

NOTICE SEEKING CLEARANCE FOR BUSINESS ACQUISITIONS
COMMERCE ACT 1986 – section 66
PUBLIC VERSION

29 January 2021

The Registrar
Competition Branch
Commerce Commission
WELLINGTON

Pursuant to s66(1) of the Commerce Act 1986, notice is hereby given by Taranaki By-Products Limited (**TBP**) seeking clearance for it, or an interconnected body corporate, to make the following share acquisitions:

- a. TBP acquiring up to 100% of shares in Hawkes Bay Protein Limited (**HBP**) and Jackson Transport Limited (**JTL**); and
- b. Glenninburg Holdings Limited (**GHL**) acquiring up to 100% of shares in Tuakau Proteins Limited (**TPL**).

the **Transactions**.

The vendor to the Transactions is Andrew Lowe Trustee Company No.2 Limited (**ALT**) and the shares are being purchased as a package.

Executive Summary

(The following includes words/ acronyms defined in this application)

1. For the reasons set out in this Application, the proposed Transactions will not result in a substantial lessening of competition:
 - a. in any North Island market for rendering of meat material whether as a toll processor or as purchasers of meat material; or
 - b. in any national market for the sale of rendered meal or tallow products.
2. Since 2014, TBP has jointly owned HBP and JTL, and GHL has jointly owned TPL. TBP holds 50.1% of the shares in HBP and 50% of JTL. GHL holds a 49.9% shareholding in TPL. TBP and GHL have shareholder rights to and have appointed two of the four directors to the boards of all three target companies that they have shareholdings in.

3. Under an orthodox competition assessment approach and as applied by the Commission in other merger decisions, interests at these levels clearly already provide the Applicant substantial influence over the businesses of the target companies and so the target companies are already “associated” with the Applicant. Accordingly, these companies have been part of the same group since 2014 for competition purposes. This was recognised by the Commission in the Tuakau Determination.
4. The vendor, ATL/Andrew Lowe, does not act as a competitive constraint over how TPL, HBP and JTL conduct their businesses against the Applicant’s other rendering businesses at Waitoa, Okaiawa and Kakariki.
5. In any event, since 2014 changes have occurred to the North Island rendering markets. These have been driven largely by export market certification requirements and impending changes thereto. There is now no significant overlap between the target companies and the Applicant’s other rendering operations in regard to input material customers and toll customers.
 - a. TPL’s Tuakau plant in the upper North Island only renders ante and post- mortem (A&PM) inspected bovine material. TPL has permanently withdrawn from rendering poultry and shop collection material.
 - b. GHL’s Waitoa plant also in the upper North Island mainly renders casualty stock, home kill, pet food waste and poultry. It has no A&PM inspected material customers and [] will not be able to compete for A&PM inspected material in the future. It is not financially feasible to upgrade this plant.
 - c. TBP’s Okaiawa plant is in the lower North Island and mainly renders A&PM inspected bovine, some ovine and poultry. []. A few TBP customers in the King Country may have an option to supply bovine material to TPL but the Transactions will not change the status quo as TBP has (through GHL) substantial influence over TPL (as previously cleared under the Tuakau Determination). These customers have AFFCO and PVL as alternative rendering options in the upper North Island.
 - d. HBP is in the lower North Island but only operates as an EU certified ovine renderer. Given different certifications and species focus, Waitoa, Okaiawa and Kakariki do not compete against HBP for ovine material.

- e. Kakariki near Marton is now the only North Island renderer of shop material, porcine and cervine. It also renders poultry for its 50% shareholder, and fish. Given different certifications and species focus, this plant does not compete against TPL or HBP for material.
6. AFFCO and PVL (Wilson Hellaby) remain as options for customers to send their material to and are understood to have spare capacity to receive such material.
 7. New entry is possible, but it would likely come from a meat or poultry processor adding a rendering line to their plant, similar to what the larger meat processors already do. As the supply of material for rendering has been reducing due to greater utilisation of carcasses (e.g. diversions into pet food and other edible products), there is a real and ongoing threat to the Applicant's businesses which require volume throughput to maintain efficiency. To satisfy customers using the Applicant's plants for third-party rendering or tolling is more cost effective than self-rendering, the Applicant's []. They also provide transparency of transport costs and sale prices, from which material prices are set. [].
 8. JTL collects material from customers to transport to TBP's Okaiawa plant and to HBP's Napier plant. There are many other transport operators and the Applicant does not have any other interests in transport operators aside from JTL.
 9. The output meal and tallow markets are national, with most product exported. Other suppliers are the meat companies (e.g. AFFCO, PVL, Alliance) and toll customers ([]). No competition concerns over the output markets were raised in Tuakau Determination. The only aggregation since 2014 is meal and tallow produced by Waitoa. The Applicant assesses that the TBP/GHL group would account for around [] New Zealand's output products and so there is significant competition from other providers of outputs.

PART 1: APPLICANT AND OTHER PARTY DETAILS

Applicant for Clearance

10. This notice seeking clearance is given by TBP for it, or an interconnected body corporate, to acquire up to 100% of the shares in TPL, HBP and JTL as described previously. The Applicant can be contacted as below:

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11. All correspondence and notices in respect of this application should be directed in the first instance to:

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Other party to the Transactions

12. Contact details for ALT are set out below:

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PART 2: TRANSACTION OVERVIEW

Target Companies

13. TPL carries on the business of rendering bovine material at its plant in Tuakau (South Auckland). HBP renders ovine material at its plant near Napier. JTL operates trucks that collect animal material from meat processing companies and transports bovine material to be rendered at TBP's plant at Okaiawa and ovine material to HBP. Protein meat and bone meal (**MBM**), blood meal and tallow are the main products produced from rendering, most of which is exported mainly for stock food and bio-diesel end uses.
14. All three target companies are owned under joint venture type arrangements between TBP and Lowe Corporation Limited or associated companies (**Lowe**) as set out below:

Table 1

| Tuakau Proteins Ltd | Hawkes Bay Protein Ltd | Jackson Transport Ltd |
|--|--|--|
| Graeme Lowe Protein Ltd* (50.1%) | Taranaki By-Products Ltd (Applicant) (50.1%) | Taranaki By-Products Ltd (Applicant) (50%) |
| Glenninburg Holdings Ltd (Applicant) (49.9%) | Lowe Corporation Ltd* (49.9%) | Lowe Corporation Ltd* (50%) |

** These are the current Companies Office registered shareholders, however these shares have been transferred to ATL and that transfer will be regularised with the Companies Office as part of the paperwork relating to the purchase by TBP and GHL of the shares*

Acquiring Companies

15. TBP operates a rendering facility at Okaiawa just north of Hawera in Taranaki, which primarily renders bovine and poultry material. TBP is ultimately owned by family interests associated with Glenn Smith and his sister Amanda Stockwell.
16. TBP is also a shareholder in Taranaki Bio Extracts Ltd which is a value-add processing business attached to the Okaiawa plant, in a 50/50 joint venture with ANZCO Foods Ltd. ANZCO has meat processing plants nearby at Waitara and Eltham and supplies bovine material to Okaiawa. Taranaki Bio Extracts manufactures bone gel and edible tallow. It has a 100% owned subsidiary company, SBT Marketing (2009) Ltd, which markets meal and tallow to overseas customers.

