

**BEFORE THE EXPERT CONSENTING PANEL  
CONCERNING THE OHINEWAI FOAM FACTORY**

**IN THE MATTER**

Of the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA) and the deliberations and final decision of the Expert Consenting Panel appointed under Clauses 2, 3 and 4 of Schedule 5 of the COVID-19 Recovery (Fast-Track Consenting) Act 2020 to consider applications for resource consents for the Ohinewai Foam Factory by Ambury Properties Limited

**Expert Consenting Panel:**

Jan Caunter (Chair)  
David Hill  
Tim Manukau

**Legal representation:**

Berry Simons

**Lead Consultant:**

Bloxam Burnett & Olliver

**Comments received under Clauses 17(6), (7) and (8) of Schedule 6 to the Act:**

16

**Details of any hearing held under Clause 21 of Schedule 6 of the Act:**

No hearing was held

**Date of Hearing if held:**

Nil

**Date of Decision:**

24 August 2021

**Date of Issue:**

24 August 2021

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**RECORD OF DECISION OF THE EXPERT CONSENTING PANEL UNDER CLAUSE 37  
SCHEDULE 6 OF THE ACT**

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## Table of Contents

<b>EXECUTIVE SUMMARY .....</b>	<b>1</b>
<b>PRINCIPAL ISSUES IN CONTENTION .....</b>	<b>2</b>
<b>REFERRAL OF PROJECT, LODGEMENT WITH THE EXPERT CONSENTING PANEL AND PROCEDURES .....</b>	<b>3</b>
<i>Introduction .....</i>	<i>3</i>
<i>The Expert Consenting Panel (Clauses 1, 3 and 4 of Schedule 5 of FTCA) .....</i>	<i>3</i>
<i>The lodging of the consent applications (Sections 15(1), 2(a), (3) and Clauses 2 and 3 of Schedule 6 of FTCA) .....</i>	<i>3</i>
<i>Expert Consenting Panel Provisions and Procedures.....</i>	<i>3</i>
<i>Invitations to comment on referred project.....</i>	<i>3</i>
<i>Requests for information made to Applicant and Reports to the Panel.....</i>	<i>4</i>
<i>Suspension of processing .....</i>	<i>5</i>
<i>Reports requested.....</i>	<i>5</i>
<i>Pre-hearing processes .....</i>	<i>5</i>
<i>Processes at hearing if held (Clause 21 of Schedule 6 of the Act) .....</i>	<i>6</i>
<i>Site visits .....</i>	<i>6</i>
<i>Meetings .....</i>	<i>6</i>
<b>OUTLINE OF THE PROJECT .....</b>	<b>6</b>
<i>The applicant for consent and reasons for the project .....</i>	<i>6</i>
<i>Existing resource consents .....</i>	<i>10</i>
<i>Zoning and rezoning.....</i>	<i>10</i>
<i>The existing environment and receiving environment .....</i>	<i>10</i>
<i>Statutory applications and approvals needed.....</i>	<i>11</i>
<i>Project application documentation.....</i>	<i>11</i>
<b>LEGAL FRAMEWORK FOR DELIBERATIONS.....</b>	<b>11</b>
<i>Legal framework .....</i>	<i>11</i>
<i>Relationship between FTCA and Resource Management Act 1991 .....</i>	<i>12</i>
<i>Planning framework.....</i>	<i>14</i>
<i>Jurisdiction to assess greenhouse gas emissions .....</i>	<i>14</i>
<b>CULTURAL CONSIDERATIONS .....</b>	<b>15</b>
<i>Statutory framework.....</i>	<i>15</i>
<i>Treaty of Waitangi.....</i>	<i>15</i>
<i>TWGG.....</i>	<i>16</i>
<i>Kaitiaki Environmental Values Assessment (KEVA).....</i>	<i>17</i>
<i>Customary marine title groups .....</i>	<i>23</i>
<i>Archaeology and heritage values.....</i>	<i>23</i>
<i>Tangata whenua comments on invitation .....</i>	<i>24</i>
<i>Conditions .....</i>	<i>24</i>
<b>ANY ACTUAL AND POTENTIAL EFFECTS OF ALLOWING THE ACTIVITY (CLAUSE 31(1)(A) SCHEDULE 6) .....</b>	<b>24</b>
<b>GEOTECHNICAL AND EARTHWORKS .....</b>	<b>24</b>
<i>Site conditions.....</i>	<i>25</i>
<i>Site Seismicity and liquefaction.....</i>	<i>25</i>
<i>Earthworks.....</i>	<i>25</i>
<i>Excavation and Replacement/ Re-compaction .....</i>	<i>25</i>
<i>Dynamic Compaction .....</i>	<i>26</i>
<i>Hydrogeology.....</i>	<i>26</i>
<i>Pavements.....</i>	<i>26</i>

<i>Comments received and responses</i> .....	26
<i>Conditions</i> .....	26
INFRASTRUCTURE.....	27
<i>Civil infrastructure</i> .....	27
<i>Earthworks methodology</i> .....	27
<i>Stormwater management</i> .....	28
<i>Water supply and wastewater</i> .....	32
<i>Groundwater</i> .....	32
<i>Comments received and responses</i> .....	32
<i>Conditions</i> .....	34
LANDSCAPE AND VISUAL IMPACT .....	36
<i>Landscape and site context</i> .....	36
<i>Landscape and visual assessment</i> .....	36
<i>Comments received and responses</i> .....	38
<i>Effect of rezoning appeals</i> .....	39
<i>Effect of rail siding Option 2</i> .....	39
<i>Conditions</i> .....	39
<i>Conditions imposed</i> .....	40
TRANSPORTATION.....	40
<i>Existing traffic environment</i> .....	40
<i>Foam factory</i> .....	41
<i>Movement of freight by rail and Lumsden Road realignment</i> .....	42
<i>Earthworks</i> .....	44
<i>Pedestrians and cyclists</i> .....	44
<i>Parking</i> .....	44
<i>Loading Areas</i> .....	45
<i>Draft Construction Traffic Management Plan (CTMP)</i> .....	45
<i>Assessment of transportation effects</i> .....	45
<i>Comments received and responses</i> .....	46
<i>Alternative rail siding</i> .....	50
<i>Conditions</i> .....	50
<i>Conditions imposed</i> .....	52
ECOLOGY .....	52
<i>Terrestrial ecology</i> .....	52
<i>Aquatic ecology</i> .....	53
<i>Assessment of ecological effects</i> .....	53
<i>Proposed mitigation</i> .....	53
<i>Comments received and responses</i> .....	54
<i>Conditions</i> .....	55
<i>Conditions imposed</i> .....	55
NOISE AND VIBRATION .....	55
<i>Proposed works and basis of assessment / Construction Noise and Management Plan (CNVMP)</i> .....	55
<i>Performance standards</i> .....	56
<i>Predicted noise and vibration levels</i> .....	56
<i>Mitigation and management</i> .....	57
<i>Monitoring</i> .....	57
<i>Comments received and responses</i> .....	57
<i>Noise and mitigation - rail siding Option 2</i> .....	58
<i>Conditions</i> .....	58
<i>Conditions imposed</i> .....	59
CONTAMINATION .....	59
<i>Standards and regulations</i> .....	59
<i>Change in land use, subdivision and development</i> .....	60
<i>Investigations and analysis</i> .....	60
<i>Comments received and responses</i> .....	60
<i>Conditions</i> .....	60
HAZARDOUS SUBSTANCES.....	61

<i>Proposed activities and potential substances</i> .....	61
<i>Surface water drainage</i> .....	62
<i>Control and management of hazardous substances</i> .....	63
<i>Assessment of effects</i> .....	63
<i>Comments received and responses</i> .....	63
<i>Conditions</i> .....	64
<i>Conditions imposed</i> .....	64
QUALITATIVE RISK ASSESSMENT .....	64
<i>Description of manufacturing processes</i> .....	64
<i>Hazardous substances – construction, operation, site controls</i> .....	67
<i>Qualitative Risk Assessment (QRA)</i> .....	68
<i>Draft Emergency Plan</i> .....	69
<i>Mitigation and monitoring</i> .....	70
<i>Comments received and responses</i> .....	70
<i>Conditions imposed</i> .....	70
GREENHOUSE GAS EMISSIONS AND CLIMATE CHANGE .....	70
<i>Comments received and responses</i> .....	71
<i>Conditions imposed</i> .....	72
ECONOMIC EFFECTS.....	72
<i>Comments received and responses</i> .....	72
<i>Conditions</i> .....	72
SOCIAL AND CULTURAL EFFECTS .....	73
<i>Comments received and responses</i> .....	73
<i>Conditions</i> .....	73
THE RALPH ESTATES – MINERAL INTERESTS .....	74
<b>ANY MEASURE PROPOSED OR AGREED TO, TO ENSURE POSITIVE EFFECTS ON THE ENVIRONMENT TO OFFSET OR COMPENSATE FOR ANY ADVERSE EFFECTS (CLAUSE 31(1)(B) SCHEDULE 6) .....</b>	<b>76</b>
<b>ANALYSIS AGAINST CERTAIN STATUTORY DOCUMENTS (CLAUSE 31(1)(C) AND CLAUSE 29(2) SCHEDULE 6) .</b>	<b>76</b>
<i>Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (“NESCS”)</i> .....	76
<i>Resource Management (National Environmental Standard for Freshwater) Regulations 2020 (“NESFW20”)</i> .....	76
<i>Resource Management (National Environmental Standards for Air Quality) Regulations 2004 (“NES-AQ”)</i> .....	77
<i>National Policy Statement for Freshwater Management 2020 (“NPSFW20”)</i> .....	77
<i>National Policy Statement on Urban Development 2020 (“NPS-UD”)</i> .....	77
<i>New Zealand Coastal Policy Statement (“NZCPS”)</i> .....	77
<i>District Plan and Proposed District Plan</i> .....	81
<i>Planning document recognised by a relevant iwi authority and lodged with a local authority</i> .....	82
<b>ANY MATTERS IMPACTED BY SECTION 6(A) OF THIS ACT (TREATY OF WAITANGI) (CLAUSE 31(2) SCHEDULE 6) .....</b>	<b>82</b>
<b>TREATY SETTLEMENT OBLIGATIONS ON LOCAL AUTHORITIES OR DECISION MAKERS (SECTION 6(B) OF THIS ACT AND CLAUSE 31(10) SCHEDULE 6).....</b>	<b>82</b>
<b>DISREGARDING CERTAIN EFFECTS CONCERNING CERTAIN PERMITTED ACTIVITIES (CLAUSE 31(4) SCHEDULE 6) .....</b>	<b>82</b>
<b>PLANNING DOCUMENTS PREPARED BY CUSTOMARY MARINE TITLE GROUP UNDER S85 MARINE AND COASTAL AREA (TAKUTAI MOANA) ACT 2011 (CLAUSE 31(3) SCHEDULE 6).....</b>	<b>82</b>
<b>TRADE COMPETITION (CLAUSE 31(5)(A) SCHEDULE 6) .....</b>	<b>83</b>
<b>OTHER MATTERS PANEL MUST NOT HAVE REGARD TO (CLAUSE 31(5)(B) SCHEDULE 6 .....</b>	<b>83</b>
<b>SECTIONS 104A TO 104D, 105 TO 107 AND 138A RESOURCE MANAGEMENT ACT 1991 (CLAUSE 32(1) SCHEDULE 6) .....</b>	<b>83</b>

<b>SECTION 104E RESOURCE MANAGEMENT ACT 1991 (CLAUSE 32(3) SCHEDULE 6)</b> .....	<b>83</b>
<b>CONDITIONS APPLYING TO RESOURCE CONSENTS UNDER THIS ACT (CLAUSES 35-36 SCHEDULE 6)</b> .....	<b>83</b>
<b>PART 2 RESOURCE MANAGEMENT ACT 1991</b> .....	<b>84</b>
<b>PURPOSE OF THE FTCA</b> .....	<b>85</b>
<b>FINAL DECISION OF PANEL (CLAUSES 37 AND 38 SCHEDULE 6)</b> .....	<b>85</b>
<i>The consents granted and conditions of consent</i> .....	85
<b>APPENDIX 1</b> .....	<b>87</b>
CONSENTS APPLIED FOR AND GRANTED .....	87
<b>APPENDIX 2</b> .....	<b>91</b>
PERSONS AND BODIES WHO WERE INVITED TO COMMENT ON THE APPLICATIONS AND LATER ON DRAFT CONDITIONS, AND RESPONDED .....	91
<b>APPENDIX 3</b> .....	<b>92</b>
SUMMARY OF COMMENTS ON DRAFT CONDITIONS .....	92
<b>APPENDIX 4</b> .....	<b>100</b>
CONDITIONS OF CONSENT.....	100

## EXECUTIVE SUMMARY

1. This is an application by Ambury Properties Limited to construct and operate a foam factory and associated rail siding at Ohinewai in the North Waikato.
2. The applicant had been pursuing a resource consent application for this project under the traditional Resource Management Act 1991 pathway but elected to seek a referral from the Minister for the Environment to an expert panel under the COVID-19 Recovery (Fast -track Consenting) Act 2020 (FTCA). The Minister accepted that the purpose of the FTCA would be met by the Project and referred it to this expert panel (the Panel).
3. We outline in our Decision the FTCA process and our assessment. We undertook a site visit on 18 June 2021, visiting the Ohinewai site and surrounds and the applicant's foam factory at Otahuhu in Auckland.
4. The Panel identified those from whom comment should be sought and comments were received from 16 persons.<sup>1</sup> The applicant comprehensively responded to those comments. We have made several requests for further information from the applicant and have also sought additional comment from some parties on specific matters.
5. The applicant requested the process be suspended on 9 July 2021 to enable it to prepare some information and plans requested by the Panel. The process was resumed on 2 August 2021.
6. Draft conditions were forwarded to the applicant and persons who made comments. In light of the comments made, we invited the applicant to respond to the comments made by parties on conditions. We have taken account of all comments made in response in finalising the conditions attached to this Decision.
7. Subject to the conditions in Appendix 4 of this Decision, the Panel grants consents to all the Project, including Options 1 and 2 for the proposed rail siding. To be clear, only one option may be implemented.
8. Pursuant to Clause 37(7) of Schedule 6 FTCA, the date on which the resource consents granted in this Decision lapse unless first given effect to is two years from the date of the commencement of the resource consents as defined in Clause 37(9) of that Schedule.

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<sup>1</sup> Refer Appendix 2

## PRINCIPAL ISSUES IN CONTENTION

9. Our summary statement of the principal issues in contention is, subject to detailed discussion throughout this Decision, as follows:
  - a. The provision of a rail siding, in particular the ownership of land to provide for the rail siding. As noted above, the applicant has tabled assessments and plans detailing two options for the rail siding. As part of this issue, we considered the traffic effects if the applicant could not provide the rail siding;
  - b. Amenity effects on residents in the vicinity of the site, in particular, noise, lighting and landscaping;
  - c. Stormwater management; and
  - d. The issues raised by The Ralph Estates in opposing the project outright.
  
10. In summary, the main findings of the Panel on those principal issues are, subject to detailed discussion throughout this Decision, as follows:
  - a. Rail siding and traffic effects:
    - i. The rail siding will reduce heavy traffic movements on the roading network and will reduce greenhouse gas emissions;
    - ii. Options 1 and 2 for the rail siding are consented;
    - iii. The conditions address Options 1 and 2 and include a variety of plans that must be implemented depending on which option is chosen.
  
  - b. Amenity effects:
    - i. Setting of appropriate conditions to provide for noise, lighting and planting mitigation;
    - ii. Noise and planting mitigation to include rail siding Options 1 and 2.
  
  - c. Stormwater management:
    - i. Imposition of stringent conditions, including a comprehensive Stormwater Management Plan, to ensure stormwater is properly managed on site and the receiving environment is protected;
    - ii. Provision of a Fish Management Plan;
    - iii. Provision of an Ecological Rehabilitation and Management Plan, which shall be prepared in consultation with tangata whenua.
  
  - d. The Ralph Estates:
    - i. The impact of the project on The Ralph Estates' mineral interests would be, at most, in the area of the stormwater conveyance swale and possibly the diffuser, both of which are surface infrastructure and could be diverted if necessary.
    - ii. Those impacts are not sufficient to refuse the granting of the consents sought.
    - iii. The mineral interests held by the Ralph Estates would not be sterilised.

## **REFERRAL OF PROJECT, LODGEMENT WITH THE EXPERT CONSENTING PANEL AND PROCEDURES**

### **Introduction**

11. Ohinewai Foam Factory is a referred project under Schedule 3 of FTCA. On 4 December 2020, Schedule 8 was inserted into FTCA (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 a decision of the Minister for the Environment to refer the project to an expert consenting panel under section 24 of FTCA.

### **The Expert Consenting Panel (Clauses 1, 3 and 4 of Schedule 5 of FTCA)**

12. Clause 1 of Schedule 5 to FTCA describes the purpose of expert consenting panels. Clause 3 provides for the membership of panels including that there must be one person nominated by relevant local authorities and one person nominated by relevant iwi authorities. Clause 4(3) provides that a panel convenor may, if the circumstances require it, appoint a suitably qualified lawyer with experience in resource management law to be the chairperson of the panel.

### **The lodging of the consent applications (Sections 15(1), 2(a), (3) and Clauses 2 and 3 of Schedule 6 of FTCA)**

13. On 14 May 2021 the applicant formally lodged the applications with the Environmental Protection Authority (EPA). On 20 May 2021 the EPA determined that they complied with the requirements of clause 3 Schedule 6 of FTCA.

### **Expert Consenting Panel Provisions and Procedures**

14. Schedule 6 sets out the requirements for processing both listed and referred projects. This project is a referred project. The application may be refused if the Panel determines that to be appropriate.
15. Clause 31 of Schedule 6 provides matters relevant to determination of consent applications for referred projects. We discuss this in more detail below.

### **Invitations to comment on referred project**

16. Clause 17(1) of Schedule 6 specifies that applications must not be notified. Rather, the Panel must invite comments from persons and groups described in Clauses 17(6) and 17(7) of Schedule 6 of FTCA and to other persons and bodies at its discretion (Clause 17(8) of Schedule 6).
17. On 1 June 2021 and 2 June 2021 the Panel invited comments from persons listed in Clauses 17(6) and (7) of Schedule 6. In its discretion, it also invited comment from Waikato District Council Rooding Alliance and Ngati Koheriki<sup>2</sup> and, through Minute 2, the Minister of Health and the Waikato District Health Board. Additionally, in its discretion, the Panel slightly widened the area of land adjacent to the land on which

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<sup>2</sup> Waikato District Council Rooding Alliance plans, builds and maintains local roads in the district under its road strategy. As the project includes the realignment of a road, the Panel considered it appropriate to see the view of the Alliance. Ngati Koheriki is identified in the Section 17 report prepared by the Ministry for the Environment as having negotiation mandates recognised by the Crown.



the development is to occur to ensure landowners in the Ohinewai township could make comment on the applications if they so wished.

18. While Clause 18(1) of Schedule 6 requires that comments be received by the EPA 10 working days after the date on which the invitation is sent, the Panel decided that in this instance, 15 working days should be allowed due to the EPA not having email addresses for some persons to be invited for comment and instead, having to post the invitation for comment to those persons. The closing date for comments was 23 June 2021.
19. Sixteen comments were received<sup>3</sup>, 7 from local and central government organisations and 9 from other organisations and individuals. We received comments from the Minister of Housing one day late and exercised our discretion under clause 18(6) of Schedule 6 to accept these comments.<sup>4</sup> We were also advised by the EPA of late comments received on 12 July 2021 from the Minister of Conservation. We did not accept these comments, given their lateness.<sup>5</sup>
20. Many comments received supported the project and sought specific outcomes and/ or conditions. One party, Ralph Estates Limited, opposed the project outright.

**Requests for information made to Applicant and Reports to the Panel**

21. Under Clause 25 of Schedule 6 a panel may request further information from the applicant, a relevant local authority, or any person or group invited to provide comments under Clause 17(2); and request the preparation or commissioning of a report (including from a relevant local authority) on an issue relevant to the application.
22. We note that Clause 25(2) contains an unfortunate error. It states “If further information is requested under subclause (1)(a), the person or body requesting the information must...”. That is clearly incorrect, as it would require the EPA itself to provide the information requested from parties. We interpret this clause as intended to apply to those from whom the Panel has requested the information under Clause 25(1)(a).
23. We made the following further information requests:
  - a. On 4 June 2021<sup>6</sup> we requested the applicant to provide us with information on the implications of the rezoning of the applicant’s land at Ohinewai through the Waikato Proposed District Plan review process. That information was received on 21 June 2021.

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<sup>3</sup> Refer Appendix 2

<sup>4</sup> Minute 4

<sup>5</sup> Minute 6

<sup>6</sup> Minute 2

- b. On 25 June 2021 we requested the applicant to answer several questions we had about the application.<sup>7</sup> Responses were received on 2 and 6 July 2021 respectively.
- c. On 25 June 2021 we requested Waikato District Council (WDC) to clarify whether its comments received by the Panel on our about 23 June 2021 had included consideration of the rezoning decision and if not, what the Council's response to the applicant was on the implications of the rezoning. WDC's response was received on 1 July, confirming its comments had taken account of the rezoning.
- d. On 5 July 2021 we requested the applicant to answer further questions on the proposed rail siding. We did not receive a response and instead received a request to suspend the processing of the application, which we discuss below.
- e. On 5 July 2021 we requested Ralph Estates Limited to advise whether the information provided by the applicant identifying the extent of Ralph Estate's mineral interests was accepted. We received that response on 8 July 2021.
- f. On 6 July 2021 we requested Waikato Regional Council (WRC) to indicate whether it accepted the applicant's approach to the further consent required for a water take and relevant conditions in that regard. We received that response on 9 July 2021.
- g. On 7 July 2021 we requested WDC to forward to us copies of the appeals received against the Ohinewai rezoning decision (see discussion below). We received these appeals on 8 July 2021.
- h. On 2 August 2021 we requested the applicant to answer further questions about the rail siding alternative and to provide a full set of plans addressing that alternative. That response was received on 5 and 10 August 2021 respectively.

#### **Suspension of processing**

- 24. On 8 July 2021 the applicant requested that the application be suspended, pursuant to Clauses 23(1) and (4) of Schedule 6 to the FTCA. It required more time to respond to our questions of 5 July 2021 on the rail siding. This request was granted on 9 July 2021, with the suspension to commence on 12 July 2021 to allow time for information requested from Waikato Regional Council to be lodged. The processing of the application resumed on 2 August 2021.<sup>8</sup>

#### **Reports requested**

- 25. As a result of the applicant not lodging information in response to our further information request of 5 July, and instead seeking that the processing of the application be suspended, we requested that the applicant prepare a report for the Panel on matters related to the rail siding and property ownership. That request was made on 9 July 2021 under Clause 25(1)(b) of Schedule 6 FTCA. That information was received by the Panel on 28 July 2021.

#### **Pre-hearing processes**

- 26. No pre-hearing processes were required.

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<sup>7</sup> Minute 5

<sup>8</sup> Minute 6

### **Processes at hearing if held (Clause 21 of Schedule 6 of the Act)**

27. No hearing was held.

#### **Site visits**

28. The panel conducted an all-day site visit on 18 June 2021. It first visited the applicant's existing foam factory at Otahuhu in Auckland and was given a comprehensive tour through that facility and an explanation of how the foam manufacturing process works. The Panel then travelled to Ohinewai and inspected the applicant's site, nearby roads, and views of the site from locations in the site vicinity.

#### **Meetings**

29. The Panel conducted meetings by Zoom on:
- a. 11 June 2021
  - b. 25 June 2021
  - c. 2 July 2021
  - d. 2 August 2021.

