



The defendant by his solicitor says in response to the statement of claim dated 28 November 2014:

### **Parties**

1. He admits paragraphs 1(a) and 1(b). He has no knowledge of and therefore denies paragraph 1(c).
2. He denies paragraph 2, and further says that paragraph 2 contains matters of law to which he is not required to plead.
3. He admits paragraph 3(a). He has no knowledge of and therefore denies paragraphs 3(b) and 3(c).
4. He denies paragraph 4, and further says that paragraph 4 contains matters of law to which he is not required to plead.
5. He admits paragraph 5, and further says that reference to the Ministry for Primary Industries (**MPI**) in this statement of defence is also reference to the Ministry of Agriculture and Forestry (**MAF**) at the relevant time. MAF merged with the New Zealand Food Safety Authority on 1 July 2010 and with the Ministry of Fisheries on 1 July 2011. The new ministry changed its name to form the Ministry for Primary Industries on 30 April 2012.
6. He admits paragraph 6.
7. The defendant admits that he is vicariously liable for torts committed by the Crown's servants or agents within the scope of section 6 of the Crown Proceedings Act 1950, to the extent that any acts or omissions occurred within the proper scope of their employment and/or agency, but otherwise denies paragraph 7.

### **Background**

#### ***Psa***

8. He admits paragraph 8, and further says that:

8.1 *Pseudomonas syringae* pv. *actinidiae* (**Psa**) is a pathovar of the Gram-negative, non-spore forming plant pathogenic bacterium *Pseudomonas syringae*;

- 8.2 Psa causes bacterial canker of green and gold kiwifruit;
  - 8.3 In addition to the disease symptoms listed in paragraph 8, symptoms of Psa also include bacterial ooze (red exudates) and cankers.
9. He denies paragraph 9 and further says that scientific knowledge regarding Psa has evolved rapidly since 2010:
- 9.1 *Pseudomonas syringae* pv. *actinidiae* is now known to be a genetically diverse and widely distributed pathogen. Prior to May 2010, scientific knowledge did not differentiate Psa into different genetic strains (haplotypes).
  - 9.2 From May 2010 Psa was differentiated into two haplotypes. The new haplotype emerging in Italy from 2008 was referred to as “Psa-V” or the “Italian Strain”. The older haplotype present in Japan, Korea and China since the 1980s and Italy since 1992 was referred to as “Psa-LV” or the “Asian Strain”. This nomenclature was overtaken when four distinct haplotypes were characterised in 2012.
  - 9.3 Since 2012 four distinct Psa haplotypes have been characterised and named in chronological order of detection:
    - 9.3.1 Psa1: haplotype present in Japan (1989) and Italy (1992).
    - 9.3.2 Psa2: haplotype present in Korea.
    - 9.3.3 Psa3: haplotype present in Italy (2008–09), New Zealand (2010), Chile (2010), China (2010), France (2010), Portugal (2010), Spain (2012), Japan (2014), Slovenia (2014), Japan (2014) and Greece (2015) and possibly Turkey. This haplotype is also referred to as “Psa-V” or the “Italian strain”.
    - 9.3.4 Psa4: has been widely present across New Zealand (since before 2007, but was undetected until October 2010) and in Australia (since 1990). Since characterisation in 2012, Psa4 is now considered to be a different pathovar, known as

*Pseudomonas syringae* pv. *actinidifoliorum*. This pathovar is also referred to in New Zealand as “Psa-LV”.

9.4 MPI and the kiwifruit industry currently monitor 11 high priority pests threatening the kiwifruit industry, based on a risk matrix developed by MPI, the kiwifruit industry and Plant & Food Research. The risk matrix assesses the likelihood of entry, the potential for establishment in New Zealand and the impact of the pest. “Psa (non-NZ biovars)” is pest number 4 on the list, with a risk score of 40 out of a possible 250.

10. He admits paragraph 10 and repeats paragraph 9.3.4 above.

11. He is not required to plead to paragraph 11, but repeats paragraph 9 above and says that the internationally accepted terminology is Psa Biovar 3, as opposed to PsaV. In this statement of defence the term “Psa3” is used.

***Psa-V outbreaks causing bacterial canker in Italy and elsewhere***

12. He denies paragraph 12, repeats paragraph 9 above and further says that scientific knowledge of the distribution of Psa populations has evolved rapidly since 2010:

12.1 Psa3 was first characterised in 2012, from isolates collected in Italy in 2008 and 2009. Psa3 has not been characterised from any isolate collected anywhere in the world before 2008.

12.2 Psa1 was described from Japan in 1989 as being the causal agent of bacterial canker of kiwifruit in Japan and China in the 1980s. Psa1 was later detected in Italy in 1992 and was characterised in 2012.

12.3 Korean strains isolated in 1997-1998 were characterised in 2012 as Psa2.

12.4 The virulent Italian Psa:

12.4.1 Emerged in Italy in 2008 and 2009, but did not constitute an “outbreak” until 2009;

- 12.4.2 Was first reported internationally in the European and Mediterranean Plant Protection Organisation (**EPPO**) report of 1 November 2009 (**2009 Alert**).
- 12.4.3 Was first differentiated as a new strain in May 2010, although this strain was not reported to be more virulent than the older “Asian strain” which was also present in Italy; and
- 12.4.4 Was first characterised as Psa3 in 2012.
- 12.5 Psa1 has been present in China since the 1980s, but little information was available until 2012 when a strain isolated from the Shaanxi province in China was characterised as Psa3.
- 12.6 Psa in Chile was officially reported by the Chilean National Plant Protection Organisation (**NPPO**) in 2011. Bacterial canker in Chilean kiwifruit was first detected in December 2010 and January 2011 following investigations by Servicio Agrícola Y Ganadero (**SAG**) (Chilean Agricultural and Livestock Service). In 2012, the MPI Plant Health Environment Laboratory (**PHEL**) assisted Chile to validate their finding of Psa3.
13. He denies paragraph 13, repeats paragraph 12 above.
14. He denies paragraph 14, and further says:
- 14.1 Psa1 has been present in Italy since 1992.
- 14.2 The outbreak of Psa3 was limited to the Ravenna and Latina provinces.
- 14.3 Differences between the Italian Psa1 (1992) and Psa3 (2008-2009) strains were not detected in 2009. A study published online in May 2010, and in the Plant Pathology journal in October 2010 detected a new genetic haplotype in the Italian outbreak (characterised in 2012 as Psa3). However, it did not establish at that time that this new haplotype was more virulent than other Psa strains.

15. He admits that EPPO issued the 2009 Alert and that selected MPI staff received a copy but otherwise denies paragraph 15 and further says:
  - 15.1 New Zealand is not a member of the EPPO, because membership is only available for countries in the European and Mediterranean region.
  - 15.2 The introduction to the EPPO Alert list states:

“it is not a quarantine list and does not constitute a recommendation for phytosanitary action. ...

All pests on the Alert list are selected because they may present a phytosanitary risk for the EPPO region.”
  - 15.3 The EPPO 2009 Alert was based on a change observed in Italy for the behaviour and distribution of Psa. The 2009 Alert summarised the history of Psa and its presence in Japan (1980s) and the Lazio province of Italy (1992), and noted its spread in Italy since 2007. The 2009 Alert did not differentiate the Italian Psa as a new virulent haplotype, rather it stated that Psa is “currently emerging in the Mediterranean region”.
16. He admits paragraph 16, and further says that the 2009 Alert described the pathway for Psa as “Plants for planting of Actinidia spp. (infected fruits cannot be totally excluded but seem very unlikely)”. The 2009 Alert did not mention pollen.
17. He admits paragraph 17 in that the Psa outbreak in Italy progressed aggressively between March and June 2010, but repeats 12 above.
18. He admits paragraph 18, and further says that MPI responded to Kent Atkinson’s email, explaining the biosecurity system.
19. He admits paragraph 19, repeats paragraphs 9 and 12 above, and further says that the Australian Plant Pathology Website article of July 2010 referred generically to Psa identified in Korea, Japan and Italy (later characterised as Psa1 and 2), but did not differentiate the virulent Italian haplotype (later characterised as Psa3).