17. GHL is 70% owned by TBP and 30% owned by a family trust associated with Stephen Dahlenburg (**Dahlenburg**). GHL owns Wallace Proteins Ltd (**WPL**), which operates a bovine/mixed material/poultry rendering plant at Waitoa in the Waikato. WPL has a 33.3% shareholding in Waitoa Industrial Estate Ltd, which owns shared infrastructure at the Waitoa site, including effluent ponds, effluent disposal infrastructure and composting infrastructure. There is also an adjoining tannery owned by Waitoa Tannery Limited, which is ultimately owned by Greenlea By-Products Ltd and Wilson Hellaby Ltd, which are the other shareholders of Waitoa Industrial Estate Ltd.
18. GHL and TBP together own Liqueo Bulk Storage Ltd, which operates bulk storage terminals for tallows and oils at the Ports of Napier and Timaru. GHL is a 50% shareholder in Direct Fats and Oils Ltd, which collects used cooking oil from restaurants and fast-food outlets. This waste is then filtered and sold for stock food manufacture and bio-diesel.
19. A Dahlenburg related trust owns 50% of Kakariki Proteins Ltd (**KPL**), which operates a mixed material rendering plant in the Manawatu near Marton.

Ownership Structures

20. Before and after ownership structures relating to the rendering plants are attached as **Appendices 1A and 1B**. An ownership diagram showing the Applicant's other related businesses is attached as **Appendix 1C**.

Agreement for Sale and Purchase of Shares (the Agreement)

21. The parties have entered the Agreement on 27 January 2021 which is conditional on obtaining a clearance from the Commission. The Applicant proposes to acquire the Lowe related shareholdings which will bring its existing near 50% interests to 100% in each target company. The purchase price

[

]. A confidential copy of the Agreement is attached as **Appendix 2**.

22. [

]. Confidential copies of these are attached as

Appendices 3, 4 and 5.

23. [

].

24. [

].

Counterfactual

25. If a clearance is not given, the current ownership of the three target companies will likely continue

[

], the status quo in terms of ownership is probably the only counterfactual that should be applied in these circumstances.

Previous Commission Decisions

Tuakau Determination

26. In 2014, the Commission gave clearance to TPL to acquire the Tuakau rendering assets and business then owned by Graeme Lowe Protein Ltd.¹ The shareholding in TPL has since remained the same with 50.1% held by Lowe-interests and 49.9% held by GHL. In 2014, the shareholding in GHL was intended to be TBP holding 82% and Dahlenburg interests holding 18%. That shareholding was never formalised. TBP held 100% of the shares in GHL until May 2018, whereupon the Dahlenburg related trust acquired a 30% interest.
27. At the time of the Tuakau determination, HBP was already jointly owned by TBP (50.1%) and Lowe (49.9%) and KPL was 50% owned by Dahlenburg interests and 50% by Foxton-based Turk's Poultry Farm Ltd (**Turks**).

¹ Tuakau Proteins Ltd and Graeme Lowe Protein Ltd [2014] NZCC 26 - (25 November 2014)

28. In its Determination (para. 4) the Commission assessed the acquisition by TPL of the Tuakau rendering assets and business as if it were a full merger between Lowe, TBP and KPL. That encapsulated the rendering plants at Tuakau (Lowe), Hawera (Lowe), Napier (HBP - TBP/Lowe), Okaiawa (TBP) and Marton (KPL – Dahlenburg/Turks).
29. Although not recorded in its decision, Lowe purchased a 50% interest in JTL in October 2014 through a new allocation of shares. JTL was previously wholly owned by TBP and transports material from meat processors to TBP’s Okaiawa plant and to the HBP Napier plant (HBP was once wholly owned by TBP).
30. In the Tuakau determination, the Commission approached the input markets as being in two geographical areas, being the upper North Island and the lower North Island. Within those areas, the product dimensions were broken down to be:
 - a. toll rendering services for poultry material
 - b. toll rendering services for bovine/ mixed raw material
 - c. toll rendering services of ovine raw material
 - d. direct collection of poultry raw material
 - e. direct collection of bovine/mixed material
 - f. direct collection of ovine material
 - g. shop collection of raw material.
31. The output markets identified in the Tuakau determination were meat and bone meal (MBM) from different species, bone meal, blood meal, oils and edible and inedible tallow. MBM from different materials have different qualities but tallow is quite generic. The output product markets were viewed on a national basis.

WGLP Determination

32. In 2016, the Commission granted clearance to The Wallace Group Limited Partnership (**WGLP**) acquisition of the rendering assets and businesses of Wallace Corporation, Farm Brands and Keep it Clean Ltd². In that case, the competition overlaps for the input markets that was investigated occurred only in the South Island and the approach to market definition followed that applied in the earlier Tuakau determination.
33. The WGLP determination recorded the developments relating to finished rendered products whereby the requirements of overseas markets were affecting how input material needs to be rendered in New Zealand as follows:

² The Wallace Group Limited Partnership/ Wallace Corporation Ltd/ Farm Brands Ltd and Keep it Clean Ltd [2016] NZCC 21 – 19 October 2016

20. For example, to sell into the EU market, a rendering line cannot have switched species more than once in the previous year. The EU market also does not accept finished rendered products produced with casualty material because of disease risk. Some markets (e.g., Indonesia and China) do not accept material containing pork. The presence of pork in the material used to produce the finished products significantly reduces the value of the product. This, in turn, affects the price that the renderer is prepared to pay for the animal material.
21. The rendering industry in New Zealand is beginning to face increasing pressure to manage the risks of cross species contamination of rendered products. International purchasers of the finished products are increasingly relying on DNA testing to ensure, for example, that halal certified material does not contain pork. The financial implications of cross contamination are significant as purchasers will reject large volumes of material if a DNA test is failed and it has implications for the export certification of a rendering plant.
34. Export certification requirements are getting stricter []. In essence these relate to only veterinary inspected (A&PM) bovine material being processed on pure bovine lines in the near future, []. Those changes are discussed below.

Wallace Waitoa Acquisition

35. The Commission is currently investigating GHl’s acquisition (via WPL) of WGLP’s rendering assets at Waitoa and two related properties in June 2020. This application assumes that GHl will retain ownership of the Waitoa plant via WPL for the purposes of the following competition assessment. However, some updated market information provided in this application will also be relevant for the Commission’s investigation into the Waitoa acquisition.

PART 3: MARKET INFORMATION.

36. The Commission has previously advised the Applicant that it wishes to examine the extent to which Lowe’s approximate 50% shareholding imposes an independent constraint on the competitive behaviour of TPL, HBP and JTL.³

Tuakau (TPL) and Waitoa (WPL)

37. The plants at Tuakau (South Auckland) and Waitoa (Waikato) are located in the upper North Island, approximately 100km distant by road from each other. If there is a significant overlap in the provision of rendering services between these two plants or could be in the future, the question as to whether Lowe applies an independent competitive constraint against GHL as owner of Waitoa, is probably the most relevant. This is in contrast to the situation involving the other more distant rendering plants in the lower North Island, being HBP (Napier), TBP (Okaiawa) and KPL (Marton).