## **OUTLINE OF THE PROJECT**

### **The applicant for consent and reasons for the project**

30. The applicant, Ambury Properties Limited (AML), is an associated company of New Zealand Comfort Group Limited (NZCG). NZCG is a third generation New Zealand owned manufacturing business founded in 1935. It is the manufacturer of Sleepyhead, Sleepmaker, Serta, Tattersfield and Design Mobel beds along with Dunlop Foams and Sleepyhead flooring underlay. NZCG also produce related products including pillows and mattresses, along with a range of foam products for domestic, industrial and healthcare products.
31. The applicant's manufacturing operations are currently based at locations in Auckland (Avondale and Otahuhu).<sup>9</sup> The applicant wants to relocate its existing Auckland operations to a single location and to offer home ownership to its workers who cannot afford to own a house in Auckland. The applicant investigated land purchase options able to deliver a manufacturing base, a cluster of similar businesses that could support the manufacturing plant and maximise the use of the proposed rail siding and sufficient to also provide for a residential community nearby. The overall landholding at Ohinewai is approximately 178ha in size.
32. The applicant has chosen a site next to the North Island Main Trunk railway line (NIMT) as it receives and distributes goods through both Auckland and Tauranga Ports. As a major New Zealand manufacturer, it imports raw materials and distributes and exports products domestically and overseas. We were told that it has strong exports to China and Australia. It could not find any suitable sites adjacent to the NIMT in Auckland.

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<sup>9</sup> AEE, sections 2.1 and 2.4

33. Another reason stated by the applicant as a reason for choosing this site is its close location to the Ohinewai and Huntly areas and the strong employment base. The company is keen to work with local schools, other educational institutions and Waikato-Tainui to develop the appropriate technical and professional staff skills within the local labour force. It has commenced training initiatives in that regard, identifying a suitable group of workers in Huntly in 2020 and transporting them daily to the existing Otahuhu factory where they were employed and gained training in readiness for the factory opening in Ohinewai.
34. Prior to the foam factory being referred as a fast-track project, a land use consent application was lodged with WDC for stages 1 and 2 of the factory but without the rail siding. At that time, no decision had been released on the rezoning of the applicant's land under the WDC Proposed District Plan process. WDC was therefore considering the project wholly on the basis of the Rural Zone provisions. In light of the fast-track referral, the applicant withdrew its land use consent application.<sup>10</sup>
35. The applicant has been granted a number of resource consents for Stage 1A of the site works for this project, which are listed below.<sup>11</sup> These consents include a land use consent from WDC for bulk earthworks and five consents from WRC for bulk earthworks, air discharge, stormwater discharge, diversion of surface water and surface water take. We were told that, other than the air discharge consent, all consents have been exercised.<sup>12</sup> The WRC consents include an approved stormwater management plan for Stage 1, which includes Wetland 1. Stage 2 of the project (the rail siding) implements an additional Wetland 2 and a conveyance swale along the site's northern boundary. As we discuss later in our Decision<sup>13</sup>, rail siding Option 2 (if it proceeds) will require the two wetlands to be reconfigured.
36. This fast-track consenting process only considers the construction and operation of the foam factory and the rail siding and associated works. The foam factory is said to be urgently required as the Avondale site is leased and does not provide a long-term investment for the company. That site also operates on outdated technology and due to its small size, has limited expansion opportunities. The Otahuhu site has particular restrictions on storage, which restricts production.
37. The site includes the following landholdings:
  - a. 88 Lumsden Road, legally described as Allotment 405 Parish of Whangamarino (RT SA42D/983) and is 36.9554 hectares in size, more or less. This site is owned by the applicant.
  - b. 109 Tahuna Road, legally described as Lot 2 DPS 29288 (RT SA1250/17 & SA 26D/299) and is 61.1275 hectares in size more or less. This site is owned by the applicant.

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<sup>10</sup> Comments from Waikato District Council, 23 June 2021

<sup>11</sup> Refer Existing resource consents section of Decision

<sup>12</sup> AEE, Table 2.1

<sup>13</sup> Refer Stormwater management section of Decision

- c. 231 Tahuna Road, legally described as Lot 1 DPS29288 (RT SA44B/473) and is 68.1385 hectares in size more or less. This site is owned by the applicant.
  - d. 154 Lumsden Road (corner of Lumsden and Tahuna Roads), legally described as Lot 1 DP21944 (RT SA42D/977). This site is owned by Malcolm John Lumsden, Eileen Laurel Lumsden and SR Hamilton Corporate Trustee Limited.<sup>14</sup>
38. Section 3.2 of the Assessment of Environmental Effects (AEE) clarified that the addresses listed in the referral order (88 Lumsden Road, 109 Tahuna Road and 52 Lumsden Road) differ to those referred to in the application documents, for the following reasons:
- a. Works are no longer required to be undertaken on 52 Lumsden Road, which was previously identified as being required for the construction haul road. This road has now been relocated to the east at the address 109 Tahuna Road, owned by the applicant. The construction of this haul road commenced in March 2021.
  - b. Stormwater management and ecological restoration works are now located on land at 231 Tahuna Road, owned by the applicant.
  - c. Further design work identified the need for road realignment works and visibility requirements on 154 Lumsden Road, that land being owned by parties other than the applicant. The rail siding requires 570m<sup>2</sup> of this land. 154 Lumsden Road remains part of the application.
39. We address later in this Decision a possible Option 2 for the rail siding. This option does not require land to be acquired from a third party.
40. The scope of the project is to:
- a. 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. construct and operate a rail siding that will connect to the NIMT<sup>15</sup>; and

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<sup>14</sup> The comments received from the Lumsden Family Trust confirmed that it owned some of the land required for the applicant's rail siding and the realignment of Lumsden Road, but it had not reached an agreement with the applicant about the sale or use of this land.

<sup>15</sup> The application as lodged included a rail siding entering from the north, which we refer to in our Decision as Option 1. As discussed in our Decision, this option was compromised by the applicant relying on acquiring land from a third party, which that third party has not agreed to. We asked the applicant if it had considered an alternative option that did not require land acquisition from a third party. Through the provision of further information, the applicant tabled Option 2, a rail siding entering from the south. We address this further in our discussion of transportation effects.

- c. earthworks and related infrastructure (detailed in other sections of this Decision).
41. The foam factory comprises five buildings:
- a. Building 1, gross floor area 2,960m<sup>2</sup>, which will comprise several parts:
    - i. Foam Plant – forms the southern spine of Building 1, approximately 11m wide, 115m long and 8m high.
    - ii. Tank farm – northern elevation. Height of 11m, centrally located within Building 1, but comprising less than half its length at 50m.
    - iii. Pillow moulding – northern elevation. Located at eastern end of building and the same height as the foam plant.
    - iv. Lab facility – northern elevation. Western end of building. This area is 21m long, 7m wide and 5m high. This is a separate building located close to the foam plant.
    - v. 16m high TDI filter stack located within the alcove of this building.
  - b. Building 2 – gross floor area 5,450m<sup>2</sup>, hot and cold foam block store. Maximum height 12.27m with shallow pitched roof.
  - c. Building 3 – foam processing building. Gross floor area 12,170m<sup>2</sup>, approximately 61m x 192m in rectangular form. Maximum height 11m with shallow pitched roof.
  - d. Building 4 – rebond building. Gross floor area 2,710m<sup>2</sup>. This is the tallest structure at 17.9m high. Shallow pitched roof line. Northern elevation reaches 16.19m and roofline then moves upwards towards the centre of the building to an apex of 17.9m. The building then drops vertically to a height of 9.785m, and grades down from the centreline to 8.5m on its southern elevation.
  - e. Building 5 – bean building. Gross floor area of 420m<sup>2</sup>. Maximum height of 8m, shallow pitched roofline.
  - f. Cladding to be pre-cast concrete panels to approximately 2.4m with ribbed coloursteel cladding above. Roofing to be in coloursteel.
42. A formed concrete driveway is proposed off Lumsden Road, linking to a perimeter road that provides access to the manufacturing plant, water tanks and associated pump houses. The perimeter road will encompass areas of gravel car parking for 50 car parks. A gravel pad will be located adjacent to the perimeter driveway to the north, providing storage for shipping containers stacked two high.
43. The project includes temporary site sheds, decking and parking for the relocatable site offices. It also includes three steel water tanks 13.5m in diameter and 6m high and pump houses located to the north of Building 2 for firefighting purposes. Three smaller water treatment tanks and a larger rainwater supply tank are also located in this area. The existing on-site wastewater treatment facility will be used for this stage also.
44. We address other more detailed specifics of the project later in our Decision.

### **Existing resource consents**

45. Table 2.1 of the AEE identified the following existing resource consents:

Waikato District Council:

- a. Land use consent for bulk earthworks (in the process of being implemented) [LUC/0200/21], expires 25 March 2026.

Waikato Regional Council:

- b. Land use consent for bulk earthworks associated with the Ohinewai foam factory (in the process of being implemented) [AUTH142166.01.01], expires 15 February 2026;
- c. Air discharge consent for the Ohinewai foam factory (not yet implemented) [AUTH142166.02.01], expires 15 February 2041;
- d. Stormwater discharge associated with factory operations (not yet implemented) [AUTH142166.03.01], expires 15 February 2056;
- e. Diversion of surface water (in the process of being implemented) [AUTH142166.04.01], expires 15 February 2026;
- f. Surface water take associated with bulk earthworks (in the process of being implemented) [AUTH142166.04.01], expires 15 February 2026.

### **Zoning and rezoning**

46. The overall Ohinewai site is currently zoned Rural in the Operative Waikato District Plan. Through the Proposed Waikato District Plan review process, the applicant successfully secured a rezoning of its Ohinewai site to a mix of Industrial, Commercial and Residential zoning (we refer to this in our Decision as the Decisions Version).<sup>16</sup> The new zone provisions will not be operative until any appeals<sup>17</sup> lodged against the decision have been resolved. We discuss later in this decision the weight to be given to the new zones.

### **The existing environment and receiving environment**

47. The site is located on the corner of Balemi Road and Lumsden Road, Ohinewai. Balemi Road runs along the northern boundary of the site and is a no-exit road providing access for two dwellings. Lumsden Road is classified as a Local Road and is also a no-exit road, running along the site's western boundary. It is accessed from Tahuna Road, an Arterial Road to the south. Lumsden Road provides access to a number of residential properties and several commercial and industrial activities to the north of the site, including two timber processing plants and a house removal company yard.
48. State Highway 1 (SH1) and the NIMT are to the west of Lumsden Road. Ohinewai is accessed via an interchange on SH1.
49. The site is approximately 9km north of Huntly, 6 km south of Rangiriri and 10 km south of Te Kauwhata. Ohinewai township lies approximately 350m to the west of the SH1 interchange. Approximately 1.2km to the east of the site is Lake Rotokawau and a

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<sup>16</sup> Decision of an independent hearing panel appointed by Waikato District Council dated 24 May 2021

<sup>17</sup> We have been advised by WDC that 4 appeals have been lodged against the rezoning decision.

further 1.5km to the north-east is Lake Waikare. To the south of Tahuna Road is Lake Ohinewai.

50. The receiving environment will be within the site to the east, adjacent to Lake Rotokawau.

#### **Statutory applications and approvals needed**

51. We refer to Appendix 1 to this decision, listing the applications made and the additional consents identified as being required through this fast track process. The list of consents and approvals required was originally set out in Table 4.1 of the AEE, but additional consents have been added since then. In summary, the application comprises 10 consents required under the Operative Waikato District Plan, 11 consents under the Proposed Waikato District Plan and 5 consents under the Waikato Regional Plan.
52. While there were no rules with legal effect under the Proposed Waikato District Plan at the time the application was lodged, the Decisions Version has recast the list of consents required under the Proposed Waikato District Plan. These are included in Appendix 1. Other activities forming part of this proposal are permitted under the Decisions Version.<sup>18</sup>

#### **Project application documentation**

53. The application comprised an AEE and a large number of technical reports. We note that some technical reports were prepared for the rezoning submission and others were prepared generically to cover both Stages 1A and 1B. As the Panel only has the legal jurisdiction to consider Stage 1B of the project, this approach has made the identification of some environmental effects more difficult.

## **LEGAL FRAMEWORK FOR DELIBERATIONS**

### **Legal framework**

54. Section 4 of the FTCA states the Act's purpose as:

The purpose of this Act is to urgently promote employment to support New Zealand's recovery from the economic and social impacts of COVID-19 and to support the certainty of ongoing investment across New Zealand, while continuing to promote the sustainable management of natural and physical resources.

55. Section 5 sets out the structure of the FTCA. Part 1 sets out the substantive elements of the scheme for fast-track consenting. Schedule 1 sets out transitional, savings and related provisions. Schedule 2 describes the listed projects. Schedule 3 sets out requirements for referral orders of referred projects. Schedule 4 provides for location requirements, permitted activities, and permitted activity standards for work on

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<sup>18</sup> Memorandum from Bloxam Burnett & Olliver dated 21 June 2021, pages 5 and 6. Attachment 6 to that Memorandum set out the extensive list of permitted activities.



infrastructure. Schedule 5 relates to expert consenting panels. Schedule 6 deals with applications and decision making in relation to listed and referred projects.

56. Section 6 of the FTCA addresses the Treaty of Waitangi. It is worded differently to section 8 of the Resource Management Act 1991 and is more stringent in its terms. We discuss this in our discussion of Cultural Considerations.

#### **Relationship between FTCA and Resource Management Act 1991**

57. Section 12(2) of the FTCA notes that an application for a resource consent for an activity under the FTCA is subject to the process set out in Schedule 6 of the FTCA, rather than the process set out in the RMA. A resource consent granted under the FTCA has the same force and effect for its duration, and according to its terms and conditions, as if it were granted under the RMA. Under section 12(4), a certificate of compliance issued under Clause 27 of Schedule 6 has the same force and effect as if it were issued by a consent authority under section 139 of the RMA.
58. Section 12(9) FTCA notes that every person who carries out an activity as part of a referred project is subject to the duty to avoid unreasonable noise under section 16 RMA and also has a duty to avoid, remedy or mitigate adverse effects under section 17 RMA.
59. Section 12(10) states that the provisions of the RMA otherwise apply, to the extent that they are relevant and with any necessary modifications, to a referred project.
60. Clause 31 of Schedule 6 FTCA sets out the matters to which a Panel must have regard in considering consent applications for referred projects:
- (1) When considering a consent application in relation to a referred project and any comments received in response to an invitation given under section 17(3), a panel must, subject to Part 2 of the Resource Management Act 1991 and the purpose of this Act, have regard to-
    - a) Any actual or potential effects on the environment of allowing the activity; and
    - b) Any measure proposed or agreed to by the consent applicant to ensure positive effects on the environment to offset or compensate for any adverse effects that will or may result from allowing the activity; and
    - c) Any relevant provisions of any of the documents listed in clause 29(2); and
    - d) Any other matter the panel considers relevant and reasonably necessary to determine the consent application.
  - (2) In respect of the matters listed under subclause (1), a panel must apply section 6 of this Act (Treaty of Waitangi) instead of section 8 of the Resource Management Act 1991 (Treaty of Waitangi).
  - (3) If a consent application relates to an activity in an area where a planning document prepared by a customary marine title group under section 85 of the Marine and Coastal Area (Takutai Moana) Act 2011 applies, a panel must have

regard to any resource management matters in that document until all obligations under section 93 of the FTA have been met by the relevant local authority.

61. Clause 31(4) of Schedule 6 FTCA states:

When forming an opinion for the purposes of subsection (1)(a), a panel may disregard an adverse effect of the activity on the environment if a national standard or the plan permits an activity with that effect.

62. Clause 31(5)(a) of Schedule 6 FTCA lists the matters that a Panel must not have regard to, being trade competition/ effects of trade competition and any effect on a person who has given written approval to the application.<sup>19</sup> In this case, there is no trade competitor or an effect of trade competition. Written approvals have been provided by KiwiRail and the Tangata Whenua Governance Group.

63. Clause 31(5)(b) of Schedule 6 FTCA states that a Panel must not grant a resource consent that is contrary to section 107 RMA, section 217 RMA, an Order in Council under section 152 RMA, any regulations made under the RMA, wahi tapu conditions included in a customary marine title order or agreement, or section 55(2) of the Marine and Coastal Area (Takutai Moana) Act 2011. None of those matters are relevant to this application.

64. A Panel may grant a resource consent on the basis that the activity concerned is a controlled, restricted discretionary, discretionary, or non-complying activity, regardless of what type of activity the application was expressed to be for: Clause 31(7) of Schedule 6 FTCA.

65. Pursuant to Clause 31(8) of Schedule 6 FTCA, a Panel may decline an application on the ground that the information provided by the consent applicant is inadequate to determine the application. In making an assessment of the adequacy of the information, a Panel must have regard to whether any request made to the consent applicant for further information or reports resulted in further information or any report being made available: Clause 31(9).

66. Referred projects require consideration of sections 104A to 104D, 105 to 107, and 138A(1), (2), (5), and (6) of the RMA: Clause 32(1) of Schedule 6 FTCA. Clause 32(3) FTCA states that section 104E RMA does not apply to a Panel's consideration of a resource consent for a referred project.

67. Conditions applying to resource consents are addressed in Clauses 35-36 of Schedule 6 FTCA. This process requires that before a Panel grants a resource consent, it must

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<sup>19</sup> Clause 31(6) of Schedule 6 FTCA notes that the provision regarding written approvals must be disregarded if the person withdraws the approval in a written notice received by the panel by the date of the hearing (if any), or, if there is no hearing, before the application is determined.

provide a copy of its draft conditions to the consent applicant and every person that provided comments in response to an invitation given under Clause 17(2) of Schedule 6. Those comments on conditions must then be sent to the EPA, who must as soon as practicable after receiving them, send them on to the Panel, the consent applicant and the persons that provided comments under Clause 17(2) of Schedule 6. A Panel must have regard to all comments received through this process before it makes its final decision.

68. In that regard, draft conditions were sent out by the Panel on 13 August 2021 and comments were received from most parties by 20 August 2021. Two parties, Ohinewai Area Committee and R and SJ Marsh, lodged their comments several hours late but as there was little prejudice to the applicant or to our decision making requirements, we accepted them. In light of the comments received from other parties, we asked the applicant to provide to the Panel any response to those comments. We received these comments on 20 and 21 August 2021.

#### **Planning framework**

69. As noted already, Clause 31(1)(c) of Schedule 6 requires that our planning framework comprise the documents listed in section 29(2) FTCA. These are:
- a. National Environmental Standards
  - b. Other regulations made under the RMA
  - c. National Policy Statements
  - d. New Zealand Coastal Policy Statement
  - e. Regional Policy Statements or Proposed Regional Policy Statements
  - f. Plans and Proposed Plans
  - g. Planning documents recognised by a relevant iwi authority and lodged with a local authority.

#### **Jurisdiction to assess greenhouse gas emissions**

70. We requested a legal opinion from the applicant's solicitors, Berry Simons, on the legal jurisdiction available to us to assess greenhouse gas emissions against the FTCA. We received this on 6 July 2021.
71. Berry Simons noted that Clause 31(1) of the FTCA essentially replaces section 104(1) of the RMA, the only real difference being that the FTCA requires consideration of the purpose of the FTCA and Part 2 of the RMA. While normally an assessment of effects would include an assessment of effects arising from any change in the level of greenhouse gases discharged from an activity, section 104E of the RMA excludes the consideration of the effects of any discharge into air of greenhouse gas discharge on climate change. This provision is to be repealed as of 31 December 2021 but applies to our consideration of this application. Importantly, this particular application did not seek an air discharge consent for the discharge into air of greenhouse gases, therefore section 104E RMA does not apply in that respect.
72. As noted above, Clause 32(3) of Schedule 6 to the FTCA provides that section 104E of the RMA does not apply to a panel's consideration of a resource consent for a referred

project. As noted by Berry Simons, the ability to consider the effect of greenhouse gas emissions in determining resource consent applications made under the FTCA is consistent with the overarching framework and policy intent of the FTCA noted in sections 19(d), 21(2) and Clause 17(6) of Schedule 6 to the FTCA.

73. We agree with Berry Simons that the Panel has jurisdiction to assess the reduction of greenhouse gas emissions as a result of the proposed foam factory and rail siding:
- a. As a relevant actual or potential effect on the environment of allowing the activity – Clause 31(1)(a) of Schedule 6 to the FTCA;
  - b. In considering any objectives or policies from the relevant planning instruments which relate to greenhouse gas emissions – Clause 31(1)(c) of Schedule 6 to the FTCA; and
  - c. If required, as a matter that is “relevant and reasonably necessary” to determine the application – Clause 31(1)(d) of Schedule 6 to the FTCA.

## **CULTURAL CONSIDERATIONS**

### **Statutory framework**

74. Schedule 6 of the FTCA requires that all applications lodged include additional information, namely:
- a. Information about Treaty settlements that apply in the project area – Clause 9(1)(i);
  - b. A Cultural Impact Assessment (CIA) or a statement of reasons given by the relevant iwi authority for not providing a CIA – Clause 9(5);
  - c. Information on customary marine title groups, if relevant – Clause 9(6)(b);
  - d. Views of iwi or hapu that have been consulted in relation to the proposal and if the iwi or hapu elect not to respond when consulted, any reasons that they have specified for that decision – Clause 10(1)(e) and (f); and
  - e. Information on protected customary rights – Clause 10(1)(h).
75. A number of documents are relevant to our assessment of cultural considerations and are discussed in the following sections.

### **Treaty of Waitangi**

76. Section 6 FTCA provides as follows:

#### **6 Treaty of Waitangi**

In achieving the purpose of this Act, all persons performing functions and exercising powers under it must act in a manner that is consistent with –

- (a) the principles of the Treaty of Waitangi; and
- (b) Treaty settlements.

77. Clause 29(3) of Schedule 6 FTCA requires us to apply section 6 FTCA instead of section 8 RMA.
78. Clause 9(1)(i) of Schedule 6 requires an application to provide:

... information about any Treaty settlements that apply in the project area, including –  
(i) The identification of the relevant provisions of those Treaty settlements; and  
(ii) A summary of any redress provided by those settlements that affects natural and physical resources relevant to the project or the project area.

79. The Expert Consenting Panel’s decision on the Matawii application<sup>20</sup> held that the FTCA does not contain a list of Treaty principles, but the case law indicates that these may include principles of active protection, good faith consultation and communication, and a spirit of partnership.
80. The applicant considers that the proposal is consistent with the principles of the Treaty of Waitangi and upholds the principles of engagement and partnership, by undertaking active engagement and open participation with tangata whenua on the Ohinewai rezoning and this application primarily through the Tangata Whenua Governance Group (TWGG), which has since provided its approval to the application.<sup>21</sup> The applicant recognised the important principle that tangata whenua is the only party able to best address the proposal’s potential cultural effects, and subsequently the TWGG confirmed that such effects have been appropriately addressed.

#### **TWGG**

81. As a result of a Memorandum of Understanding between the applicant and tangata whenua, a TWGG was established in 2019. Hui are held approximately once a month.
82. The TWGG is comprised of representatives from mana whenua organisations, being Waikato-Tainui, Waahi Whaanui Trust, Nga Muka Development Trust and Te Riu o Waikato.
83. The applicant has stated in its application that engagement with TWGG has been very helpful and there have been numerous presentations on technical aspects of the overall rezoning, the factory proposal, stormwater management, water supply and wastewater management.
84. The applicant has taken into account feedback provided by the mana whenua that includes:
- a. Providing for cultural monitors as kaitiaki;
  - b. Monitoring the performance of the carbon filter and stormwater management measures;
  - c. Providing detail on the existing wastewater treatment plant to be used for the factory, including maintenance plans; and

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<sup>20</sup> Record of decision of Expert Consenting Panel under Clause 37 Schedule 6 of the Act concerning the Matawii Water Storage Reservoir, issued 27 October 2020 at [55].