20. He admits that the further EPPPO update on 1 August 2010 referred to the potential differentiation of a new haplotype, but denies the remainder of paragraph 20 and repeats paragraphs 9 and 12 above.
21. He admits paragraph 21 and repeats paragraph 9 above.
22. He admits paragraph 22, and further says:
- 22.1 “Psa-like” symptoms were observed on approximately 23 October 2010 at 37 Mark Road, Te Puke; KPIN 9287 (later called “Restricted Place No 1” or **RP1**) and:
- 22.1.1 The symptoms were reported to MPI on 5 November 2010;
- 22.1.2 MPI placed a restricted place notice on the property on 6 November 2010, using Biosecurity Act 1993 (the **Act**) powers.
- 22.1.3 Psa was confirmed by PHEL through molecular and biochemical testing on 8 November 2010.
- 22.2 “Psa-like” symptoms were observed on a neighbouring property at 36 Mark Road, Te Puke; KPIN 7668 (later called “Restricted Place No 2” or **RP2**) by the orchard owner on 4 November 2010 and:
- 22.2.1 MPI was notified on 8 November 2010;
- 22.2.2 MPI placed a restricted place notice on this property on the same date.
23. He denies paragraph 23, repeats paragraphs 9 and 12 above and further says that the incubation period for Psa3 varies a great deal depending on factors such as humidity and temperature, type of host and level of infection.

***The economic impact of Psa in New Zealand***

24. He denies paragraph 24.
25. He admits that Psa3 has impacted on the kiwifruit industry, but otherwise denies paragraph 25. He further says that on 18 February 2011, MPI and Zespri entered into a funding agreement with Kiwifruit Vine Health

Incorporated (KVH), to the effect that the Crown and Zespri would each provide \$25 million to KVH for the purpose of managing the initial response, remediating losses and providing payments to orchards, undertaking research and developing a long-term management strategy.

***The Sapere Report***

26. He admits paragraph 26.

27. He admits paragraph 27.

***The biosecurity regime and relevant legislative framework in New Zealand***

28. He admits paragraph 28.

29. He admits paragraph 29.

30. Paragraph 30 contains matters of law to which the defendant is not required to plead.

31. Paragraph 31 contains matters of law to which the defendant is not required to plead.

32. Paragraph 32 contains matters of law to which the defendant is not required to plead.

33. Paragraph 33 contains matters of law to which the defendant is not required to plead.

34. Paragraph 34 contains matters of law to which the defendant is not required to plead.

35. Paragraph 35 contains matters of law to which the defendant is not required to plead. He further says that:

35.1 MPI develops approximately five to ten new Import Health Standards (IHS) per year, and reviews approximately 15 to 20 IHS per year, according to a programme of work set out at the beginning of the year, prioritised according to a number of criteria including importance, strategic fit, net benefit, feasibility, barriers and amount of work expected.



- 35.2 There are currently more than 300 IHS in place.
36. Paragraph 36 contains matters of law to which the defendant is not required to plead. He further says that MPI processes approximately 2,500 to 3,000 requests for import permits per year.
37. Paragraph 37 contains matters of law to which the defendant is not required to plead.
38. Paragraph 38 contains matters of law to which the defendant is not required to plead.
39. Paragraph 39 contains matters of law to which the defendant is not required to plead, but he admits that New Zealand is a signatory to international conventions including the World Trade Organisation Agreement on the Application of Sanitary and Phytosanitary Measures (**SPS Agreement**) and the International Plant Protection Convention (**IPPC**), both of which are referred to for their terms. IHS are New Zealand's phytosanitary measures for the purposes of the IPPC, and are regulated by the International Standards for Phytosanitary Measures (No 2) (1995) Guidelines for Pest Risk Analysis.
40. Paragraph 40 contains matters of law to which the defendant is not required to plead.
41. He admits paragraph 41 and further says that the Biosecurity New Zealand Risk Analysis Procedures (v1) 12 April 2006 outline some circumstances in which a risk assessment "may" be initiated.
42. He admits paragraph 42, and further says that the Implement and Monitor IHS Events and Trigger Criteria Checklist "assists MPI to determine" whether to request a review of an IHS.
43. He admits that within MPI at the relevant times were groups set up to analyse emerging risks, but otherwise denies paragraph 43. He further says:
- 43.1 The Biosecurity and Risk Assessment Group assesses biological risks to help avoid, remove or effectively manage the harm that pests or diseases can do to New Zealand's economy, environment or health.

- 43.2 The Plant Imports and Exports Group develops and reviews IHS under the Biosecurity Act and provides technical expertise to minimise the introduction of exotic (regulated) plant pests and diseases.
- 43.3 The PHEL laboratory provides diagnostic testing and technical expertise for exotic (regulated) pests and diseases affecting plants and the environment.
44. He denies paragraph 44 and says:
- 44.1 EROC was responsible for undertaking comprehensive global and national scanning to identify new and emerging risks and opportunities, and assign those issues that meet the defined threshold to the appropriate part of MPI (including the border or post border risk management committees). EROC was disestablished in February 2011 and its responsibilities were transferred to the Science and Risk Advisory Group.
- 44.2 Informal Cross-Directorate Groups were formed in approximately mid-2010 to facilitate sharing of information across directorates. The informal groups used their professional networks and information received to inform their daily role. Commercial kiwifruit orchards formed part of the agricultural and horticultural plants network.

### ***Import permits***

45. He admits paragraph 45 to the extent that he is required to plead.
46. He admits paragraph 46 to the extent that he is required to plead. He further says that MPI processes approximately 2,500 to 3,000 requests for import permits per year.

### ***Border processes***

47. He admits paragraph 47, and further says that:
- 47.1 Craft is another major entry pathway for risk goods.
- 47.2 New Zealand's biosecurity regime provides for the effective management of risks associated with the importation of risk goods.

- 47.3 In 2010-11, 4.9 million crew and passengers arrived in New Zealand, were risk assessed and processed through MPI's risk management and verification systems. The vast majority (99%) arrived by air, with the remainder arriving as passengers on cruise ships and private yachts. Approximately 4.3 million cargo consignments arrive each year, and MPI evaluates and manages the risks associated with 190,000 consignments. New Zealand has seven international airports and 14 ports designated as Places of First Arrival.
- 47.4 Biosecurity relies to an extent on voluntary compliance, including accurate declarations by inbound passengers and importers.
48. Paragraph 48 contains matters of law to which the defendant is not required to plead.
49. He admits paragraph 49.
50. He denies paragraph 50 and says that the specific entry requirements for nursery stock vary depending on the requirements under the IHS schedule and the import permit. The entry requirements for pollen depended on the requirements specified in the import permit.