38. In 2014, the Commission identified that Tuakau and Waitoa operated competing rendering lines, and both provided shop collection services in the upper North Island as follows:

Table 2

| Renderer | Ovine line | Mixed | Blood line | Poultry line | Feather line | Shop collection service | Casualty |
|----------|------------|-------|------------|--------------|--------------|-------------------------|----------|
| Tuakau | N | Y | Y | Y | Y | Y | N* |
| Waitoa | N | Y | N | Y | Y | Y | Y |

- *Tuakau’s resource consent prevents casualty stock being processed except in limited situations and within a 1% cap. However Tuakau does not accept casualty stock.*

39. Since 2014, significant changes have been made to what is rendered at Tuakau. Only ante and post-mortem (A&PM) veterinary inspected bovine material, sourced from meat processing plants, is now processed at Tuakau. The A&PM inspections are also part of Halal certification to make sure the animal has no disease. Material is not accepted at Tuakau without being accompanied by “House Certificates” issued by the meat processor. These provide traceability back to the processor and to the farm where the animal originated from.

40. TPL withdrew from collecting shop waste in 2019 and then ceased rendering shop waste in August 2020. No mixed lines are now in operation at Tuakau.

³ []

41. Waitoa’s operations have remained much the same since 2014 except for the withdrawal by WGLP of shop collection services in around 2016. The services currently being provided at both plants are as follows:

Table 3

| Renderer | Ovine line | Bovine (A&PM inspected only) | Mixed | Blood line | Poultry line | Feather line | Shop collection service | Casualty |
|----------|------------|------------------------------|-------|------------|--------------|--------------|-------------------------|----------|
| Tuakau | N | Y | N | N | N | N | N | N |
| Waitoa | N | N | Y* | Y | Y | Y | N | Y |

* excluding shop collection & pork

42. The background to these changes is explained below.

Bovine Only Rendering

43. Since 2014, Tuakau’s LTR1 has been operated as a dedicated bovine line with material from meat processors, that include A&PM inspections and traceability. This was to take advantage of the higher export prices obtainable from pure bovine MBM product certified for export, particularly to Indonesia under the relevant Overseas Market Access Requirements (**OMARs**).
44. OMARs generally require species material separation during the entire process (receiving, rendering, drying, milling, storage and delivery) and the OMARs for some countries require that all material is A&PM inspected. Pork is not permitted to be processed on lines used to process bovine, even if the line is thoroughly cleansed between production runs. MPI undertakes regular audits of a plant’s records to confirm compliance under the relevant OMARs.
45. Around [] of Tuakau’s bovine MBM is exported to Indonesia.
[

].

46. [] for rendered products not intended for human consumption requires traceability through all stages back to the meat processor and the farm. This information is provided via

House Certificates received on delivery. This information is collated with rendering dates and this information is sent to MPI for checking and issue of export certificates for the finished product. This traceability requirement means that if TPL wishes to export to [], it has little option but to only accept material from meat processors that have the requisite systems and provides the relevant information and certificates.

47. Securing additional A&PM bovine material from [] in 2019 provided sufficient raw material for a second dedicated bovine line (LTR2B) to be established at Tuakau from January 2020.

48. Waitoa ceased shop collection to maintain MPI-certification to export bovine MBM to [].

49. At Waitoa, there are two separate raw lines (mixed and poultry) feeding separate cookers and dryers. The poultry line is separate from the mixed line, but material going down mixed line cannot be separated. [

]. A major investment to reconfigure and upgrade the old plant would need to be made to add a separate 3rd line for A&PM bovine rendering. An estimate of that cost would be \$16m.

50. The Applicant believes it most unlikely that the Waitoa mixed line plant would ever be converted to have an A&PM bovine dedicated line in order for the plant to be compliant with [](even under WGLP's former ownership). This is because the Waitoa plant was established from the start as a "dead cow" rendering plant servicing the Waikato dairy region. The plant was integrated with a tannery on site to process hides that came with casualty stock. The rendering and tannery operations together provided the core of the business. A meat processing plant was added to the site and later sold to Silver Fern Farms. The Silver Fern Farm plant is seasonal and now only processes calves for sixteen weeks of the year.

51. []. The Applicant believes that WGLP would not likely have invested \$16m given that background of non-investment and it would be difficult to build a business case to support such an investment, either then or now. Part of the reason for this is that

A&PM bovine material is not in abundant supply and there is excess rendering capacity. For the last 5 years, material for rendering has been declining as meat processors utilise more material before sending what it cannot otherwise sell to be rendered. Some of that is sold to pet food manufacturers. An investment to convert Waitoa would also necessitate obtaining supply commitments from a number of meat processors to underwrite it. Meat processors may be unwilling or unable to provide such commitments, particularly given some are under existing term-supply contracts. In summary, the likelihood of Waitoa converting to have a A&PM bovine dedicated line was and remains a very remote proposition.

52. While Waitoa can continue to process A&PM bovine on its mixed lines, the MBM produced at Waitoa will be of lower grade [] Bovine MBM is a commodity traded internationally and the current price of OMARs-certified bovine MBM exported to Indonesia by TPL is around \$920 per tonne, whereas mixed MBM sells for around \$610 per tonne. As Waitoa's costs are no lower than Tuakau's, Waitoa would be unable to viably sustain paying to meat processors prices for A&PM material equal to what those meat processors receive elsewhere, such as from TPL.

53. In any event, Waitoa really needs to remain a "dead cow" renderer for environmental reasons as there is no other renderer that can perform that service in the Waikato dairying region and neighbouring areas.

Poultry

54. TPL ceased processing poultry in December 2019 because the effluent system at Tuakau could no longer cope with the waste produced from rendering poultry, which resulted in the discharge of insufficiently filtered liquid and excess odour. Processing poultry material generates a higher volume of liquid going into the waste/effluent system, than what is generated from bovine material. As a result of the December 2019 discharge, TPL was prosecuted for breaching its resource management consents and fined \$180,000⁴.

55. As a consequence, poultry material from [] previously supplied to TPL was diverted to be rendered at Waitoa from January 2020. Waitoa has a large effluent treatment system which once also serviced the meat works on the site, that now only operates seasonally. The previous poultry line (LTR2B) at Tuakau is now a second dedicated A&PM bovine line.

⁴ <https://www.stuff.co.nz/business/300168646/christmas-stink-which-made-people-sick-ends-in-180000-fine-for-offal-processing-plant-tkau-proteins-limited>

56. TPL does not intend to resume rendering of poultry as the effluent system remains under strain and there is not sufficient land to increase effluent processing capacity. Tuakau's resource consents are up for renewal this year
- []
-]Because of these constraints, it is very unlikely that poultry material would ever return to Tuakau.
57. [] was once a toll customer for TPL but is now a direct customer. It has the option to switch back to being a toll customer should it choose. In either case, [] poultry material will need to be rendered at Waitoa unless [] decides to render it.

