

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

**AND**

**IN THE MATTER** of applications by Tegel Foods Limited for resource consents to develop and operate a free-range broiler farm at 5763 and 5802 State Highway 12, Arapohue, Dargaville

**BEFORE** Hearings Commissioners for **Northland Regional Council** and **Kaipara District Council** (joint Consent Authorities)

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**Minute # 1 of Hearings Commissioners**

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**Introduction**

1. This is a Minute of Ms Sharon McGarry (Chair), Dr Rob Liewering, Mr Reginald Proffit and Mr Mark Farnsworth.
2. We have been appointed by the Northland Regional Council (**NRC**) and the Kaipara District Council (**KDC**) as independent hearings commissioners under section 34A of the Resource Management Act 1991 (**RMA**) to jointly hear and decide applications for resource consents lodged by Tegel Foods Limited ('the Applicant') for a proposed free range broiler farm at Arapohue, Dargaville.
3. When a joint hearing is held section 102(2) of the RMA states that the NRC will act as the lead authority and will be responsible for the preparations and procedures for the joint hearing.
4. The purpose of this Minute is to set out some preliminary matters and directions in preparation for the hearing, which is set down to commence at **9 am on Wednesday 8 August 2018** at the **Lighthouse Function Centre, Dargaville**. In particular, the purpose of our directions is to ensure a smooth and easily navigable pre-hearing and hearing process for all parties. This requires some action from the parties in the next few weeks in readiness for the formal proceedings, which we will now outline in detail.
5. This Minute also responds to a request from Professor Margaret Mutu, on behalf of Kāpehu marae, to postpone the hearing.
6. In this respect, this Minute covers the following matters:
  - (a) Pre-hearing meetings and conferencing;
  - (b) Evidence preparation and circulation;
  - (c) Hearing process and presentations;
  - (d) Site and locality visit; and
  - (e) The request to postpone the hearing for several months.

7. It is possible that there will be further directions issued by way of Commissioners' Minutes before, during, and after the hearing. All correspondence between the parties and the Commissioners will be facilitated by Ms Alissa Sluys at the NRC. Her contact details are provided at the end of this Minute. There shall be no direct contact between the Commissioners and the hearing parties, either before or during the hearing process except, if instigated by the Commissioners.

#### **Pre-hearing meetings and conferencing**

8. We do not propose to formally direct the undertaking of, or participation of any party in, formal pre-hearing meetings or expert conferencing.
9. However, as a first principle, we encourage parties (Applicant and submitters) to meet and hold discussions prior to the commencement of the hearing. This includes general meetings amongst the parties:
  - To discuss any procedural or substantive matters;
  - For submitters to gain a better understanding of what the proposal entails and what the effects and implications may be;
  - For the Applicant to better understand what the submitters' concerns are and how they might be accommodated; and/or
  - For conferencing between any technical experts engaged by any party.
10. We record here that conferencing between the parties is not mandatory. However, if any parties are able to constructively discuss issues raised in submissions with a view to facilitating a smooth hearing process, we welcome and encourage that.
11. We will determine whether we will formally direct expert conferencing (prior to or during the hearing) after we receive notice from submitters as to whether any expert evidence is to be called.
12. To be clear, the purpose of any such conferencing is to:
  - Clearly identify the areas of agreement and disagreement between the parties and the reasons for any disagreement; and
  - Enable the hearing to focus on those areas of disagreement.

#### **Evidence Preparation and Circulation**

13. Where conferencing is not successful in resolving issues prior to the hearing, we accept that hearing attendance will be necessary for those submitters and experts. In this respect, we anticipate that some parties may wish to call expert witnesses in support of their submissions, while others will opt to 'go it alone'. In either case, we direct that all parties provide Ms Sluys with a list of all individuals that will be presenting evidence and an estimate of the hearing time needed no later than **Monday 23 July 2018**. This direction applies even if a submitter is representing himself/herself without any additional representation. This will assist in scheduling the hearing proceedings – both in terms of indicating the likely duration of the hearing and understanding roughly how long each party will require to present its case. We note that Ms Sluys may have already attempted to make contact with submitters in relation to this requirement, but all submitters wishing to be heard must confirm this in writing by the 23 July 2018.

