

Memorandum on Compliance

File	FTC000023
To:	Sandra Balcombe – Manager Land and Oceans Applications
Copy to:	Elliott Thornton – Team Leader Fast-track Consenting, Judge Newhook – Panel Convener
From:	Alex Erceg – Senior Advisor
Date:	20 May 2021
Subject:	Ohinewai Foam Factory - Assessment whether the application complies with clause 3(1) of Schedule 6 of the COVID-19 Recovery (Fast-track Consenting) Act 2020

Purpose

1. The purpose of this memo is to assist you in making your decision on whether the Ohinewai Foam Factory (the project) application, received by the Environmental Protection Authority (EPA) on 14 May 2021 lodged by Bloxam Burnett and Olliver (BBO) on behalf of Ambury Properties Limited, complies with the requirements of clause 3(1) of Schedule 6 of the COVID-19 Recovery (Fast-track Consenting) Act 2020 (the Act).

Conflict of interest

2. I confirm that I do not have any conflict of interest in this matter that would prevent me making this assessment.

The application

3. On 5 November 2020, the Minister for the Environment decided to refer the project to an expert consenting panel under Section 24 of the Act.
4. On 4 December 2020, Schedule 8 was inserted into the COVID-19 Recovery (Fast-track Consenting) Referred Projects Order 2020 (the referral order), by clause 4 of the COVID-19 Recovery (Fast-track Consenting) Referred Projects Amendment Order (No 3) 2020, in order to give effect to the above decision, pursuant to Section 26 of the Act.
5. The EPA must either provide the consent application to the expert consenting panel (if complete) or return it to the person who lodged it (if incomplete), as set out in paragraphs 13-16 below.

Project

6. The scope of the project is—

- a. to construct and operate a foam factory and associated facilities, including—
 - i. a foam manufacturing plant and storage facility; and
 - ii. a carpet underlay plant; and
 - iii. a foam conversion plant; and
 - iv. temporary site sheds; and
 - v. facilities to manage air discharges; and
 - vi. facilities to manage hazardous waste; and
 - vii. facilities to manage stormwater and wastewater generated on site; and
- b. to construct and operate a rail siding that will connect to the North Island Main Trunk Railway.

Fast-track consenting application process

Legislative context

7. Clause 2(1), Schedule 6 of the Act states that a person authorised in accordance with section 15 may apply for a resource consent that would otherwise be required under section 88 of the Resource Management Act 1991 (RMA).
8. Clause 3(1), Schedule 6 of the Act states that *“within 5 working days of receiving a consent application or notice of requirement, the EPA must determine whether the application or notice—*
 - (a) relates solely to 1 or more of the listed projects or referred projects; and*
 - (b) does not breach clause 2(3)(c) or (4); and*
 - (c) contains all the information required under clauses 9 to 13.”*
9. Clause 3(2), Schedule 6 of the Act states that *“if the EPA is satisfied that a consent application or notice of requirement complies with the matters listed in subclause (1), the EPA must provide the application or notice to the panel appointed to determine that application or notice.”*
10. Clause 4(1), Schedule 6 of the Act states that *“if the EPA determines that a consent application or notice of requirement does not comply with the requirements of clause 3(1), it must return the application or notice immediately to the person who lodged it, with written reasons for the EPA’s determination”.*