<sup>21</sup> Application Appendix 18

- d. Initiation of an independent peer review of the air discharge and adoption of their recommendations.
85. As noted above, a key outcome of the ongoing engagement is a letter of support for this proposal from the TWGG, which has acknowledged the engagement undertaken prior to the lodgement of this application.
86. TWGG has shared its concerns with the applicant and sought measures and practices to protect water-bodies from erosion, sediment and contaminants, and to protect and preserve taonga, cultural/customary practices, and sites and activities of significance.
87. TWGG acknowledge that the applicant has accommodated the active participation of mana whenua kaitiaki responsibilities on site. TWGG is of the view that the information and content in the application demonstrates that its concerns have been addressed and allowed mana whenua the ability to monitor initial earthworks activities on the site.
88. TWGG believes it is able to address any actual and potential cultural and environmental impacts associated with the proposal in partnership with the applicant.
89. TWGG confirmed within its letter of support that a cultural impact assessment was not required. We therefore refer to the Kaitiaki Environmental Values Assessment (KEVA), discussed below, as the principal cultural report developed by tangata whenua for this proposal and confirm that the proposal aligns with the KEVA.
90. We recognise the partnership approach the applicant has undertaken with the TWGG, and the level of comfort of the TWGG with the proposal.
- Kaitiaki Environmental Values Assessment (KEVA)**
91. As part of the wider rezoning process, a KEVA was completed by Whetu Consultancy Group on behalf of Waahi Whaanui Trust, Nga Muka Development Trust, Te Riu o Waikato Trust and Waikato-Tainui, who are collectively the organisations represented on the TWGG and represent the interests of mana whenua.
92. The KEVA sets out the values and interests of the mana whenua as they relate to the site, the wider development and the impacts on the Waikato River catchment.
93. The KEVA provides direction for the TWGG and the applicant to work together over the lifetime of the proposed development. The values and interests of mana whenua culminate around three fundamental factors:
- a. To uphold, recognise and provide for the Vision and Strategy for the Waikato River/Te Ture Whaimana o Te Awa o Waikato;

- b. That mana whenua (via TWGG) continue to be active participants to enable the expression and exercise of Mana Whakahaere to protect and nurture the mauri of all living things and be active managers of the values and interests identified in the report (and any future reports); and
  - c. Opportunities to advance mana whenua social, economic, environmental and cultural aspirations, such as papakainga housing, employment and enterprise within the Sleepyhead Estate, and environment enhancement/restoration activities.
94. The KEVA acknowledges the opportunities that the wider Sleepyhead Estate development will bring and recognises the engagement efforts and willingness of the applicant to discuss and accommodate the initial concerns of mana whenua prior to the full development of the KEVA.
95. Actions are recommended by the KEVA intended to support the incorporation and integration of mana whenua interest and values in the Ohinewai rezoning, this application and the wider future development of the site.
96. The KEVA developed by the TWGG considered that the rezoning and wider development of the site is consistent with the principles of the Treaty of Waitangi and upholds the principles of engagement and partnership.
97. We find that when developing and refining its proposal with the TWGG, the applicant has acted in a manner that is consistent with the principles of the Treaty of Waitangi.

**Treaty Settlement provisions and redress**

98. Treaty settlements are defined in section 7(1) FTCA as including relevant Treaty settlement Acts and Treaty settlement deeds.
99. There are primarily two Settlement Acts of Parliament of relevance to the application area, each with associated Treaty settlement deeds.
- a. Waikato-Tainui Raupatu Claims (Land) Settlement Act 1995 (Land Act)
  - b. Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 (River Act).

**Waikato-Tainui Raupatu Claims (Land) Settlement Act 1995**

100. The Land Settlement applied to the Waikato-Tainui Raupatu Claim area, which covers a significant part of the Waikato Region north of Pirongia and Maungatautari mountains, Ohinewai and some areas in Auckland. This settlement arose from the historic raupatu, or confiscation of land, and its consequences on the iwi of Waikato-Tainui.

101. The Land Settlement provided redress to Waikato-Tainui in the form of land, cash, the right of first refusal of Crown lands, the protection of excluded claims (Waikato River), and an apology from the Crown. As private land, the site was not used as Land Settlement redress.
102. The applicant has confirmed to the Panel that there are no Crown lands that will be acquired or transferred to it as part of the proposal.

**Waikato-Tainui Raupatu (River) Settlement Act 2010**

103. The overarching purpose of the River Settlement is to restore and protect the health and wellbeing of the Waikato River for future generations. It sets out Te Ture Whaimana (Waikato River Vision and Strategy) to be the primary direction-setting document for the Waikato River and activities within its catchment that affect the Waikato River.
104. Te Ture Whaimana recognises, and responds to, four fundamental issues for the Waikato River:
  - a) The degradation of the Waikato River and its catchment has severely compromised Waikato River iwi in their ability to exercise mana whakahaere or conduct their tikanga and kawa;
  - b) Over time, human activities along the Waikato River and land uses through its catchments have degraded the Waikato River and reduced the relationships and aspirations of communities with the Waikato River;
  - c) The natural processes of the Waikato River have been altered over time by physical intervention, land use and subsurface hydrological changes. The cumulative effects of these uses have degraded the Waikato River; and
  - d) It will take commitment and time to restore and protect the health and wellbeing of the Waikato River.
105. The River Settlement provided Waikato-Tainui co-governance and co-management arrangements over the Waikato River that included Ministerial Accords and Joint Management Agreement arrangements with Councils.
106. The River Settlement established the Waikato River Authority and the Waikato River Clean Up Trust to promote Te Ture Whaimana and to manage a clean-up fund from the Crown for the Waikato River.
107. Section 9(2) of the River Act confirms that Te Ture Whaimana applies to the Waikato River and activities within its catchment affecting the Waikato River. Section 11(1) deems Te Ture Whaimana as part of the RPS and prevails over any inconsistent provision in a national policy statement.



108. In accordance with Section 12(1) of the River Act, Te Ture Whaimana prevails over any inconsistent provision in an NPS, NZ Coastal Policy Statement or any national planning standard. Further, sections 11 to 15 of the River Act prevail over sections 59 to 77 of the RMA (which relate to regional policy statements, regional plans and district plans) to the extent to which the content of the River Settlement Act relates to matters covered under the RMA.
109. The site lies within the lower catchment of the Waikato River, and is accordingly subject to the River Act.
110. The site, along with Lake Ohinewai, drains to Lake Rotokawau which flows into Lake Waikare. Lake Waikare ultimately discharges to the Whangamarino Wetland via the Waikare Gate.
111. Lake Rotokawau and Lake Ohinewai formed part of the co-managed lands redress under the River Settlement and continue to be owned by the Crown. Both lakes are subject to arrangements in an Accord between Waikato-Tainui and the Minister of Conservation.
112. The lakebed of Lake Waikare was also transferred to Waikato-Tainui as part of the River Settlement.
113. The applicant considers that its proposal is consistent with the objectives of Te Ture Whaimana in the following ways:
  - a) Investment in the Ohinewai/Huntly areas, which in turn supports a prosperous community to contribute to the restoration of the health and wellbeing of the river;
  - b) Its enduring working relationship with mana whenua via the TWGG;
  - c) Working with mana whenua to apply Mātauranga Māori into the detailed design;
  - d) An integrated, holistic and coordinated approach to the proposal undertaken early via the TWGG and the commissioning of the KEVA;
  - e) Avoiding impacts on water quality during site development works;
  - f) Landscape planting and ecological restoration works; and
  - g) The retirement of approximately 31ha of dairy farm and the anticipated reduction in nutrient runoff from the site.
114. In response to questions the Panel asked on the protection of stormwater quality, the applicant has stated that:
  - a. Procedures will be in place for the foam plant operations and for any loading or unloading within the hazardous substances store. Necessary systems will isolate the area from the downstream stormwater wetland;

- b. If there are spills, then any water and contaminants will be pumped out;
  - c. Checks and alarms will be in-built as part of that system, so that no materials will be unloaded/ loaded if valves are not in working condition; and
  - d. A Stormwater Emergency Management Plan will be required to be developed and submitted to the Waikato Regional Council prior to the operation of the factory.
115. The site of the foam factory and the area surrounding it were historically wetlands that connected the Waikato River to the Lakes of Waikare, Ohinewai and Rotokawau. These three lakes and surrounding wetlands have been degraded over time due to changes in Lake levels, land drainage and sediment and nutrient runoff from farming.
116. We acknowledge the adverse effects from historical degradation have had significant impacts on tangata whenua, the local ecology and water quality. Whilst this particular proposal did not cause these adverse impacts, it should not exacerbate them. Te Ture Whaimana requires the proposal to assist in reversing the environmental damage that has been done.
117. The proposal will increase impervious surfaces (roading and carparks) and introduce new forms of contaminants; however, these will be managed via the latest water quality treatment devices employing a two-stage treatment approach in accordance with the Stormwater Management Plan.
118. We agree with the conclusions of the applicant that the 31ha land use change from dairy farming to an urban environment will result in a decrease of nutrients from stormwater and therefore, may assist in the reduction in eutrophication of the local receiving waterways.
119. When assessing this proposal, we consider the land use change, the proposed stormwater management regime, ecological wetland restoration, landscape planting and the improved access and relationships with the river and lakes will lead to an improvement in the health and wellbeing of the Waikato River.
120. We also acknowledge the applicant working in partnership with the TWGG and its kaitiaki in a number of areas of the proposal and the wider development. This partnership recognises and provides for the important principle of Mana Whakahaere and promotes the relationship of tangata whenua with the Waikato River.
121. We find that the proposal will overall assist with the restoration and protection of the Waikato River and for the above reasons we consider the proposal aligns with Te Ture Whaimana.

122. By clause 29(2)(g) of Schedule 6 FTCA, we are to have regard to the WTEP.
123. The WTEP is recognised as an Iwi Management Plan under the RMA and has elevated statutory recognition under the Waikato River Settlement Act 2010 that all decision makers must consider.<sup>22</sup>
124. The overarching purpose of the WTEP is to provide a map or pathway that will return the Waikato-Tainui rohe to the modern day equivalent of the environmental state that it was in when Kiingi Taawhiao composed his maimai aroha. To do this the WTEP seeks to:
- a. Provide the overarching position of Waikato-Tainui on the environment;
  - b. Consolidate and describe Waikato-Tainui values, principles, knowledge and perspectives on, relationship with, and objectives for natural resources and the environment;
  - c. Underpin the development of a consistent and integrated approach to environmental management within the Waikato-Tainui rohe;
  - d. Describe Waikato-Tainui environmental issues;
  - e. Provide tools to enhance Waikato-Tainui mana whakahaere and kaitiakitanga, particularly when participating in resource and environmental management;
  - f. Provide guidance to external agencies regarding Waikato-Tainui values, principles, knowledge and perspectives on, relationship with, and objectives for natural resources and the environment.
125. In order to achieve the overarching purpose of the WTEP, section 6 of the plan “Consultation and Engagement with Waikato-Tainui” outlines how developers and resource users should engage with Waikato-Tainui/hapuu/marae.
126. The applicant has provided an assessment of its proposal against the WTEP as part of its application. TWGG has stated the application (which included a WTEP assessment by the applicant) addresses its concerns in its letter of support for the proposal.
127. The supporting documentation provided as part of the application clearly demonstrates to us that the applicant has a positive relationship with tangata whenua and that the engagement to date has enabled tangata whenua concerns to be addressed.
128. We consider the engagement of the applicant with the TWGG consistent with the WTEP. We acknowledge the applicant’s willingness to work with tangata whenua to utilise mātauranga Māori as the development proceeds, and to incorporate cultural symbolism and acknowledgements into the detailed design. The incorporation and application of mātauranga Māori is supported by the WTEP.

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<sup>22</sup> Section 40, Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010

129. The applicant has confirmed that the proposal will increase waste minimisation by 6% compared to its existing operations. This increase is due to envisaged production efficiencies at the proposed site and a more efficient foam manufacturing process. This aspect of the proposal aligns with the waste reduction, recycling and reuse methods within the WTEP.
130. The WTEP promotes the reduction of vehicle emissions and we accept that the proposed use of rail to reduce the amount of truck movements on the road will overall, reduce vehicle and greenhouse gas emissions.
131. We note that during the Ohinewai rezoning process, Waikato-Tainui raised concerns regarding the long-term water supply and wastewater servicing for the applicant's entire site development. Due to Waikato-Tainui concerns, the panel hearing the Ohinewai rezoning agreed to planning provisions in the Decisions Version to restrict proposed developments in the medium and long-term until necessary water supply/wastewater discharge consents for each stage are in place.
132. During the rezoning and expert caucusing process, the wastewater biocycle system for the proposed foam factory raised no objections from Waikato-Tainui, provided it was managed appropriately.
133. Water supply requirements for the foam factory will be met by on-site rainwater re-use tanks and an existing water bore located on site will be used as a backup. The WTEP supports rainwater harvesting and onsite storage.
134. We consider that the water supply and wastewater treatment and disposal of the proposal aligns with the objectives of the WTEP.
135. We encourage the applicant to continue to work with the TWGG and Waikato-Tainui to address any ongoing wastewater/water supply issues over the lifetime of the wider development.
136. Overall, we consider that the applicant has appropriately recognised the WTEP in its proposal.

**Customary marine title groups**

137. There are no customary marine title groups relevant to this application.

**Archaeology and heritage values**

138. An archaeological assessment of the site has been completed by a qualified archaeologist and showed that while there are recorded sites in the surrounding area, within the proposed development area there are no recorded sites.

139. Results from a walkover survey did not identify anything of archaeological interest. The assessment concluded the possibility of subsurface archaeological features and deposits within the proposed development area. However, the potential for unidentified archaeological deposits was very low to nil.
140. Mana whenua did not disclose the exact locations of sites of significance in the KEVA report, but instead stated that they will work with the applicant in a manner that is consistent with the purpose, principles and objectives of the MoU should such sites become apparent.
141. The applicant has provided the opportunity for kaitiaki to be onsite to act as cultural monitors during initial bulk earthwork activities.
142. During the site visit we saw evidence that kaitiaki had been inducted on to and were working on the site. The contact details of kaitiaki were clearly visible in the site office.

#### **Tangata whenua comments on invitation**

143. The TWGG letter of support for the application preserved their right to comment on this application in order to represent any concerns/views from any new information.
144. Despite the invitation to tangata whenua to comment, none was received.
145. We also note that tangata whenua did not appeal the Ohinewai rezoning decision.
146. We consider that tangata whenua concerns on this particular application have been appropriately addressed and note that any future concerns of tangata whenua that may arise will be raised directly with the applicant via the TWGG.

#### **Conditions**

147. Subject to changes we have made to reflect some of the comments from Heritage New Zealand, we consider that the proposed conditions related to an Accidental Discovery Protocol will be appropriate to protect archaeological and heritage values of the site. We note that the conditions put forward by Heritage New Zealand were supported by the Minister for Arts, Culture and Heritage.
148. Other conditions addressing effects such as stormwater are addressed elsewhere in this Decision.

### **ANY ACTUAL AND POTENTIAL EFFECTS OF ALLOWING THE ACTIVITY (CLAUSE 31(1)(a) SCHEDULE 6)**

#### ***Geotechnical and Earthworks***

149. The May 2021 Geotechnical Report by Initia notes, in summary, the following.

### **Site conditions**

150. The site is underlain by an upper layer of loose silty Sand (Taupo Pumice Alluvium) overlying highly compressible Peat (Rotokawau Formation). The thickness of the Taupo Pumice Alluvium decreases to the east of the site while the thickness of the Rotokawau Formation increases. Ground conditions are therefore less favourable to the east.
151. The Taupo Pumice Alluvium and Rotokawau Formation units are underlain by interbedded silt, sand and organic soils of the Karapiro and Puketoka Formations. The basement rock (Mangakotuku Formation) is inferred to be present at approximately 100 m depth.

### **Site Seismicity and liquefaction**

152. The Taupo Pumice Alluvium soils (silty sands) at ground surface level (1.5 to 5.5 m thickness) are highly susceptible to liquefaction during a ULS seismic event. The site has a calculated Liquefaction Severity Number (LSN) > 50 which indicates that severe effects could be experienced following a ULS seismic event. Ground improvements are proposed to partially mitigate this risk, however it is considered prohibitive to design for full liquefaction mitigation of the yard and siding areas.
153. A liquefaction remediation zone for building platforms is shown on Drawing 1310-EW.

### **Earthworks**

154. New fill is required to lift the site to design subgrade levels. Fill depths will be typically between 0.25 m and 1.25 m. Initial notes that new fill should be placed and compacted to engineered standards, and fill materials should be resistant to liquefaction (e.g. cohesive soils, SPR or quarry graded hardfill).
155. Only minor excavations are required across the site - to form a stormwater drainage swale down the northern side of the site (0.5 to 0.75 m deep) and stormwater treatment ponds (0.5 to 1.5 m) at the eastern boundary of the site. Excavations in the east are very likely to encounter groundwater as shallow as 0.5 m below current ground levels. The stormwater conveyance swale down the northern end of the site will be formed entirely within the Taupo Pumice Alluvium. These materials are highly permeable and therefore clay linings may be required in the swales.

### **Excavation and Replacement/ Re-compaction**

156. The site is underlain by compressible soils and will be subject to settlement due to new fill and dead + live loads from the pavement. Settlements may continue for years in the organic (predominantly peat) soils.
157. Preloading of the site is proposed to address settlement risk. A minimum period of 12 months should be assumed for preloading of the yard areas; however, the actual required preload period will depend on monitoring results during construction. Contingency for a longer preload period and/or additional preload fill should be allowed for.

### **Dynamic Compaction**

158. Initia notes that a recent trial of the Broons Impact Roller has confirmed the efficacy of this treatment method for improving the density of the upper 1.0 to 1.5 m of the Taupo Pumice Alluvium, such that it is resistant to liquefaction under a ULS seismic event. It therefore recommends that Taupo Pumice Alluvium be impact rolled using the Broons Roller following stripping of topsoil, but prior to the placement of bulk fill to lift the site levels. A 300 mm thick layer of SPR should be placed over the ground surface prior to impact rolling to distribute the dynamic energy. Densification (ground settlement) of between 200 and 300 mm should be anticipated following rolling.

### **Hydrogeology**

159. Groundwater levels are expected to be present between RL 8.0 m (western end of the site) and RL 7.0 m (eastern end of the site), or between 1.5 m and 0.5 m depth (west and east respectively).
160. The base of the stormwater treatment ponds is likely to be below groundwater level (measured at 0.5 to 1 m below ground level in this area of the site). Preliminary batter slopes of 3H:1V should be assumed for design of pond side walls and containment bunds. However, detailed stability analyses will be required to confirm this during design stages.

### **Pavements**

161. Assuming the Taupo Pumice Alluvium is improved by impact rolling, and all new fill is placed to an engineered standard, the subgrade strength will be relatively high. Pavements can be designed assuming a preliminary subgrade CBR of 6%.
162. Where possible, a ballasted rail track should be considered as this would enable periodic re-levelling where required. Design loads and postconstruction tolerances to settlements will need to be confirmed for the rail siding prior to detailed design.
163. Subsoil drainage is recommended below all pavements.
164. APL has further advised that the in-situ compaction is to be achieved by excavating to a level corresponding to 2m below design subgrade level of the building, placing a 500 mm thick layer of hardfill and then subjecting the base of the excavation to Impact Rolling (using a Broons Impact Roller). Further, that tests performed on the initial Stage 1A trial area confirmed that the in-situ compaction was effective in mitigating the liquefaction susceptibility of the 1m of soils below the excavation depth, for a ULS seismic event. This same methodology will therefore be used for all buildings within the Stage 1A area.

### **Comments received and responses**

165. Nil comments received.

### **Conditions**

166. Industry standard conditions are imposed on both sets of consents and Initia's recommendations accepted.

## **Infrastructure**

167. Further detail on these matters can be found in the relevant reports under Appendix 10 to the application, and especially:

- Woods, Civil Infrastructure Report, 1/04/2021;
- Woods, Earthworks Methodology Report, 31/03/2021;
- Woods, Stormwater Management Framework, 31/03/2021.

### **Civil infrastructure**

168. The civil works associated with the application include the following:

#### Foam Factory

- Building 1 - Foam Store
- Building 2 - Tank Farm & Foam Plant
- Building 3 - Foam Conversion
- Building 4 - Rebond
- Building 5 - Bean Plant
- Stormwater Wetland 1

#### Rail Siding & Stormwater Infrastructure

- Rail siding & associated inland port
- Stormwater Wetland 2<sup>23</sup>
- Conveyance swale and dispersal area
- Lumsden Road and Balemi Road realignment

### **Earthworks methodology**

169. It is proposed that a cut to fill operation is utilised for a portion of the works. Cut and fill will be required in the western and northern portions of the site to form the subgrade for building platforms and pavement areas, and in the northern and eastern portions of the site to form the stormwater management devices.

170. Approximately 50,000m<sup>3</sup> of cut and 490,000m<sup>3</sup> of fill is required over the 31.00 Ha of both stages 1A (consented<sup>24</sup>) and 1B (application) to form finished levels and provide for preload, including to:

- Provide geotechnical remediation for liquefaction and settlement prone soils;
- Undertake filling to above the 1% AEP flood level (RL 8.00);
- Form the subgrade for building platforms and pavement areas;
- Form stormwater management devices; and
- Form the rail siding including realignment and reforming sections of Lumsden and Balemi Roads.

171. Due to a fill deficit, material will need to be imported to site to complete the works.

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<sup>23</sup> Both wetlands are differently configured for the rail siding Option 2.

<sup>24</sup> APL has consent for Stage 1A (13.7 ha) of 8,350m<sup>3</sup> cut, 127,400m<sup>3</sup> fill, 37,380m<sup>3</sup> fill due to densification, and 120,000m<sup>3</sup> required for a rolling preload. This totals 280,000m<sup>3</sup> imported (solid).



172. For the 17.3 ha of the present application (i.e. stage 1B earthworks) some 41,750m<sup>3</sup> of cut<sup>25</sup> and 210,000m<sup>3</sup> fill<sup>26</sup> are estimated as being required, although the exact volumes will only be known once the works are completed.

### **Construction Works**

#### **Erosion and Sediment control**

173. The primary controls proposed for the site for the Stage 1B Earthworks (Rail Siding) are:

- Sediment Retention Pond – SRP B (Catchment 6.25 Ha);
- Sediment Retention Pond – SRP C (Catchment 3.00 Ha).

174. Additional proposed controls and measures include:

- Clean Water Diversion Drains
- Dirty Water Diversion Drains
- Silt Fence
- Decanting Earth Bunds
- Stabilised Haul Roads
- Stabilised Construction Entrances (and Wheel Washes if required)
- Rapid Stabilisation
- Dust Mitigation Measures

#### **Dust Management**

175. Dust management proposed to be incorporated into the existing approved Stage 1A Dust Management Plan (DMP) includes:

- Use of a stabilised Haul Road from Tahuna Road with chemical stabilisation measures and sprinklers (if required) to keep dust generated from vehicle movements away from the nearby residential houses;
- Rapid stabilisation of stockpiles and completed areas;
- Wheel wash at the Tahuna Road exit;
- Wetting of dry areas prone to dust using:
  - Water collected from the on-site rainwater or bore supply tanks;
  - Water tanker delivered to site from the public supply in Te Kauwhata or Huntly.

#### **Stormwater management**

176. APL has an approved Stormwater Management Plan and discharge permit for Stage 1 – which permits an interim discharge strategy to the Balemi Road Drain for Stage 1 and attenuation of the 10-year storm in Wetland 1. A temporary clean water drain from the wetland is provided to the Balemi Drain in the north-eastern corner of the site until construction of Stage 2 (the present application) is completed, when discharge to the Balemi Drain will cease. For the interim strategy attenuation is required. However, once connected to the future Wetland Park area, attenuation will no longer be required.

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<sup>25</sup> This is assumed by 50,000 – 8,350m<sup>3</sup> granted.

