

Reference: 20210157

16 June 2021

s9(2)(a)

Dear s9(2)(a)

Thank you for your Official Information Act request, received on 19 April 2021. You requested the following:

*Under the provisions of the Official Information Act, please provide me with all documents generated or received by Treasury, related to Grant Robertson's letter of expectations to the chair of Air New Zealand of April 8, found here.*

*This should include all draft copies as well as any emails (or any other forms of correspondence) discussing the letter or its contents.*

As you are aware, on 17 May 2021 the Treasury extended the timeframe to decide on this request by 20 working days to allow time for consultation.

**Information being released**

Please find enclosed the following documents:

Item	Date	Document Description	Decision
1.	17 February 2021	Treasury Report T2021/236 Project 20 – Levers of Influence	Release in part
2.	30 March 2021	Treasury Report T2021/797 Air New Zealand Letter of Expectations	Release in part
3.	8 April 2021	Email: Air New Zealand letter of expectation	Release in part

I have decided to release the relevant parts of the documents listed above, subject to information being withheld under one or more of the following sections of the Official Information Act, as applicable:

- commercially sensitive information, under section 9(2)(b)(ii) – to protect the commercial position of the person who supplied the information, or who is the subject of the information,

- advice still under consideration, section 9(2)(f)(iv) – to maintain the current constitutional conventions protecting the confidentiality of advice tendered by Ministers and officials,
- certain sensitive advice, under section 9(2)(g)(i) – to maintain the effective conduct of public affairs through the free and frank expression of opinions,
- names and contact details of officials, under section 9(2)(g)(ii) – to maintain the effective conduct of public affairs through protecting ministers, members of government organisations, officers and employees from improper pressure or harassment,
- Information under section 9(2)(i) – to enable the Crown to carry out commercial activities without prejudice or disadvantage,
- confidential information, under section 9(2)(j) – to enable the Crown to negotiate without prejudice or disadvantage,
- direct dial phone numbers of officials, under section 9(2)(k) – to prevent the disclosure of information for improper gain or improper advantage.

Direct dial phone numbers of officials have been redacted under section 9(2)(k) in order to reduce the possibility of staff being exposed to phishing and other scams. This is because information released under the OIA may end up in the public domain, for example, on websites including Treasury's website.]

### **Information to be withheld**

There are also 12 emails covered by your request that I have decided to withhold in full under the following sections of the Official Information Act:

- commercially sensitive information, under section 9(2)(b)(ii) – to protect the commercial position of the person who supplied the information, or who is the subject of the information,
- certain sensitive advice, under section 9(2)(g)(i) – to maintain the effective conduct of public affairs through the free and frank expression of opinions,
- confidential information, under section 9(2)(j) – to enable the Crown to negotiate without prejudice or disadvantage.

In making my decision, I have considered the public interest considerations in section 9(1) of the Official Information Act.

Please note that this letter (with your personal details removed) and enclosed documents may be published on the Treasury website.

This reply addresses the information you requested. You have the right to ask the Ombudsman to investigate and review my decision.

Yours sincerely

Maureena van der Lem  
**Manager, Commercial Performance**

# 20210157

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TE TAI ŌHANGA  
THE TREASURY

## Treasury Report: Project 20 - Levers of Influence

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<b>Date:</b>	17 February 2021	<b>Report No:</b>	T2021/236
		<b>File Number:</b>	SE-1-3-21

### Action sought

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	Action sought	Deadline
<b>Minister of Finance</b> (Hon Grant Robertson)  <b>Associate Minister of Finance</b> (Hon David Parker)	s9(2)(b)(ii), s9(2)(i) and 9(2)(j)	25 February 2021

### Contact for telephone discussion (if required)

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Name	Position	Telephone	1st Contact
Lars Piepke	Principal Advisor, Commercial Performance	s9(2)(k)	s9(2)(g)(ii) ✓
Maureena van der Lem	Manager, Commercial Performance		N/A (mob)

### Minister's Office actions (if required)

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**Return** the signed report to the Treasury