Shop Collections

58. []
-] Waitoa ceased its collection and processing of shop waste in around 2016.
59. TPL ceased its collection service for this material in mid-2019. TPL sold its trucks to Allied Bulk which took over the upper North Island collection service from butcher shops, supermarkets and other small material customers (e.g. pet food manufacturers). That collection service stretches from Taupo to Whangarei. The Allied-collected material was transported to Tuakau, either directly or via Allied's Penrose site where material is stored for a short time.
60. TPL ceased accepting and rendering shop collection material in August 2020. The reason for this was
- []
-]
61. [] The high temperature rendering line previously used for shop collections now only processes A&PM inspected bovine fleshings.
62. As a result of TPL ceasing to accept shop waste, Allied and KPL entered into an agreement whereby Allied would linehaul shop collection material from Penrose to Kakariki. Allied continues to collect from Taupo to Whangarei and unloads the material into a large drive-in and dump chiller at Penrose. The material is re-loaded into linehaul trucks and taken to KPL.
63. KPL at Marton is the last remaining renderer prepared to accept porcine material in the North Island.

64. []. KPL also pays Allied for transport, details of which are provided below.

Customers - Tuakau

65. TPL has seven direct input customers ([] beef plants, [] fleshing customers and [] poultry customers, whose poultry material is now rendered at Waitoa) and [] beef plant toll customer. The identity of those customers and their volume and revenue data has been provided to the Commission separately. All input customers are located in the upper North Island area.

Customers - Waitoa

66. Waitoa’s main input customers are poultry processors []. Waitoa receives dead cows all year round, goats and dead calves during calving season. It has no meat processor customers. The Applicant understands that WGLP has provided the Commission with past customer information separately.

Other upper North Island Renderers

67. There are no other independent renderers in the upper North Island but the larger meat processing companies operate on-site rendering plants.

Table 4

| Renderer | Ovine line | Bovine line | Mixed | Blood | Poultry | Feather | Shop Collection service | Casualty Stock |
|-----------------|------------|-------------|-------|-------|---------|---------|-------------------------|----------------|
| AFFCO Moerewa | N | N | Y* | Y | N | N | N | N |
| PVL AMP/Hellaby | N | Y | Y | Y | N | N | N | N |
| AFFCO Horotiu | N | Y | N | Y | N | N | N | N |
| AFFCO Rangiuru | Y | N | N | N | N | N | N | N |

* Beef & lamb

68. Both AFFCO and Wilson Hellaby’s PVL have accepted material from other meat processing companies at times. In particular, the Applicant understands that Greenlea has supplied both AFFCO and PVL at times in the past. It is understood that the AFFCO and PVL plants have spare capacity to process third party material.

Other Options

69. Meat processors may sell material to pet food manufacturers which, after removing as much remaining material as possible for petfood, the rest (mainly heads and guts) is sent to be rendered. Farmers with casualty stock can bury them⁵ or send to landfills if they accept them. In the South Island, where rendering of shop collection and pork is no longer provided to the Applicant's knowledge, the material ends up in a landfill.

Napier (HBP)

70. HBP's Napier plant is EU-certified to export ovine MBM to the EU. This certification requires A&PM inspections. In 2014, the Commission found that HBP's Napier plant operated an ovine line but also rendered a small amount of cervine. In 2017, a second ovine-only line was added. While processing of cervine is still possible, EU OMAR certification prevents cervine being processed at the same plant. All cervine previously rendered at Napier is now sent to Kakariki. A blood line also operates at Napier.
71. EU destined ovine meal is a premium export rendered product. Being in Napier, HBP is located in the main North Island sheep farming and slaughtering region on the East Coast. Material is also transported from Wellington and King Country to Napier by reason of the higher returns that can be obtained from ovine processed at the EU certified Napier plant. Currently ovine meal exported to the EU realises \$NZ1,600 per tonne (which is lower than normal).

Customers - HBP

72. HBP has around [] meat processing input customers made up of [] large toll customers and [] direct customers. The identity of those customers and volume /revenue data has already been provided to the Commission.
73. HBP also receives material from meat processors in the King Country which are within the upper North Island geographic market. [] processes lamb and its waste material is transported to HBP to be processed on the ovine only lines. Similarly, [] sends its lamb material to HBP.

Other ovine renderers

74. HBP's plant is in the lower North Island but is the only independent EU registered ovine renderer in the North Island. WPL can process ovine on its mixed line, which it does for casualty stock (e.g. dead lambs), but the value of mixed material meal is much lower than EU-

⁵ See <https://www.dairynz.co.nz/environment/waste-management/dead-stock-disposal/>

export certified ovine meal. The Applicant considers that its customers would not view WPL as a practical alternative to HBP because it is not EU-export certified and so WPL is unable to offer similar prices for input material.

75. AFFCO’s Rangiora works in the Bay of Plenty is an ovine only rendering line which could take third-party ovine material. Progressive has in the past sent material there. The Applicant understands that meal from this plant is exported but that it does not have EU certification.

Other options

76. Pet food companies compete for material that could otherwise go straight to rendering.

Okaiawa (TBP)

77. TBP’s plant in Okaiawa, just north of Hawera, is in the lower North Island geographical market. Save for a blood line, Lowe’s rendering plant in Hawera was closed in 2014 after the Tuakau Determination. Lowe’s contract with [] was effectively subcontracted to TBP’s Okaiawa plant. As noted, Lowe retained a blood line at the Hawera plant

[] The blood meal produced by Lowe is toll processed for [] and sold for export by [].

78. The material currently rendered at TBP’s Okaiawa plant is as follows:

Table 5

| Renderer | Ovine line | Bovine line | Mixed (Bovine/Ovine) | Blood | Poultry | Feather | Shop Collection service | Casualty Stock |
|----------|------------|-------------|----------------------|-------|---------|---------|-------------------------|----------------|
| Okaiawa | N | Y | Y* | Y | Y | Y | N | Y |
| TBP | | | | | | | | |

* excluding shop collection & pork

79. TBP has MPI export certification for meal from A&PM inspected bovine material to be exported to Indonesia and China. It operates a dedicated bovine line and has a second bovine line that occasionally processes other bovine casualty material and ovine material separately, with thorough cleansing of the line in between

[]

80. [] supplies TBP with poultry offal from its [] factory, and [] is the only supplier of such material to Okaiawa. The additional cost to transport this material from [] to Waitoa (the only other upper North Island poultry renderer) would not be a financially viable alternative for [] also supply feathers to TBP.

Customers

81. TBP has about 15 regular input customers, with [] being the two largest suppliers of A&PM inspected bovine. Customer information has been provided to the Commission separately.
82. Most customers are located in Taranaki or to the south of Taranaki. Okaiawa receives material from meat processors located in the King Country, which are in the upper North Island geographic market. They are [] and [].
83. Both [] process mainly lamb, and also bobby calves for six weeks or so each year. Bobby calf material is not that attractive to renderers as it produces a low yield from having next to no fat and volumes are low. As above, these customers supply their ovine material to HBP. As an owner of HBP, TBP takes a “full-service” approach to these customers and is willing to take their A&PM inspected bobby calf material to Okaiawa for rendering on the pure bovine lines.
84. [] sends its bovine material to Okaiawa. There has been a long-term relationship between this customer and TBP. [] has supplied material to be rendered by AFFCO Horotiu.