***The import requirements for Kiwifruit Nursery Stock and Pollen***

51. He admits paragraph 51, and further says that in addition to the Standard 155.02.06: *Importation of Nursery Stock* (**the nursery stock IHS**) there are other standards in place relevant to the importation of nursery stock, including:
- 51.1 PBC.NZ.TRA.PQCON: Specification for the Registration of a Plant Quarantine or Containment Facility, and Operator (the Post Entry Quarantine (PEQ) Standard), issued in 1999 which describes the requirements for PEQ facilities, including how the material (including *Actinidia*) must be held in the PEQ facility.
- 51.2 Standard 155.04.03: A Standard for diagnostic facilities which undertake new organisms, excluding animal organisms (the Diagnostic Facility Standard) issued in 2006 which describes the requirements for diagnostic facilities. For nursery stock (including *Actinidia*) this includes facilities which carry out testing of diagnostic

samples (eg, when symptoms are observed on the plants in arrival in New Zealand or in PEQ, and the causal organism needs to be identified) and pre-determined testing (eg, the mandatory testing that must occur as prescribed in the nursery stock IHS).

- 51.3 PIT.OS.TRA.ACPQF: Accreditation of Offshore Plant Quarantine Facilities and Operators (the Offshore Quarantine Facility Standard), issued in 2001, which describes the requirements for facilities in other countries which have been audited and accredited by MPI to undertake quarantine, inspections and testing of specified horticultural commodities (excluding *Actinidia*) prior to export in accordance with the nursery stock IHS. These facilities must be certified by the exporting National Plant Protection Organisation (NPPO) on the phytosanitary certificate.

*Nursery stock IHS and Actinidia schedule*

52. He admits paragraph 52, and further says:

- 52.1 The nursery stock IHS has 161 specific schedules for nursery stock regulating the import of more than 19,200 specific species, including *Actinidia*.
- 52.2 Prior to its suspension in September 2013, the *Actinidia* schedule of the nursery stock IHS listed 17 regulated pests, including Psa.
- 52.3 The nursery stock IHS allows the importation of approved plant species in the following forms: whole plants, including rooted cuttings; cuttings (no roots), including dormant (budwood) and non-dormant (with active growth) cuttings; dormant bulbs (roots, tubers); and pollen.

*2004 amendment to Actinidia schedule of the nursery stock IHS*

53. He admits that the quotes in paragraphs (a) to (e) are accurate as taken from MPI's "CAT file" created in 2003, but otherwise denies paragraph 53. He further says:

- 53.1 Psa was first included as a quarantine pest and in the nursery stock IHS in August 1998, and post entry quarantine of cuttings and tissue cultures was required;
- 53.2 He repeats paragraphs 9 and 12 above and says the CAT file was created in 2003 and referred to the “Asian strain” of Psa then present in Japan and China, characterised in 2012 as the Psa 1 haplotype.
54. He admits paragraph 54, save that the following requirements on imports of tissue culture were imposed:
- 54.1 An import permit was required;
- 54.2 A Phytosanitary Certificate was required, with the NPPO of the exporting country only to issue a certificate if they were satisfied that the relevant nursery stock had been: inspected and was free from visually detectable regulated pests; treated for regulated insects/mites as described in MPI’s approved treatment paper within 7 days of shipping (cuttings only); and held in a manner to ensure that infestation/reinfestation does not occur following certification;
- 54.3 If satisfied that the pre-shipment activities have been undertaken, the exporting country NPPO must confirm this by recording the relevant treatments;
- 54.4 Tissue cultures cannot contain charcoal; and
- 54.5 All imports must go into a level 3 PEQ facility, where they will be grown for a minimum of six months, with regular inspections, testing and treatment for regulated pests as specified in the document “Inspection, Testing and Treatment Requirements for Actinidia”.
- 54.6 He says further that these requirements did not apply to pollen. Paragraph 2.2.3 of the 28 May 2004 nursery stock IHS required that for importation of pollen “a prior import permit must be obtained from the Permit Officer.”
55. He denies paragraph 55, repeats paragraphs 53 and 54 above and further says:

- 55.1 In addition to visual inspection, each plant had to be tested for Psa using a PCR test, being either OCTF/OCTR primers *or* PAV 1/P 22 primers, but not both;
- 55.2 The use of transmission electron microscopy was to test for viruses but was not used to test for bacteria, such as Psa; and
- 55.3 PCR Testing was not required for pollen.

*2006 amendment to Actinidia schedule of the nursery stock IHS*

56. He denies paragraph 56, repeats paragraphs 54 and 55 above, and further says that on 9 August 2006 the *Actinidia* schedule was amended to update testing requirements for Psa following development by PHEL of the Post Entry Quarantine Testing Manual for Actinidia. The amendment removed the option of using OCTF/OCTR primers which did not reliably detect Psa, but retained the PAV 1/P 22 primers which had been supported by PHEL testing and ratified in the PHEL Testing Manual for Actinidia.
57. He admits paragraph 57, save that the 28 May 2004 version of the nursery stock IHS, clause 2.2.3 stated:

“[a] prior import permit must be obtained from the Permit Officer.”

He further says that this wording remained until the nursery stock IHS was amended on 1 October 2009.

*2009 amendment to nursery stock IHS pollen requirements*

58. He admits paragraph 58, save to say that from 1 October 2009 clause 2.2.3 stated:

“An import permit must be obtained from MAFBNZ prior to import.

Prior to issuing the permit to import, MAFBNZ will assess, on a case by case basis, the requirements that must be met to import the pollen. All import requirements will be detailed on the permit to import.”

*Other relevant IHS*

59. He denies paragraph 59, and further says:
- 59.1 The Industries Standard 152.02 Importation of Fresh Fruit and Vegetables into New Zealand allows for the importation and

clearance of fresh fruit and vegetables into New Zealand, including kiwifruit;

- 59.2 The *Actinidia* schedule within the IHS: 155.02.05 Importation of Seed for Sowing provides for the importation of kiwifruit seed for propagation;
- 59.3 The BNZ.NPP.HUMAN: Importation into New Zealand of Stored Plant Products Intended for Human Consumption IHS: provides for the importation of frozen, dried, cooked or preserved kiwifruit plant material; and
- 59.4 The MPI.STD.PLANTMATERIAL: Dried and Preserved Plant Material, and Fresh Plant Material for Testing, Analysis or Research provides for the importation of dried or preserved plant material for other purposes.

***Pollen imports***

- 60. He admits paragraph 60.
- 61. He admits paragraph 61 and further says that:
  - 61.1 Kiwi Pollen provided detailed information following requests from MPI regarding the collection and milling process of the exporters, including that “flower buds must be milled within 18 hours of harvesting, therefore they are always milled in the location they are harvested, and the pollen processed there”; and
  - 61.2 MPI relied on this information when granting the import permits.
- 62. He admits paragraph 62 and further says:
  - 62.1 Kiwi Pollen imported 6 commercial consignments of kiwifruit pollen, 4 from Chile and 2 from China, and all between 2008 and 2010 as set out in Schedule 1 to this statement of defence;
  - 62.2 MPI refused a request in 2007 by Kiwi Pollen to import pollen collected in Italy by the vacuum method.

63. He admits paragraph 63, and further says that the 3 permits were issued to Plant & Food Research for the importation of kiwifruit pollen for research purposes related to the Italian Psa outbreak of 2008-2009.
64. He denies paragraph 64, and refers to each pollen import permit for its terms. Details of pollen permits and pollen importation are set out in Schedule 1 to this statement of defence.
65. He admits paragraph 65, and further says the special conditions quoted are from the first Chilean permit issued and the first Chinese permit issued.
66. He admits paragraph 66 and further says that Plant & Food Research imported kiwifruit pollen for research purposes from Italy in 2010, which was after the EPPO Alert of 1 November 2009 regarding the spread of Psa3 in Italy. Plant & Food Research collected pollen from areas in Italy in which Psa was known to occur to aid in its research. The pollen imported by Kiwi Pollen, however, was from Chile and China, and was expressly declared to be used for commercial use on orchards, so conditions regarding containment and disposal of pollen were not required.