177. Stage 2 (i.e. the rail siding and inland port) implements an additional wetland (Wetland 2) and a Conveyance Swale along the northern boundary of the site to the proposed dispersal area within the site approximately 100m from the Lake Rotokawau Reserve boundary. The swale will be constructed over the top of existing farm drains, where temporary culverts will be installed until those drains are made redundant due to future developments. The dispersal structure will provide for a low velocity outflow surrounded by restoration plantings for the early stages of the future wetland park area.
178. For rail siding Option 2 the two wetlands are reconfigured.
179. Two other vegetated swales are proposed:
- Wetland 2 Collection Swale – collects flows from the stormwater network and delivers it to the Wetland 2 intake structure.
  - Balemi Road Swale – on the northern side of the road provides treatment of flows from Lumsden Road and Balemi Road before discharging into the existing table drain (that discharges into the Balemi Road Drain).
180. The sizing of the swales will be completed as part of detailed design.
181. Secondary flows from the factory and rail siding area will be collected in the Wetland 2 Collection swale, then into the Conveyance Swale via a spillway to the north of Wetland 2.
182. The stormwater treatment system is shown in the P20-353-00-3000 and 3300-DR series of layout drawings.
183. We note that some modification of the application treatment train system is required should rail siding Option 2 be confirmed. This is shown in new drawing series P20-353-009040(-43)-SK Rev 1 dated 3/08/2021. Those modifications are considered “relatively minor” by Woods<sup>27</sup> as follows:
- Slight alterations proposed for the contributing catchments for Wetland 1 and Wetland 2;
  - Slight alterations to the lengths of the flow paths within the wetlands;
  - The catchment for Wetland 2 is now split due to the rail siding; the catchment to the north of the rail is to be piped to the inlet Wetland 2;
  - The small section of Wetland 2 in the north of the rail siding is to be removed due to the highpoint splitting the catchments making it difficult to convey flows from the southern portion of the catchment under the rail to an inlet at that portion;

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<sup>27</sup> Woods – Request for information, Memorandum dated 5 August 2021

- A single inlet to the wetland is proposed, rather than a separate inlet for northern/southern catchments, as the secondary inlet could lead to resuspension of solids from the upstream flows.

184. Changes in which end of the conveyance swale the overland flow discharges to:

**Wetland 1**

- Option 2, due to the Rail alignment now creating a high point prior to the Wetland 2 Collection Swale preventing overland flow to be directed to the northeast, it is proposed the overland flows discharge to the Wetland 2 Collection Swale to the east and then overtop into the Conveyance Swale adjacent to the outlet of Wetland 2, at the southeastern boundary of the site. This is illustrated in P20-353-00-9040-SK Rev 1.

**Wetland 2**

- Option 2, as the catchments for Wetland 2 are split due to the new ridge created by relocating the rail towards the north, the northern catchment overland flows into the northern portion of the Wetland 2 Collection Swale to discharge to the conveyance swale adjacent to Balemi Road at the northeastern boundary of the site. For the southern catchment, overland flow is to discharge to the eastern portion of the Wetland 2 Collection Swale then overtop into the Conveyance Swale adjacent to the outlet of Wetland 2 at the southeastern boundary of the site. This is illustrated in P20-353-00-9042-SK Rev 1.

185. We agree that the comparative changes to the wetland and conveyance swale configurations between Options 1 and 2 are effect-neutral in terms of stormwater management.

186. APL has confirmed<sup>28</sup> that development not associated with the factory will connect into other stormwater infrastructure to be developed elsewhere – and therefore cannot contribute sediment or contaminants to the wetlands.

187. Paved areas around the foam factory have been provided for vehicle access, container storage and parking. These have been designed to include for stormwater runoff, treatment and overland flow path conveyance to ensure that there is no flooding of the factory during the 1% AEP Storm. Roof areas have allowed for the treatment and collection of rainwater for reuse.

188. A Stormwater Management Plan (SMP) outlining two stage treatment devices for the paved and roof areas has been allowed for and will be fully detailed at the detailed design stage but in summary includes:

For the foam factory roof runoff, the following measures:

- Carbon Filter for vent stacks – ensuring discharge from the factory is treated in line with the air discharge consent (granted February 2021).

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<sup>28</sup> BBO Memo - Request for information No 2, Appendix 10, Q16

- Inert roofing materials to be utilised.
- 800m<sup>3</sup> rain tank to capture the roof areas for reuse and attenuation for the proposed 4.99 Ha catchment.
- Overflow from rain and sprinkler tanks to be discharged to stormwater network whereby two further treatment measures will be implemented.

For hardstand areas, the following measures are proposed:

- ACO drain grates will be selected to allow stormwater flows but inhibit rubbish entering the stormwater system.
- Cesspit sumps and ACO drain sumps will be provided for settlement of sediments from the runoff. Fox valves may be required should there be risk of oil spills or similar to divert first flush to treatment.
- Gross Pollutant Traps will be utilised in manholes within in the piped network for removal of rubbish at key locations.
- Due to the relatively flat topography and subsequent shallow piped network, it is not practicable to install standard raingardens. In order to achieve best practice, the use of shallow raingardens for an extra step in the treatment train for hardstand areas is encouraged, however not required as part of this stormwater treatment plan.

For landscaping areas, the following measures:

- Groundwater recharge;
- Overflow to cesspits, hardstand areas, and ACO drain system.

189. Allowance has been made for sprinkler tanks and storage of sprinkler water within the recessed loading dock following a discharge event.
190. The rail siding includes paved areas for vehicle access, container storage and parking. These have been designed to include for stormwater runoff, treatment and overland flow path conveyance to ensure that there is no flooding caused to the adjacent foam factory during the 1% AEP Storm. As part of this stage, and formation of the rail siding from the existing tracks, the realignment of Lumsden Road and the Balemi Road intersection is required in order to form a safe level crossing of Lumsden Road and the Rail Siding. A modification of this realignment is proposed for rail siding Option 2 as discussed above.
191. Approximately 630m of Balemi Road and the realigned section of Lumsden Road will be upgraded to industrial sealed road standard and treatment of this will be undertaken in the vegetated swale located on the northern side of Balemi Road. Because Balemi Road needs to be raised above the 1:100 year flood event, a single crossfall is proposed to minimise the need for filling on the neighbouring property.
192. If rail siding Option 2 is pursued, Balemi Road is not required to be realigned where it intersects with Lumsden Road. Balemi Road will still be required to be upgraded and stormwater management remains as per the submitted proposal<sup>29</sup>.

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<sup>29</sup> BBO Memo – Response to request, Alternatives to the land acquisition, Q b, 27 July 2021.

193. APL has clarified<sup>30</sup> that the stream realignments required for Stage 1B are:
- Drain 1 (Eastern Drain) already diverted for Stage 1A, will be diverted around the works area and run into the new diversion running north/south.
  - Drain 2 will be diverted to a new alignment running north/south.
  - Drain 3 will be diverted to a new alignment running north/sought.
  - Drain 4 will be diverted and culverted under Wetland 2 and the conveyance swale.

194. Those are shown on new drawing P20-353-1600-EW.

#### **Water supply and wastewater**

195. Potable water supply is be sourced on-site from rain tank supply (800m<sup>3</sup>) and an existing bore at 88 Lumsden Road – which has a permitted take of 2m<sup>3</sup>/d. Water saving demand has been calculated as 2.28m<sup>3</sup>/d for the 50 staff anticipated at Phase 2 of the foam factory production. A small-scale water treatment system is proposed housed with a water pump station to provide pressure in the 50mm distribution main.
196. A further three 800m<sup>3</sup> rain tanks are proposed to be reserved for firefighting purposes.
197. The existing on-site Bio-Cycle Wastewater Treatment System and dripper field is sufficient for phase 2, with 50 staff anticipated.
198. Demand above those limits is expected to be met in due course by connection to future public network infrastructure as the wider Ohinewai Zone area is developed.

#### **Groundwater**

199. A groundwater study was undertaken by PDP as part of the wider OSP and re-zoning reporting and recommended that some groundwater recharge in the factory location is desirable, however is not specifically required.
200. High existing ground water levels indicate that stormwater discharge via soakage would be limited.
201. No groundwater recharge is proposed, nor is it required as part of the consented foam factory discharge consents.

#### **Comments received and responses**

202. The Lumsden Family Trust submission noted the regular flooding of farmland adjacent to the Balemi Road drain and expressed concern that diverting additional water into the drain would not only further exacerbate this issue but also result in any

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<sup>30</sup> BBO Memo - Request for information No 2, Appendix 10, Q18

contaminants therein entrained depositing on its farmland and, potentially via Lake Waikare into the Whangamarino wetland, an international Ramsar site.

203. APL has indicated that it is prepared to accept a condition reflecting its intention to cease discharging to the Balemi Drain once Stage 2 and Wetland 2 is completed. The new discharge point post-Wetland 2 will be via an area of landscape planting and thence to Lake Rotokawau. The treatment train approach proposed (and agreed to by WRC) should ensure that no stormwater entrained contaminants (including sediment) reach the lake system.
204. Furthermore, APL has noted in response<sup>31</sup> that the proposed design and attenuation significantly reduces peak flows when compared with existing pre-development flow rates (a reduction of 230 l/s). The pre-development flows to Balemi Road are 260 l/s when compared with 30 l/s for the post-development flows after attenuation.
205. As the existing Balemi Road is metalled and considered impermeable, no additional runoff is anticipated from upgrading the road surface.
206. The Ohinewai Lands Limited submission supported the proposed stormwater treatment train with diffuse discharge via Lake Rotokawau, and the cessation of stormwater discharge to the Balemi Drain as soon as practicable.
207. The Waikato District Council (WDC) supported the stormwater approach but sought some amended conditions to ensure that what is constructed and operated accords with approved plans. It also sought a condition requiring the certification of earthworks prior to building consent stage.
208. APL has incorporated WDC's amendments into its revised conditions<sup>32</sup>.
209. WRC generally supported the application and the adoption of similar consent conditions as were granted for the stage 1A earthworks, noting the potential for enhanced cumulative effects from the enlarged earthwork areas and proposed that a maximum exposed surface area of 15 ha be maintained between the two stages.
210. WRC also noted that a water take permit was required for construction earthworks – and did not appear to have been addressed – and queried whether consent for the significant increase in the level of infilling of the Lake Waikare 100 yr floodplain was required.

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<sup>31</sup> BBO, Section 6 Lumsden Family Trust, Response to Comments Received, 1 July 2021

<sup>32</sup> BBO, Section 8 Waikato District Council, Response to Comments Received, 1 July 2021

211. Amendments to the proposed conditions to require the review or approval of certain design elements were also recommended by WRC.

212. In response to WRC, APL has advised<sup>33</sup> the following:

- It disputes the need for a 15ha maximum earthworks open area on the basis of its Stage 1A earthworks, which have demonstrated that the site's excellent drainage characteristics, due to the sandy soils, has resulted in minimal discharge from the sediment retention ponds because of soakage. It accepts that this is appropriate for winter works but not for the rest of the year. Through its final response of 21 August 2021 it proposed an amended condition to address WRC's concern.
- It accepts that a water take permit is required, suggests that this was an oversight, that the application clearly covers the relevant estimated quantum (up to 2,000m<sup>3</sup>/d) and effect issues so that no further assessment is required and consent for such can be granted. A draft set of conditions based on the existing Stage 1A water take permit is provided in the response.
- As the diffuse discharge point is within the site and not in Lake Rotokawau reserve and greater than 100m from the lake margin, no material effect is anticipated – particularly because the estimated flows (1.8m<sup>3</sup>/s for the 10 yr event and 2.98m<sup>3</sup>/s for the 100 yr event) are static due to high flood levels on site during those events. Furthermore, there is a substantial net reduction in nutrient runoff discharge from the land to waterways with the change in land use from dairy farming.

### **Conditions**

213. Both standard and bespoke conditions are imposed that will satisfactorily manage the earthworks and stormwater aspects of this application – and are consistent with those that have already been granted by WRC and WDC for Stage 1A. The need for slightly different wetland configurations for each of the rail siding options requires no additional consent or change of condition as that is addressed within the existing water discharge permit granted by WRC, AUTH142166.03.01 - which requires final design plans to be approved for the wetlands and the conveyance swales. Dust and air quality management is also addressed in the existing WRC consents. Relevant conditions we impose, such as for dust management, piggy-back onto the management plan requirements of those existing consents. All the conditions sought by WDC for which it has jurisdiction have been accepted by APL and are imposed and, again, are consistent with the land use consent already granted by WDC for stage 1A (LUC/0200/21).

214. Appendix 3 sets out comments from a number of parties on earthworks and stormwater conditions. By way of response to those comments:

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<sup>33</sup> BBO, Section 9 Waikato Regional Council, Response to Comments Received, 1 July 2021

- a. We accept most of WDC's suggested change to condition 15 regarding earthworks completion. The applicant noted a problem with WDC's suggested subparagraph (c), which we also accept and have not included in the final conditions.
- b. We accept the applicant's response to the comments made about the overlap of the stormwater discharge consents for Stages 1 and 2. It is intended to retain the existing foam factory stormwater discharge consent (AUTH142166.03.01) alongside any stormwater discharge consent granted under this application for the rail siding. Condition 8 of the WRC stormwater consent and Condition 69 of the WDC land use consent require the cessation of stormwater discharges to the Balemi Road drain once the rail siding has been constructed. The conditions refer to the plans proposed for this part of the project. There is no need for the Stage 1 conditions to be copied in to the Stage 2 conditions.
- c. We accept Ohinewai Land Limited's suggested amendment to condition 18 requiring the consent holder to undertake measures at the direction of WRC as the best practicable option to address adverse effects.
- d. We partly accept WRC's request for a restriction on the total area of exposed earthworks to 15ha at any one time and accept the applicant's suggested wording in this regard.
- e. We do not accept Ohinewai Lands Limited's suggested amendment to condition 8 requiring resource consent AUTH142166.03.01 to be surrendered by the consent holder at the appropriate time.
- f. We do not accept the inclusion of new stormwater conditions addressing the SOMP to mirror the WRC stormwater consents. This is unnecessary and would lead to the unsatisfactory position of two consenting authorities approving (or not) the same documents. This is a regional matter and that responsibility should lie with WRC.
- g. We do not accept the consents should be reviewed for non-compliance or the additional requirements for maintenance of the stormwater network. The conditions adequately address these matters. The applicant has offered a review condition in response to the concerns raised by Ohinewai Lands Limited (which applies to the existing stormwater consent). We have added other more general review conditions to the stormwater consent and we have removed the date specification for this review. We consider a five year period is too long. It may be that a review is required before then. In doing so, we note the review is discretionary. If there is no need for a review, the review need not occur.
- h. Lumsden Family Trust sought that Conditions 14 and 15 of the stormwater discharge consent should specify limits for both suspended solids and for other contaminants. We do not agree. The conditions require compliance with the document *WRC Erosion and Sediment Control – Guidelines for Soil Disturbing Activities (Technical Report No 2009/02- dated January 2009)*. We do not consider any additional requirement is necessary.
- i. We do not accept any further conditions are required to address dust on roads. The conditions require no dust nuisance beyond the boundary of the site and this must be complied with. Non-compliance is an enforcement



matter. We note BBO has stated that it will raise this concern about the existing activity with the applicant and site manager direct.

### ***Landscape and visual impact***

#### **Landscape and site context**

215. We outlined earlier in our decision the details of the buildings forming the project and the site's distance from nearby townships.
216. Local landscape features include Lake Rotokawau and the associated wetland to the east (which forms part of the Lake Waikare ONFL), Lake Ohinewai to the south, low rolling hills within a predominantly flat area and low lying wetland areas. This character is further influenced by State Highway 1 and surrounding local roads, the NIMT, surrounding rural pastures and some shelter belts and mature trees, scattered clusters of rural and rural residential housing, Ohinewai Village development and the commercial activities to the north of the site (lumber yard and house removal yard).
217. Buildings in the wider landscape are quite widely dispersed. These include farmhouses and associated ancillary buildings.

#### **Landscape and visual assessment**

218. The landscape and visual effects assessment<sup>34</sup> provided with the application included a number of photographs of the immediate area of the site and also the wider environment. That assessment also outlined the five main buildings forming part of this proposal, the intended cladding, access and parking, temporary site sheds/ deck, water tanks, lighting, the stormwater management system and the road realignment and rail linkage.
219. The landscape assessment considered effects on existing landscape and rural character, assessed visual effects and considered the application against the relevant provisions of the RMA and the Operative Waikato District Plan, which zoned the site and its surrounds Rural. The conclusion reached was that the project would have an adverse effect on the existing landscape character and visual amenity associated with the site, from close proximity of 1.5 kilometres. It would change from its existing rural pastoral land use to a site of industrial character and include buildings of a character and scale not currently present in the area.<sup>35</sup>
220. Having recognised that the project is of a "significant scale within this environment"<sup>36</sup> and required mitigation planting to assist with its integration into the existing environment, the landscape assessment detailed a mitigation strategy involving:
- a. The retention of the existing large Plane tree;

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<sup>34</sup> Mansergh Graham Landscape Architects dated March 2021

<sup>35</sup> Mansergh Graham landscape assessment dated March 2021, page 30

<sup>36</sup> Mansergh Graham landscape assessment dated March 2021, page 12

- b. Mitigation planting of the site comprising a 15-metre band along the full extent of the western boundary and 8 metre wide bands of planting along the northern and southern boundary;
- c. Mitigation along the northern boundary comprising two rows of close planted informal hedging to achieve a 4-metre height within 5 years and a row of evergreen tree species planted behind that to achieve a mature height of 20m in the long term. This planting is predominantly intended to provide screening of the development from mid distance and distant views;
- d. Mitigation along the southern boundary of informal hedging, with specimen trees to provide intermittent screening of a greater height. Some additional native plantings to be used to provide some variety. The informal hedging would reach a height of 3m within 5 years with a mature height of 6 metres. Care had been taken to include specimen trees along the southern boundary interface with the lifestyle blocks to ensure over-shadowing did not occur.
- e. A view shaft was provided to allow the proposed large sign and illuminated digital clock to be seen. A 50-metre portion of the mitigation planting along the western boundary would be limited to grow no taller than 6m to provide for this.

221. The March 2021 report made three recommendations if it was decided that consent could be granted:

- a. Consideration be given to the application of additional colour blocking and/or alternate cladding for portions of the building<sup>37</sup>, reflecting changes in roof form and orientation, to assist in reducing the apparent scale of the building.
- b. Due to the potential for future development, the southern boundary mitigation planting should be capable of alteration or revision should future development occur.
- c. Unless required to be removed as part of Stage 1 of the development (or future stages as they occur), viable specimen trees within the site should be retained where practicable to assist with screening of the development while the proposed mitigation establishes.

222. These recommendations and the mitigation planting were put forward on the basis of the site being zoned Rural.

223. As part of its response to the Panel's request for information on the effect of the Ohinewai rezoning, the applicant lodged a memorandum<sup>38</sup> from its landscape expert, MGLA, containing a revised landscape assessment. As the site of the foam factory and the rail siding is zoned Industrial under the Decisions Version, MGLA's assessment was that the proposed development and its anticipated effects are now largely aligned with that industrial zone context. While previously the effects of the development were considered to be adverse to the rural character of the site, the rezoning resulted

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<sup>37</sup> We assume the reference to "building" here was to the largest building, housing the foam factory.

<sup>38</sup> Dated 21 June 2021

in an assessment that the effects were less than minor and are a positive to the site's industrial character.

224. The MGLA memorandum concluded that the height of Building 4, infringing the maximum height in the Industrial zone by 2.0m, had a negligible effect on amenity.
225. While most of its earlier recommended mitigation appeared to still stand, MGLA recommended that the need for mitigation planting along the southern boundary of the site be reconsidered in light of the rezoning to Industrial, noting that its original purpose was to provide screening for adjacent residential properties (some of which were now also rezoned as Industrial) and to assist with the integration of the development. In MGLA's opinion, the anticipated extension of industrial development beyond the southern boundary would negate the benefit of low-level screening. Some taller specimen trees could be retained to provide a degree of screening from more publicly accessible views and the planting of these could be timed to coincide with the development of the collector road.
226. We queried this approach through our 25 June 2021 questions on the application, in particular the opinion that the southern boundary planting could be reduced and delayed. The applicant's response was that in time, there is an expectation that the neighbouring property will be developed in line with the Ohinewai zone provisions and extensive landscaping would be unnecessary. However, the applicant accepted that development timeframes are currently unknown and that landscaping along the southern boundary with 58 Lumsden Road would be appropriate and is proposed.

#### **Comments received and responses**

227. Waikato District Council noted that during consideration of the applicant's earlier land use consent application, the Council had engaged an external landscape architect as the Council's processing planner considered there was potential for significant effects in relation to landscape and visual amenity. This review was not completed. The Council commented that this may require further consideration in this fast track process, but did not attach any assessment to its comments. By way of conditions on landscape matters, the Council sought conditions to address lighting.
228. In response to WDC, the applicant noted that the previous landscape assessment and reporting for the foam factory had been superseded by the landscape assessment prepared in support of this application and the additional landscape report on the implications of the rezoning. It considered the Panel had sufficient information before it to make a decision on the landscape and visual effects.
229. Ohinewai Area Committee also sought some control on lighting. Lighting conditions are now proposed.

230. Richard and Shanette Marsh, resident at 75 Lumsden Road, expressed disappointment that their rural lifestyle would be lost. They said they had chosen that property “because of its rural location, views and peacefulness” and these would now be lost. They were concerned as to how they would now sell their property for its full value. In response, the applicant acknowledged the change in character in the vicinity of the site resulting from the development and noted the extensive plantings within a 15m landscape buffer on Lumsden Road to create a visual buffer between the development and the Marsh property.

#### **Effect of rezoning appeals**

231. The appeal against the rezoning lodged by the Ralph Estates seeks that the entire Ohinewai rezoning be deleted and the zoning of the land returned to Rural. As we discuss later in our Decision, it is not safe to proceed on the assumption that the Decisions Version industrial provisions are de facto operative and, certainly, the Council has not exercised its discretion to that effect under clause 17(2) of Schedule 1 RMA.

#### **Effect of rail siding Option 2**

232. Rail siding Option 2 would enter from the south and has some flow on landscape effects. An existing large Plane tree is likely to be required to be removed by this option through the construction of the amended Lumsden Road realignment. The tree may be able to be retained with specialist arborist supervision, however if this is not possible, a landscaping strip exists in this location. If the Plane tree is removed, we were told that taller screening can be achieved by extending the Cryptomeria planting in this location and retaining the lower informal hedging planting. To the north of the Plane tree, the 15m landscaping width would reduce in width to approximately 7.5m for a distance of approximately 40m, to account for the internal access road. This portion of planting is north of the Lumsden Road residential properties and located on the middle bend of the proposed realignment. Any view would therefore be to road and rail users, not residential properties, and would be of short duration.<sup>39</sup>
233. Due to the inability to achieve 15m width of planting in this area, an additional consent is required due to the infringement of Rule PREC3-S4 of the Proposed Waikato District Plan.

234. Rail siding Option 2 includes an acoustic barrier, which at this stage is intended to be a 2m high fence. This does not require resource consent. There is already extensive existing vegetation in the immediate location of the fence at 85 Lumsden Road. The applicant proposes a planting strip in front of the acoustic fence to further mitigate its effects.

#### **Conditions**

235. The 1 July 2021 conditions proposed by the applicant addressed lighting. External lighting is to be managed so that light levels measured at the boundary are no more

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<sup>39</sup> BBO Memo, Response to request, Alternatives to the land acquisition, dated 27 July 2021, Q2

than 10 LUX. Luminance levels from the large sign to be located on Building 2 are to be managed to control the level of illumination when ambient light levels change.