Other lower North Island Renderers

85. Aside from Kakariki (which is discussed separately below), the other renderers in this region are those attached to the larger meat processing companies as follows:

Table 6

| Renderer | Ovine Line | Bovine Line | Mixed | Blood | Poultry | Feather | Shop Collection service | Casualty Stock |
|---------------------------|------------|-------------|-------|-------|---------|---------|-------------------------|----------------|
| AFFCO Wairoa | N | Y | N | Y | N | N | N | N |
| AFFCO Imlay | N | Y | N | N | N | N | N | N |
| Alliance Levin | Y | N | N | N | N | N | N | N |
| Taylor Preston Wellington | N | Y | N | N | N | N | N | N |

86. AFFCO offers services to third parties and has excess capacity.

Kakariki (KPL)

87. KPL's plant on Kakariki Road near Marton (commonly referred to as Kakariki) is a small rendering plant which up until 2020, operated a single mixed line that rendered shop collection, poultry (from Turks in Foxton, a co-shareholder), fish and cervine. In 2020, a second line was completed to enable the plant to handle shop collection material that was previously rendered at Tuakau.
88. KPL does not provide shop collection services but receives this material direct from customers or waste collection contractors. As above, Allied Bulk collects shop waste from both the lower and upper North Island regions. KPL pays Allied a flat rate of [] per month for the lower North Island collections. KPL currently pays Allied [] per tonne for shop waste collected in the upper North Island, and a further [] per tonne for linehaul transport from Allied's collection site at Penrose to Kakariki.
[]].
89. Kakariki is the last remaining renderer in the North Island (possibly New Zealand) that accepts material containing pork. Until Christmas 2020, it rendered such product transported to it from two South Island customers but complaints of odour on the Cook Strait ferries has brought that to an end. It is the only renderer of fish and cervine material in the North Island. Allied separately transports fish collected from [] and some other customers to Kakariki. KPL pays fish customers [] per tonne and Allied a collection fee [] and linehaul fee []].
90. Kakariki has no capability to accept casualty stock or feathers and there is no business justification to invest in plant expansion to accept such material.

Table 7

| Renderer | Ovine | Bovine | Mixed | Blood | Fish | Cervine | Poultry | Feather | Shop Collection Service | Casualty Stock |
|-----------------|--------------|---------------|--------------|--------------|-------------|----------------|----------------|----------------|--------------------------------|-----------------------|
| Kakariki | N | N | Y | Y | Y | Y | Y | N | N | N |

Customers

91. KPL has one toll customer and ten direct input customers details of which have been provided separately to the Commission.

Other lower North Island Renderers

92. The only other independent lower North Island renderer is TBP at Okaiawa. The only overlap of material accepted by both KPL and TBP is poultry but their customers []

around \$30m. The difficulty is around securing the supply of material. The Applicant's Timaru plant did not proceed because [] withdrew its support.

98. The Applicant considers that any new entry would be by a meat processor or poultry customer adding a rendering line to their operations, similar to what the larger meat processors have done for years. A single line plant would cost around \$20m. [] is known to have been entertaining a plan of doing its own rendering and has obtained a resource consent for the relevant emissions and discharges. In 2019, [] signed a [] contract to supply its material to Tuakau but it is not guaranteed that that supply arrangement will continue and [] has the option to self-render.

99. The Applicant says that it is very aware that larger customers can (arrange to) self-render in which case it will lose supply volumes, which will not be replaced from elsewhere, and high input-volumes are crucial for the viability of independent rendering plants. [] are well able to add rendering lines. [] these companies have operated rendering plants in the past. The Applicant provides transparency of transport and current sale prices for rendered products which are used in matrices to set material prices. Customers such as [] which pays for toll processing in the South Island, are able to benchmark the Applicant's processing charges.

[

]. The loss of supply

volume impacts on the efficiency of the rendering plant.

Output Products/ Markets

100. The output markets for the supply of various rendered dry and liquid products are New Zealand wide. The products are:

Table 8

| Manufacturer/ Supplier | Product | Specification/ Quality |
|-----------------------------------|---|---|
| Tuakau (TPL) | Bovine Material | |
| | Meal | Bovine MBM to Indonesia |
| | Tallow | Inedible Tallow |
| Waitoa (WPL) | Bovine / Bovine Casualty / mixed | |
| | Meal | Mixed MBM to Indonesia, [] |
| | Tallow | Inedible Tallow |
| | Poultry Material | |
| | Meal | Poultry MBM |
| | Feather | Feather Meal |
| | Fat | Poultry Fat |
| | | |
| Okaiawa (TBP) | Bovine Material | |
| | Meat & Bone Meal | Bovine MBM to China and Indonesia |
| | Blood | Blood Meal |
| | Tallow | Inedible Tallow |
| | Poultry Material | |
| | Meal | Poultry MBM |
| | Feather | Feather Meal |
| | Fat | Poultry Fat |
| | Bovine Casualty | |
| | Meal | Casualty Meal |
| | Tallow | Inedible Tallow |
| Napier (HBP) | Ovine Material | |

| | | |
|-----------------------|--------------------------------|------------------------------|
| | Meal | Ovine MBM exported to the EU |
| | Blood Meal | Blood meal to Indonesia |
| | Tallow | Inedible Tallow |
| Kakariki (KPL) | Mixed Material - Shop | |
| | Meal | Mixed MBM |
| | Blood Meal | Mixed Blood Meal |
| | Tallow | Inedible Tallow |
| | Poultry Material | |
| | Meal | Poultry Meal |
| | Fat | Poultry Fat |
| | Fish Material | |
| | Meal | Fish Meal |
| | Oils | Fish Oil |
| | Cervine Material (toll) | |
| | Meal | Cervine Meal sold by [] |

101. The Commission has been provided with details of output customers of TPL, HBP, TBP and KPL. We understand the Commission has separately received output customer for Waitoa from WGLP.

Summary of Relevant Markets

102. Based on the Tuakau Determination, the Applicant considers the input markets relevant to this application are the provision of rendering services (toll and direct)

a. in the upper North Island for

- A&PM inspected bovine (TPL);
- Casualty stock/ mixed specie (WPL);
- Poultry/ feather (WPL).

b. In the lower North Island for

- A&PM inspected bovine (TBP);
- A&PM inspected ovine (HBP);
- Casualty stock collection/acceptance (TBP);
- Mixed specie including shop waste, pork, fish and cervine (KPL);

- Poultry (KPL & TBP)/ feather (TBP).

103. As regards outputs, there are a number of protein MBM and blood meal products which are differentiated by quality. Tallow is also produced which can have different specifications (lower fatty acids are of higher value). The output markets are national with most product being exported as commodities with prices set on the world market.

104. Finally, JTL operates in the rural services transportation market which is contracted by TBP and HBP to collect material from meat processor customers and bring it to the respective plants. These services may be treated as forming part of the rendering services offered by TBP and HBP.