### **The Card Paper**

67. He admits that the Card Paper was taken into account by MPI in deciding to issue a permit to Kiwi Pollen for the importation of pollen from Chile and China (on conditions), but otherwise denies paragraph 67.
68. He denies paragraph 68, and further says:
- 68.1 The quotation in paragraph 95 of the Sapere Report comes from a PHEL Report called “Pollen-transmitted Plant Pathogens” (**PHEL Report**), and not from the Card Paper;
- 68.2 The PHEL Report was an MPI initiated research paper to assess the pests and diseases transmitted by pollen, to determine which diseases MPI should be concerned about when considering requests to import pollen;
- 68.3 The PHEL Report was written for an internal audience, and was not released publicly for comment. However it was internally peer



reviewed by two members of MPI, and externally peer reviewed by the Associate Professor of Biological Sciences at the University of Auckland, and later formed the basis of the Card Paper;

- 68.4 The final version of the PHEL Report (2007) was provided by MPI to Sapere.
69. He denies paragraph 69, repeats paragraph 68 above, and further says that the Card Paper's purpose was to "seek to assist countries [signatories to the IPPC] to develop appropriate phytosanitary measures by considering the pests that are transmitted by pollen" (p, 455).
70. He denies paragraph 70, repeats paragraph 68 above, and further says that the "initial draft" referred to at paragraph 97 of the Sapere Report was not a draft, but a separate report ie. the PHEL Report.
71. He denies paragraph 71, repeats paragraph 68 and 70 and further says:
- 71.1 The PHEL Report and the Card Paper represented the scientific opinion of the time.
- 71.2 There was no scientific evidence that Psa was associated with pollen until the Plant & Food Research findings in May 2010.
- 71.3 There was no scientific evidence that Psa could be transmitted via pollen until limited experimentation in 2011. Recent experimentation in 2013 and 2014 has shown that Psa can be transmitted through pollen in limited circumstances where conditions are optimal. It is still unclear how readily infection of kiwifruit vines via Psa infested pollen occurs during commercial orchard practices.
72. He admits that the three quotes in paragraph 100 of the Sapere Report are accurate, but otherwise denies paragraph 72. He further says that the comments made by the Risk Analysis team were directed at the PHEL Report, not the Card Paper. The third quote in paragraph 100 of the Sapere Report also appears out of context, and the full comment made was:

"What all this shows is that pollen can be contaminated by fungi (and bacteria) and as such pollen can act as a vector of fungi and bacteria.

Given that the pollen used in trade would be mechanically applied to the plant, bee transmission is not important.”

73. He denies paragraph 73, and further says:
- 73.1 Paragraph 101 of the Sapere Report refers to a paper titled “The Role of Seed and Pollen in the Spread of Plant Pathogens Particularly Viruses” by HC Phatak from 1980, and two further papers from scientific journals from 1944 and 1967 as acceptable justification for the proposition that MPI ought to have considered pollen as a pathway for Psa3.
- 73.2 As outlined in paragraph 71 above, there was no scientific data in 2006 to suggest that Psa could be associated with, or transmitted through kiwifruit pollen.
74. He admits that hand-picked, commercially milled pollen will contain minute amounts of plant material, the size of pollen grains or smaller, but otherwise denies paragraph 74, and further says that MPI refused a request in 2007 by Kiwi Pollen to import pollen which had been collected in Italy by the vacuum method.
75. He admits that MPI required kiwifruit cuttings and tissue culture to be tested for Psa from 2004, but otherwise denies paragraph 75. He further says that the Psa Data Sheet, prepared for the 2004 nursery stock IHS amendment, records the Phytosanitary risk of Psa as: “Tissue culture, budwood/cuttings (stems only) – Kiwifruit”.
76. He denies paragraph 76, and repeats paragraphs 67 to 71 and 74 above and further says:
- 76.1 A risk assessment is not required to issue an import permit under an IHS;
- 76.2 Conditions were imposed on Kiwi Pollen import permits to ensure buds were hand-picked, and Kiwi Pollen informed MPI that pollen would be milled within 18 hours of picking then frozen, as outlined in paragraph 61 above;

- 76.3 Strict conditions were imposed on Plant & Food Research import permits, where pollen was being imported from areas known to have Psa, as outlined in paragraphs 63 and 66 above.
77. He denies paragraph 77, and repeats paragraphs 71 and 73 to 76 above.
78. He denies paragraph 78, and further says that consultation obligations in the Biosecurity Act relate only to the development of IHS and pest management plans (formerly pest management strategies). MPI policies require consultation on standards, risk analyses, pest management strategies, policy statements and legislation. There is no obligation on MPI to consult with industry regarding decisions made under an IHS. MPI has obligations of confidentiality with respect to permit applications and information that may be commercially sensitive.
79. He denies paragraph 79, repeats paragraph 78 and further says:
- 79.1 The pollen imported by Kiwi Pollen was imported for commercial use in New Zealand orchards and for export; and
- 79.2 He was entitled to assume that a commercial importer such as Kiwi Pollen would properly inform orchards of the origin of the imported pollen, as required under the Fair Trading Act 1986.
80. He denies paragraph 80 and repeats paragraphs 9, 12, 61, 71, 74 and 76 above.

### **MPI's knowledge of and response to the Italian Psa3 outbreak**

81. He denies paragraph 81, and repeats paragraphs 9 and 12 to 20 above.
82. He denies paragraph 82, and repeats paragraphs 9, and 12 to 20 above and further says:
- 82.1 Following the EPPO Alert of 1 November 2009 regarding the spread of Psa in Italy, an internal priority assessment of the import requirements for *Actinidia* was carried out in late 2009/early 2010;
- 82.2 Between October and November 2010, in light of the Italian outbreak and increasing uncertainty about the current testing methods for Psa, MPI decided to review the testing requirements for the detection of

Psa, and if appropriate, the *Actinidia* schedule to the nursery stock IHS;

82.3 MPI convened the Germplasm Advisory Committee (**GERMAC**) in March 2010 as a consultative forum between the plant germplasm import industry (including Zespri) and MPI. The role and functions of GERMAC included:

“To assist in the establishment of industry strategy, policy, standards, specifications and codes of practice based on industry consultation and advice regarding the limits of legislation to decision-making bodies...

To initiate and/or examine proposals for the development of New Zealand strategy, policy, standards and codes to address risks and opportunities to the industry.”

82.4 GERMAC discussed issues with the nursery stock IHS in detail, however Psa was not raised as an issue at any of the GERMAC meetings in 2010.

83. He denies paragraph 83, repeats paragraphs 42 and 82 above, and further says:

83.1 The risk of Psa entering New Zealand through imports of budwood, tissue culture or other nursery stock pathways was managed through adequate quarantine and testing controls;

83.2 The conditions for import permits of kiwifruit pollen were assessed on a case by case basis, in reliance on information provided by the importer requesting the import permit;

83.3 The risk of Psa entering New Zealand through the fruit pathway was unlikely, however MPI initiated a pest risk assessment when requested by industry in October 2010;

83.4 MPI was not aware of any scientific evidence associating Psa with pollen until informed by email of Plant & Food Research’s provisional findings on 30 September 2010;

83.5 There was no reliable scientific evidence that Psa could be transmitted through pollen until recent experimentation in 2013 and 2014;

