome of any consultation with Waka Kotahi NZ Transport Agency.</p> <p>Assessment criteria:</p> <p>a)Whether the location of the building minimises effects;</p> <p>b)Alternative mitigation which manages the effects of the non-compliance on the health and amenity of occupants; and</p> <p>c)the outcome of any consultation with Waka Kotahi NZ Transport Agency</p>
Activity	Maximum road noise level Note 1 LAeq(24h)					
Required Outdoor Space	57 dB					

AINF-RX	Sensitive land use within 40m of state highway as shown on the planning maps (vibration)	
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<p>All zones within 40m of the outer painted line marking of a state highway</p>	<p>Any sensitive land use within 40m of the outer painted line marking of a state highway and is:</p> <ul style="list-style-type: none"> (iv) a new building that contains a sensitive land use; or (v) an alteration to an existing building resulting in an increase in floor area of a sensitive land use; or (vi) a new sensitive land use located in an existing building. <p>(1)Activity status: PER</p> <p>Activity-specific standards</p> <ul style="list-style-type: none"> a)Must be designed and constructed and maintained to achieve road vibration levels not exceeding 0.3mm/s $V_{w,95}$. b)A report is submitted by a suitably qualified and experienced person to the council demonstrating compliance with clauses X above (as relevant) prior to the construction or alteration of any building containing an activity sensitive to vibration. 	<p>(2)Activity status where compliance not achieved: RDIS</p> <p>Council's discretion is restricted to the following matters</p> <ul style="list-style-type: none"> a)Location of the building and outdoor space; b)The effects of the non-compliance on the health and amenity of occupants; and c)The outcome of any consultation with Waka Kotahi NZ Transport Agency. <p>Assessment criteria:</p> <ul style="list-style-type: none"> a)Whether the location of the building minimises effects; b)Alternative mitigation which manages the effects of the non-compliance on the health and amenity of occupants; and c)the outcome of any consultation with Waka Kotahi NZ Transport Agency
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Amend Planning Maps

Amend the planning maps to show the 100m noise effects area adjacent to the state highway and the 40m vibration effects area adjacent to the state highway.

Annexure B: Waka Kotahi submission and further submission (separate attachment)

Annexure C: List of persons to be served

Name	Contact details
Waikato District Council	Gavin Ion Will.gauntlett@waidc.govt.nz
KiwiRail Holdings Limited	Pam Butler Pam.Butler@Kiwirail.co.nz
Kainga Ora (previously Housing New Zealand Corporation)	Dr C E Kirman and Alex Devine ADevine@ellisgould.co.nz
Pieter Van Leeuwen	pietsonja@xtra.co.nz
Parkmere Farms	Brenda and Gavin Butcher South.fork@xtra.co.nz
Cindy and Tony Young	tony@lifestyleservices.org
Dean Van Ingen	N/A
Counties Manukau Police, Dave Glossop	david.glossop@police.govt.nz
Anna Noakes	noakesa@gmail.com
Ports of Auckland	marbuthnot@bentley.co.nz
Withers Family Trust	john@planmanconsultants.co.nz
Federated Farmers of NZ	plemiere@fedfarm.org.nz
Powerco	simon.roche@powerco.co.nz
Waikato District Health Board	Richard.Wall@waikatodhb.health.nz

Horticulture NZ	lucy.deverall@hortnz.co.nz
Alstra (2012)	julia@kineticenvironmental.co.nz
NZ Pork	hannah.ritchie@pork.co.nz
Auckland Council	unitaryplan@aucklandcouncil.govt.nz
Donna Maria Lincoln	N/A
Ann Gladding	N/A
Fulton Hogan	eloise@kineticenvironmental.co.nz
Dilworth trust	ablomfield@bentley.co.nz
Meridian	Andrew.Feierabend@MeridianEnergy.co.nz
Synlait Milk	penny.gallagher@synlait.com
Stevenson Waikato	N/A
T&G Global	Elizabethm@barker.co.nz
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Poultry industry	joan.forret@harkness.co.nz

NZ Steel	Margaret.gracie@bluescopesteel.com
Mainland poultry	phil.page@gallawaycookallan.co.nz
John Rowe	N/A
Genesis	alice.barnett@genesisenergy.co.nz
Brendan Balle	N/A

Annexure D: Relevant part of decision (separate attachment)