PART 4: WHY THE ACQUISITIONS ARE UNLIKELY TO SUBSTANTIALLY LESSEN COMPETITION

TBP and GHL already have substantial influence/control of the target companies that was cleared by the Tuakau Determination.

105. The Applicant considers that Lowe provides no independent competitive constraint on the operation and business of TPL or HBP.
106. Although Lowe holds a slim shareholding majority in TPL (and TBP holds a slim majority in HBP), both Lowe and GHL can appoint two directors to the board where business decisions of a strategic or investment nature are made. Having exited meat processing in 1998, Lowe's other main business operation in the wider meat industry is tanning and processing of hides, skins and pelts. Lowe's tannery businesses have no impact on rendering aside from fleshings that are taken from hides and pelts are rendered. Lowe produces blood meal in Hawera for [].
107. While Lowe and GHL directors [], given they are common owners of TPL their commercial interests are aligned towards making both businesses as successful as possible.
108. This is consistent with the Commission's approach in the Tuakau Determination in which the ownership linkages were such as to treat the acquisition as a full merger between Lowe and TBP (and by implication GHL).
109. It is also consistent with the Commission's guidelines, and other precedent and statements for the Applicant to be treated as already associated with TPL and the other target companies:
 - a. in the Commission's current *Mergers & Acquisition Guidelines*, the Commission states that a shareholder may have a substantial degree of influence at any shareholding above 10%;⁶
 - b. the Commission has previously accepted as a rebuttable presumption that "a shareholding between 30% and 50% is likely to give rise to a substantial influence, without any other contributing factors";⁷
 - c. in 2000, the Commission found that being "50/50 joint venture partners" was sufficient to give rise to a finding of association as "they have entered into this arrangement for the purpose of pursuing joint aims and ends";⁸

⁶ Commerce Commission. *Mergers and Acquisitions Guidelines*. (July 2019).

⁷ Decision No. 462. *Anchor Investments Limited / Grated Cheese Company*. (20 April 2002).

⁸ Decision No. 388. *New Zealand Seafood Investments Ltd / Basuto Investments Ltd*. (23 March 2000).

- d. in 2003, the Commission considered Qantas' proposed 22.5% shareholding in Air New Zealand was sufficient to be associated (including as it would also provide Qantas the ability to appoint up to two directors on the Air New Zealand board);
- e. in 2005, the Commission considered that PPCS's 19.9% shareholding and the ability to appoint one director of four on the board was sufficient to be treated as "one head in the market";⁹ and
- f. in 2014, the Commission considered that Evolution's 25% shareholding in Connor was sufficient for Evolution to be associated, despite the other 75% being held by a single industry-player shareholder, due to Evolution also having:¹⁰
 - i. two of four seats on the board (the same as GHL); and
 - ii. veto rights over certain decisions (the same as GHL).

110. Likewise, in the UK under a similar "material influence" test, the UK regulators have treated the following shareholdings as giving rise to material influence:

- a. BSkyB's 17.9% shareholding in ITV, despite BSkyB being prepared to not have a director on the board, including because:
 - i. the ITV board would likely seek to avoid conflict with a major shareholder; and
 - ii. BSkyB was an important industry player so its views would be given weight.
- b. First Milk's 15% shareholding in Robert Wiseman Diaries as it was coupled with a right to appoint a director to the board and the UK regulator considered the views of the First Milk director would be given weight as he had industry experience;
- c. Gillette's 22% shareholding in Wilkinson Sword despite Gillette having:
 - i. no right to attend shareholders' meetings or board meetings; and
 - ii. expressly covenanted not to exert any influence.

In any event, the Acquisitions do not have significant aggregation or integration effects.

111. Even if Lowe provided a competitive constraint (which is denied) at the board level, the Acquisitions do not result in any significant aggregation or integration in the markets that increase the Applicant's market power through unilateral or coordination effects.

Assessment: – input markets

112. The direction that rendering services has taken in response to export certification requirements has [] irreversibly remove the previous overlap between the Tuakau

⁹ Decision No. 550 *PPCS Limited/Venison Rotorua Limited* (12 May 2005) at para [32].

¹⁰ *Connor Healthcare Limited and Acurity Health Group Limited* [2014] NZCC 39.

and Waitoa plants. In the upper North Island, Tuakau and Waitoa no longer compete for material from the same upper North Island customers.

[

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113. Whether material is rendered by Tuakau or Waitoa will be determined by what that the material is (including whether it has been A&PM inspected) and the applicable export certifications of the relevant plant. It is most unlikely that the current supply arrangements with input customers will change in the foreseeable future even if Tuakau and Waitoa were in separate ownership. There is material that neither plant will render, such as shop collection.
114. Owing to the fact that the Tuakau and Waitoa plants – being the two closest plants - no longer constrain each other, it follows that the proposed acquisition by GHIL of Lowe’s TPL shareholding will also not remove an independent constraint in relation to TPL’s business.
115. In the lower North Island region, the closure of Lowe’s Hawera plant (save for a blood line) back in 2014 at the time of the Tuakau Determination removed any overlap in bovine rendering with TBP’s Okaiawa plant. Lowe’s remaining blood processing operation at Hawera is not involved in the Acquisition.
116. Lowe’s less than 50% shareholding in HBP does not constrain TBP vis-à-vis TBP’s interest (through GHIL’s ownership) in WPL, nor is there any overlap of services between the plants at Waitoa and Napier. HBP is an EU registered ovine plant and the material it receives would not otherwise be destined for Waitoa, and vice versa.
117. Likewise, HBP does not compete against KPL’s Kakariki plant, and the HBP ownership connection had previously been sanctioned by the Commission in the Tuakau Determination. The operations at HBP and Kakariki have not materially changed since 2014, other than the increase in capacity at Kakariki and no cervine being accepted at HBP.
118. The proposed Acquisition has no effect on any competitive relationship between TBP and KPL. In any event, the only overlap between Okaiawa and Kakariki is for poultry but for two customers that are tied to supplying their current plants. There is no overlap at all between TPL and Kakariki and HBP and Kakariki.
119. There are other meat renderers in the North Island, being the larger meat processing companies. They are able to accept A&PM inspected material from the non-integrated meat processors.

120. For these reasons, the Applicant submits that the Commission should be satisfied that it is unlikely that the Acquisitions will have the effect of substantially lessening competition on any input markets.