236. The conditions also include the requirement for landscape planting plans to be submitted to WDC for approval prior to the construction of the foam factory. These plans must include details on the staging of the planting programme, the species/locations/ expected heights of any proposed plants and details of a maintenance programme.
237. The landscape conditions also require landscaping plans to be submitted to WDC prior to the construction of the rail siding and for that planting to be implemented on site within 12 months of the rail siding becoming operational. This applies to Options 1 and 2. The conditions also include a requirement for mitigation planting specific to Option 2 to be implemented should that option be chosen. As noted above, the applicant proposes mitigation planting in front of the acoustic barrier relevant to Option 2 and this is shown on Mitigation Planting Plan P10. If rail siding Option 2 is chosen, and the large Plane tree on the site's western boundary must therefore be removed, any resource consent required for that tree removal must be obtained before any work required to implement Option 2 is undertaken.
238. WDC's comments on the draft conditions requested an additional condition requiring that any landscape mitigation planting be maintained to the satisfaction of WDC and that if any of it dies and/ or becomes diseased, it is to be replaced. We accept that condition is appropriate. Otherwise, WDC requested we amend the time in which plans are certified. We agree and address this later in our decision. We have also added some wording to the WDC conditions to ensure that the native planting forming part of the stormwater management is required to be implemented.
239. We do not accept the residents of Lumsden Road need to be involved in the building design. For the most part, the buildings will be screened by a 15m landscape strip along Lumsden Road.

#### **Conditions imposed**

240. We are satisfied that the landscape effects will be satisfactorily addressed through the proposed mitigation and conditions of consent.

#### ***Transportation***

241. The application was accompanied by an Integrated Transport Assessment (ITA) dated March 2021 and a Draft Construction Traffic Management Plan (CTMP) dated May 2021, both prepared by Bloxam Burnett & Olliver (BBO).

#### **Existing traffic environment**

242. As described elsewhere in our decision, the road network in the vicinity of the site comprises Balemi Road, Lumsden Road, Tahuna Road and State Highway 1 (including the Ohinewai interchange ramps). Balemi and Lumsden Roads are Local Roads. Tahuna Road is an Arterial Road. State Highway 1 is a National Route.

243. Vehicle counts and vehicle operating speeds were collected over a 15-day period in August 2019. Turning movement surveys were also undertaken the same month between the hours of 0700-0900 and 1600-1800, and on one Saturday in August 2019 between 1100-1400. The results were shown in Table 2 of the BBO report.

#### **Foam factory**

244. The ITA was based on the foam factory operating from 7am to 6pm, seven days per week. This was inconsistent with other parts of the application, which specified different operating hours. In response to our questions on this point, the applicant stated that the ITA assessment was based on the worst-case scenario and was the information available at the time of lodgement. A condition was proposed that the hours of operation for the foam factory be between the hours of 4am and 6pm Monday to Friday and 4am to 1pm on Saturday.

245. On the basis of those hours, the applicant's traffic assessment was that the majority of inbound staff movements to the site would occur outside typical morning peak hours of 7am-9am. The effect would therefore be negligible. Outbound staff movements from the site would still occur during the typical afternoon peak of 4pm to 6pm. Overall, the amended hours of factory operations would help to reduce traffic movements in the morning peak and there would be an overall improvement in terms of the overall transport assessment.

246. Prior to the completion of the rail siding, the applicant predicted the factory would generate approximately 50 heavy commercial truck movements per day (two way). This would reduce to approximately 10 heavy commercial truck movements per day (two way) once the rail siding is operational in 2024.

247. Other operational trips (staff, visitors, light trucks, freight deliveries) would generate 140 vehicle trips per day. Overall, the foam factory is predicted to generate approximately 190 vehicle trips per day (two way) and 20 trips during the peak afternoon period. The predicted trip generation is not expected to exceed the permitted 200 vehicle movements per day threshold specified in the Operative District Plan for activities in the Rural Zone. In addressing the project against the Decisions Version, the applicant noted that the project would comply with the traffic generation requirements with the exception of the construction traffic movements for the importation of clean fill.<sup>40</sup> However the proposed construction traffic movements would be consistent with the heavy vehicle movements consented as part of the Stage 1A earthworks (200vpd on average per day, 300vpd maximum per day). The proportion of heavy vehicle movements overall is between 25% and 35%, before the rail siding becomes operational.

248. The ITA also assessed external trip distribution. It is expected that the majority of new staff members will be local residents, with about a third of the 50 staff members in

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<sup>40</sup> BBO Memo dated 21 June 2021, referring to Decisions Version OHI-EIT-R81

the new factory expected to be employed from the existing plant in Auckland. Imported good (raw materials) will arrive at the site via State Highway 1 from Auckland. Manufactured goods will be transported both north to Auckland and south and/ or east to the Port of Tauranga/ Christchurch. The calculations of vehicle trips for these journeys were set out at pages 23-25 of the ITA and in Figure 9.

#### **Movement of freight by rail and Lumsden Road realignment**

249. The ability to move freight by rail was stated by the applicant as being a key reason for it having chosen this site. The inclusion of a rail siding is an important component of the project.
250. The proposed rail siding would include one branch track from the NIMT to the west of the site that would split into three tracks within the site, after a level crossing on Lumsden Road. A maximum 20kph would be imposed on the rail siding. Vehicle access to the rail siding is proposed to be provided through no more than three heavy commercial vehicle crossings off Balemi Road. As noted earlier in our Decision, the applicant has two options on the table for the rail siding, Option 1 (approaching from the north) and Option 2 (approaching from the south). KiwiRail has provided support for both options. Only Option 1 requires the applicant to acquire land from a third party.
251. According to the applicant's estimates, the transportation of materials and product by rail will be equivalent to approximately 20-25 heavy vehicle movements per day (40-50 truck movements). Once the rail siding is operational, heavy commercial movements would reduce by some 80%.
252. The applicant has confirmed that the rail siding design will enable two trains to be loaded/ unloaded at the same time with reach stackers. The design of the rail siding will provide for a locomotive towing the train in from the NIMT to unhitch at the eastern end of the siding and then go around the third track to the western end of the train and reconnect so that it can depart the siding with the locomotive at the front. Heavy freight trains can have two or more locomotives, connected push me/ pull you style. With that arrangement, one locomotive would face forwards going into the siding and the other would face forwards on departure. Either way, there is no impact on safety at the level crossing. We were provided with an updated revised Drawing 119 showing the turnout at the eastern end of the siding.<sup>41</sup>
253. The proposed rail siding would cross Lumsden Road at-grade. The close proximity to the NIMT results in the rail siding crossing Lumsden Road at a low skew angle. This does not comply with KiwiRail's requirements. For Option 1, it has therefore been agreed that the alignment of Lumsden Road should be amended with a series of horizontal ('S') bends to ensure the road crosses the rail at a safe angle. KiwiRail's standards require this to be between 70 and 110 degrees. This in turn affects speed

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<sup>41</sup> BBO Memo, Response to request for information received under Clause 25 of Schedule 6 dated 5 August 2021, Q1

limits on Lumsden Road and the design of that road for users, which have been assessed by Traffessionals through a Road Safety Audit report. Option 2 has required the level crossing and the Lumsden Road realignment to be slightly amended to accommodate the updated rail siding geometrics. This option makes no change to the intersection of Balemi Road and Lumsden Road.

254. Option 2's amended realignment to Lumsden Road brings the road a little closer to Building 2. BBO<sup>42</sup> has confirmed that the corner of Building 2 closest to the road edge is some 23m from the edge of the seal and 17.5m from the property boundary. The risk of hitting the building is therefore low. Nevertheless, the appropriateness of including roadside barriers or other safety measures would be considered as part of safe system design considerations during the detailed design stage and again during the pre-construction Road Safety Audit. The conditions proposed by the applicant included these matters.
255. The applicant intends that the rail siding could be used by other industrial or business activities in the immediate area in the future. It will be accessible from the south and east of the foam factory for such external parties, including other industries located within the Ohinewai Industrial Precinct (as now identified in the proposed WRP). In response to questions, the applicant has confirmed that any commercial agreements with other parties would require them to operate under the terms of the relevant resource consents and that the applicant, as consent holder, would be responsible for ensuring the relevant conditions of consent were complied with and compliance with them incorporated into any commercial agreements.<sup>43</sup>
256. The proposed rail level crossing has been based on Waka Kotahi's Traffic Control Devices Manual (Part 9 Level Crossings) which sets out requirements of any approach to a level crossing. It was concluded that while the approach visibility of southbound vehicles looking east and west would comply with the minimum requirements, that would not be the case for northbound vehicles looking to the east, as these sightlines could be obscured by vegetation and the foam factory building. In that regard, a give-way control at the level crossing was not recommended.
257. Instead, BBO recommended an active level crossing with flashing lights and bells. Figures and drawings provided with the application showed the control devices, road signage and road markings recommended for implementation of this crossing. Barrier arms were deemed not to be necessary due to low traffic volumes, but this will be revisited at the time of detailed design. The ITA stated that KiwiRail had confirmed it accepted the concept design of a new level crossing at the proposed location, subject to a Level Crossing Safety Impact Assessment giving a satisfactory assessment of safety protection needs and the provision of a detailed signal design based on the

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<sup>42</sup> BBO Memo, Response to request for information received under Clause 25 of Schedule 6 dated 5 August 2021, Q6

<sup>43</sup> BBO Memo, Response to request for information received under Clause 25 of Schedule 6 dated 5 August 2021, Q2b



proposed road and rail alignment drawings. The Level Crossing Safety Impact Assessment has been completed and added minor design details. All of these matters are addressed in the consent conditions.

258. It is proposed to construct the rail siding at the same time as Lumsden Road is realigned. This work will be subject to KiwiRail and WDC engineering approvals and safety reviews. In response to our questions, the applicant confirmed road stopping will not be needed, stating “The rail siding is located over either KiwiRail land, private property (owned by APL) or in road reserve. Agreements with WDC and KiwiRail are expected to formalise access and maintenance requirements, however there is no need to stop a road.”<sup>44</sup>

### **Earthworks**

259. The ITA set out the volume of earthworks associated with this application and the existing and consented Stage 1A, along with the predicted trip generation for Stage 1B. The Stage 1A consent specified the location of the haul road from Tahuna Road into the site and the entry point to the site for lighter vehicles, along with other specific matters related to access for the earthworks operations.
260. The Stage 1A earthworks consent did not include approval for earthworks for the rail siding. This is included in the current application, as are the earthworks required for stormwater management infrastructure. This Stage 1B application also includes the importation of an additional 210,000m<sup>3</sup> of clean fill material.<sup>45</sup> This is expected to generate approximately 17,500 inbound truck loads, or approximately 35,000 heavy commercial vehicle movements (in and out combined) over the course of the proposed activity, with a daily average of 73 one-way trips and 146 two-way trips. These figures are based on a 24-month construction period, a 6-day working week (7am to 6pm Monday to Saturday) and allows for programming and weather delays.
261. The earthworks programme will also generate lighter traffic movements associated with staff trips, fuel and machinery servicing and site visitors. These would generate an additional 40 movements per day. Overall, the daily traffic generation associated with the Stage 1B earthworks operations is not expected to exceed 190 vehicles per day, with approximately 75% of those movements being heavy commercial vehicles.

### **Pedestrians and cyclists**

262. As the site is in a rural area, cyclists and pedestrians are expected to be low in numbers. All workers accessing the site will be made aware of their potential presence on the roads and this will be covered in site inductions of staff.

### **Parking**

263. A total of 52 car parks, including two accessible car parks and a separate bicycle parking area with provision for 10 bicycles, is proposed. This is significantly less than the requirements of the ODP (237 carparks, based on a floor area calculation). The

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<sup>44</sup> BBO Memo Response to request dated 6 July 2021, Q30

<sup>45</sup> TIA, section 7.2.2

reason for the shortfall is that, according to the applicant, the foam factory will not require more than the proposed 52 parks because the expected staff levels are known, at 50. BBO's opinion was that this lower number of carparks was sufficient to meet parking demand. Under the Decisions Version, the proposal complies with the requirements for on-site parking.

#### **Loading Areas**

264. Four separate loading areas are proposed within the foam factory site. The internal road layout has been designed to meet the spatial needs of a 19.45m semi-trailer. The loading spaces meet the requirements of the ODP and the Decisions Version.

#### **Draft Construction Traffic Management Plan (CTMP)**

265. The draft CTMP identifies its objectives and identified the area of Stage 1B earthworks. It details roles and responsibilities, traffic management, site traffic generation, the cleaning of roads and road maintenance, dealing with cyclists and pedestrians, signage, dust, security, parking and loading/ unloading, driver education, emergency services, complaints and consultation.
266. The applicant's conditions include a requirement for specified safety measures to be included in the draft CTMP. The conditions also include a number of conditions addressing transport associated with the construction works such as access areas for vehicles of differing sizes, the haul road and a limit on the daily number of vehicle movements on it, an automated wheel wash facility, daily monitoring of construction traffic, the use of temporary traffic management plans for works associated with the construction of the proposed construction site accesses and maintenance of the roading network.

#### **Assessment of transportation effects**

267. Table 11 of the ITA addressed the impact of the foam factory operations in traffic terms. It set out the observed baseline traffic numbers in 2019, the additional foam factory traffic, the total of the two and the change in average daily traffic numbers. The biggest change will occur on Lumsden Road, with a 35% increase. The predicted change to the volume of traffic using the Ohinewai interchange ramps is 6-10%.
268. Safety assessments were carried out for Ohinewai Interchange and Lumsden Road. Regarding Ohinewai Interchange, two recommendations were made to address constrained sightlines at the southbound off ramp – trimming vegetation on both sides of the off ramp and relocating the stop line to so that the sightlines would not be obstructed by the rail overbridge parapet on the eastern side of the off ramp and/ or handrail. On the basis of these improvements, traffic effects were considered to be negligible. Regarding Lumsden Road, no improvements were considered necessary, particularly as the traffic volumes would remain low (less than 1000 vpd) even with the increased traffic.
269. The ITA also considered the Lumsden Road realignment associated with the new rail siding. This section of the report addressed the key findings and recommendations of

the safety assessment undertaken by Traffessionals. These were accepted and design drawings updated.

270. The ITA concluded that the additional vehicle traffic associated with the foam factory, the rail siding and the earthworks would not increase the present safety risk on the roads and at intersections and the effects will be no more than minor provided the recommended mitigation measures set out at Section 11 of the ITA were included in the consent conditions. These mitigation measures addressed vehicle access, the Ohinewai Interchange road safety improvements, the rail siding/ level crossing and associated road safety works, Balemi Road and Stage 1B construction traffic. These are included in the consent conditions and the draft CVMP.

#### **Comments received and responses**

271. Iain MacDonald, resident at 58 Lumsden Road, requested that a footpath be installed on Lumsden Road between Tahuna and Balemi Roads during the stages of earthworks to facilitate safe access to those residents using this area and surrounds. Mr MacDonald stated that he and his family could not, at present, undertake their usual recreational activities of walking, biking and running, without a footpath. Mr MacDonald also sought that a speed limit of 50 km/h be imposed on Lumsden Road between Tahuna Road and 52 Lumsden Road, to then change to a speed limit of 30 km/h to an area 500m past Balemi Road.
272. The applicant's response was that heavy vehicles use the haul road accessed from Tahuna Road and only light vehicles use Lumsden Road for construction access. The speed limit on Lumsden Road will reduce due to the realignment of that road and would in turn decrease the speed of traffic passing the existing Lumsden Road properties. Lumsden Road will be upgraded to include an upgraded road carriageway and shared walkway/cycleway as part of the wider development of the applicant's site, those upgrades being required for Stage 3B, due in approximately 2024. The applicant did not consider the requested upgrade was required for the foam factory application given the small number of staff working at the facility.
273. Mr Rolf Stucki asked that, due to the increase in traffic, there be a permanent ban on "motor braking" for trucks in the area, especially near and on the Ohinewai Interchange on and off ramps. The applicant's response was that technical information from Waka Kotahi/ NZTA indicated only a small proportion of trucks operating in New Zealand have engine brakes that generate the loud and distinctive noise Mr Stucki is concerned about. Bans on the use of such engine brakes are set under Bylaws and only on roads with speed limits of 70kph or lower. The applicant considered the ban to be unnecessary given the low number of trucks associated with the foam factory operation and the expected number of trucks using engine brakes. It also noted that heavy vehicles associated with construction use the haul road and do not pass residential properties on Lumsden Road.

274. Lumsden Family Trust made a number of comments on traffic and the rail siding, to which the applicant has responded. At the time these comments and the applicant's response were received, rail siding Option 1 was the only option on the table. We have proceeded on the basis that the same points would also apply to Option 2. We summarise the comments and the applicant's responses below:
- a. There is a sustained flow of traffic on Lumsden Road with a constant flow of heavy vehicles from the sawmill and servicing farms. Surprising that intersection movements counted over such a limited period of time.  
Response: Agree there is substantial heavy traffic on Lumsden Road, HCVs accounting for approximately 16% of the average daily traffic. These figures were based on traffic data collected in 2019. Turning movements at intersections are typically collected over the peak period of the adjacent roading network and that was done here in the morning and afternoon peak periods.
  - b. Tahuna Road is not used as a detour route.  
Response: Tahuna Road is an important east-west regional arterial route.
  - c. Balemi Road serves more than one property.  
Response: Accepted. Of little consequence as daily traffic is still relatively low, at 130 vpd.
  - d. There is a school bus currently operating on Lumsden Road.  
Response: Information received from GoBus indicated that bus stops are only on Tahuna Road.
  - e. Further development on site after commissioning of the foam factory will exceed the 200 vehicle movement threshold for a rural road and 25-35% will be heavy trucks. Relevant to cumulative effects.  
Response: Foam factory only predicted to generate approximately 190 vehicles per day (below the threshold). Future development will require further resource consents and those effects will be assessed at that time. Cumulative traffic effects were assessed in the ITA.
  - f. Oppose realignment of Lumsden Road because land north of Balemi Road will be rezoned for development in the future. Road realignment may result in planners to restrict traffic volumes from such development.  
Response: Lumsden Road has low traffic numbers (600-700 vpd) and has capacity to accommodate any future demand. Any future development is not yet approved. Proposed realignment will result on safety benefits by reducing speeds on Lumsden Road to 35 km/h at the S bend. Otherwise, Lumsden Road speed will also reduce to 60 km/h.
  - g. When land to north of proposed rail crossing and S bend is developed over the next decade, traffic volumes will be significantly greater on Lumsden Road. Any changes to road layout need to take into account future adverse effects.  
Response: See response to point f above.
  - h. The application for private rail access will require land presently held in a private title owned by Lumsden Family Trust. The applicant presented the Lumsden Family Trust with an unconditional sale document "at an early stage" and the Lumsden Family Trust was requested to sign it, but there has been no discussion with the applicant since then. This part of the land in

question could have two dwellings erected on it and has been kept as a suitable future house site for staff.

Response: APL has actively engaged with Lumsden Family Trust since early 2019. That party provided written approval to the project in 2019 which included the foam factory but not the rail siding<sup>46</sup>. Lumsden Family Trust also provided written approval to the initial earthworks application in March/April 2021. Meetings were held in late 2020 and the early part of 2021 about land acquisition. On 2 February 2021, the realignment of Lumsden Road was discussed and Lumsden Family Trust expressed support for the realignment. A draft MoU to formalise land acquisition was sent to the Trust on 13 February 2021, but no progress had been made since then. If the land cannot be acquired, detailed design will be undertaken to avoid the land acquisition.

275. Waka Kotahi was concerned at the lack of mechanism to address damage to the Ohinewai Interchange. It considered the mechanism that currently applies to the use of Tahuna Road for construction works should be extended to include the Ohinewai Interchange given the increased heavy commercial vehicle use during the construction period. It sought a condition requiring this addition. The applicant agreed to this request and included a condition in its 1 July 2021 response to comments.
276. Waka Kotahi also raised a concern about the location of the sign to be placed on the western façade of Building 2. It considered the location of the proposed sign could distract northbound road users on the Waikato Expressway and sought that the sign be positioned on the northern façade of Building 2. It also noted in its comments the lack of information in the application on the proposed sign, stating it had sought information from the applicant on these details.
277. In response, the applicant produced a safety assessment from BBO, which detailed the size, wording and illumination of the sign and considered the effects of the sign on the efficiency and safety of the state highway. The proposed sign will be 17.8m wide and 3.52m high. It will be illuminated with an LCD clock that will display the time in numerical digits. This digital clock will be 5.44m long and 1.15m wide. The numerals will change and the colon will flash. The rest of the sign will be static. The BBO assessment considered the sign details against the rules in the ODP and PDP Decisions Version. While many aspects comply, notable non-compliances are the sign size (ODP only), sign illumination and the movement of the clock. The BBO assessment also considered the visibility of the sign for both northbound and southbound drivers, concluding northbound drivers would only see the sign for a short period of time, the visibility distance being only 30m, that sign being obscured by vegetation of about 8-10m in height and an acoustic wall located on the state highway. In contrast, the southbound drivers would see the sign for about 12 seconds (based on a speed limit of 100kph) in an unobstructed view, being visible from approximately 335m away.

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<sup>46</sup> Given the date, we assume this written approval preceded the fast-track application

278. The BBO assessment concluded that the proposed sign on the western side of Building 2 would not have an adverse influence on the operational efficiency of the state highway traffic and that the main potential effect relates to safety. On safety, the assessment was that while there is non-compliance with standards relating to illuminance (flashing clock symbols) and visibility sight distance for northbound drivers, the transport safety effects are negligible. As noted already, the applicant's 1 July 2021 conditions included a condition confirming the sign must comply with the 10LUX standard at the boundary of the site and that luminance levels adjust to ambient light levels. The 10LUX light level is specified in the ODP and PDP Decisions Version.
279. We asked the applicant to confirm why placement of the sign on the northern side of Building 2 was not acceptable to it, noting the very short distance the sign would be visible to northbound road users on State Highway 1. The applicant responded that the sign was proposed on the western side of Building 2 to maximise the visibility of the sign to all users of State Highway 1.<sup>47</sup>
280. WDC made five comments on traffic matters:
- a. It would prefer that the required sight distances for the realignment of Lumsden Road at the intersection with Balemi Road are fully within legal road reserve as this will negate the need for interaction with private property owner/s in maintaining safe sightline distances for the proposed intersection.
  - b. The application did not comment on the future maintenance of the level crossing facility. WDC expect that a memorandum of understanding will be entered into between the applicant, KiwiRail and WDC confirming that WDC will not be responsible for future maintenance.
  - c. All costs associated with the acquisition of land for road (including to achieve sight distance) road vesting and road stopping will be at the expense of the applicant and will require consultation with WDC's Roading and Property Teams. An appropriate mechanism is required to achieve this, possibly a memorandum of understanding between the applicant and WDC.
  - d. WDC would prefer to have a better understanding now of the areas of road to be vested and stopped and questioned consultation with WEL Networks or Chorus.
  - e. WDC sought conditions be added addressing 5 matters, but did not provide drafts of the conditions.
281. In response to those comments, the applicant stated:
- a. Discussions have been underway with Lumsden Family Trust for some time and those discussions are expected to continue until agreement can be reached and may include refinement of the detailed design of the works.
  - b. Preliminary discussions have been had with KiwiRail regarding operation and maintenance of the rail siding and its connection to the NIMT. The applicant

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<sup>47</sup> Applicant response to request for further information dated 27 July 2021

agreed that a memorandum of understanding is likely to be a suitable tool to address roles and responsibilities in relation to the rail siding, level crossing and public roads. This could be addressed outside the resource consent process.

- c. There are options available to the applicant and WDC with respect to the legalities of formalising the road reserve. Road stopping is not likely to be required. It is premature to address these matters ahead of the detailed design process. WDC will continue to be engaged throughout the process.

282. The applicant produced a fresh set of conditions dated 1 July 2021 which picked up on the points made by WDC in its comments.

#### **Alternative rail siding**

283. As already noted, in our request for information dated 5 July 2021 and our further request for a report dated 9 July 2021, we expressed some concern that the land required for the rail siding and road realignment had still not been resolved. We asked the applicant for more information on the alternative to this land acquisition, and a number of associated specific questions should the applicant have to provide the land for the entire rail siding, how any lack of rail siding might impact on heavy traffic movements in the long term and associated impacts on the roading network. The applicant responded on 27 July 2021 with proposed Option 2, and answered further questions on the details of that proposal in its responses dated 5 and 10 August 2021. It noted that while there was a rail siding option available, without the rail siding the heavy truck movements associated with the proposal would be low at 25 deliveries expected per day (a total of 50 movements). The additional truck movements that would eventuate from no rail siding were, in the applicant's opinion, negligible.