- 83.6 The quotes cited in paragraph 83 come from page 32 of the Biosecurity New Zealand Risk Analysis Procedures and that those Procedures give examples of a number of situations when the need for a new risk assessment “may arise”.
84. He denies paragraph 84, and repeats paragraphs 9, 12 to 20 and 71 above.
85. He admits that the Italian Psa outbreak presented a possible biosecurity threat to New Zealand’s kiwifruit industry, but otherwise denies paragraph 85 and repeats paragraphs 9, 12 to 20 and 83 above.
86. He denies paragraph 86, repeats paragraphs 9, 12 to 20, 61, 71, 74, 76, 78, 82 and 83 above, and further says:
- 86.1 MPI and the New Zealand kiwifruit industry hosted growers from Italy and travelled to Italy between 2006 and 2010.
- 86.2 The focus of concern by both industry and MPI was the importation of fruit as a pathway for Psa. Industry raised fruit as a risk pathway in approximately September 2010 and MPI formed a working group to assess the risk of Psa entering via fruit.
- 86.3 The kiwifruit industry, through Zespri, invested in biosecurity research using agencies such as Plant & Food Research. MPI was notified of the preliminary findings of this research on 30 September 2010.
87. He denies paragraph 87, and repeats paragraphs 53, 56, 82, and 83 above.
88. He denies paragraph 88, and further says that the Australian Quarantine Inspection Services (**AQIS**) informed MPI that as of October 2010, Australia had no specific active testing for Psa for imports of *Actinidia* nursery stock. Instead the protocol was three months’ post entry quarantine with a minimum of two visual inspections.
89. He admits that EROC met six times between November 2009 and October 2010 and that Psa was not discussed during those meetings, and repeats paragraph 44 above, but otherwise denies paragraph 89.

90. He admits that the Risk Analysis team were aware of the Italian outbreak prior to the detection of Psa in New Zealand but otherwise denies paragraph 90, and repeats paragraphs 82 and 83 above.
91. He admits that the listed emails were sent but otherwise denies paragraph 91, and further says:
- 91.1 The Team Manager, Fresh Produce Imports' comments were focussed on the transmission of Psa by fruit and she also noted that a risk assessment had been completed "for the species not the strain";
- 91.2 The email from a member of the Risk Analysis Team dated 8 April 2010 at 10:55pm stated that there was no risk analysis supporting the import standards, but did not question whether they remained appropriate in light of Psa. The email further stated that "fresh fruit is likely to be a low risk/no risk pathway" and "Nursery stock is the most likely pathway for entry but has had good controls for many years (level 3 quarantine etc) and this bacteria is on the pest list."
- 91.3 The email of 16 April 2010 was sent at 12:07pm and said that Psa was a "possible discussion item for EROC, along with an emerging fruit pest called *Drosophila suzukii*".
- 91.4 A further email by the Manager, Fresh Produce Imports sent on 16 April at 12:39pm in response to the 12:07pm email, says: "Please note this canker is identified as a hazard on [n]ursery stock pathway and we require specific tests".
92. He denies paragraph 92 and repeats paragraphs 9, 12 and 71 above.
93. He denies paragraph 93 and repeats paragraphs 9, 12, 82, 83 and 86 above.
94. He denies paragraph 94, repeats paragraphs 9, 12, 71, 82 and 83 above and further says the import controls were adequate in light of the scientific knowledge at the time. He denies that MPI continued to rely on current import requirements for fruit and repeats paragraphs 83 and 86 above.

95. He admits that communications between MPI and Plant & Food Research occurred on the dates pleaded but otherwise denies the allegations in paragraph 95, and says further:
- 95.1 The email from Plant & Food Research of 17 May 2010 was written with reference to the importation of Italian kiwifruit from Latina to New Zealand;
- 95.2 MPI's response to Plant & Food Research on 25 June 2010 was similarly focussed on the spread of Psa via infected fruits, and noted that EPPO (2009) fruit as a possible pathway "appears to be very unlikely";
- 95.3 Plant & Food Research's letter of 20 August 2010 noted that MPI required "further published evidence of the ability of [Psa] to be transmitted by whole undamaged kiwifruit before considering any additional phytosanitary measures" for importing green kiwifruit from Italy, and said that Plant & Food Research was initiating research to establish whether Psa could survive treatment under existing protocols for kiwifruit imports;
- 95.4 In response to Plant & Food Research's letter of 20 August 2010, a MPI staff member noted that it was "assumed that spread of this pathogen is via the planting of infected propagation material", and that MPI would "continue to monitor the literature closely and hopefully will be able to get in touch with Plant & Food Research as they progress through their research";
- 95.5 The risk of pollen being associated with Psa was first mentioned to MPI on or about 30 September 2010 and was based on preliminary research only;
- 95.6 A subsequent meeting on 22 October 2010 with Plant & Food Research and Zespri still only focused on the risks of fruit import. The meeting noted a programme of research commissioned in Italy to better understand the life cycle of Psa, including "determining the

survival of the pathogen on fruit, pollen and other traded kiwifruit parts”; and

- 95.7 Plant & Food Research’s research was published in New Zealand Plant Protection in 2011 and only demonstrated an association of Psa with pollen, rather than transmission. The author noted at p250:

“all the pollen samples from which live cells of Psa were found are samples originating from Italy, where pollen is collected by vacuum. One cannot rule out that the presence of Psa in some of those samples was the result of collecting extraneous material itself contaminated with Psa”; and

“whether Psa is directly associated with the pollen or collected at the same time as the pollen, pollen collected from an infected orchard could contain Psa and therefore presents the risk of distributing the pathogen to orchards not yet infected. So far, there is no proof that this even happened.”

96. He denies paragraph 96 and repeats paragraphs 39, 69, 71, 76 and 95 above.
97. He denies paragraph 97, repeats paragraphs 61, 62, 71, 74 and 76 above and further says:
- 97.1 On 12 November 2010, MPI cancelled all import permits for kiwifruit pollen, and refused all further requests from industry to issue any further import permits, other than those requested to be imported into MPI-approved containment facilities such as Plant & Food Research, for research purposes;
- 97.2 In August 2012 the nursery stock IHS was amended to prohibit imports of pollen, in response to the Management Action Plan July 2012;
- 97.3 In September 2013 MPI suspended the *Actinidia* schedule under the nursery stock IHS; and
- 97.4 Following a request from industry in October 2012 to import kiwifruit pollen for commercial pollination of orchards, MPI commenced research and consultation on a specific IHS for kiwifruit pollen.
98. He denies paragraph 98, repeats paragraphs 9, 12, 39, 71 and 76 above.



99. He denies paragraph 99.
100. He has no knowledge of and therefore denies paragraph 100, and repeats paragraph 95 above.
101. He denies paragraph 101, and repeats paragraphs 9, 12, 39 and 71 above.
102. He denies paragraph 102 and repeats paragraphs 39, 69, 71 and 97 above.
103. He admits that the email containing Plant & Food Research's preliminary finding was sent to at least four senior MPI staff members on 1 October 2010, but otherwise denies paragraph 103 and further says:
- 103.1 The email contained a preliminary finding that Psa could be associated with pollen, to be followed up by a report from Plant & Food Research;
- 103.2 MPI noted the Plant & Food Research report was "likely to arrive towards the end of the next week and decisions on what to do next were likely to be required w/c 11 Oct".
104. He admits paragraph 104 but repeats paragraph 103 above.
105. He denies paragraph 105 and repeats paragraphs 103 and 104 above.
106. He denies paragraph 106 and further says:
- 106.1 Scientific knowledge regarding Psa was evolving rapidly in 2010 as outlined in paragraphs 9, 12 to 20 and 71 above;
- 106.2 The import controls regarding nursery stock were adequate in light of scientific knowledge of the time, as outlined in paragraph 83 above;
- 106.3 MPI took actions including an internal priority assessment of the import requirements for *Actinidia* in late 2009/early 2010; reviewing the testing requirements for the detection of Psa in nursery stock, convening GERMAC as outlined in paragraph 82 above;
- 106.4 MPI commenced a risk assessment for fruit as outlined in paragraphs 86 and 95 above.