14. Section 103B of the RMA requires the pre-circulation of the following:
- The NRC and the KDC section 42A RMA reports, including briefs of any other evidence to be called by either consent authority;
  - All briefs of evidence (expert and non-expert) of the Applicant;
  - All briefs of expert evidence being called by submitters wishing to attend the hearing; and
  - Supplementary written statements from those submitters not wishing to attend the hearing, but wanting to table material in support of their submissions.
15. The timetable for the pre-circulation of the above is as follows:

Date (2018)	Action
<b>Tuesday 17 July, 12pm</b>	NRC and KDC section 42A reports to be circulated to the Applicant and submitters who wish to be heard.
<b>Monday 23 July, 4pm</b>	All submitters wishing to attend the hearing – to provide a list of evidence authors / witnesses to be called in support of their submission(s) (plus any site and localities that they wish the Commissioners to visit prior to the hearing).
<b>Tuesday 24 July, 12pm</b>	Applicant to provide briefs of expert and non-expert evidence.
<b>Tuesday 31 July, 12pm</b>	All submitters to provide briefs of their expert evidence (if intending to call). Submitters to provide supplementary written statements in support of their submission (if intending to supply).
<b>Wednesday 8 August, 9am</b>	Hearing commencement.

16. The above timetable allows ample time for reports and evidence to be prepared. Notwithstanding this, where any submitter (or their representative) is unable to comply with the above timetable, other arrangements can be made with our prior approval. It is our strong preference, however, that every effort be made to follow the prescribed schedule.
17. For completeness, we expect to hear any legal submissions during the proceedings themselves, and confirm there is no need for these to be pre-circulated. However, parties should indicate their intention to present legal submissions and provide an estimate of the hearing time required by 23 July 2018.
18. We understand that the NRC will collate all pre-circulated evidence and make it available on its website. Further instructions about accessing this information (including where hard copies of the evidence may be viewed) will be conveyed to the parties by the NRC following receipt of all materials.

#### **Hearing Process/Presentations**

19. All the pre-circulated evidence (both from the Applicant and from submitters) will be available to all parties via both councils' websites and at their main offices prior to the hearing. In addition, all the pre-circulated material will have been read by us prior to the hearing commencing and, as such, it will be "taken as read" meaning that it will not be necessary for a verbatim oral presentation of the written statements of evidence at the hearing.
20. We direct that each expert witness presenting evidence:

- Be introduced by the party calling the expert and asked to confirm their qualifications and areas of expertise;
  - Confirm the matters of fact and opinion contained in the statements of evidence;
  - Identify any corrections to be made; and
  - Provide a summary of their evidence to draw attention to key points in their statement of evidence - we request that this be limited to no more than 2-3 A4 pages.
21. The Applicant's expert witnesses may also provide written rebuttal evidence on other expert statements of evidence provided by another party. We remind witnesses that no new evidence shall be introduced, unless it is specifically in response to matters raised in other pre-circulated statements of evidence provided by another party.
22. Non-expert evidence from submitters, including lay evidence or legal submissions, shall be tabled at the hearing and read aloud on the day the submitter appears at the hearing. We remind the parties we will have also read all the submissions received prior to the hearing and therefore discourage submitters from reading their written submissions verbatim. Again, we are happy for submitters presenting to speak to a summary of their submission by either:
- A separate tabled statement that condenses the key points of the written submission (i.e. a couple of pages); or
  - Highlighting particular points within their submission during their presentation.
23. With this approach in place, we envisage presentations will be in the order of 10-15 minutes per speaker, though this is not a fixed time requirement. Our intent in signalling this is less a stipulation that speakers rigidly adhere to an imposed time limit, and more a *guide* for those wondering how long their presentation is likely to last. Further time may be required to answer any questions we may have.
24. We want to be clear that all parties (Applicant, submitters and Reporting Officers) will be given the time they require to adequately present their cases. The main reason the RMA requires pre-circulation of evidence is to minimise the time required for all parties to be present at the hearing itself. This expedited process will not, however, be at the expense of any party's ability to fully participate in the process and present its case to us.

#### **Site and Locality Visits**

25. We will be undertaking a general site and locality visit during the hearing process.
26. If any party has a desire for us to visit particular sites/localities associated with the applications, they should advise Ms Sluys as soon as practicable. We would suggest that this could be done at the same time that they respond to the NRC regarding the list of evidence authors/witnesses to be called in support of their submission (i.e. by 23 July 2018).