#### **Conditions**

284. The applicant proposed extensive traffic conditions to address traffic effects, some of which have been added in response to comments and our requests for further information and a report.

285. In addressing road safety, the applicant's conditions propose the following:

- There will be a speed limit reduction on Lumsden Road from 100 km/h to 60 km/h between Tahuna Road and 280m north of Balemi Road.
- A 60 km/h gated speed threshold treatment will be installed on the southbound approach to the "S" bend on Lumsden Road.
- The road carriageway will be narrowed at the threshold pinch point and there will be 20m long solid built outs on the northern approach to the threshold pinch point.
- Kerb and channel is to be installed on the eastern side of Lumsden Road from the Balemi Road intersection and the northern boundary of 58 Lumsden Road.
- Roadside barriers, chevron boards and speed advisory signs will be installed on the "S" bend curves.
- Street lighting will be installed on the eastern side of Lumsden Road.

- The T intersection of Lumsden Road and Balemi Road will be realigned and include street lighting.
  - Balemi Road is to be upgraded, accounting for:
    - Widening and seal to a minimum 6 metre wide trafficable carriageway to the eastern most access to the site, including kerb and channel drainage along the westbound carriageway edge;
    - Reduction of the speed limit from 100 km/h to 60 km/h over the full length of the road in line with the identified safe and appropriate speed for the road.
286. Both rail siding options will require detailed design plans and drawings for the rail siding, level crossing and Lumsden Road realignment to be provided to WDC and KiwiRail's Senior Safety Engineer for written approval prior to any construction work commencing on the rail siding or the road realignment. Designs are to be in general accordance with a number of design plans<sup>48</sup> and include geometric details, drainage design, level crossing and pavement design details and safety features to meet KiwiRail and WDC's infrastructure design standards. The conditions outline the level crossing details for each option. To be clear, only one rail siding option may be implemented.
287. We received comments from Waka Kotahi/ NZ Transport Agency, Lumsden Family Trust and WDC on draft transportation conditions.
288. Waka Kotahi/ NZ Transport Agency largely supported the draft land use conditions but sought that the proposed advertising signage be located on the northern side of Building 2 rather than the western side. In light of the BBO assessment of the safety of road users, we do not consider that to be necessary. The time period in which northbound users of the Waikato Expressway would see the signage is very small and we do not accept this would raise safety issues. The conditions have therefore not been amended.
289. Lumsden Family Trust sought that an additional noise monitoring condition be inserted to address any adverse effects from the use of the rail siding (Option 1 or 2). We do not consider that to be necessary. We have added a condition requiring the consent holder to enter into an agreement with KiwiRail regarding the lubrication of the rail siding track. Otherwise, any adverse noise effects can be addressed through the general review condition.

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<sup>48</sup> Further information provided by the applicant on 27 July 2021 included the following plans - Gaze Commercial Drawing ARC 120 Option 1 Rail Kiwi Rail Designation Operative District Plan; Gaze Commercial ARC 121 Option Rail Kiwi Rail Designation Proposed District Plan; Gaze Commercial ARC 125 Option 2 Rail Kiwi Rail Designation Operative District Plan; Gaze Commercial ARC 126 Option 2 Rail Kiwi Rail J11 Designation Proposed District Plan. Further plans provided by the applicant on 10 August 2021 included Gaze Commercial ARCRO 119 Site Plan Overall Fast Track Development Rail Option 2. All plans are included in the tables of plans attached to the conditions in Appendix 4



290. We accept WDC's suggested further advisory note regarding the need for the consent holder to provide evidence that it has entered into a binding agreement for the acquisition of the necessary land for rail or a road to enable rail.
291. We do not accept the suggestion of Ohinewai Area Committee that noise monitoring should include the use of cell phones. Noise monitoring is undertaken using specialist equipment and this is currently set up on the site for the Stage 1A work. Residents concerned about noise levels should take those concerns to the WDC monitoring team.
292. We do not consider the conditions require any further amendment in response to concerns about mud tracking on roads and wheel washing. For the applicant, BBO has offered to raise these concerns with the applicant and the site manager. Nor do we consider the conditions should include a requirement for the applicant to undertake road sweeping or maintenance of the overbridge. These are the responsibility of WDC and Waka Kotahi/ NZ Transport Agency respectively. As noted by the applicant, the conditions already provide for the consent holder to undertake a pre-works survey of the interchange pavements and to undertake remedial work as required.
293. We have not included a condition on engine braking as this is outside the consent holder's control and would be unlawful.
294. As regards weed control at the Ohinewai Interchange, we accept the applicant's comment that this will be part of its discussions with Waka Kotahi. In any event, weeds are vegetation. There is no need for any additional condition addressing this.
295. We do not consider the conditions require any amendment in response to the point raised by Richard and Shanette Marsh about the length of trucks and necessary tracking curves. This was assessed in the ITA.

#### **Conditions imposed**

296. We are satisfied that the traffic effects will be satisfactorily addressed through the proposed mitigation and conditions of consent.

#### **Ecology**

##### **Terrestrial ecology**

297. Vegetation within the proposed project area is dominated by exotic species. There are some mature exotic trees, the remainder of the site is dominated by rank pasture grass and pasture weeds. No rare or threatened plant species or threatened or at-risk birds were identified in the ecological assessment.<sup>49</sup> An abundance of insect species was noted during the site walkover. There was minimal suitable habitat for ground-dwelling lizards and no threatened or at-risk lizards were observed on site. Potential bat roosting habitat was noted within several trees on site and these trees were noted

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<sup>49</sup> Ecology New Zealand Limited, 31 March 2021

as meeting the criteria to be considered potential bat roosting trees. The assessment located potential long-tailed bat habitat features including roosting, foraging and commuting habitat.

### **Aquatic ecology**

298. Four artificial drains were identified within the relevant project footprint. These were straight channels with little habitat and with pasture vegetation growing throughout the channel. At the time of assessment, the drains were either completely dry or had little water in them. Previous freshwater fauna surveys in the adjacent Stage 1 footprint found only shortfin eels. Black mudfish were not found in the earlier Stage 1 assessment and in the case of the Stage 2 footprint, the experts expressed the view that black mudfish presence or abundance within this stage of works would be low during periods of sufficient water due to the lack of high-quality cover, habitat structure and water clarity in the drains.

### **Assessment of ecological effects**

299. Terrestrial and aquatic ecological values were assessed as being low or moderate. Proposed impacts on terrestrial values were considered minimal, including the clearance of predominantly exotic vegetation and pasture grasses and the potential loss of habitat for, or injury to, native birds and bats, although the assessment did note the potential effects on the bats pre-mitigation was high. Impacts on aquatic values were assessed as predominantly arising from injury or death of native fish species during realignment or infilling of farm drains. Potential indirect impacts on aquatic values included sedimentation or hydrocarbon pollution of watercourses and waterbodies.

### **Proposed mitigation**

300. The ecological assessment made a number of recommendations for mitigation:
- a. The preparation of a site-specific Ecological Management Plan (EMP) to mitigate and manage foreseeable ecological impacts associated with the removal of protected vegetation and to enhance retained areas of indigenous biodiversity. This EMP should include:
    - i. Indigenous Fish Management Plan, which should include consideration of potential species within the on-site waterways and methodologies for the salvage, temporary storage and relocation of any fish caught and released into appropriate habitat within the same catchment. The same Plan should include specific reference to black mudfish in case they are found during works.
    - ii. Bat Management Plan – Long tailed bats are listed as a Threatened-Nationally Critical species whereby the potential death of a colony due to the felling of one of the roost trees would be critical for the population. If bats are found within trees to be removed for the project, the applicant is to plant fast growing exotics to mitigate against permanent loss. Alternatively, the applicant could instal 9 roosting boxes.

The use of downward facing lighting on site is also important. In that regard, we asked the applicant to assess the effect of lighting of the

digital sign on bats. The response received on 5 August 2021 indicated that the proposed digital signage would face the Waikato Expressway to the west of the site which is already subject to ongoing nightly influence from traffic movements, meaning the signage would not introduce new lighting into previously unlit areas in this environment. The report noted that any form of lighting would exert some level of negative effects that are likely to deter and/ or influence bat behaviours, but the level of bat activity already measured on site did not show that bat commuting or foraging would be significantly impacted by the level and directionality of the lighting proposed.

- iii. Ecological Restoration Plan – to be prepared for that part of the site that is to be subjected to restoration planting for stormwater management or amenity purposes, including habitat creation and enhancement. Details of restoration were included within the Landscape Concept Plan submitted with the application. It is proposed to undertake 1 ha of restoration plantings associated with the stormwater treatment and conveyance devices. This planting is intended to assist in the reestablishment and maintenance of indigenous vegetation communities on the site, to provide habitat for indigenous fauna species and to provide functional connectivity between the site and Lake Rotokawau reserve.
- iv. Predator Control Plan – a pest animal/ predator control plan to outline objectives and performance measures for predator control as recommended within a report prepared in July 2020 and as subject to the joint witness statement prepared by ecological experts in the rezoning process.
  - b. Bird management – vegetation clearance is to avoid the peak bird breeding season. Outside of that, trees will be checked for nests. If birds are found, they will be left alone until the chicks have fledged. Nest inspections will be carried out during bat management protocols.
  - c. Sediment and erosion – to mitigate the risk of sediment entering adjacent drains and contaminating Lake Waikare and Rotokawau catchments, a sediment and control plan will be prepared, to be approved by Waikato Regional Council prior to works commencing.

301. We note that a Draft Ecological Rehabilitation and Management Plan (ERMP) dated 21 June 2021 was provided with the applicant’s response to the Panel on the implications of the Ohinewai rezoning decision. This is because the rezoning decision requires a draft Plan to support applications relating to earthworks activities. The conditions also require that a finalised ERMP be submitted prior to construction commencing.

#### **Comments received and responses**

302. WRC commented that information should be provided to confirm how the objectives of the Waikato River Vision and Strategy will be met. These measures need to be “up and above” those measures which are directly required to manage the adverse environmental effects of the development activities and should clearly confirm a

contribution towards the enhancement and restoration of the Waikato River catchment environment. The Council also sought that consent conditions should ensure that agreed environmental enhancement requirements are implemented and sustained for the project.

303. WRC also noted that the applicant should provide details of the proposed Lake Rotokawau stormwater receiving environment (such as existing water quality/ hydrology/ ecology) to support the stormwater management/ discharge proposal to ensure an effective assessment of the potential stormwater discharge effects.
304. We have considered the applicant's response to these points elsewhere in our decision, under the heading Construction Works.

#### **Conditions**

305. The applicant's conditions included a requirement for an Ecological Rehabilitation and Management Plan to be provided to WDC at least five working days prior to the commencement of activities authorised by the land use consent. This is to include implementing bat management or vegetation removal protocols. This document is to be prepared with involvement from the TWGG. A draft of this document was provided with the applicant's information on 22 June 2021.
306. Other conditions require the preparation of a Fish Management Plan and a Bat Management Plan.
307. In its comments on the draft conditions, WRC sought a condition requiring the implementation of the proposed native planting. We accept that is appropriate and have added a condition specifying this.

#### **Conditions imposed**

308. We are satisfied that the conditions address ecological and planting effects.

#### **Noise and vibration**

##### **Proposed works and basis of assessment / Construction Noise and Management Plan (CNVMP)**

309. The noise assessment addressed the operational noise emissions from the rail siding, the foam factory, and construction of the building and associated infrastructure and the Stage 1B earthworks, and was assessed against the Rural Zone provisions of the Operative District Plan.<sup>50</sup> The assessment was premised on:
- a. The foam factory operating from 4am to 4pm Monday to Friday with occasional overtime in the weekday afternoons and Saturday mornings.
  - b. Goods movements by vehicle occurring between 7am and 7pm;
  - c. Goods movements by rail occurring during daylight hours (no hours specified);

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<sup>50</sup> Marshall Day report dated 1 April 2021. In response to Minute 2, the applicant confirmed that the project would also comply with the relevant new noise standards included in the Decisions Version.

- d. Staff movements occurring between 4am and 6pm.
- e. Regarding the earthworks, digging to 3m depth, replacing 300mm layers, using a roller to compact each layer, a duration of 6 months for the works and no dynamic compaction works being proposed.

310. The closest receivers are at 52, 58, 63, 65, 67, 71, 75-79 and 81-85 Lumsden Road. Other sensitive receivers to the north and east are located over 400m from the site. We note that the CNVMP provided with this application (and which has been applied to the Stage 1 earthworks) recorded some of these parties providing written approval to the Stage 1 earthworks, but there was no record of written approvals having been provided to this foam factory and rail siding application.

311. The Marshall Day report noted the elevated noise levels in the existing ambient noise environment due to the presence of State Highway 1 and the NIMT and truck movements on Lumsden Road associated with other commercial operations to the north of the applicant's site. The ambient noise levels were noted as being significantly above the relevant Operative and Proposed District Plan noise limits. In response to a question from the Panel, Marshall Day confirmed that there would be no "noise vacuum" (as we put it) between the applicant's development and the acoustic fence alongside State Highway 1 as the ambient noise levels were very high for these residents and would almost completely mask the factory noise unless there was a large gap in the traffic. The factory noise levels are relatively low with a daytime level of 46 dB  $L_{A10}$ . Residents are likely to notice occasional cars, trucks and trains entering and leaving the site.

#### **Performance standards**

312. Noise is to be measured and assessed against NZS 6803:1999 "Acoustics – Construction Noise" and must comply with certain standards at any occupied building. Vibration is to be measured and assessed in accordance with German Standard DIN 4150-3: 1999 "Structural Vibration – Part 3: Effects of Vibration on Structures". In terms of amenity, vibration is to comply with 2mm/s PPV at any occupied dwelling unless additional management measures are considered.

#### **Predicted noise and vibration levels**

313. The highest predicted noise levels from the foam factory and rail siding operations are 46 dB  $L_{A10}$  and 40 dB  $L_{A10}$  during the day and night-time periods respectively. These levels comply with the noise limits.

314. All construction works were predicted to comply with the noise and vibration standards. Vibration from the proposed impact rolling would be noticeable at the closest receivers but at an acceptable level of less than 2mm/s PPV.

315. The noise assessment concluded that the potential noise and vibration effects would be less than minor.

### **Mitigation and management**

316. Mitigation and management measures set out in the draft CNVMP provided with the application include:
- a. Training prior to the start of construction with particular attention being given to the construction noise and vibration limits, those activities with the potential to generate noise/ vibration, noise/ vibration mitigation and management procedures, and sensitivity of receivers.
  - b. Equipment selection to keep noise and vibration levels as low as practicable;
  - c. General measures to avoid complaints being made – these might include avoiding unnecessary noise on site, avoiding high engine revolutions, mitigating track squeal from tracked equipment, minimising construction direction near sensitive receivers, locating stationary equipment such as generators away from sensitive receivers, ensuring complete advanced communication prior to ground works commencing, and undertaking monitoring to verify the predictions and suitability of Best Practicable Option measures.
317. The draft CNVMP provides that nearby receivers will be informed of timings and duration of close proximity works. Noise monitoring is also to be undertaken if any high noise works are undertaken within 50m of a receiver. This includes equipment such as a bulldozer, compactor and articulated dump truck.

### **Monitoring**

318. The draft CNVMP sets out in detail the proposed monitoring for noise and vibration levels and steps to be taken if non-compliance occurs.

### **Comments received and responses**

319. WDC sought that consent conditions include a restriction on the hours of operation of the foam factory.
320. David Whyte, resident at 38 Ohinewai North Road, supported the project but sought regulation around the hours of activity at the site, including the hours of construction and the operation of the foam factory. He noted in his comments the “somewhat quite [sic] rural environment” in which he lives but at the same time acknowledged the noise from SH1 and the NIMT, depending on wind direction.
321. The applicant agreed to a condition imposing hours of operation.
322. Ohinewai Area Committee sought that a robust process was in place to deal with concerns that may arise for neighbours through the building and operation of the facility, including construction noise and the noise from trains using the rail siding slowing down and speeding up rather than travelling at a consistent speed.<sup>51</sup> The

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<sup>51</sup> It was suggested that a regular meeting occur between a senior manager of the applicant and the Ohinewai Area Committee.

applicant responded by suggesting it meet with the Ohinewai Area Committee on at least an annual basis.

### **Noise and mitigation - rail siding Option 2**

323. In response to our request for a report on the alternative rail siding and our questions about the noise impact of the tight radius of the rail siding and its likelihood of causing squealing on train tracks, the applicant provided a further noise assessment from Marshall Day dated 27 July 2021 and also noted that the design of the rail siding had been driven by KiwiRail requirements. It was accepted that the radius did have the potential to cause squealing but that this could be addressed by a number of factors including regular track maintenance and/ or specific lubrication of the tracks at the location.
324. Marshall Day's assessment was that predicted noise levels from squealing at the façade of 85 Lumsden Road (the nearest residential dwelling) were comparable to noise from existing train movements, at 70 dB  $L_{Aeq}$  (15min). This could be reduced by 7 decibels through a noise barrier or bund alongside the siding, although some squealing would still be noticeable. The applicant indicated it would accept consent conditions imposing the requirement for a noise barrier and a condition requiring the relevant operation and maintenance agreement with KiwiRail to include a specific requirement for automatic lubrication of the siding. As noted in our discussion of landscape effects, a plan was provided showing the proposed acoustic fence and construction detail. The fence would be 2m in height and does not require resource consent under the proposed WDP Decisions Version. The applicant also noted the extensive existing vegetation in the immediate location of the fence at 85 Lumsden Road. It proposed a planting strip in front of the fence, shown on the mitigation planting plan P10 dated 9 August 2021.

### **Conditions**

325. The conditions provided by the applicant set out the standards to be complied with for both construction noise and vibration and require a CNVMP to be submitted to WDC for approval at least 5 working days prior to the commencement of construction. The conditions set out the objectives of the CNVMP and identify matters to be included in managing and mitigating noise, as discussed above. The conditions also require that WDC may request noise measurements to be carried out in response to any noise related complaint(s). We have already mentioned the inclusion of an acoustic fence and planting near 85 Lumsden Road and the restricted hours of operation of the foam factory.
326. The conditions include limits on the hours of operation for the foam factory operations, the manufacture of foam and the manufacture of underlay. We have also included a condition limiting the hours of operation of the rail siding in order to further protect the amenity of residents. Conditions proposed by the applicant limiting the hours for the manufacturing of foam and the hours for the manufacture of underlay now sit within the same section of the conditions as the hours limiting the overall foam factory operations. We do not accept the concerns raised by Ohinewai

Area Committee and R and SJ Marsh about the hours of operation. We accept the applicant's explanation for the foam manufacturing occurring over three hours and its point that not all 50 staff on site will be arriving at work at the same time. We consider the limitation on the hours of operation of the rail siding are enforceable. This is the applicant's responsibility and it will need to work with KiwiRail on this to ensure compliance.

327. The applicant offered a condition to address meetings with the Ohinewai Area Committee. We have amended this to include the presence of tangata whenua, WRC and WDC at such meetings and also to ensure that the meetings are more than simply an update from the applicant. We are of the view that the meetings should be a two-way discussion, enabling attendees to raise matters of concern to them and the applicant responding to those points. We do not accept the meeting should be held more frequently, as suggested by some parties.
328. The conditions include the requirement for a noise barrier.
329. While the draft conditions provided to the parties did not include the requirement for any agreement with KiwiRail to lubricate the rail siding, we consider this would be appropriate and have included it. This will in part address the issue raised about noise from the rail siding. Otherwise, noise effects arising from the rail siding can be addressed through the land use review condition should that prove to be necessary.
330. We accept WDC's suggested additional Advice Note that if the haul road is proposed to be moved any closer to any properties with occupied dwellings, it must be demonstrated that noise standards are still able to be complied with and that there is no impact on residents' amenity as a result of this change. The haul road condition is the same as included in the bulk earthworks consent granted by WDC (LUC0200/21) except the advisory note was also included as part of the condition LUC0200/21.

#### **Conditions imposed**

331. We are satisfied that the conditions address noise and vibration effects.

#### **Contamination**

332. The application included a contamination report prepared by Geosciences Limited dated 14 August 2019. A Preliminary Site Investigation (PSI) was undertaken across the whole property and a Detailed Site Investigation (DSI) was undertaken across the Stage 1A earthworks footprint. We were not provided with a DSI for the Stage 1B earthworks footprint. In response to our question on this topic, the applicant advised that the PSI completed did not identify any areas of interest in relation to the Stage 1B earthworks area. While a DSI was undertaken for the Stage 1A area, no such area of interest applied to Stage 1B.

#### **Standards and regulations**

333. The relevant standards are:



- a. The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES) 2012;
- b. Waikato Regional Plan (WRP), Chapter 5, Section 3;
- c. Operative Waikato District Plan, Rule 25.30;
- d. Proposed Waikato Regional Plan, Policy 10.2

334. Under the NES, land is considered to be actually or potentially contaminated if an activity or industry on the MfE Hazardous Activities and Industries List (HAIL) has been, is, or is more likely than not to have been undertaken on the land. A subdivision or development on HAIL land requires a DSI to be undertaken to determine if there is any risk to human health resulting from former activities.

335. The WRP regulates discharges from remediation of contaminated land, predicated on receipt of a DSI and a site Remedial Action Plan. This has been received and assessed.

336. Rule 25.30 of the ODP Contaminated land – remediation, defers to the NES with regard to activity status.

337. The proposed WDP Contaminated land objective and policy (10.2) similarly mirrors the NES. As decisions on relevant submissions regarding any rules concerning contaminated land have yet to be made under the proposed WDP, those proposed rules have no legal effect.

#### **Change in land use, subdivision and development**

338. The site will change from primary production to an industrial land use and will be developed for the foam factory and rail siding.

#### **Investigations and analysis**

339. As the report focused on the Stage 1A works, and that stage of work has already been consented, there is no need for us to comment any further on that. We simply note that some site samples within the Stage 1A area returned lead concentrations above expected background levels, and there were two samples showing elevated levels of cadmium. The assessment concluded that the development would meet the requirements of Regulation 9 of the NES and was a permitted activity under Rule 5.3.4.6 of the Waikato Regional Plan, subject to the provision and certification of a remediation plan.

#### **Comments received and responses**

340. WDC noted the PSI and DSI work undertaken and did not consider anything further was required under this application. This was noted by the applicant in its response to our questions.

#### **Conditions**

341. No conditions addressing contamination are required.

## ***Hazardous substances***

### **Proposed activities and potential substances**

342. The on-site activities proposed that will include a range of hazardous substances requiring storage and use are identified, described and discussed in Tonkin + Taylor's Hazardous Substances Technical Assessment, dated 3 July 2020<sup>52</sup> (the T+T Report), and include the following:
- Polyurethane foam plant;
  - Bed manufacture;
  - Underlay manufacture;
  - Bed spring manufacture and annealing;
  - Polystyrene bead manufacture (for use in bean bags);
  - Fibre-line;
  - Pillow manufacture; and
  - Quilting manufacture.
343. The particular substances used in each activity are identified as follows.
344. The proposed polyurethane foam plant at the Lumsden Road site intends to use the following hazardous substances:
- Toluene diisocyanate (TDI);
  - Diphenyl methane diisocyanate (MDI);
  - Polyols;
  - Catalysts – both amine catalysts and tin catalysts;
  - Anti-microbial agents;
  - Pigments;
  - Liquid carbon dioxide as blowing agent; and
  - Fire retardants
345. There are two major reactions:
- Polyol and TDI/MDI polymerize to form polyurethane; and
  - TDI/MDI and water react to produce carbon dioxide gas and begin the initial formation of the cell structure of the final product.
346. Bed manufacture involves gluing and stitching together the different components of the bed including the fabric outer, the springs, foam frame, the underlay and quilting layer. The manufacture is undertaken using an adhesive as well as stitching together the different layers. The main adhesives used at the site will be a hot-melt adhesive based on water-based adhesives.
347. The underlay process involves mixing small pieces of foam offcuts together with a small quantity of a solution made up of polyol and TDI (approximately 2% TDI) and

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<sup>52</sup> Appendix 16 of the Application documents.

pressing the mixture into a mould. The mixture in mould is then heated with steam which causes the TDI to react with the polyol and steam to set the material in a bound form.