Prerequisites for the application

11. There are a number of prerequisites for an application to be lodged as set out in this table.

Reference to clause in Schedule 6	Preliminary Matter	Comment	Accept/reject

Clause 2(1) or 2(2)	Application is made by authorised person or requiring authority	Application is for Ambury Properties Limited ¹ , who are listed as the authorised person in the referral order.	Accept
Clause 2(3)(b)	Application is in approved form and manner	Yes	Accept
Clause 2(3)(c)	Application complies with any restrictions and obligations in either:		
	(i) Schedule 2; or	N/A – project not listed on Schedule 2 of the Act	Accept
	(ii) Schedule 3 and referral order	Yes – Schedule 8 of the referral order sets out restrictions and obligations	Accept ²
Clause 2(4)(a)	Applications must not relate to an activity that is classified as a prohibited activity in a:		
	(i) Relevant plan or proposed plan	No relevant prohibited activities	Accept
	(ii) RMA regulations (including any NES)	No relevant prohibited activities	Accept
Clause 2(4)(b)	Applications must not relate to an activity that is to occur within a customary marine title area unless agreed by the appropriate customary marine title group	Application is not in, adjacent to, or likely to adversely affect the coastal marine area	Accept
Clause 3(1)(a)	Relates solely to 1 or more of the listed projects or referred projects	The project is a referred project and is identified in Schedule 8 of the referral order	Accept

¹ Lodged by BBO on their behalf

² Clause 5 of Schedule 8 of the referral order sets out the (with my emphasis underlined) approximate geographical location. The application identifies that work will no longer be required to be undertaken on Lot 3 DP 474347 (which is listed in clause 5 of Schedule 8 of the referral order), and that works that form part of this application will be undertaken on two additional blocks of land not listed in clause 5 of Schedule 8 of the referral order. These additional blocks are contiguous with those identified in the referral order, and as such I consider this complies with the restrictions in the referral order, being the approximate geographical location.

Conclusions on preliminary matters

12. The application can proceed to an assessment of whether the application contains all the information required under clauses 9 to 12 of Schedule 6 of the Act.

Assessment of compliance table

13. An assessment table against clauses 9-12 of Schedule 6 of the Act is included in Appendix 1.
14. The information provided must be in sufficient detail to correspond to the scale and significance of the effects that the activity is anticipated to have on the environment, taking into account any proposal by a consent applicant or requiring authority to manage adverse effects through conditions, including requiring the preparation of a management plan (Clauses 13(3) and 14 of Schedule 6).
15. The information in the application has been assessed on the basis that the scale of the activity is significant, and potentially more than minor effects on the environment.
16. My view is that the application **does comply** with clause 3(1) and can be referred to the Panel.

Appendix 1: Clauses 9-11

Table 1: Checklist of completeness requirements in Clauses 9-11 of Schedule 6 of the Act

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
Clause 9			
Clause 9(1)(a)	A description of the proposed activity	Yes Sections 2 and 4 and aided by various appendices for the technical components.	Yes
Clause 9(1)(b)	A description and map of the site at which the activity is to occur	Yes Section 3	Yes
Clause 9(1)(c)	Confirmation that the consent application complies with clause 3(1).	Yes Section 1.1	Yes
Clause 9(1)(d)	The full name and address of:	Yes	Yes
	i. Each owner of the site and of land adjacent to the site	Sections 3.2 and 3.4	
	ii. Each occupier of the site and of land adjacent to the site who, after reasonable inquiry, is able to be identified by the applicant	Yes Sections 3.4	Yes
	Were reasonable inquiries made?	Yes	Yes

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
Clause 9(1)(e)	A description of any other activities that are part of the proposal to which the consent application relates	<p>Yes</p> <p>Section 2.6 – Outlines existing resource consents relevant to the proposal</p> <p>Section 4</p> <p>Section 4.1 – Consented Activities</p> <p>Section 5.1 – Existing Resource Consents Held</p> <p>Section 5.2 – Permitted Activities</p> <p>Section 5.3 – Other Relevant Resource Management Processes</p>	Yes
Clause 9(1)(f)	A description of any other resource consents, notices of requirement for designations, or alterations to designations required for the proposal to which the consent application relates	<p>Yes</p> <p>Section 5.3.2 - Waikato District Plan Review and Rezoning Submission</p> <p>Section 5.3.3 - Other Approvals Required</p>	Yes
Clause 9(1)(g)	An assessment of the activity against— (i) Part 2 of the RMA	Yes	Yes