Note any  
feedback on  
the quality of  
the report

**Enclosure:** Appendix 1: Air NZ's Board of Directors

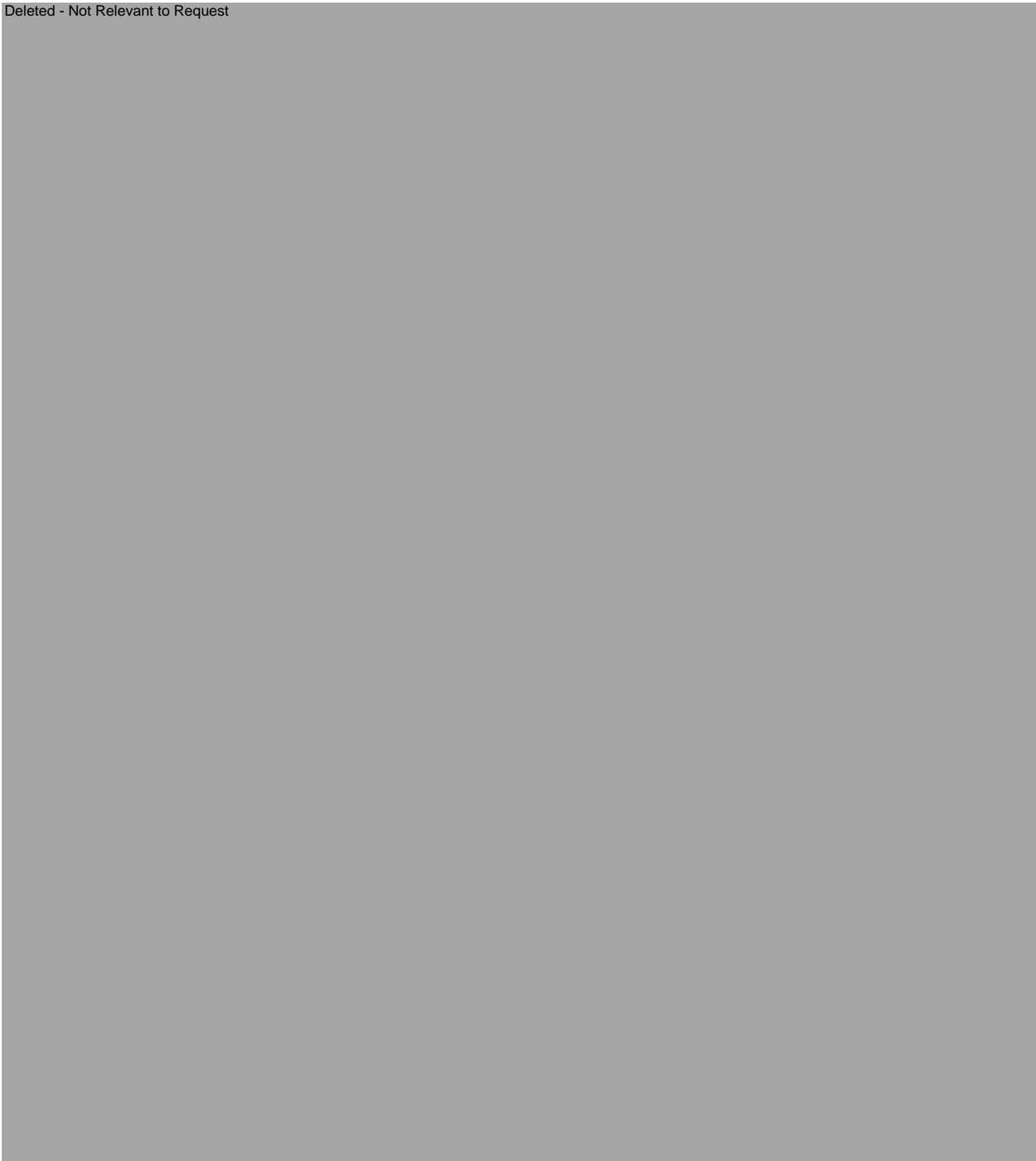
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**Treasury Report: Project 20 - Levers of Influence**

**Purpose of Report**

1. This report discusses options available to the Crown to exert increased influence on Air New Zealand (Air NZ) as the company's majority shareholder.