348. No hazardous substances are used within the following manufacturing processes undertaken at the site:

- Bed spring manufacture and annealing;
- Polystyrene bead manufacture (bean bags);
- Fibre-line;
- Pillow manufacture; and
- Quilting manufacture.

349. The proposed fire system will utilise diesel powered fire pumps. This diesel will be stored within a 1,500 litre tank with secondary containment within a 240/240/240 fire rated room. Refuelling will be undertaken by tanker when required.

350. The site will utilise a range of oils, greases and solvents for normal maintenance activities which are common for most manufacturing sites. An evaluation of these substances was not undertaken as the volumes stored will be low (20L and below), are common to normal maintenance works, and no specific hazards associated with the proposed plant are likely.

351. In addition to the normal maintenance oils and greases, two chemicals will be used that are specific to the proposed polyurethane foam plant. This includes the use of Dioctyl Phthalate (DOP) and N Methyl Pyrrolidone (NMP). DOP is used to clean out any process lines used for TDI due to its non-reactivity with TDI. NMP is used to clean out the filters on the carbon dioxide line.

#### **Surface water drainage**

352. To prevent the accidental discharge of contaminants to the stormwater management system, the site drainage will be designed with a switch valve at the hazardous substance delivery and unloading area. When hazardous substances are unloaded in this area, the valve will be positioned such that it drains via a sump to the bund internal to the hazardous substances storeroom. This will ensure any spills during unloading of hazardous and environmentally hazardous substances can be contained for clean-up without contaminating stormwater.

353. Additionally, there will be stormwater shut off valves at the site's main outlets that can be closed in the event of a spill in the wider yard or a fire.

354. All proposed storage and use of hazardous substances will occur in designated areas within the buildings onsite.

### **Control and management of hazardous substances**

355. The hazardous substances, volumes and hazard classifications are summarised in Table 5.1; a summary of the Hazardous Substances and New Organisms Act 1996 requirements in Table 6.1; separation distance requirements for the above ground tanks for TDI, MDI and diesel under the Health and Safety at Work - Hazardous Substances regulations in Table 6.2; and the lower and upper tier evaluation requirements of the Health and Safety at Work (Major Hazard Facilities) regulations in Tables 7.1-7.4 of the T+T report. Those Tables are not replicated in this decision report but the reader is referred to them for the detail. From the point of view of on-site management controls, those matters are effectively regulated by the Ministry of Business, Innovation, and Employment and WorkSafe NZ – as underlined by Objective OHI-HR-03 of the Ohinewai Zone (to avoid unnecessary duplication of regulation) our jurisdiction relates to off-site effects and attendant risks.
356. Furthermore, we note that the volume / quantity thresholds for hazardous substances that were included in the Operative District Plan have been removed in the Decisions Version of the Ohinewai Zone – which simply makes the factory a Major Hazard Facility (polymer foam) and a discretionary activity in the industrial precinct requiring, in particular, a risk assessment (which is discussed below).

### **Assessment of effects**

357. The matter of hazardous substance effects and risk is discussed below.

### **Comments received and responses**

358. David Whyte submitted his concern over the potential release of volatile gases in view of a lung injury that he has. While he appears to accept the assurances about the systems and procedures to be adopted he sought some level of future proofing for inspection and complaints into the future.
359. We note that there are detailed duties, obligations and procedures under the HSWA and its regulations for inspection and reporting, as well monitoring and reporting requirements in the air discharge permit granted by WRC (which has a 20 year expiry term and can then be reassessed and updated assuming a further application is then made). We are therefore satisfied that the relief sought by Mr Whyte is in hand.
360. The Ohinewai Area Community also sought fail safe systems for the handling and storage of hazardous substances and the management of emissions.
361. The above response to Mr Whyte's submission apply. Furthermore, we note the careful design of the materials reception, storage and handling train – which should reduce the risk of off-site adverse effects from these substances to an as low as reasonably practicable alert standard.

362. The WDC commented that the information previously sought by its hazardous substance expert appeared not to be fully addressed and might require further consideration.
363. We sought a response from APL on that concern and were advised<sup>53</sup> that those matters had been responded to through the s92 RMA request made and, as no further correspondence on those matters was received, had concluded the matters satisfied. That subsequent material was included in the present application documentation.

#### **Conditions**

364. The only direct hazardous substance management conditions imposed relate to storage volumes and rates of usage, as all other matters are either controlled by other agencies / jurisdictions or, in the case of air discharges, have already been consented by WRC (AUTH142166.02.01). Potential hazardous substance contamination of waterways is to be managed by the requirement for and implementation of a detailed stormwater emergency management plan.

#### **Conditions imposed**

365. We are satisfied that the conditions address hazardous substances insofar as the FTCA / RMA require for the present application.

#### **Qualitative Risk Assessment**

##### **Description of manufacturing processes**

366. The Qualitative Risk Assessment (QRA) was undertaken as reported in Jacobs: *Ohinewai Foam Factory Hazardous Substances Qualitative Assessment*, Rev 5 dated 26 March 2021 (Technical Appendix 14 to the application). The QRA was based on the following activity understanding. The following is a summary (only) of the processes taken from that report.
367. The construction of the overall factory, including bed manufacturing, is being staged and therefore not all processes will be undertaken in the initial stages of the development. Stages 1 and 2 of the factory will include the foam manufacturing and underlay processes. Bed manufacturing will occur in later stages of the factory development and those operations will be subject to separate approvals and assessments.
368. Under Option 1, a rail siding from the North Island Main Trunk rail line will be installed by APL to the north of the foam manufacturing plant (Building 2) which will take goods to and from the site – under Option 2 this spur line comes from the NIMT south of Building 2. The rail siding (but not all of the spur line – which crosses the NIMT designation and the road reserve) will be within APL's site boundary under both options. There will be two train movements per day (one train in, one train out). All

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<sup>53</sup> BBO, Section 8 Waikato District Council, Response to Comments Received, 1 July 2021

hazardous substances associated with the foam manufacturing will be transported by road to the site.

369. **Base, joinery and assembly shop:** The manufacture of wooden bedding components starts with lengths of timber arriving on site to the completed bed base unit. The only process chemicals used in this area is a water-based adhesive. Dust discharges from the joinery shop are collected via a pulse jet bag house filter dust collection unit designed to achieve an emission level <15 mg/m<sup>3</sup> and with a collection efficiency of 99.9%. The unit will be fitted with pressure gauges to measure any change of pressure across the bag house unit which is an indication of a bag failure. The pressure gauges will be alarmed.
370. **Foam Underlay:** The base raw material for the foam underlay process includes foam off-cuts that are collected from various processes throughout the bed manufacturing operation with the majority being purchased offshore and delivered on site in bale form in 40' containers. The foam off-cuts are fed into a bale breaker and then chipped and sorted. The chipped and sorted foam are metered and fed into a ribbon blender. A polyurethane premix containing TDI, manufactured on site, is metered into the hopper and the mixture rotated to ensure the ingredients are thoroughly blended. This blend is metered into a cylindrical mould, compressed and steam cured. The formed cylindrical foam block is then peeled, and a polyethylene film thermally laminated to the foam sheet. This laminated sheet is cut to length, rolled and packed as foam carpet underlay ready for dispatch.
371. Steam is produced by a 700 kW gas fired boiler. The manufacture of foam underlay uses approximately 14 kg/hr of TDI for 10 hours of operation per day. At most, the maximum use of TDI will be 16.5kg/hr.
372. The raw materials for the underlay plant are stored in the Hazardous Substances Store. The Binder (premix of polyol and TDI) will be mixed in the Hazardous Substances Store and transported daily by forklift in special containers, or as required, to fill the Binder process vessel which is a 1680 kg bulk tank. In addition to the Binder process vessel, processing oil will be stored in a 600 kg bulk tank in a bunded area at the Foam Underlay Plant. This tank will be refilled using drummed stock which is stored in the Hazardous Substances Store and is transported by forklift from the store to the Foam Underlay Plant.
373. **Spring manufacture:** Wire for the manufacture of bedsprings (mattresses and bases) is received in coil form. The wire is fed through five spring machines, which form the wire into the various shapes and lengths required. The forming process requires several stages of heating in both electric and gas fired ovens. No process chemicals are used in this area.

374. There are three types of spring assemblies manufactured on site but no process chemicals are used or stored in these areas.
375. **Foam Manufacture:** The manufacture of polyurethane foam involves mixing together an isocyanate with a polyol, a catalyst and a blowing agent to expand the foam. Other chemicals are also added to provide colour, fire resistant properties and anti-microbial properties.
376. The foam manufacturing plant will be housed in a separate specially designed building at the proposed Ohinewai site. This means that the building is isolated from the rest of the manufacturing facility and any TDI/MDI vapours released by the foam manufacturing plant will not be able to travel through the whole of the manufacturing facility, which is one of the hazards with the current Otahuhu manufacturing site.
377. With respect to delivery:
- Polyol will be delivered to the site in 20,000 litre containers and pumped into polyol holding tanks. These tanks are located inside the bunded Hazardous Substances Store.
  - TDI/MDI will be delivered in 200 litre drums and/or in 20,000 litre ISO containers and be pumped under vacuum into storage tanks located inside the TDI/MDI Store, which is a separate sealed storage area in the Hazardous Substances Store.
378. Up to 90 tonnes in total of TDI (50,000 kg in bulk tanks and 40,000 kg in drums) and 46 tonnes in total of MDI (30,000 kg in bulk tanks and 16,000 in drums) will be stored on site. For stage 1 of the development TDI will be stored in one bulk tank (25,000 kg) and 40,000 kg in drums.
379. The TDI and MDI storage tanks within the TDI/MDI Store will be equipped with two high level alarms in series (a high alarm and a 'high-high' alarm). The air moving in or out of the tank is dried via a desiccant drier and expelled air passes through a filter to remove TDI/MDI vapour.
380. All other minor liquids (e.g. silicon, amine catalyst, tin catalyst) are delivered in various drum sizes and stored in bunded areas in the factory or the Hazardous Substances Store.
381. All liquids are metered via high pressure pumps to the mixing head. Delivered volumes are computer controlled and any flow outside the metering volumes will bring up an alarm and if necessary, automatically shut down the manufacturing process.

382. Apart from some lubricants, no other chemicals are use in the foam conversion, quilting and sewing, expanded polystyrene beads manufacture, or polyester fibre filled pillow manufacture areas.

**Hazardous substances – construction, operation, site controls**

383. The design for the proposed facility incorporates a number of features to prevent the release of hazardous substances to the environment. They include:

- A dedicated Hazardous Substances Store where the majority of hazardous substances (including TDI/MDI) are stored, which is bunded and separated from the rest of the factory;
- Bulk TDI/MDI stored in tanks within the Hazardous Substances Store, located in a separate room which is sealed, and the vapour discharges are ventilated via the carbon filter in the event of a spill or tank failure;
- Independent fire sprinklers zones which cover the whole facility, now including the TDI/MDI Store<sup>54</sup> (since further design has identified that inundation with water as early as possible is the best response); and
- A fire water storage pond (2,300 m<sup>3</sup>) at the eastern end of the site to contain firewater and to prevent accidental discharge into the adjacent drain.

384. All hazardous substances at the site will be stored in their respective buildings in appropriately designed storage areas, which will provide spill containment.

385. In addition to the above engineering controls a series of Standard Operating Procedures have been developed for the handling of hazardous substances, tanker transfers and emergency shutdowns of the foam blowing plant, and for dealing with spillages.

386. The proposed bed and foam manufacturing facility will be constructed of non-combustible materials. Previously it had been intended that the only area not covered by the fire sprinkler system was the TDI bulk storage room within the Hazardous Substances Store which is sealed and discharge from which would be vented to the filter in the event of a spill. The reason for this was the potential for reaction of water with TDI should a spill or tank failure occurs in this area at the same time as a sprinkler release which APL wants to avoid. As noted above, however, that position has now changed and fire sprinklers are intended.

387. In addition to the ring main a 2,100,000 litre storage tank will be constructed on site to provide enough water storage on site to enable the automated fire sprinklers to activate and provide 120 minutes of firefighting. The three diesel fire pumps (one on standby) will draw water from the on-site storage tank and supply 17,000 litres per minute of water at a delivery pressure of 1200 kPA to the fire sprinkler system.

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<sup>54</sup> BBO Memo - Request for information No 2, Appendix 14, Q24



388. When vehicles/containers are unloading hazardous substances, the dual sump bypass valve will be switched so that if a spill occurs in the bunded delivery area it will flow into the TDI/MDI bulk storage tank bund and not into the site's stormwater system.
389. The use and storage of hazardous substances in the workplace is controlled under the Health and Safety at Work (Hazardous Substances) Regulations 2017 (HSW-HS). In addition to the controls under these regulations, the Health and Safety at Work (Major Hazard Facilities) Regulations 2016 (HSW-MHF) sets out requirements for facilities that exceed set thresholds of hazardous substances. For that purpose, APL included a July 2020 report by T+T (Appendix 16C) on those requirements, which addressed the following matters:
- Identify the likely hazard classifications for the hazardous substances, or types of substances, expected to be stored and used at the new facility based on a review of inventories and safety data sheets from Comfort Groups existing sites; and
  - Based on these classifications, identify the relevant site and operational controls required under the Health and Safety at Work Act and Regulations.
390. The T+T report notes that for the present application the threshold quantities of hazardous substances proposed result in the facility being classified as a lower tier Major Hazard Facility (MHF) which requires (among other things):
- Notification of proposed lower tier major hazard facility to Worksafe;
  - Preparation and implementation of an emergency plan; and
  - Preparation and implementation of a major accident prevention policy by establishing a safety management system.
391. The detailed requirements are further defined in Tables 4.2-4.5. The report also covers the upper level tier MHF, which will be realised as the site develops.
392. Those matters are the responsibility of the Ministry of Business, Innovation and Employment and Worksafe NZ and we do not discuss them further.

#### **Qualitative Risk Assessment (QRA)**

393. A QRA has been conducted for the proposed bed and foam manufacturing plant at Ohinewai using the following steps:
- Hazard Identification;
  - Fault/Failure mode analysis;
  - Likelihood analysis of the fault/failure mode/release;
  - Off-site consequence analysis of the accident event; and
  - Qualitative determination of risk.
394. A hazard identification process was conducted for the site facilities and operations. For each hazard a number of fault/failure modes were identified. Where an incident was identified that could have a potential offsite effect, it was included in the QRA.

The QRA lists the hazard, incident type, causes, likelihood and consequences and safeguards (mitigation measures). Each postulated hazardous incident where a potential offsite effect was identified, was assessed as to its potential level of effect using quantitative empirical modelling (consequence analysis). From the outputs of the modelling, an assessment, in light of proposed safeguards (technical and management controls), was undertaken using the likelihood and consequence descriptors and the risk matrix, to determine the level of risk.

395. The QRA conducted combines both a qualitative analysis (Level 1) and partial quantification (Level 2) where all hazards in terms of their consequences (effects) to people beyond the site boundary are assessed. Partial quantification was applied to development for the hazards identified in order to determine whether they are Credible Major Accident Events (MAEs) with potential consequences beyond the site boundaries but with a low frequency of occurrence.
396. A total of five credible MAEs that could result in offsite effects should they occur at the site were identified by the QRA process. For the majority of incident/accident events analysed, the consequences of the event are able to be contained on site and as such the process was stopped at that point for these hazards. The credible MAEs identified that could result in offsite effects are:
- Overfilling of TDI/MDI bulk tanks;
  - Failure of the extract fan during foam blowing resulting in vapour releases;
  - Hot block (excessive heat generated as a result of the foam blowing reaction);
  - Extensive fire at plant; and
  - Fire water including contaminants being released offsite.
397. These MAEs were run through the risk analysis matrix where the qualitative descriptors were used to determine the likelihood of an event occurring and consequence of that event in terms of offsite effects. All MAEs which could result in offsite effects have been evaluated as having a low level of risk to human health and environment provided the mitigation measures detailed in this report are followed. In conclusion, the level of risk posed to the environment and human health resulting from the storage and use of hazardous substances at the facility on average is low. The mitigation, standard operating procedures, emergency response procedures and safety design measures that will be in place will limit the risk resulting from the storage and use of hazardous substances to as low as is reasonably practical.

#### **Draft Emergency Plan**

398. A preliminary draft Emergency Plan (EP), as required for a lower tier registered Major Hazard Facility (MHF) under the HSWAct, was provided (Appendix 17) to illustrate the detail of what is required under the HSW regulations – including potential emergency scenarios and response procedures, information and controls on hazardous substances to be stored on site, a plan showing the layout of the site and hazardous substance storage locations and emergency response equipment, site emergency contacts and responsibilities, procedures for notification of potentially affected neighbours and for testing and review of the EP.

### **Mitigation and monitoring**

399. The following recommendations based on the QRA were proposed:

- The Standard Operating Procedures for managing chemical spills including TDI are implemented at the site and are regularly tested to ensure staff are aware of the contents of the procedure and to check that they are still current. If the SOP tested is found to be deficient it should be amended.
- The Standard Operating Procedure for managing a hot block incident should be implemented at the site and the SOP tested once every six months so that staff are familiar with the requirements of the SOP and how to manage a hot block situation, given that a hot block event occurs on an infrequent basis.
- That removal efficiency of the carbon filter is tested on regular basis in order to ensure that the filter is operating as per its specifications.

### **Comments received and responses**

400. The Environmental Defence Society considered that the QRA appropriately assesses the risk and proposes effective site design and operational procedures. It supports the conditions proposed to address and manage this matter.
401. WDC noted that in the Council's assessment of the land use application lodged by the applicant (LUC0062/21) it was determined that Hazardous Substances was a key effect that required careful consideration, noting it had engaged an external consultant to assist it in that assessment. The applicant responded to a detailed request for further information but, according to WDC, the external consultant continued to have some concerns. The WDC comments did not elaborate on this further and no reports from an external consultant were provided to us.
402. The applicant's response was that matters addressed in the previous application had been incorporated into the technical report forming part of this fast-track application.

### **Conditions imposed**

403. We are satisfied that the QRA and effects of hazardous substances have been addressed in the application and conditioned as far as is appropriate, noting that the key operational risk controls lie with other agencies / jurisdictions.

### ***Greenhouse gas emissions and climate change***

404. Atmospheric Science Global (ASG) prepared a Greenhouse Gas (GHG) Emissions Assessment report for APL (Appendix 20) based on the premise of closing the two Auckland factories at Otahuhu and Avondale and with the proposed new state of the art facility at Ohinewai.
405. The assessment follows the MfE endorsed GHG Protocol Corporate Accounting and Report Standard of placing all emission sources into one of three so-called Scope activities, where:
- Scope 1 is direct GHG emissions from sources that are owned and controlled by NZ Comfort Group (NZCG) such as refrigerants;

- Scope 2 activities are indirect GHG emissions used by NZCG, such as purchased electricity usage; and
  - Scope 3 are other indirect emissions that are generated from sources that NZCG does not own or control, such as third party delivery of the foam products, fuel, materials and waste and forestry.
406. The ASG report concludes that the estimated total emissions in kg CO<sub>2</sub>-e<sup>55</sup> from the new Ohinewai plant in its first year of normal operations is expected to be 1,396,698 kg CO<sub>2</sub>-e minus 'Materials'. This latter element representing the quite high generating construction phase of the plant (i.e. 6,350,008 kg CO<sub>2</sub>-e estimated).
407. The summary calculated totals for the respective emission sources (fuel, transmission and distribution losses, purchased energy, refrigerant use, travel, freight transport, waste, materials and agriculture/ forestry/ other lands) for the new plant under normal operating conditions are presented in Table 1 of that report.
408. Table 2 of that report summarises the results of the comparison between the existing and the new plants in 2024 (at the conclusion of stage 2 with the rail siding operational) concluding a total carbon emission saving of 43,298,637 Kg CO<sub>2</sub>-e.
409. That reduction results primarily from switching of refrigerants away from methylene chloride (i.e. from 42,349,655 Kg CO<sub>2</sub>-e to 175,655 Kg CO<sub>2</sub>-e) and the use of rail freight as the primary transport mode (1,379,701 Kg CO<sub>2</sub>-e versus 292,444 Kg CO<sub>2</sub>-e). Further reductions are also anticipated based on equipment and practice improvements but these are not quantified.
410. In response to a question from the Panel regarding the consequence of not achieving the 80% rail freight forecast – i.e. the same volume having to be moved by road – ASG calculated<sup>56</sup> that would result in 1,392,688 Kg CO<sub>2</sub>-e more produced – worst case scenario assuming 60 truck movements per day over 261 days per year- but still an overall reduction of 42,340,240.2 Kg CO<sub>2</sub>-e (being primarily the consequence of not using methylene chloride).

#### **Comments received and responses**

411. No GHG comments were received from clause 17(6) Schedule 6 invited persons, including on climate change effects. We are therefore not able to put the significance of the calculated Kg CO<sub>2</sub>-e reduction into a national benefit framework. However, as a pure quantum, we find that reduction significant, relevant and a positive contribution to NZ's climate change reduction target. That conclusion stands regardless of whether rail freight targets are met – though obviously enhanced if they are (in addition to the latter's beneficial transportation effect).

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<sup>55</sup> kg CO<sub>2</sub>-e is the unit of carbon dioxide equivalent in kilograms, and consists of Kg CO<sub>2</sub> + Kg CH<sub>4</sub> + KG N<sub>2</sub>O (i.e. carbon dioxide, methane and nitrous oxide).

<sup>56</sup> BBO, Memo, page 2 & Attachment 2, 6 July 2021

### **Conditions imposed**

412. No specific conditions relating to GHG and climate change are required.

### ***Economic effects***

413. The application included an economic assessment from Property Economics Limited. This addressed both Stages 1 and 2 of the development, which comprises the first 23,000m<sup>2</sup> of land to be developed of the proposed 100,000m<sup>2</sup> Sleepyhead factory, as well as the rail siding. The assessment particularly noted the need to consider the assessment in light of the COVID-19 pandemic on the level of economic activity both short and medium term.
414. Manufacturing and construction employment are important to the region and have shown consistent growth over the past decade. In 2019-2020 there was a significant drop in growth from the previous 10 years across the manufacturing sector. Nevertheless, it remained the second highest contributor to the region. The report noted a decreasing population to employment ratio in the Waikato District since 2006.
415. The Post-COVID-19 economy will rely on the restoration and recovery of economic wellbeing in production, distribution and employment. This project will provide a catalyst to the economy by supporting the construction industry and creating new jobs. The total investment over the next four years from the applicant's development is calculated at \$119 million, from 2021, with the development complete and operational by 2023. The total forecast projection into the economy through to 2025 is \$152 million, with a projected total 5-year employee count of approximately 2,100 jobs.
416. Other potential economic benefits from Stages 1 and 2 of the development are:
- a. Opportunity and equity – the potential to increase the competitive profile of the regional and local economy;
  - b. Safeguarding existing infrastructure;
  - c. Operational efficiencies and increased competitiveness;
  - d. Sector specific growth; and
  - e. Initial stages of development of a much larger and more comprehensive development plan (the Ohinewai Structure Plan).

### **Comments received and responses**

417. No comments were received on economic effects, other than positive comments about the potential for this development to deliver clear economic benefits. We accept that the proposal provides positive economic benefits.