Assessment – output markets

121. In general terms, Tuakau manufactures pure bovine meal and tallow and HBP manufactures pure ovine meal and tallow, mainly for export. Waitoa currently produces bovine meal for export [] and also mixed species and poultry meal and tallow. TBP's Okaiawa plant produces pure bovine meal, poultry meal, some mixed meal and tallow. Kakariki manufactures mixed meal, poultry meal, fish meal and oil and tallow.
122. There is some aggregation in output products for bovine meal. However, that will be confined to the Tuakau and Okaiawa plants, and the combination of those plants that was previously cleared under the Tuakau Determination. Both plants provide tolling services to its major customer [] that separately sells it open market for export.
123. Apart from a small quantity of rendered products being sold to local customers (e.g. bovine MBM sold for chicken and egg producers), the bovine MBM rendered products produced at Tuakau and Okaiawa is exported at prices are set by international markets, with New Zealand manufacturers essentially being price takers.
124. There is aggregation in the manufacture and supply of poultry meal with Waitoa, Okaiawa and Kakariki producing this product. [] (a toll customer) and Tegel South Island also sell poultry meal. All poultry meal is exported to Indonesia and China as it cannot be used as poultry feed in New Zealand.
125. In both the Tuakau and WGLP determinations, the Commission noted that the main meat processors in both islands are also participants in the output meal and tallow markets, and toll customers [] were also participants. The Applicant considers that it processes no more than [] of New Zealand's rendered products, of which around [] of volume is toll processed. As there are numerous suppliers of output products, there should be no substantial lessening of competition concerns.

TRANSACTION DOCUMENTS

[

-
-
-
-

])

OTHER SUPPORTING DOCUMENTS

Appendix 6 is a map of New Zealand's rendering works prepared by the Meat Industry Association. The Commission has received from the Applicant detailed input and output customer information, volume and revenue information. They are contained in **confidential** spreadsheets labelled and dated as below: [

]The Transactions are the result of a []. There are no background papers or reports containing market

information or rationale information relating to the Transaction. The Commission has been provided with what limited market information is held by the Applicant in relation to the s47 investigation into the Waitoa acquisition.

DECLARATION ON BEHALF OF THE APPLICANT

I, **Glenn Raymond Smith**, have prepared, or supervised the preparation of this notice seeking clearance.

To the best of my knowledge, I confirm that:

- All information specified by the Commission has been supplied;
- If information has not been supplied, the reasons have been included as to why the information has not been supplied; All information known to me is relevant to the consideration of this notice has been supplied; and
- All information supplied is correct as at the date of this notice.

I undertake to advise the Commission immediately of any material change in the circumstances relating to this notice.

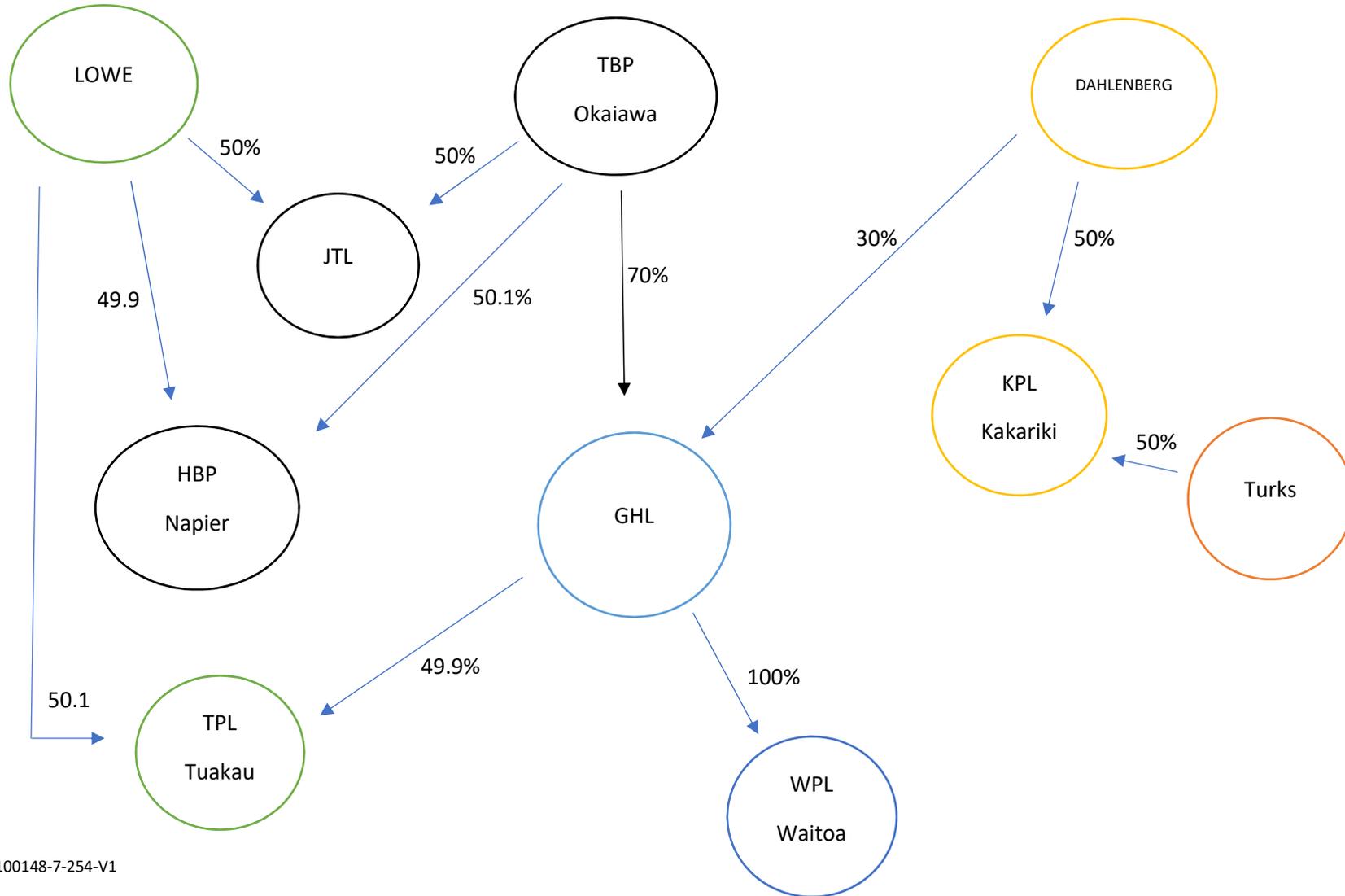
I understand that it is an offence under the Commerce Act to attempt to deceive or knowingly mislead the Commission in respect of any matter before the Commission including these documents.

I am a director of the Applicant companies and am duly authorised to submit this notice.