Deleted - Not Relevant to Request



**COMMERCIAL-IN-CONFIDENCE****Levers of Influence**

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7. As majority or sole shareholder, shareholding Ministers have influence over the companies that the Crown has a shareholding in. The Chairs and boards of these companies place significant weight on the views of shareholding Ministers. s9(2)(b)(ii), 9(2)(g)(i) and 9(2)(i)

s9(2)(b)(ii), 9(2)(g)(i) and 9(2)(i)

The rationale for this is that Air NZ has a critical role in economic and social activity underpinning New Zealanders' wellbeing, and that it operates in a volatile industry and has twice in the last two decades needed significant Crown assistance s9(2)(b)(ii), 9(2)(g)(i) and 9(2)(i) The Crown also has a sizeable ongoing investment in Air NZ. All of these factors mean the Crown has a legitimate interest in Air NZ's strategy, decisions and performance, and the right to expect that Air NZ manages itself in a manner that upholds New Zealand's values in how it operates and with a level of caution for its financial stability.

**Role of the Crown as Majority Shareholder**

8. Before discussing specific levers, it is worthwhile considering the nature of the role that the Crown should play and implications for other stakeholders. It is common for a private majority shareholder to exert significant influence or control over a listed company. Controlling shareholders on average appoint around 35% of the members of the boards of listed subsidiary companies across Australia and New Zealand. There are several reasons why this level of control would be inadvisable for the Crown to exert.

- **Minority Shareholders** – private majority shareholders have no obligation to consider the interests of minority shareholders and often show little or no interest in doing so. This would be inappropriate behaviour for the Crown. If there are outcomes that the Crown would like the company to achieve that are not in the company's interests or disadvantage minority shareholders it would be inappropriate to use the Crown's majority shareholding to achieve these outcomes as this could transfer value away from minority shareholders (likely in a non-transparent way) in order to achieve a public policy objective. Regulation or attainment of the desired outcome through a purchase arrangement would be more appropriate.
- **Investor confidence** - historically, government-owned airlines around the world have often made non-commercial decisions as a result of their government ownership, and so tend to achieve poor financial performance and returns to shareholders. Air NZ has made strenuous efforts over a long period of time to convince its investors, particularly overseas investors, that it is different: it is commercial and is not unduly or inappropriately influenced as a result of its majority ownership by the Crown. Investor confidence in the commerciality (and commercial independence) of the company leads to lower overall financing costs and reduces the financing burden on the Crown.
- **Decision-making** – it is important that there is a clear distinction between the roles of shareholders, the board, and management. There is no reason to believe that Ministers or officials are better-placed to make commercial or operational decisions for Air NZ than Air NZ's directors and management. Nor would it be appropriate for Ministers or officials to be appointed as directors. A private majority shareholder would often be a larger company operating in the same industry that has relevant technical expertise and can add value in decision-making, and where the objectives of the majority shareholder are aligned with the objectives of the company (e.g. returns to investors). This is not the case for the Crown or its representatives – for example, the Crown has much broader objectives than financial returns. It is appropriate for the Crown to specify high-level objectives, to provide comments on strategic direction, ask the board and

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management to ensure the operational decision-making that can deliver those objectives; and then to hold the company to account for its performance. It should be noted that if the Crown directly appoints directors to the board it will likely increase its moral hazard responsibility for decisions of the board, and may also increase the potential for conflicts of interest.

- *Board Composition* – there is a protocol regarding board appointments that has been in place since 2002 for Air New Zealand, which was later extended to the three majority Crown-owned listed electricity companies. Under this protocol the boards are responsible for deciding when directors should retire (consistent with the stock exchange listing rules) and then for searching for and appointing new candidates to replace them. Directors appointed by the board must be elected by shareholders at the next Annual Shareholder Meeting (ASM) as is the case for other, non-Crown owned listed companies. The Crown's vote, as majority shareholder, obviously determines the outcome of voting at ASMs, so the Crown is consulted on the board's candidates. Ministers have reserved the right to nominate candidates to the boards, but noted that they expected this to happen very rarely, and that it would be a step only taken towards the end of a process of escalating concerns with the board, where shareholding Ministers were not satisfied that those concerns were being addressed. The Crown's approach to board appointments for Air NZ has been well-understood and accepted by investors and potential investors and is important for maintaining the confidence of current and potential investors for all four companies, and for attracting and retaining high quality candidates for the boards and management. However, it is open to Ministers to change this protocol, or to invoke their right under the protocol to nominate candidates to the board, given that Air NZ is not in normal circumstances. Direct nomination of directors would need to be carefully considered as there may be concerns about the objectives of Crown nominated directors.
9. We consider each of these general implications of increased Crown influence when discussing specific levers of influence on the next page.