#### **Request to Postpone Hearing Date**

27. On 20 June 2018 the NRC and the KDC received an email from Professor Margaret Mutu, on behalf of Kāpehu marae, to postpone the hearing. The email outlined difficulties in organising volunteer expert and technical advice associated with assessing the potential effects of the proposal and the need to undertake/prepare their own Cultural Impact Assessment. A copy of the request was sent to the Applicant for comment and is appended to this Minute.

28. On 25 June 2018 the NRC and the KDC received a Memorandum of Counsel, on behalf of the Applicant, responding to the request to delay the hearing and providing information witnesses and evidence to be called at the hearing. A copy of that Memorandum is appended to this Minute.
29. We have considered the request to delay the hearing for several months and also the Memorandum provided by the Applicant's Counsel. We consider this request is unreasonable given the statutory timeframes of the RMA. Section 103A of the RMA requires the hearing to be completed no later than 75 working days after the closing date for submissions. This timeframe has already been extended by the NRC and the KDC to enable the hearing to commence in August. Further, we note there is no provision under the RMA which would enable us to delay the hearing. While section 91A of the RMA allows an Applicant to request the consent authorities to suspend the processing of an application, this section of the Act does not afford the consent authorities the same suspension ability. We therefore refuse the request to postpone the hearing.
30. If any party wishes to seek further clarification around this Minute or the hearing process, please contact Ms Sluys in the first instance by email at [alissas@nrc.govt.nz](mailto:alissas@nrc.govt.nz) or by phone on 0800 002 004.

**DATED** this 29<sup>th</sup> June 2018



Sharon McGarry  
Independent Hearings Commissioner (Chair)

On behalf of Independent Hearing Commissioners  
Dr Rob Lieffering  
Mr Reginald Proffit  
Mr Mark Farnsworth

## Alissa Sluys

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**From:** Margaret Mutu

**Sent:** Tuesday, 19 June 2018 6:46 PM

**To:** Stuart Savill; David Badham

**Cc:** 'J Hollis; Betty Shine; Shannon; Pam White; John Mutu-Grigg; Michelle Mutu-Grigg; Shane Cambell; Isaac Mutu; Diane Bradshaw; Vili and Robyn; Jen Murray; Reuben Reeves; Jerome; Rosie

**Subject:** RE: Tegel Foods Ltd Cultural Impact Assessment and unauthorised personnel

Tēnā kourua David kourua ko Stuart

I am writing to advise that following on from our marae hui on 10 June, Kāpehu marae is now conducting our own full Cultural Impact Assessment of the application made by Tegel, regardless of the fact that Tegel has refused to resource or fund the work. While we have been offered a range of expert and technical advice, especially in respect of the potential effects on tapu, and of the odour, air quality and the public health issues arising from the proposal, each of the experts will be working voluntarily and the assessment will therefore take some time to complete. We ask that in terms of the resource consent process you are currently conducting, we be given the necessary time to carry out the research required, to write up the assessment and to have it approved by the whānau and hapū who whakapapa to Kāpehu before sending it to your councils. At this stage we cannot give a firm undertaking as to a probable completion date but based on the work carried out to date, it will be at least several months away.

By way of background to this decision, the reasons we have decided to carry out this assessment are a result of deteriorating relationships with Tegel Foods Ltd. Since our last communication Tegel advertised a meeting of Kāpehu marae in Auckland on 6 June without advising the marae and giving only four days' notice. Luckily a member of the marae saw the advertisement in the New Zealand Herald. We asked Tegel not to proceed without permission of the marae but they refused. In the event over 100 people attended the meeting even though the venue was changed three hours before it took place and many did not make it as a result.

At the meeting, Tegel presented their proposal and asked for questions. A very large number of mainly technical questions were put to them. The responses they gave indicated that not only were our concerns about their proposal justified, the negative impacts will be even greater than we originally thought having considered their application and the responses to your s.92 requests for information. We advised Tegel and Tonkin and Taylor of our concerns.