### **Import permits and change to the wording**

107. He admits paragraph 107.
108. He admits that the second and third China permits, and the second and third Chile permits, contained the following conditions:
- “unopened male flower buds must be hand collected. The pollen may be milled prior to import”,
- but otherwise denies paragraph 108 and repeats paragraphs 61 and 62 above.
109. He admits that the second China permit did not contain conditions for the disposal of plant waste material, but otherwise denies paragraph 109, repeats paragraphs 61 and 62 above and further says that conditions for disposal of plant material were unnecessary as the second China permit was given for the importation of frozen kiwifruit pollen, and not kiwifruit plant material for milling in New Zealand.

### **The Import of Anthers**

110. He admits that a consignment imported from China by Kiwi Pollen (the **2009 consignment**) was given biosecurity clearance on 30 June 2009 but otherwise denies paragraph 110, repeats paragraph 61 above and further says:
- 110.1 The 2009 consignment arrived by airfreight at Auckland airport on 24 June 2009;
- 110.2 The invoice dated 5 June 2009, from Hangzhou Yuehao Agricultural Technology Consulting Co Limited, China, stated that the consignment was “kiwi pollen” and “4.50kgs/carton”;
- 110.3 The NPPO phytosanitary certificate described the consignment as 1 carton of “kiwi pollen” from Shaanxi, weighing 4.5kgs. The additional declaration stated:
- “pollen has been produced from hand collected and unopened male flower buds only”
- This declaration met the requirements of the second China permit;  
and

- 110.4 The customs waybill records that 1 carton of “kiwi pollen”, gross weight of 11 kgs, was shipped to New Zealand on 9 June 2009.
111. He admits that the Sapere Report at paragraph 323 takes the quoted definition of “anther” from the Miriam-Webster dictionary, but otherwise denies paragraph 111, and further says that neither the nursery stock IHS, nor the IPPC guidelines, contain a definition for “pollen” or “anther”.
112. He denies paragraph 112, and repeats paragraphs 61 and 74 above.
113. He admits that anthers are not pollen, but otherwise denies paragraph 113 and repeats paragraphs 61, 74 and 111 above.
114. He denies paragraph 114.
115. He admits that the importation of anthers would not meet the terms of the second China permit, but otherwise denies paragraph 115 and repeats paragraphs 61 and 110 above.
116. He denies paragraph 116, and repeats paragraph 110 above.
117. He admits that Psa was included as a quarantine pest in the nursery stock IHS, repeats paragraph 75 above but otherwise denies paragraph 117.
118. He admits that the first Psa3 symptoms were noticed in October 2010 on RP1 and RP2, but otherwise denies paragraph 118. He further says that Kiwi Pollen informed MPI in an interview on 13 December 2010, and at subsequent interviews, that the 2009 consignment of anthers was milled at Kiwi Pollen’s main office at Main North Road, Te Puke, and discarded following viability testing, and that the 2009 consignment was not used to pollenate any kiwifruit plants.
119. He admits that the first China permit and the first Chile permit were not used and that some permits were in respect of pollen to be imported from Chile, but otherwise denies paragraph 119. He repeats paragraphs 23 and 118 above, and further says that Kiwi Pollen informed MPI at interviews and in email correspondence that none of the pollen imported from China (2 consignments) was used in New Zealand:

- 119.1 The 2009 consignment (imported under the second China permit) was milled at Kiwi Pollen's main office at Main North Road, Te Puke, and was discarded due to low viability; and
  - 119.2 The 2010 consignment (imported under the third China permit) was damaged during a border inspection, and also exhibited low viability. This consignment was handed over to MPI in late 2010, with no material missing from the reported consignment.
  - 119.3 None of the pollen imported from China was used for artificial pollination of kiwifruit plants in New Zealand.
120. He admits that the phytosanitary certificate for the 2009 consignment notes the place of origin of the anthers as Shaanxi, China, but otherwise denies paragraph 120 and repeats paragraph 118 above. He further says that:
- 120.1 Psa4 has been in New Zealand since at least 2007, but was not detected until 2010;
  - 120.2 None of the Chinese pollen was used for artificial pollination in New Zealand, but was either discarded or seized by MPI;
  - 120.3 The Tracing Report found the likelihood that Psa3 entered through commercial pollen imports was "uncertain but probably low";
  - 120.4 The genomic analysis in the Otago University study concluded that the New Zealand, Italian and Chilean strains of Psa3 are likely to share a common ancestor. Only two strains of Psa3 from China were analysed. These were sampled from Shaanxi province.
  - 120.5 The genomic analysis in the Otago University study is based on limited sampling of isolates from China and may not accurately reflect the genetic diversity of Psa;
  - 120.6 The Otago University finding is disputed by another academic study (McCann et al 2013). This study concluded that while Psa3 strain C-9 from the Shaanxi province, China shares a common ancestor with Psa3, it is not the source of the global outbreak. The outbreaks in

Italy, Chile and New Zealand are independent events, and the precise geographical location of the source population awaits elucidation.

121. He admits that the Tracing Report states in its summary, p 3, “the pattern and timing of spread from the sites where Psa3 was initially found also suggest that the disease arose from a single point of introduction”, but otherwise denies paragraph 121, repeats paragraph 118 and 120 above, and further says the spread of Psa did not correspond with the application of artificial pollen in 2009-2010 to New Zealand orchards.

### **FIRST CAUSE OF ACTION – NEGLIGENCE**

The defendant repeats paragraphs 1 to 121 and says:

#### ***Duty***

122. He denies paragraph 122 and further says:
- 122.1 It would not be just, fair or reasonable to impose a duty of care on the defendant;
  - 122.2 There is no proximate relationship between the parties; and
  - 122.3 Policy factors, including New Zealand’s international obligations and the indeterminate nature of the alleged liability, militate against a duty of care.
123. He denies paragraph 123 and repeats paragraph 122 above.
124. He denies paragraph 124.

#### ***Breach of duty***

125. He denies paragraph 125 and repeats paragraphs 40 to 106 above.

#### ***Causation of loss***

126. He denies paragraph 126, repeats paragraphs 2 and 4 and further says:
- 126.1 The immediate response to the Psa3 incursion was initially managed by MPI, including declaration of Restricted Places (including RP1 & RP2) and a Controlled Area by way of notices issued under the Act. Compensation of \$2.3 million was paid to persons who suffered loss

or damage for actions taken by MPI under the Act during the initial response phase of the incursion.

126.2 On 17 November 2010 Ministers with Power to Act delegated by Cabinet approved the allocation of \$25 million towards a joint response to the Psa3 incursion between MPI and industry, which was matched by a \$25 million contribution from industry Zespri. The \$50 million was administered by a new joint MPI-industry body, KVH. The objective of KVH was:

126.2.1 To manage and contain Psa3 through the Aggressive Management Assistance Package (**AMAP**);

126.2.2 To establish and manage a financial assistance package for growers who agree to take aggressive containment steps on their orchards under the AMAP; and

126.2.3 To develop a long term pest management plan for Psa.

126.3 The AMAP provided remediation and payments from the fund to orchardists who entered into a contract with KVH and complied with the Psa Orchard Management Strategy for Italian Isolate Psa. The AMAP contracts limited MPI's, KVH's and Zespri's liability towards orchardists receiving remediation and payments, and included a mechanism to resolve disputes.