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
Section 19		Section 11	
	(ii) the purpose of this Act	Yes Section 12	Yes
	(iii) the following matters (set out in section 19 of the Act - whether project helps to achieve purpose of Act):	As above	Yes
	(a) the project's economic benefits and costs for people or industries affected by COVID-19	As above	Yes
	(b) the project's effect on the social and cultural well-being of current and future generations	As above	Yes
	(c) whether the project would be likely to progress faster by using the processes provided by this Act than would otherwise be the case	As above	Yes
	(d) whether the project may result in a public benefit by, for example: generating employment; increasing housing supply; contributing to well-functioning urban environments; providing infrastructure in order to improve economic, employment, and environmental outcomes, and increase productivity; improving environmental outcomes for coastal or freshwater quality, air quality, or indigenous biodiversity; minimising waste; contributing to New Zealand's efforts to mitigate climate change; and transition more quickly to a low-emissions economy (in terms of reducing New Zealand's net emissions of greenhouse gases); promoting the protection of historic heritage; strengthening environmental, economic, and social resilience, in terms of managing the risks from natural	As above	Yes

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
	hazards and the effects of climate change; or any other benefit(s) identified.		
	(e) whether there is potential for the project to have significant adverse environmental effects, including greenhouse gas emissions:	As above	Yes
	(f) [for referred projects only] any other matter that the Minister considers relevant.	N/A None identified	N/A
Clause 9(1)(h)	An assessment of the activity against -- (a) any relevant provisions in a national environmental standard, including:	Yes Section 10.1 Identifies the relevant National Environmental Standards as being: • Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES-CS) ³ .	Yes

³ Application notes that Appendix 9 contains detailed site investigations, which concludes there is some minor contamination of soil which can be remediated as a permitted activity under the NES-CS

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
		<ul style="list-style-type: none"> Resource Management (National Environmental Standards for Air Quality) Regulations 2004 (NES-AQ)⁴. Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-FW)⁵. 	
	i. Any relevant objectives, policies or rules	As above	Yes
	ii. Any requirement, condition, or permission in any rules	As above	Yes
	iii. Any other requirements	N/A	N/A
	(b) Any relevant provisions in any other regulations made under the RMA, including:	Yes/ N/A ⁶	N/A
	iv. Any relevant objectives, policies or rules	N/A	N/A
	v. Any requirement, condition, or permission in any rules	N/A	N/A

⁴ The application notes the NES-AQ was assessed when applying for, and obtaining air discharge permits under the RMA.

⁵ The application notes that there waterways are in excess of 100m away, and as such, the regulations under the NES-FW do not apply.

⁶ Whilst there are no other regulations made under the RMA, Section 10.2 assesses against any other regulations, which includes regulations under the Health and Safety and Work Act 2015, and Section 10.5 assesses the project against the Waikato-Tainui Settlement Act 2010.

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
	vi. Any other requirements	N/A	N/A
	(c) Any relevant provisions in any national policy statement, including:	Yes Section 10.3 Recognises that the National Policy Statement for Freshwater Management 2020 (NPSFM) is relevant	Yes
	vii. Any relevant objectives, policies or rules	Yes Section 10.3 Appendix 24	Yes
	viii. Any requirement, condition, or permission in any rules	N/A	N/A
	ix. Any other requirements	N/A	N/A
	(d) Any relevant provisions in a New Zealand coastal policy statement, including:	N/A The project site is not in, or adjacent to the coastal marine area.	N/A
	x. Any relevant objectives, policies or rules	N/A	N/A
	xi. Any requirement, condition, or permission in any rules	N/A	N/A
	xii. Any other requirements	N/A	N/A

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
	(e) Any relevant provisions in any regional policy statement or proposed regional policy statement, including:	Yes Section 10.5 Waikato Regional Policy Statement (RPS)	Yes
	xiii. Any relevant objectives, policies or rules	Yes Appendix 25	Yes
	xiv. Any requirement, condition, or permission in any rules	N/A	N/A
	xv. Any other requirements	N/A	N/A
	(f) Any relevant provisions in a plan or proposed plan, including:	Yes Section 10.6 Operative Waikato District Plan Section 10.7 Proposed Waikato District Plan Section 10.8 Waikato Regional Plan	Yes
	xvi. Any relevant objectives, policies or rules	Yes Appendix 23	Yes
	xvii. Any requirement, condition, or permission in any rules	Yes	Yes