Several people at the meeting questioned the cultural expert contracted by Tonkin and Taylor. We are extremely concerned that he is not qualified to carry out a cultural impact assessment in respect of Kāpehu. He does not have the knowledge or access to the necessary resources required to conduct the assessment. We advised Tegel of this but they responded that he will continue to carry out an assessment. He subsequently tried to hold hui on marae other than Kāpehu in the Northern Wairoa. I am advised that four of the five marae approached refused to host Tegel and no-one from the fifth marae stayed after they unlocked the doors for the hui.

It is essential that information that councils receive relating to Kāpehu marae and urupā and the potential effects on them of Tegel's proposal are both authoritative and accurate. Kāpehu marae has been clear that only those authorised by our marae can do this work. In light of Tegel's refusal to agree to that, Kāpehu marae has no choice but to conduct the assessment using voluntary contributions from appropriate experts within timeframes that those experts can make available to us.

We hope your councils can assist in this regard.

Noho ora mai

Margaret

Professor Margaret Mutu

Chairperson

Kāpehu marae

Sills Rd

Arapohue

via Dargaville

Before the Commissioners  
appointed by Northland Regional Council  
and Kaipara District Council

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Under the Resource Management Act 1991

In the matter of an application by **Tegel Foods Limited** for resource consents  
to develop and operate a free range broiler farm at 5763 and  
5802 State Highway 12, Arapohue, Dargaville

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**Memorandum of counsel**

25 June 2018

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**Applicant's solicitor:**  
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Anderson Lloyd  
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**anderson  
lloyd.**

## May it please the Commissioners

- 1 This Memorandum of Counsel has been prepared on behalf of Tegel Foods Limited (**Tegel**, the **Applicant**). We respectfully seek it be placed before the Commissioners who will be deciding Tegel's application for resource consent to construct and operate a free range broiler poultry farm in Arapohue, Dargaville (the **Application**) prior to any directions being issued. We understand that Commissioners will be appointed at the Kaipara District Council meeting on 23 June 2018.
- 2 The purpose of this Memorandum is to:
  - (a) provide information upfront from the Applicant to ensure a focused and efficient hearing process and to assist the Commissioners in deciding what directions it may be beneficial for them to make at this point in preparation for the hearing, which is set to commence on Wednesday 8 August 2018; and
  - (b) respond to an email received by Northland Regional Council and Kaipara District Council (the **Councils**) from Professor Margaret Mutu on 19 June 2018 which requests "at least several months" delay to the hearing for Professor Mutu to conduct a Cultural Impact Assessment (**CIA**) as chairperson of Kāpehu marae.
- 3 This Memorandum covers the following matters:
  - (a) Pre-hearing meetings and expert conferencing;
  - (b) Hearing process and presentations;
  - (c) Site and locality visit; and
  - (d) Tegel's response to the (effective) request to delay the hearing fixture.

## Pre-hearing meetings and expert conferencing

- 4 The Applicant supports formal pre-hearing meetings and respectfully requests that the Commissioners enable this process. The Applicant sees merit in identifying areas of agreement and narrowing areas of disagreement between parties prior to the hearing commencing to ensure a focused and efficient hearing process.
- 5 In particular, the Applicant is willing to engage in formal pre-hearing conferencing between its technical experts and any technical experts engaged by submitters or the Councils. We have provided a list of company representatives and experts that the Applicant currently proposes to call in **Appendix 1** to assist with and



advance the Commissioners' directions in this regard. The Applicant has not been formally advised of any technical experts whom submitters will be calling. It would be useful to be made aware of this in advance of receiving evidence.