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**Specific Options**

10. In combination with our advisors, we have considered a full spectrum of options for mechanisms to achieve the Crown’s objectives, as itemised below.



Mechanism	Description	Assessment
Letter of expectations	Crown outlines expectations and releases it publicly.  Company reports performance against those expectations.	Consistent with existing Crown mechanisms, and private sector precedent, and easily implementable.  Not legally binding and cannot over-ride directors’ duties but persuasive given the Crown’s rights as majority shareholder, assuming that existing directors are responsive to Crown expectations.
Board renewal alignment	Crown undertakes its own assessment of the skills and strengths/weaknesses of the board and communicates its views to the Chair.	Potential to promote board renewal that <sup>s9(2)(b)(ii), 9(2)(f)(iv), 9(2)(g)(i), 9(2)(i) and 9(2)(j)</sup> while avoiding perceptions of a loss of independence from direct Crown nomination of directors.
Controls within a Crown loan facility	Continuation of existing process with the Crown for duration of a Crown loan facility, with some changes at the margins.	Provides ongoing increased Crown influence and access to information while the company requires Crown support through a loan facility.  This does impose additional monitoring costs on the Crown, for relatively limited influence and therefore low benefits.
Appoint specific Crown directors (not recommended)	Crown directly identifies and appoints directors.	Perception of lack of Crown independence for a commercial enterprise.  Directors still must meet their directors’ duties and cannot act as an agent of the Crown.  Directors will be 1 or 2 voices on a board of 7 or 8.  Directors would be deemed not to be independent and would be excluded from discussions or decisions where there was a conflict of interest.  Precedent effect for the three Crown majority owned electricity companies.
Change to the company’s constitution or a deed of undertaking (not recommended)	Crown objectives formally included in the company’s constitution or in a deed of undertaking.	Hard wiring general objectives into legal documentation is likely to give rise to challenges for a large and complex enterprise.  Likely to be strongly opposed by the company and unpalatable to other investors.

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- 11. We propose that you implement a package comprising the first three initiatives in the table – a letter of expectations, board renewal alignment, and maintaining some controls for the duration of the Crown providing a loan facility. We consider that these measures, undertaken in concert, will be influential and can readily be implemented without creating concerns around the commercial independence of the company.
- 12. Letters of expectation from significant shareholders are not unusual in the private sector. For example BlackRock, a major international investment fund, writes an annual letter to the companies that it invests in, and makes this letter public. The most recent letter highlighted issues that BlackRock believes are pivotal to creating durable value: capital management, long-term strategy, purpose, and climate change<sup>1</sup>.
- 13. An annual letter of expectations would be sent to Air NZ, with the first one to be sent ahead of the equity raise. The letter would be made public. The letter would outline the Crown’s overarching objectives for ownership. Future letters would adapt these objectives over time to the prevailing circumstances applying to the company.

14. s9(2)(b)(ii), 9(2)(f)(iv), 9(2)(g)(i), 9(2)(i) and 9(2)(j)

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<sup>1</sup> <https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter>  
T2021/236 Project 20 - Levers of Influence

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Letter of Expectations

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s9(2)(b)(ii), s9(2)(i) and 9(2)(j)



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s9(2)(b)(ii), s9(2)(i) and 9(2)(j)



Maureena van der Lem  
**Manager, Commercial Performance**

Hon Grant Robertson  
**Minister of Finance**

Hon David Parker  
**Associate Minister of Finance**

**COMMERCIAL-IN-CONFIDENCE****Appendix 1: Air NZ's Board of Directors**

The table below shows Air NZ's current directors, their tenure, and when they must next seek re-election by shareholders.