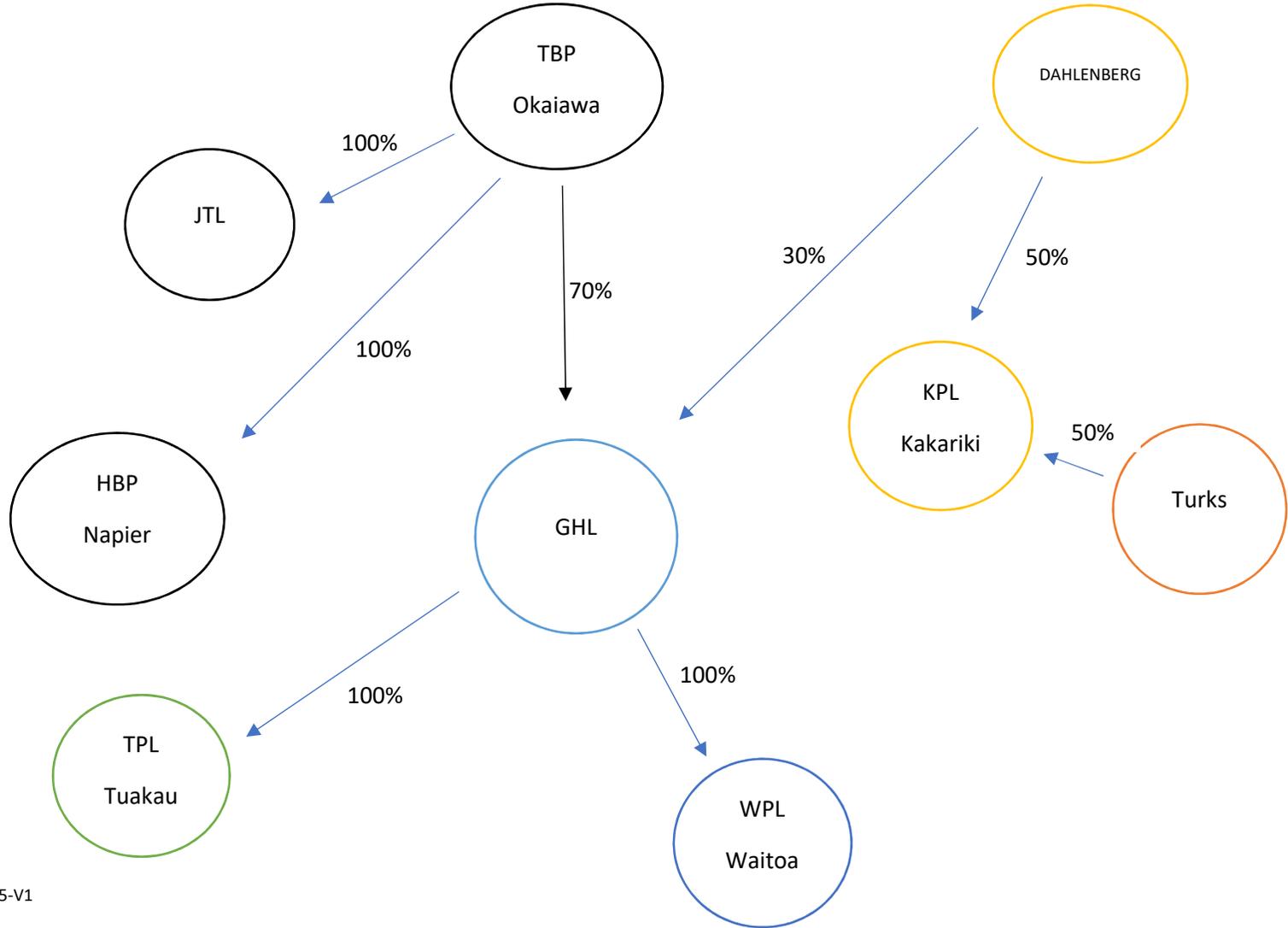
Glenn R Smith

On behalf of Taranaki By-Products Limited

APPENDIX 1A
EXISTING STRUCTURE – RENDERING PLANTS

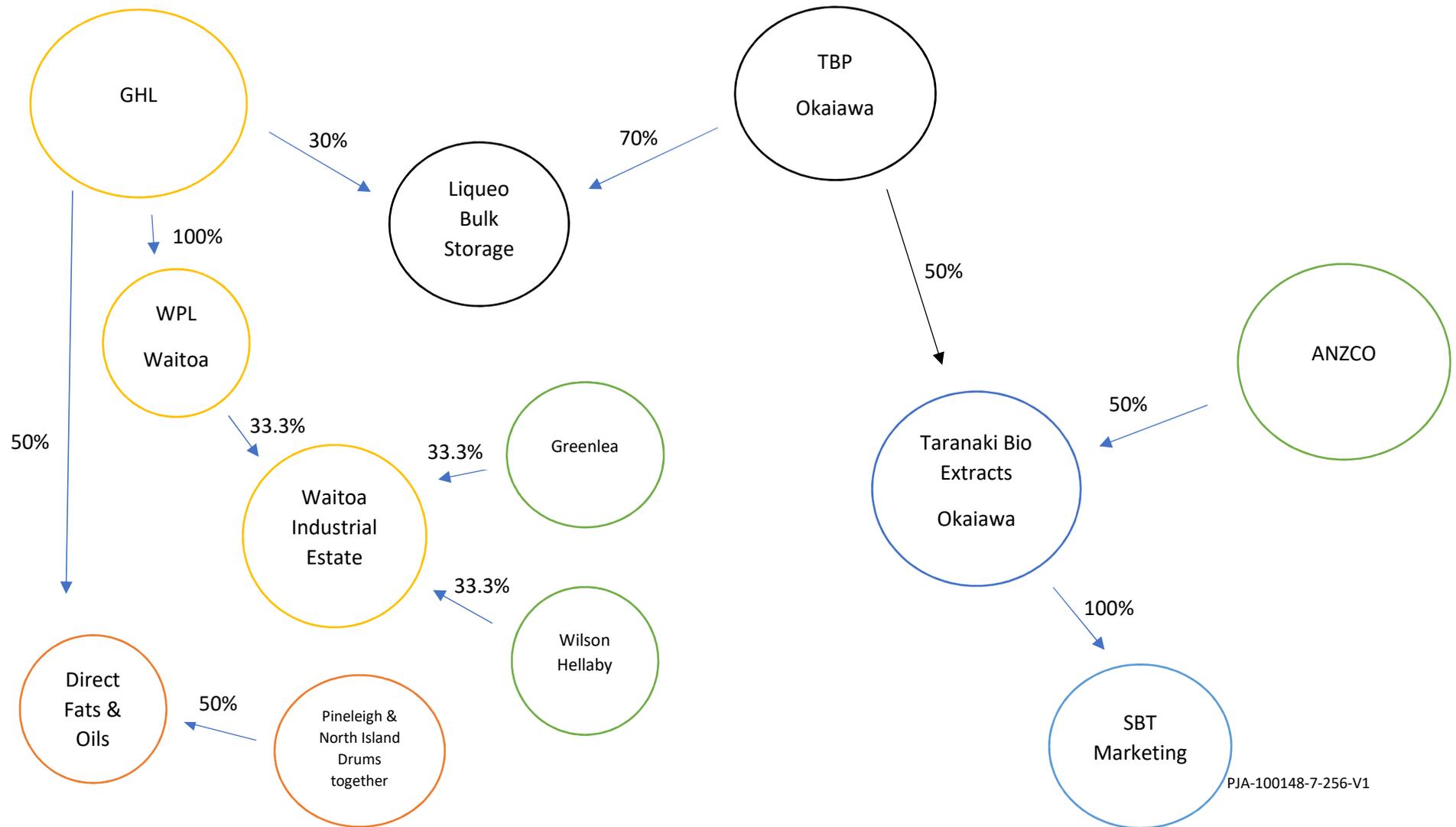


APPENDIX 1B
POST ACQUISITION STRUCTURE – RENDERING PLANTS



APPENDIX 1C

EXISTING AND POST ACQUISITION STRUCTURES – OTHER TBP & GHL RELATED BUSINESSES



Rendering in New Zealand 2020