126.4 KVH proposed a National Pest Management Plan (**NPMP**) which was developed in consultation with growers and other industry actors. The NPMP was accepted by the defendant and given a regulatory basis through the promulgation of the Biosecurity (National Psa-V Pest Management Plan) Order 2013 (conferring Biosecurity Act powers on KVH, in its capacity as a "management agency" for Psa3) and the Biosecurity (Psa-V - Kiwifruit Levy) Order 2013 (enabling KVH to levy industry for the costs of administering and operating the NPMP), on 13 May 2013.

126.5 Psa3 was also declared an “adverse event” and related relief was made available the kiwifruit industry under the Social Security Act 1964 and the Income Tax Act 2007.

126.6 Any valid claims by the plaintiffs for losses incurred as a result of the Psa3 incursion into New Zealand should have been dealt with through the mechanisms above.

***Vicarious liability***

127. He denies paragraph 127.

**SECOND CAUSE OF ACTION – NEGLIGENCE**

The defendant repeats paragraphs 1 to 121 and says:

***Duty***

128. He denies paragraph 128 and repeats paragraph 122 above.

***Breach of duty***

129. He admits that anthers are not pollen, but otherwise denies paragraph 129 and repeats paragraphs 40 to 106 above.

***Causation of loss***

130. He denies paragraph 130, repeats paragraphs 2, 4, 118 and 119 and 126 above and further says:

130.1 Kiwi Pollen informed MPI that the 2009 consignment was tested for viability but was discarded without being used; and

130.2 The Tracing Report found the likelihood that Psa3 entered through commercial pollen imports was “uncertain but probably low”.

***Vicarious liability***

131. He denies paragraph 131.

**AND BY WAY OF AFFIRMATIVE DEFENCES**

132. He repeats paragraphs 1 to 131 above and pleads, by way of affirmative defences:

**First Affirmative Defence: statutory immunity**

133. He pleads and relies on the immunity which an “inspector, authorised person, accredited person, or other person” are entitled to rely on under s 163 of the Biosecurity Act 1993.
134. The defendant is a “person” under s 2 of the Biosecurity Act 1993 and is entitled to rely on the immunity in s 163.
135. In the alternative, the immunity under s 163 applies to the defendant pursuant to s 6(4) of the Crown Proceedings Act 1950, as it would have applied in relation to “inspectors, authorised person, accredited person or other person”, if the proceedings against the defendant had been proceedings against one or more of those persons.

**Second Affirmative Defence: statutory compensation scheme and Pest Management Plan pursuant to s 162A and Part 5 of the Biosecurity Act 1993**

136. Any liability on the defendant to remedy losses resulting from a biosecurity incursion is covered by the compensation scheme under s 162A and remedial actions and compensation available under Part 5, including the statutory arbitration and appeal mechanisms.
137. The Biosecurity (National Psa-V Pest Management Plan) Order 2013 (providing enforcement powers to KVH) and the Biosecurity (Psa-V - Kiwifruit Levy) Order 2013 (enabling KVH to levy industry for the costs of administrating and operating the Pest Management Plan), were promulgated on 13 May 2013. The NPMP and levy were proposed by KVH and consulted with industry before promulgation as Orders.
138. Any valid claims by the plaintiffs for losses incurred as a result of the Psa3 incursion into New Zealand should have been dealt with through the mechanisms above.

**Third Affirmative Defence: obligation to mitigate loss**

139. He repeats paragraphs 126 and 136 to 138 above and pleads and relies on the plaintiffs’ obligation to verify and mitigate the loss alleged.

**Fourth Affirmative Defence: contributory negligence**

140. He pleads and relies on the principles of contributory negligence.



**Fifth Affirmative Defence: consequential economic loss**

141. He pleads and relies on the principle that plaintiffs cannot recover consequential or remote economic loss in a private law claim for negligence.

This document is filed by Aaron Lyall Martin, solicitor for the defendant, of Crown Law.

The address for service of the defendant is Crown Law, Level 3, Justice Centre, 19 Aitken Street, Wellington 6011. Documents for service on the defendant may be left at this address for service or may be:

- (a) posted to the solicitor at PO Box 2858, Wellington 6140; or
- (b) left for the solicitor at a document exchange for direction to DX SP20208, Wellington Central; or
- (c) transmitted to the solicitor by facsimile to 04 473 3482; or
- (d) emailed to the solicitor at [aaron.martin@crownlaw.govt.nz](mailto:aaron.martin@crownlaw.govt.nz)

Permit Number	Importer (listed on permit)	Date application submitted	Date application approved	New/renewed permit	Exported from	Permit Special Conditions	Consignment number
2007031028	Kiwi Pollen NZ Ltd	29 March 2007	16 April 2007  Valid for 12 months, multiple consignments	New	Bexley Inc, China	Only hand collected, unopened male flower buds may be collected, milled and imported. Consignments must be accompanied by a government issued phytosanitary certificate stating that male flower buds were hand collected and unopened.	Permit not used
2007033015	Kiwi Pollen NZ Ltd	7 December 2007	7 December 2007  Valid for 12 months, multiple consignments	New	Chile	Only hand collected, unopened male flower buds may be collected, milled and imported. Consignments must be accompanied by a government issued phytosanitary certificate stating that male flower buds were hand collected and unopened.	Permit not used

Permit Number	Importer (listed on permit)	Date application submitted	Date application approved	New/renewed permit	Exported from	Permit Special Conditions	Consignment number
2008034955	Kiwi Pollen NZ Ltd	15 August 2008	15 August 2009  Valid for 12 months, single consignment	New	Kiwi Pollen NZ Ltd, Thailand  (Pollen initially from New Zealand and returned from Thailand)	Pollen is to be inspected for visible signs of contamination.	c2008/261720: Arrived 13 September 2008
2008035594	Kiwi Pollen NZ Ltd	3 November 2008	3 November 2008  Valid for 12 months, multiple consignments	Renewal	Apicola Martinez SRL, Chile	<ol style="list-style-type: none"> <li>1. Unopened male flower buds must be hand collected. The pollen may be milled prior to import.</li> <li>2. All consignments must be accompanied by a phytosanitary certificate issued by the National Plant Protection</li> </ol>	c2008/352699: Arrived 14 December 2008 and released 20 January 2009 Phytosanitary report: 2.5kg of pollen Biosecurity clearance: 12.965kg of pollen

Permit Number	Importer (listed on permit)	Date application submitted	Date application approved	New/renewed permit	Exported from	Permit Special Conditions	Consignment number
						Organisation of the exporting country with the following Additional Declaration: "The male flower buds were hand collected and unopened."	c2009/67312 Arrived and released 28 March 2009 Phytosanitary report: 26kg of pollen Air Waybill: 50.6kg of fruit pollen Biosecurity clearance: 4 units (50.600kg) pollen, frozen kiwifruit pollen
2009036858	Kiwi Pollen NZ Ltd	29 April 2009	30 April 2009 Valid for 12 months, multiple consignments	Renewal	Bexley Incorporated, China	<ol style="list-style-type: none"> <li>1. Unopened male flower buds must be hand collected. The pollen may be milled prior to import.</li> <li>2. All consignments must be accompanied by a phytosanitary certificate issued by the National Plant Protection Organisation of the exporting country with the following Additional Declaration: "The male flower buds were hand collected and unopened."</li> </ol>	c2009/140782: Arrived 24 June 2009 and released 30 June 2009 Phytosanitary report: 4.5kg of kiwi pollen Air Waybill: 11kg of kiwi pollen Biosecurity clearance: 1 unit other nursery stock, Actinidia, deliciosa
2009036865	Kiwi	29 April	30 April 2009	Renewal	Apicola	1. Unopened male flower	Permit not used

Permit Number	Importer (listed on permit)	Date application submitted	Date application approved	New/renewed permit	Exported from	Permit Special Conditions	Consignment number
	Pollen NZ Ltd	2009	Valid until 3 November 2009, multiple consignments		Martinez SRL, Chile	<p>buds must be hand collected. The pollen may be milled prior to import.</p> <p>2. All consignments must be accompanied by a phytosanitary certificate issued by the National Plant Protection Organisation of the exporting country with the following Additional Declaration: "The male flower buds were hand collected and unopened."</p>	
2009038537	Kiwi Pollen NZ Ltd	3 November 2009	9 November 2009 <sup>1</sup>  Valid for 12 months, multiple consignments	Renewal	Apicola Martinez SRL, Chile	<p>1. Unopened male flower buds must be hand collected. The pollen may be milled prior to import.</p> <p>2. All consignments must be accompanied by a phytosanitary certificate issued by the National Plant Protection Organisation of the</p>	<p>c2009/296408: Arrived 28 November 2009 and released 1 December 2009 Phytosanitary report: 99kg of pollen Air Waybill: 221.2kg of fruit pollen Biosecurity clearance: 11 units of nursery</p>

<sup>1</sup> Mistakenly recorded on the Permit to Import Nursery Stock as 9 October 2009.