	<b>First appointed</b>	<b>Tenure (years)</b>	<b>Next due for re-election</b>
Dame Therese Walsh (Chair)	May 2016	4.8	2022
Jan Dawson	Apr 2011	9.9	2022
Rob Jager	Apr 2013	7.9	2021
Jonathan Mason	Mar 2014	7.0	2022
Linda Jenkinson	Jun 2014	6.7	2023
Laurissa Cooney	Oct 2019	1.4	2023
Larry De Shon	Apr 2020	0.9	2023
Dean Bracewell	Apr 2020	0.9	2023

## COMMERCIAL-IN-CONFIDENCE



## Treasury Report: Air New Zealand: letter of expectations

<b>Date:</b>	30 March 2021	<b>Report No:</b>	T2021/797
		<b>File Number:</b>	SE-1-3-21

### Action sought

	Action sought	Deadline
<b>Minister of Finance</b> (Hon Grant Robertson)	<p><b>Sign and send</b> the attached letter to the Chair of Air New Zealand, cc the Chief Executive</p> <p><b>Agree</b> that the Treasury should release the signed letter on our website</p>	After Cabinet on Tuesday 6 April 2021
<b>Associate Minister of Finance</b> (Hon David Parker)	<b>Note</b> contents	Tuesday 6 April 2021

### Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
Juston Anderson	Principal Advisor, Commercial Performance	s9(2)(k)	✓
Maureena van der Lem	Manager, Commercial Performance		

### Minister's Office actions (if required)

**Email** the signed letter to the Chair of Air New Zealand, cc the Chief Executive, and **return** the signed report and letter to the Treasury

Note any feedback on the quality of the report

**Enclosure:** Yes (attached)  
[Draft letter of expectations for Air NZ - March 2021 \(Treasury:4423505v1\)](#)

**COMMERCIAL-IN-CONFIDENCE****Treasury Report: Air New Zealand: letter of expectations**

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Attached, as requested, is a Letter of Expectations (LOE) for you to sign and send to the Chair of Air New Zealand (Air NZ).

Air NZ was given the opportunity to comment on the draft LOE.

We recommend you send the LOE to Air NZ after Cabinet on Tuesday 6 April 2021, at the same time as the letter that was attached to T2021/644.

As with all LOEs, this LOE should be made public. Air NZ is likely to do that by releasing it to the NZX. We recommend that you agree the Treasury also releases the letter on our website.

**Recommended Action**

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We recommend that you:

- a **sign** the attached Letter of Expectations to Air New Zealand and send it after Cabinet on Tuesday 6 April 2021

*Agree/disagree.*  
Minister of Finance

- b **agree** that the Treasury should release the signed LOE on the Treasury's website