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
		Section 5 Consents & Approvals Required Section 5.2 Permitted Activities	
	viii. Any other requirements	N/A	N/A
	(g) Any relevant provision in any planning document recognised by a relevant iwi authority and lodged with a local authority, including:	Yes Section 10.9 Waikato Tainui Environmental Plan – Tai Timu, Tai Pari, Tai Ao	Yes
	xix. Any relevant objectives, policies or rules	Yes Appendix 26	Yes
	xx. Any requirement, condition, or permission in any rules	N/A	N/A
	xxi. Any other requirements	N/A	N/A
Clause 9(1)(i)	Information about any Treaty settlements that apply in the project area, including—	Yes Section 7.2 and 10.4	Yes
	(i) the identification of the relevant provisions in those Treaty settlements		
	(ii) a summary of any redress provided by those settlements that affects natural and physical resources relevant to the project or project area;	Yes Section 7.2	Yes

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
Clause 9(1)(j)	The conditions that the applicant proposes for the resource consent	Yes Section 9 and Appendix 11	Yes
Clause 9(4)(a)	An assessment of the activity's effects on the environment that includes the following information (set out in clause 10 Schedule 6 of the Act): ⁷	Yes Section 8 Aided by the various appendices and technical reports	Yes
	(a) an assessment of the actual or potential effects on the environment	Yes Section 8.12 Appendices 14, 16 and 17	Yes
	(b) if the activity includes the use of hazardous installations, an assessment of any risks to the environment that are likely to arise from such use	Yes Section 8.10 Appendix 15	Yes
	(c) if the activity includes the discharge of any contaminant, a description of— (i) the nature of the discharge and the sensitivity of the receiving environment to adverse effects; and (ii) any possible alternative methods of discharge, including discharge into any other receiving environment	Yes Section 8.10 Appendix 15	Yes
	(d) a description of the mitigation measures (including safeguards and contingency plans where relevant) to	Yes	Yes

⁷ The application does not need to include any additional information specified in a relevant regional policy statement or plan that that would be required in an assessment of environmental effects under Schedule 4 of the RMA.

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
	be undertaken to help prevent or reduce the actual or potential effect of the activity	Section 9.3 Appendix 11	
	(e) identification of persons who may be affected by the activity and any response to the views of any persons consulted, including the views of iwi or hapū that have been consulted in relation to the proposal	Yes Section 6 and Section 7	Yes
	(f) if iwi or hapū elect not to respond when consulted on the proposal, any reasons that they have specified for that decision	N/A Iwi and hapū have responded	N/A
	(g) if the scale and significance of the activity's effects are such that monitoring is required, a description of how the effects will be monitored and by whom, if the activity is approved	Yes Section 9.3	Yes
	(h) an assessment of any effects of the activity on the exercise of a protected customary right	N/A	N/A
Clause 9(4)(b)	An assessment of the activity's effects that also covers the following matters (set out in clause 11 of Schedule 6 of the Act):	Yes Section 8 and Section 12 Aided by various appendices	Yes
	(a) any effect on the people in the neighbourhood and, if relevant, the wider community, including any social, economic, or cultural effects		
	(b) any physical effect on the locality, including landscape and visual effects	Yes Section 8.10	Yes