Permit Number	Importer (listed on permit)	Date application submitted	Date application approved	New/renewed permit	Exported from	Permit Special Conditions	Consignment number
						exporting country with the following Additional Declaration: "The male flower buds were hand collected and unopened."	stock, Actinidia deliciosa.
							c2010/113285: Arrived 30 April 2010 and released 3 May 2010 Phytosanitary report: 21kg of Actinidia deliciosa. Air Waybill: 54.4kg of fruit pollen Biosecurity clearance: 3 units of nursery stock, Actinidia deliciosa

Permit Number	Importer (listed on permit)	Date application submitted	Date application approved	New/renewed permit	Exported from	Permit Special Conditions	Consignment number
2010039375	Plant & Food Research		5 March 2010  Valid for 12 months, multiple consignments		Various: Italy, Japan, Korean and China	<ol style="list-style-type: none"> <li>1. All samples must be labelled. On arrival to New Zealand all documents associated with the consignment will be inspected by a MAFBNZ inspector.</li> <li>2. The samples are to be consigned in secure packaging.</li> <li>3. The samples are to be stored and used at the transitional facility in accordance with a quality system approved by the inspector of the listed transitional facility, and must not leave the facility.</li> <li>4. The samples are not to be removed or distributed to any person in NZ or used for other purposes without further authorisation from the facility inspector.</li> <li>5. Any material remaining after analysis is to be incinerated/autoclaved</li> </ol>	<p>c2010/126141 Released 13 May 2010 Biosecurity clearance: 3 vials of kiwifruit pollen</p> <p>c2010/229343 Released 23 August 2010 Biosecurity clearance: 1 unit kiwifruit pollen – hand collected</p> <p>c2010/272317 Arrived and released 19 September 2010 Biosecurity clearance: 4 vials kiwifruit pollen</p>

Permit Number	Importer (listed on permit)	Date application submitted	Date application approved	New/renewed permit	Exported from	Permit Special Conditions	Consignment number
						<p>for disposal.</p> <p>6. A record is to be kept by the importer of all samples introduced under this permit (including scientific name/description, country of origin, date of arrival) and the current status of the material (i.e. held/in use/destroyed). This record is to be made available to a MAFBNZ inspector at all reasonable times.</p> <p>7. If any conditions of this permit to import cannot be or are not complied with the importer may be required by a MAFBNZ inspector to reship or destroy the plant material.</p>	



Permit Number	Importer (listed on permit)	Date application submitted	Date application approved	New/renewed permit	Exported from	Permit Special Conditions	Consignment number
20100039663	Plant & Food Research	14 April 2010	15 April 2010  Valid 12 months, multiple consignments		Various, Italy	<ol style="list-style-type: none"> <li>1. All samples must be labelled. On arrival to New Zealand all documents associated with the consignment will be inspected by a MAFBNZ inspector.</li> <li>2. The samples are to be consigned in secure packaging.</li> <li>3. The samples are to be stored and used at the transitional facility in accordance with a quality system approved by the inspector of the listed transitional facility, and must not leave the facility.</li> <li>4. The samples are not to be removed or distributed to any person in NZ or used for other purposes without further authorisation from the facility inspector.</li> <li>5. Any material remaining after analysis is to be incinerated/autoclaved</li> </ol>	c2010/114074 Arrived and released 1 May 2010 Biosecurity clearance: 39 units Hort 16A [Kiwifruit] pollen samples

Permit Number	Importer (listed on permit)	Date application submitted	Date application approved	New/renewed permit	Exported from	Permit Special Conditions	Consignment number
						<p>for disposal.</p> <p>6. A record is to be kept by the importer of all samples introduced under this permit (including scientific name/description, country of origin, date of arrival) and the current status of the material (i.e. held/in use/destroyed). This record is to be made available to a MAFBNZ inspector at all reasonable times.</p> <p>7. If any conditions of this permit to import cannot be or are not complied with the importer may be required by a MAFBNZ inspector to reship or destroy the plant material.</p>	
2010040083	Kiwi Pollen NZ Ltd	8 June 2010	9 June 2010 Valid 12 months, multiple consignments	Renewal	Bexley Incorporated, China	<p>1. Unopened male flower buds must be hand collected. The pollen may be milled prior to import.</p> <p>2. All consignments must</p>	c2010/161762: Arrived 6 June 2010 and released 18 June 2010 Phytosanitary report: -1kg of kiwi pollen

Permit Number	Importer (listed on permit)	Date application submitted	Date application approved	New/renewed permit	Exported from	Permit Special Conditions	Consignment number
						be accompanied by a phytosanitary certificate issued by the National Plant Protection Organisation of the exporting country with the following Additional Declaration: "The male flower buds were hand collected and unopened."	Biosecurity clearance: 1 unit of nursery stock actinidia deliciosa
2011042606	Plant & Food Research		12 May 2011  Valid 12 months, multiple consignments		Various: Italy, Japan, Korea and China	<ol style="list-style-type: none"> <li>All samples must be labelled. On arrival to New Zealand all documents associated with the consignment will be inspected by a MAFBNZ inspector.</li> <li>The samples are to be consigned in secure packaging.</li> <li>The samples are to be stored and used at the transitional facility in accordance with a quality system approved by the inspector of the listed transitional facility, and must not leave the</li> </ol>	<p>c2011/156137 Released 13 June 2011 Biosecurity clearance: 1 unit of kiwifruit pollen</p> <p>c2011/218657 Arrived and released 23 July 2011 Biosecurity clearance: 3 units, 2 packets and 1 vial kiwifruit pollen from Italy</p>

Permit Number	Importer (listed on permit)	Date application submitted	Date application approved	New/renewed permit	Exported from	Permit Special Conditions	Consignment number
						<p>facility.</p> <ol style="list-style-type: none"> <li>4. The samples are not to be removed or distributed to any person in NZ or used for other purposes without further authorisation from the facility inspector.</li> <li>5. Any material remaining after analysis is to be incinerated/autoclaved for disposal.</li> <li>6. A record is to be kept by the importer of all samples introduced under this permit (including scientific name/description, country of origin, date of arrival) and the current status of the material (i.e. held/in use/destroyed). This record is to be made available to a MAFBNZ inspector at all reasonable times.</li> <li>7. If any conditions of this permit to import cannot be or are not complied</li> </ol>	

Permit Number	Importer (listed on permit)	Date application submitted	Date application approved	New/renewed permit	Exported from	Permit Special Conditions	Consignment number
						with the importer may be required by a MAFBNZ inspector to reship or destroy the plant material.	