*Agree/disagree.*  
Minister of Finance

Maureena van der Lem  
**Manager, Commercial Performance**

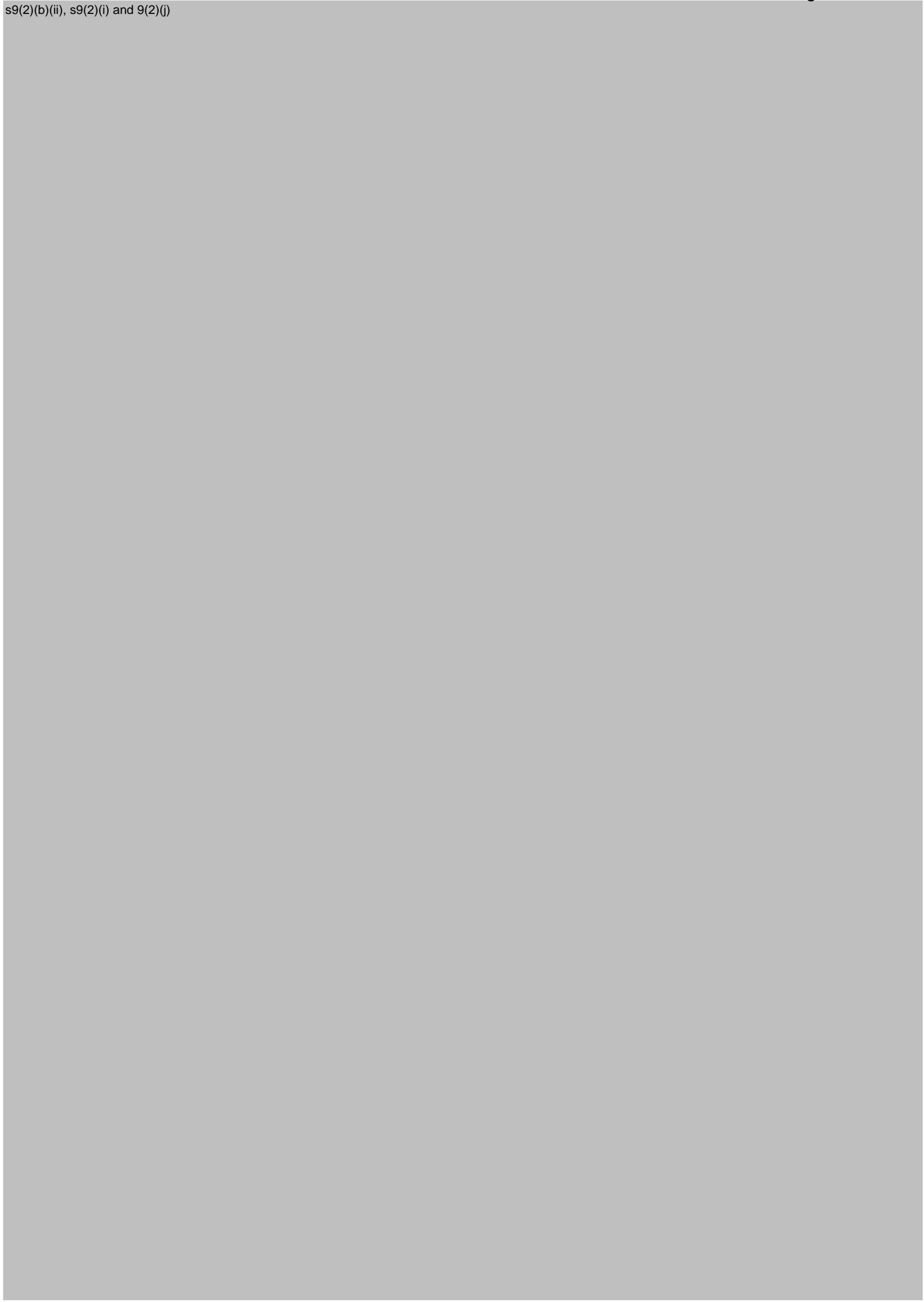
Hon Grant Robertson  
**Minister of Finance**

Hon David Parker  
**Associate Minister of Finance**

s9(2)(b)(ii), s9(2)(i) and 9(2)(j)



s9(2)(b)(ii), s9(2)(i) and 9(2)(j)



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**From:** Danni Thian <Danni.Thian@parliament.govt.nz>  
**Sent:** Thursday, 8 April 2021 6:44 pm  
**To:** Maureena van der Lem [TSY]; Juston Anderson [TSY]; Lars Piepke [TSY]  
**Cc:** Ministerial Services Inbox [TSY]; ^Parliament: Susan Ivory; s9(2)(g)(ii)  
**Subject:** T2021-797 - Air NZ LOE  
**Attachments:** 1E. Term Sheet Signed.pdf; Letter from Hon Robertson - Capital Raise.pdf; Letter from Hon Robertson - Expectations.pdf; 1. T2021-797 Air New Zealand - letter of expectations.pdf

Good evening,

The Minister has agreed T2021-797 *Air New Zealand – Letter of Expectations* subject to conditions, as annotated on the attached signed report. The correspondence to Dame Therese was sent tonight – also attached for your records.

Lastly, the signed Term Sheet is also attached. I assume TSY will liaise with Air NZ regarding counter-signing?

Kind regards,  
Danni



**Danni Thian, Finance and State Owned Enterprises Advisor**  
**Office of Hon Grant Robertson | Office of Hon David Clark**  
Minister of Finance | Minister for State Owned Enterprises

Level 7.6 Executive Wing, Parliament Buildings, PO Box 18041, Wellington 6160, New Zealand  
s9(2)(g)(ii)  
E: s9(2)(g)(ii)

Attachment withheld s9(2)(b)(ii), 9(2)(i) and 9(2)(j)

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