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
		Appendix 15	
	(c) any effect on ecosystems, including effects on plants or animals and physical disturbance of habitats in the vicinity	Yes Section 8.8 Aided by various appendices	Yes
	(d) any effect on natural and physical resources having aesthetic, recreational, scientific, historical, spiritual, or cultural value, or other special value, for present or future generations	Yes Section 7.1 Section 8 Aided by various appendices	Yes
	(e) any discharge of contaminants into the environment and options for the treatment and disposal of contaminants	Yes Section 8.6 as well as consideration of dust, sediment and greenhouse gasses.	Yes
	(f) the unreasonable emission of noise	Yes Section 8.9 and Appendix 12	
	(g) any risk to the neighbourhood, the wider community, or the environment through natural hazards or hazardous installations.	Yes Section 12	Yes
Clause 9(5)	Is there a cultural impact assessment?	No	N/A

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
	<p>If a cultural impact assessment is provided, was it prepared by or on behalf of the relevant iwi authority?;</p> <p>OR</p> <p>If a cultural impact assessment is not provided, a statement of reasons given by the relevant iwi authority for not providing that assessment</p>	<p>Yes</p> <p>Section 7</p> <p>Appendix 18 is the statement of reasons</p> <p>Appendix 19 is a Kaitiaki Environmental Values Assessment</p>	Yes
Clause 9(6)(a)	If a permitted activity is part of the proposal to which the consent application relates, a description that demonstrates that the activity complies with the requirements, conditions, and permissions for the permitted activity (so that a resource consent is not required for that activity under section 87A(1) of the RMA)	<p>Yes</p> <p>Section 5.2</p>	Yes
Clause 9(6)(b)	If the activity is to occur in an area that is within the scope of a planning document prepared by a customary marine title group under section 85 of the Marine and Coastal Area (Takutai Moana) Act 2011, an assessment of the activity against any resource management matters set out in that planning document (for the purposes of clause 30(3))	N/A	N/A
Clause 9(6)(c)	In the case of a referred project, all the additional information required by the relevant referral order.		
	An assessment of the risks posed by the hazardous substances used on site and a description of the measures to be adopted to manage these risks	<p>Yes</p> <p>Section 4.8.5</p>	Yes

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
		Section 12 Supported by Appendices 14, 16 and 17	
	An integrated traffic assessment	Yes Section 8.11 Appendix 5	Yes
	A geotechnical assessment report	Yes Section 8.5 Appendix 6	Yes
	An ecological report	Yes Sections 3.7 – 3.9 Section 8.8 Appendix 7	Yes
	An archaeological report	Yes Section 3.11 Section 8.4 Appendix 8	Yes

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
	An earthworks methodology report	Yes Section 4.3 Appendix 10	Yes
	A noise and vibration report	Yes Section 8.9 Appendix 12	Yes
	A draft construction traffic management plan	Yes Appendix 5	Yes
	A landscape and visual assessment	Yes Section 8.10 Appendix 15	Yes
	An emergency plan	Yes Section 4.8.5 Appendix 17	Yes

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
	An air quality report	N/A ⁸	N/A
	An assessment of any greenhouse gases emitted during the foam production process, and a description of measures to be adopted to reduce emissions	Yes Section 8.13 Appendix 20	Yes
	An assessment of the effects of the development on flood-water flows and the proposed mitigation measures	Yes Section 8.7.2 Appendix 10	Yes
	An assessment of the effects of the development on the Waikato River and its catchment and the proposed mitigation measures	Yes Sections 8.14 10.4 Aided by various appendices	Yes
	An assessment to show why the proposed site is the best practicable option	Yes Section 2.4	Yes

⁸ The air discharge that was initially intended to be part of the project when the applicant applied to the Ministry for the Environment is no longer required as a consent under the Resource Management Act has been granted by Waikato Regional Council. As such, the air discharge no longer forms part of the project, and consequently has not been applied for. Therefore, an air quality report is now superfluous.

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
	An assessment of the project in light of the concerns raised by submitters in the Ohinewai zoning hearings, and the measures proposed to resolve these concerns	Yes Section 5.3.2	Yes ⁹

ENDS

⁹ However, in making this assessment, I have not reviewed the submissions and do not know the full extent of the concerns of the submitters, other than those illustrated in the draft application.