### **Witnesses and evidence**

- 6 There are currently 18 witnesses who will be providing evidence in support of Tegel's proposal. **Appendix 1** sets out the intended order of witness appearances. It would be greatly appreciated if witness and submitter scheduling can occur as soon as possible so that Tegel's witnesses can confirm their arrangements and to allow Tegel to secure accommodation in Dargaville for all attendees at the hearing.
- 7 If expert evidence (both Applicant and submitter) is distributed to all parties prior to the hearing, and read by the Panel prior to the hearing commencing, we anticipate it will not be necessary for a verbatim oral presentation of the written statements of evidence at the hearing. We respectfully request directions that presentations can be limited to confirming qualifications/expertise, any corrections that need to be made to evidence, a summary of key conclusions and any rebuttal evidence to evidence received subsequent to submission of evidence in chief.
- 8 It is our current intention that at the hearing each expert will present a summary of their evidence (this will summarise the pre-circulated evidence in approximately 2-3 pages), along with any rebuttal evidence, unless directed otherwise by the Commissioners.
- 9 We tentatively estimate that legal submissions will be 1.5-2 hours; and assuming each expert reads from a summary, then each expert's presentation will take between 30min – 1 hour, depending on the length of questioning by the Panel and whether the experts' evidence is challenged by other experts in the same area. We will be in a position to confirm estimated time required to present Tegel's case once witnesses have received and reviewed the Section 42 Reports and we are aware of what other experts will be involved in the process.
- 10 We anticipate that not all witnesses will need to appear at the hearing. In the event the Commissioners have no questions for particular witnesses, we respectfully request that the Panel direct that they be excused from attending the hearing. It is worth noting that all of the witnesses are based outside of Dargaville.
- 11 One of Tegel's expert, Mr Jason Pene, (air quality modelling) is overseas. Whilst much of the matters covered in his evidence will also be addressed by Jenny Simpson who will be present, Mr Pene has particular expertise and experience relating to the modelling undertaken and we anticipate that the Commissioners

can accommodate for him to be available for questioning, if required, by video conferencing. It would be appreciated if this can be confirmed.

#### **Site and locality visits**

- 12 In order to generally familiarise the Commissioners with the Application Site, the Applicant is happy to arrange access to the Application Site prior to the hearing at a time/date that suits the Commissioners (in addition to the standard site visit to be arranged during the hearing with appropriate input from Submitters).

#### **Delaying hearing for a further Cultural Impact Assessment**

- 13 The Applicant does not agree to further delays for the hearing. It is submitted that:
- (a) the requested delay in the email of Professor Mutu dated 19 June 2018 is considered unreasonable given Professor Mutu's lengthy involvement to date in the process (including preparation of detailed submission dated 7 March 2018) and because a CIA is forthcoming from the Applicant; and
  - (b) no special circumstances exist for the Commissioners to exercise discretion to allow further delays to the hearing date of 8 August 2018.
- 14 Tegel has been and continues to be willing to engage directly with Professor Mutu as Chairperson of Kāpehu marae, as well as with other whānau and hapū who whakapapa to Kāpehu marae. With respect to Professor Mutu, she has publicly advised she will not talk with the Applicant's independent cultural expert preparing the CIA, and has encouraged many other members of Kāpehu marae to also refuse to talk to Tegel in a manner that would enable gathering of information relevant to a CIA.
- 15 Despite that stance the Applicant has made a number of amendments to its Application in direct response to cultural concerns, including those raised in the comprehensive submissions on the Application made by Professor Mutu and others on 7 March 2018. These amendments have been submitted to the Councils in the section 92 response dated 18 May. The Applicant and its independent expert are also continuing to have productive discussions with other affected mana whenua and is progressing the preparation of the CIA, which will be submitted to Council on 5 July (as previously advised in the section 92 response dated 15 June). This work is detailed further below.

#### *Cultural Impact Assessment*

- 16 Tegel has engaged an independent Cultural Expert who is working with whanau and stakeholders with interests in relation to Kāpehu marae and tūpāpaku of the Urupā to prepare a CIA. Earlier this month Tegel held meetings at Naumai and

Oturei Marae and met individual whanau to discuss the Application and their cultural concerns. This work is well underway and the CIA will be provided to the Councils and submitters by 5 July 2018, which is over a month prior to the commencement of the hearing. This CIA will complement assessments already carried out, and submitted with the Application, from an archaeological expert and from Te Roroa.

- 17 As a result, the Applicant will be in a position to ensure adequate and comprehensive information is provided on:
- (a) the relevant cultural values associated with the application site;
  - (b) the effects on those values, and the relationship of tangata whenua and mana whenua to them, as a result of the proposed free range broiler poultry farm; and
  - (c) further recommendations (if any) to avoid, remedy or mitigate any adverse effects.
- 18 An assessment of impacts on cultural values is appropriately regarded as technical advice which can form an important part of the resource consenting process under the Resource Management Act 1991 (the **RMA**), but there is no requirement for the Applicant (or the relevant Council) to have a certain group or submitter prepare a CIA under the RMA.
- 19 It is also not unusual for an independent Cultural Expert to work with whanau to prepare a CIA for an Applicant, particularly when there is a breakdown in relationship. We note for completeness that:
- (a) Tegel offered to pay for the nominated chair of Kāpehu marae to undertake a CIA to assess the potential cultural effects on the Urupā and the Marae on 16 February 2018;
  - (b) Professor Mutu accepted this offer to do an assessment in her capacity of the Professor of Māori Studies of the University of Auckland as well as the chair of Kāpehu marae;
  - (c) The Contracts Manager for Uni Services (a wholly-owned agency of the University of Auckland) provided a contract for services on 1 March 2018. The Contract included fees and costs based on the following:
    - (i) *Principal Investigator time (Professor Margaret Mutu)*: \$800 per hour for between 150 and 250 hours
    - (ii) *Research Assistant time* - \$450 per hour for up to 80 hours

- (iii) Legal input from Wackrow Williams and Davies Ltd -\$350 per hour
  - (iv) Organisation and koha for all hui - \$10,000
  - (v) *Travel and accommodation costs*: \$4000 (estimate – billing to meet actual evidenced expenses)
  - (vi) *Technical Consultants as needed* – TBC , supplied and organised by the Client in consultation with the Principal Investigator
- (d) Tegel responded to confirm that it remained willing for the CIA to be undertaken but requested a revised timeframe consistent with the anticipated hearing date (at that time) and a more reasonable estimate of fees (9 March 2018).
- (e) After some further proposed revisions to the proposed contract for services the parties accepted that they couldn't reach an agreement on costs and timeframes (14 March 2018).
- 20 Tegel can provide the Commissioners with copies of the above correspondence if it would be of assistance.

*No special circumstances warrant further delays*

- 21 Under the RMA, a hearing must be completed no later than 75 working days after the closing date for submissions on the application (s103A(2) RMA). Submissions closed on 7 March so following ordinary statutory timeframes, the hearing should have been completed by today, 25 June 2018. It is acknowledged that the consent authority may extend the maximum timeframes specified up to twice the maximum timeframes if special circumstances exist (s37A(4) RMA).
- 22 Professor Mutu is an experienced participant under the RMA. She has had many meetings with Tegel, access to Tegel's technical assessments and advisors, and the ability to ask Tegel questions for many months. Tegel first made contact and met with Professor Mutu about the Application in August 2017. She has a good understanding of the Application and its potential effects, as can be seen by her comprehensive and detailed submission lodged on 7 March 2018. Professor Mutu was aware from 14 March 2018, approximately 3.5 months ago, that she would not be preparing a CIA for Kāpehu marae at Tegel's expense and has had adequate time to prepare for the hearing.
- 23 It is submitted no special circumstances exist for the Commissioners to exercise discretion to allow further delays to the hearing given Professor Mutu's involvement to date in the process, and because a CIA will be provided shortly to the Panel, the Councils and the Submitters to ensure sufficient information is available to assess the effects of the proposal. The CIA provided by the

Applicant can be evaluated in the context of any evidence submitted by Professor Mutu as is the standard process in any hearing.

- 24 It would be unreasonable and unjustified place the application on hold and cause additional delay.
- 25 Tegel respectfully provides the above information, and requests directions from the Commissioners on the matters above to ensure a focused and efficient hearing process.

Dated this 25 day of June 2018



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Maree Baker-Galloway  
Counsel for the Applicant

## Appendix 1: Tegel Witnesses

Name	Role
John Russell	Company evidence (corporate overview)
Ed Campion	Company evidence (operations overview)
Emma Coote	Company evidence (sustainability)
Jessica Urquhart	Planning (effects)
Tim Allsopp-Smith	Civil / infrastructure (quarry, earthworks, wastewater, groundwater)
Pierre Malan	Geology/Geotech
Alan Gregory	Traffic (including quarrying)
Peter Ibbotson	Noise
Rob Van De Munckhof	Hazardous substances
Chris Shanks	Hydrogeology; groundwater abstraction
Mark Pennington	Hydrology, surface water quality
Jason Pene	Air quality
Jenny Simpson	Air quality
[TBC]	Human health [TBC]
James Bentley	Landscape / visual effects
Mahanga Maru	Cultural
Fraser Colegrave	Economics
Andrea Brabant	Planning (policy)