### **Conditions**

418. No conditions were required to address economic effects.

### ***Social and cultural effects***

419. A social and cultural wellbeing assessment was prepared by Quigley and Watts Limited.
420. The five-year construction period will create 2,100 jobs. The foam factory will create 50 long term permanent jobs, some of these staff being transferred from the Auckland factories. The longer-term development of the overall site will bring more employment, the foam factory being the catalyst for what is to follow. The long-term project, developed in accordance with the Masterplan, is expected to provide 2,100 jobs. The applicant is already working alongside Waikato-Tainui and Wintec in providing work and training opportunities. The rail siding has the potential to create further jobs, as Ohinewai could become a base or businesses who need to receive or send large-volume freight. Job opportunities could include container handling.
421. The applicant has built high-quality relationships with hapu and iwi to bring inter-generational change. The relationships strongly support social and cultural outcomes. The provision of local employment and the proposed rail siding provide support for the establishment of proposed papakainga, with up to 50 houses being planned near Matahuru Marae. This will provide affordable secure housing for flow on social, economic and cultural benefits.
422. Lumsden Road residents will experience some adverse social effects arising from the change of their rural outlook to the east. Massed plantings will block those views.
423. The wider Ohinewai community will gain 50 jobs, in addition to the existing businesses to the north of the applicant's site.
424. As evident in other parts of this Decision, the project will deliver some environmental enhancements. Site remediation will occur, a portion of dairy farming will be retired, and enhancement planting will occur around stormwater wetlands. The applicant has been in discussions with tangata whenua and residents about addressing effect such as noise, vibration, traffic, monitoring of earthworks by kaitiaki, and wastewater and stormwater management.

### **Comments received and responses**

425. Comments were received from Richard and Shanette Marsh on the loss of rural views and from Iain MacDonald on the increased traffic using Lumsden Road and the inability to use it for recreational purposes. There were also positive comments about the employment benefits of the project and the relationships that have been built with tangata whenua in its development.

### **Conditions**

426. We have addressed social and cultural effects elsewhere in this Decision in our consideration of other effects of the proposal and conditions to address those effects. While there will be some loss of rural views, we are satisfied that the mitigation

planting will add a positive effect to ensure there is some protection of amenity for Lumsden Road residents. Likewise, there are a number of conditions addressing noise and controlling the hours of operation. We have addressed the comments from Iain MacDonald elsewhere in this decision.

427. We consider the proposal provides positive social and cultural effects and that adverse effects on neighbours' amenity have been addressed through consent conditions.

***The Ralph Estates – mineral interests***

428. We received comments from the Ralph Estates, noting the mineral titles held around Rotowaro, Huntly and Ohinewai, including under and adjacent to some of the land that is the subject of this application. The Ralph Estates are administered by the Public Trust. The Ralph Estates sought that we decline the application on the basis that:

- a. The information provided by the applicant is inadequate to determine the application, in particular no information had been provided as to the Ralph Estates' interests in the site and surrounding land, or the effects of the proposal on the beneficiaries of the Ralph Estates;
- b. If consent is granted, that will effectively sterilise the mineral interests of the Ralph Estates, with flow on social and economic effects;
- c. The Ralph Estates' mineral interests and the demand for coal in New Zealand are relevant other matters reasonably necessary to determine the application under Clause 31(1)(d) of Schedule 6.

429. The comments noted that the mineral titles retained the right to enter the land to mine the minerals and the titles included coal, aggregates, peat, fireclay, greywacke and other minerals not reserved to the Crown that may be present in the land. There are over 80 beneficiaries of the Ralph Estates and one significant beneficiary with a 70% share (a charitable trust whose objectives are to provide educational opportunities for children, the deaf, refugees and the poor, and to help with the homeless). The minerals under the applicant's site are substantially coal, with an estimated market value, we were told, of \$4,087,810 to \$7,000,000.

430. The Ralph Estates commented that the application did not identify the Ralph Estates as a person affected by the application. It considered its mineral interests would be sterilised with flow-on social and economic effects on the beneficiaries. It was of the view that the proposal would have a direct effect on its ability to access its minerals and, once the foam factory is constructed, would not be able to enter the land and mine the minerals beneath the surface. It was also of the view that the restriction granting access to the applicant's proposal would place on open cast mining would also impact on its interests to the south as any open cast mine there would have to be significantly smaller to achieve necessary setbacks and slope angles. The applicant's proposal would also impact its ability to recover underground mineable coal and other minerals such as aggregates.

431. In response to comments made by the Panel in the Ohinewai rezoning process, the Ralph Estates stated it had not “sat” on its mineral interests nor had it failed to exercise those rights. Its comments noted that extensive work had been undertaken by Solid Energy and others on the resource and a series of proposals had been developed to access the coal within and adjacent to the site. The most recent of these was prepared in 2015. Expert advice provided to the Ralph Estates was that an open cast mine at Ohinewai was technically feasible but it also noted it would pose a number of technical challenges, although considered these would not be insurmountable. Solid Energy had also confirmed to it that underground mining would be technically feasible.
432. The Ralph Estates accepted that there would be a number of consenting challenges for a mining operation in this location, noting in particular requirements of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020.
433. The applicant responded to comments from Ralph Estates by way of a letter from its solicitors, Berry Simons, dated 1 July 2021. In summary, this made the following points:
- a. While the Ralph Estates had not been identified as one of the landowners in the application documents, the application contained sufficient information (including potential impacts on Ralph Estates’ mineral interests) to meet the requirements of the FTCA. The Ralph Estates were not in fact an owner of the land but held rights to minerals only.
  - b. The location of the foam factory does not affect or traverse any land that is subject to the Ralph Estates’ rights or mineral interests. The only aspect of the application that relates to 109 and 231 Tahuna Road is the stormwater conveyance swale, which runs along the northern boundary of that property. The minerals interests will not be sterilised.
  - c. The application will not result in any adverse effects on those interests and/ or on the Ralph Estates beneficiaries.
  - d. The EPA has already assessed and determined the application meets the Act’s requirements.
  - e. Even if the foam factory did affect any land in which mineral interests were held, it is not currently economically or practically viable for those minerals to be mined, including in its reasons, amongst other things, that the discharge of greenhouse gases will be a relevant matter for consideration from 1 January 2022. Resource consents would be required to realise the mineral interests.
  - f. The Ralph Estates mineral interests and the demand for coal in New Zealand are not matters that the Panel need consider or address in detail in order to determine the application.
434. We make the following findings.



435. Much of the criticism in the Ralph Estates' comments was directed at the EPA in its determination that the application complied with the requirements of Clause 3(1) of Schedule 6 FTCA. As that decision is outside the Panel's control, we can take that matter no further.
436. Through this application process, we have carefully considered the comments made by the Ralph Estates and the applicant's response to those comments, along with further information requested and received. We are satisfied that we have adequate information to decide the application.
437. We have reached the conclusion that the area of land required for this application has no real impact on the Ralph Estates land. The applicant has provided a map showing the extent of the mineral interests of the Ralph Estates<sup>57</sup>, which has been accepted by the Ralph Estates.<sup>58</sup> We consider the impact of the project on the Ralph Estates mineral interests would be, at most, in the area of the stormwater conveyance swale and possibly the diffuser, both of which are surface infrastructure and could be diverted if necessary. We do not consider that effect to be sufficient to refuse the granting of the consents sought. We do not accept that the mineral interests held by the Ralph Estates would be sterilised.

**ANY MEASURE PROPOSED OR AGREED TO, TO ENSURE POSITIVE EFFECTS ON THE ENVIRONMENT TO OFFSET OR COMPENSATE FOR ANY ADVERSE EFFECTS (CLAUSE 31(1)(b) SCHEDULE 6)**

438. The applicant has offered to undertake stormwater management, ecological planting and ecological management to offset adverse effects. We have discussed this in more detail elsewhere in this Decision.

**ANALYSIS AGAINST CERTAIN STATUTORY DOCUMENTS (CLAUSE 31(1)(C) AND CLAUSE 29(2) SCHEDULE 6)**

**Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ("NESCS")**

439. The applicant has undertaken preliminary and detailed site investigations of the site. The necessary minor remediation will be undertaken as part of the Stage 1A earthworks. No remediation is necessary for the Stage 1B works.

**Resource Management (National Environmental Standard for Freshwater) Regulations 2020 ("NESFW20")**

440. The NESFW20 is relevant to the proposed works in the vicinity of Lake Rotokawau and works in farm drains. Works in the vicinity of Lake Rotokawau are more than 100m

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<sup>57</sup> Letter from Berry Simons dated 1 July 2021, Annexure 2

<sup>58</sup> Letter from Simpson Grierson dated 8 July 2021

away and the Regulations do not therefore apply to that activity. There are no rivers on the site and regulations applying to reclamation of rivers do not apply. The application is consistent with the NESFW20.

**Resource Management (National Environmental Standards for Air Quality) Regulations 2004 (“NES-AQ”)**

441. As noted in the AEE, a technical assessment of air quality requirements of the site has been completed. That assessment concluded that the proposal is compliant with the standards set out in the NES-AQ, in particular for particulate matter for minor combustion sources for the manufacturing processes. The AEE noted that the NES-AQ matters were addressed in the technical reporting undertaken for the air discharge consent granted by WRC.<sup>59</sup>

**National Policy Statement for Freshwater Management 2020 (“NPSFW20”)**

442. The NPSFW20 requires local authorities to recognise the national significance of freshwater. The fundamental concept of Te Mana o te Wai is set out at Clause 1.3 and incorporates 6 principles. The NPSFW20 was addressed at section 10.3 of the AEE and an assessment against the relevant objectives and policies of the NPSFW20 was included in Appendix 24 of the application. This found the proposal to be consistent with the relevant objectives and policies.

443. We find that the proposed stormwater management, ecological planting and ecological management properly reflect the concept of Te Mana o te Wai. The engagement undertaken with tangata whenua and the provision for further involvement also supports the provisions. We consider the project is consistent with the NPSFW20.

**National Policy Statement on Urban Development 2020 (“NPS-UD”)**

444. The NPS-UD is not relevant as the site is not an urban environment as that term is defined in the NPS.

**New Zealand Coastal Policy Statement (“NZCPS”)**

445. The NZCPS has no relevance to this project.

**Regional Policy Statement and Regional Plan**

446. The application documentation included an assessment against the Waikato Regional Policy Statement 2016 (Appendix 25) and the Waikato Regional Plan 2018 updated (Appendix 23) and concluded that the proposal is generally consistent with the objectives and policies of those planning instruments.

447. With respect to the Waikato Regional Policy Statement (WRPS), the key development policy identified is policy 6.1, which requires an assessment against the development principles set out in section 6A of the WRPS. The general purpose of that set of regional strategic principles is to “control” greenfields urban development and facilitate appropriate and efficient infrastructural provision and connectivity. The

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<sup>59</sup> AEE, page 71, section 10.1.2

importance of that provision is implicitly acknowledged by APL in that it has provided a separate assessment table on section 6A in Appendix 25.

448. Section 6A development principles states in full:

**General development principles**

*New development should:*

- a) support existing urban areas in preference to creating new ones;*
- b) occur in a manner that provides clear delineation between urban areas and rural areas;*
- c) make use of opportunities for urban intensification and redevelopment to minimise the need for urban development in greenfield areas;*
- d) not compromise the safe, efficient and effective operation and use of existing and planned infrastructure, including transport infrastructure, and should allow for future infrastructure needs, including maintenance and upgrading, where these can be anticipated;*
- e) connect well with existing and planned development and infrastructure;*
- f) identify water requirements necessary to support development and ensure the availability of the volumes required;*
- g) be planned and designed to achieve the efficient use of water;*
- h) be directed away from identified significant mineral resources and their access routes, natural hazard areas, energy and transmission corridors, locations identified as likely renewable energy generation sites and their associated energy resources, regionally significant industry, high class soils, and primary production activities on those high class soils;*
- i) promote compact urban form, design and location to:*
  - i) minimise energy and carbon use;*
  - ii) minimise the need for private motor vehicle use;*
  - iii) maximise opportunities to support and take advantage of public transport in particular by encouraging employment activities in locations that are or can in the future be served efficiently by public transport;*
  - iv) encourage walking, cycling and multi-modal transport connections; and*
  - v) maximise opportunities for people to live, work and play within their local area;*
- j) maintain or enhance landscape values and provide for the protection of historic and cultural heritage;*
- k) promote positive indigenous biodiversity outcomes and protect significant indigenous vegetation and significant habitats of indigenous fauna. Development which can enhance ecological integrity, such as by improving the maintenance, enhancement or development of ecological corridors, should be encouraged;*
- l) maintain and enhance public access to and along the coastal marine area, lakes, and rivers;*
- m) avoid as far as practicable adverse effects on natural hydrological characteristics and processes (including aquifer recharge and flooding patterns), soil stability, water quality and aquatic ecosystems including through methods such as low impact urban design and development (LIUDD);*

- n) *adopt sustainable design technologies, such as the incorporation of energy efficient (including passive solar) design, low-energy street lighting, rain gardens, renewable energy technologies, rainwater harvesting and grey water recycling techniques where appropriate;*
- o) *not result in incompatible adjacent land uses (including those that may result in reverse sensitivity effects), such as industry, rural activities and existing or planned infrastructure;*
- p) *be appropriate with respect to projected effects of climate change and be designed to allow adaptation to these changes;*
- q) *consider effects on the unique tāngata whenua relationships, values, aspirations, roles and responsibilities with respect to an area. Where appropriate, opportunities to visually recognise tāngata whenua connections within an area should be considered;*
- r) *support the Vision and Strategy for the Waikato River in the Waikato River catchment;*
- s) *encourage waste minimisation and efficient use of resources (such as through resource-efficient design and construction methods); and*
- t) *recognise and maintain or enhance ecosystem services.*

449. While the Panel is aware that WRC opposed the Ohinewai zoning at first instance and has lodged an Environment Court appeal against the decision, we understand that appeal to be largely focussed on the residential rather than the industrial provisions – which is consistent with its having granted all necessary regional consents for stage 1A of the present proposal. We think it reasonable, therefore, that the section 6A development principles should be read in that light for the present application.

450. As such, the present activities requiring consent were essentially anticipated at the time WRC granted the existing consents<sup>60</sup> in February 2021 and which, we can presume, were considered by WRC to be sufficiently congruent with the strategic provisions of the WRPS. We also note that WRC had provided its written confirmation of the draft regional consent conditions (version 4 dated 1 July 2021) proposed by APL and further commentary on 19 August 2021 seeking only relatively minor amendments to our circulated draft conditions.

451. Having reviewed the commentary provided by APL in the assessment tables for the WRPS and, particularly, the section 6A development principles, we are satisfied that the application before us does not offend the relevant provisions of the WRPS. For efficiency, therefore, we adopt that general commentary provided in Appendix 25 and refer the reader to it rather than belabour and repeat that analysis.

452. In effect the above commentary applies also to the application of the WRP as that was in play for the Stage 1A consents – albeit the present application has a different (and more beneficial) stormwater management arrangement and, perhaps, less beneficial

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<sup>60</sup> Being for land disturbance, air discharge, stormwater discharge, surface water diversion and water take.

floodplain infilling effect. Nevertheless, Appendix 23 on the Waikato Regional Plan identifies a number of relevant objectives and associated policies as follows:

- Objective 2.3.2 regarding tangata whenua relationship with resources;
- Objective 3.1.2 relating to the NPS-FM policies A4 and B7;
- Policy 3.2.3.1 relating to the management of water bodies;
- Policy 3.2.3.3 relating to natural character;
- Objective 3.3.2 relating to the management of water allocation;
- Objective 3.5.2 relating to the discharge of contaminants to water;
- Policies 3.5.2.6 and 7 concerning tangata whenua values and at-source stormwater controls;
- Policy 3.7.3.1 relating to land drainage adjacent to identified wetlands;
- Objective 5.1.2 relating to net reduction of accelerated erosion; and
- Policy 5.1.3.1 and 3 relating to net reduction of accelerated erosion and appropriate land management practices.

453. The Appendix 23 analysis concludes that the proposal either better, meets or is consistent with those identified objectives and policies.

454. In summary the application concludes<sup>61</sup>:

*... the proposal is generally consistent with the relevant objective and policies of the WRP, in particular:*

- *The proposal will not result in a decrease in water quality and will not have a significant effect on aquatic ecosystems.*
- *There are no increases in the adverse effects of flooding.*
- *Erosion and sediment control measures will prevent the inappropriate discharge of sediments to the receiving environment.*
- *There are no adverse effects on air quality due to best practice air discharge technology being installed for the factory.*

455. While WRC has raised matters for consideration in terms of information and conditions (and an additional water take consent) in its invited comments<sup>62</sup>, its conclusion was:

*The proposal is generally considered to be consistent with relevant objectives and policies of the WRPS and WRP based upon the existing/degraded site conditions and implementation of best practice environmental management methods for land development activities....*

*Overall, WRC considers that the application outlines best practice environmental management methods to ensure that the potential effects of the proposed Stage 2 development activities will be no more than minor. WRC does not consider that there is any reason for WRC to be opposed to these activities.*

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<sup>61</sup> BBO, AEE, section 10.8 page 75

<sup>62</sup> Waikato Regional Council, Comment on the Ohinewai Foam Factory, 23 June 2021

456. Having reviewed the commentary provided by APL in the assessment table for the WRP and the response from WRC, we are satisfied that the application before us is consistent with the relevant provisions of the WRP. For efficiency, therefore, we again adopt that general commentary provided in Appendix 23 and refer the reader to it rather than belabour and repeat that analysis.

#### **District Plan and Proposed District Plan**

457. The application documentation included an assessment (Appendix 23) against the Waikato District Plan – Operative 2013 (WDP). Subsequent to the release of the Hearing Panel’s Decision on the Proposed Waikato District Plan 2018 – Ohinewai Zone Provisions on 24 May 2021 (Decisions Version), APL provided a supplementary assessment<sup>63</sup> against those decided provisions.

458. The period for appeals on that Decisions Version has now closed and while appeals have been lodged, the Panel understands that these are primarily directed against the residential intensification aspects of the Ohinewai Zone rather than the industrial zone provisions. However, the appeal lodged by the Ralph Estates challenges the entire outcome. It would, therefore, not be safe to proceed on the assumption that the industrial provisions are *de facto* operative and, certainly, Council has not exercised its discretion to that effect under clause 17(2) of Schedule 1 RMA. Clearly the operative WDP remains in play.

459. With respect to the operative WDP, being in a Rural zone the key strategic objective and associated policies are to be found in chapter 1A which clearly articulates the position that rural areas should not be developed for essentially urban activities – and there seems no dispute that the present application is for an essentially urban activity. For example the following:

- *Objective 1A.2.1 - Towns, villages and other defined growth areas are the focus of future residential, industrial and commercial development.*
  - *Policy 1A.2.2 - Subdivision, use and development of an urban nature should occur within clearly defined boundaries of towns and villages rather than in rural areas.*
  - *Policy 1A.2.2A - Industrial and commercial activities that do not have a genuine functional connection with the rural land or soil resource and that do not require a rural setting should not locate in rural areas.*
- *Objective 1A.2.9 - Rural areas are maintained as a resource for productive rural activities and lawfully established rural-based activities.*
  - *Policy 1A.2.12 - Subdivision, use and development that is not directly associated with productive rural activities should occur in towns, villages and other defined growth areas*

460. This is re-emphasised in the introduction to the Rural zone rules which notes:

*25.2 Most of Waikato District is in the Rural Zone. Anticipated activities are traditional extensive dairy and sheep farming, and horticulture with rural residential lifestyle lots interspersed. Rules seek to maintain rural land for productive rural activities, manage*

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<sup>63</sup> BBO, Further information request, Ohinewai rezoning decision, including Attachment 2, 21 June 2021.

*activities so that the effects of traditional farming can be accommodated alongside existing lifestyle blocks, to provide a level of lifestyle choice, and to preserve landscape and ecological values.*

461. One would, therefore, have expected that industrial activities such as is proposed would be identified as a non-complying activities. However, that is not the case. Rule 25.10.2 effectively makes industrial activities a discretionary activity in the Rural zone unless they fail to comply with any related condition (25.10.4). The only such discretionary activity conditions in the Rural zone, however, relate to dwellings and therefore do not apply.

462. Despite, therefore, strong objective and policy direction against industrial activities in the Rural zone in the WDP, the rules do not reinforce those directions. The application is, therefore, a discretionary activity under the WDP and falls to be determined accordingly, which reduces the weight to be accorded those broader directions.

463. With respect to the Proposed Waikato District Plan 2018 – Ohinewai Zone Provisions on 24 May 2021 (Decisions Version), the application is clearly consistent with those provisions as detailed in the application documentation. Furthermore, we note that the provisions recognise the intent for a rail siding but are silent (and therefore neutral) on the manner in which that siding enters the zone.

**Planning document recognised by a relevant iwi authority and lodged with a local authority**

464. We referred to this in our discussion of Cultural Considerations.

**ANY MATTERS IMPACTED BY SECTION 6(A) OF THIS ACT (TREATY OF WAITANGI) (CLAUSE 31(2) SCHEDULE 6)**

465. We referred to this in our discussion of Cultural Considerations

**TREATY SETTLEMENT OBLIGATIONS ON LOCAL AUTHORITIES OR DECISION MAKERS (SECTION 6(B) OF THIS ACT AND CLAUSE 31(10) SCHEDULE 6)**

466. We referred to this in our discussion of Cultural Considerations.

**DISREGARDING CERTAIN EFFECTS CONCERNING CERTAIN PERMITTED ACTIVITIES (CLAUSE 31(4) SCHEDULE 6)**

467. We referred to permitted activities in our discussion of statutory applications and approvals needed.

**PLANNING DOCUMENTS PREPARED BY CUSTOMARY MARINE TITLE GROUP UNDER S85 MARINE AND COASTAL AREA (TAKUTAI MOANA) ACT 2011 (CLAUSE 31(3) SCHEDULE 6)**

468. This is not applicable in this case.

## **TRADE COMPETITION (CLAUSE 31(5)(a) SCHEDULE 6)**

469. No trade competition matters have arisen for consideration.

## **OTHER MATTERS PANEL MUST NOT HAVE REGARD TO (CLAUSE 31(5)(b) SCHEDULE 6)**

470. We referred to this in our discussion of the legal framework.

## **SECTIONS 104A TO 104D, 105 TO 107 AND 138A RESOURCE MANAGEMENT ACT 1991 (CLAUSE 32(1) SCHEDULE 6)**

471. We have considered the effects of the application in various sections of our Decision. We have also considered the reasons the applicant has stated for the choices it has made in its design approach. Overall, we consider the adverse effects of the proposal can be remedied or mitigated through the consent conditions imposed. We also consider the proposal satisfies the provisions of the relevant planning instruments, National Policy Statements and National Environmental Standards, as discussed in this Decision.

## **SECTION 104E RESOURCE MANAGEMENT ACT 1991 (CLAUSE 32(3) SCHEDULE 6)**

472. We addressed section 104E of the RMA in our discussion of the legal jurisdiction to consider greenhouse gas emissions and in our discussion of the effects of greenhouse gas emissions and climate change.

## **CONDITIONS APPLYING TO RESOURCE CONSENTS UNDER THIS ACT (CLAUSES 35-36 SCHEDULE 6)**

473. We have discussed many draft conditions and the comments made on them in our discussion of effects. We do not intend to repeat that discussion here.

474. Otherwise, we make the following comments and findings on the remaining responses received by the parties on conditions (Note: our condition references are to the conditions as circulated to the parties on 13 August and commented on by 20/21 August - in some cases these numbers have changed in the final conditions):

- a. We accept WDC's request to change 5 working days to 10 working days in WDC land use consent conditions 7, 9, 11, 18 and 24;
- b. We accept WDC's request to require certification of documents in WDC land use conditions 9, 24 and 69, but do not agree to the same change to WDC land use condition 11 dealing with the E&SCP, as that certification is the responsibility of WRC. The E&SCP is to be provided to WDC for its information only;
- c. We accept the deletion of wording in condition 42(h) regarding the design safety audit;



- d. We accept WDC's comments on the matters addressed in condition 47(a). We do not consider any change is required to condition 47(b). This information is provided to WDC for its information and to satisfy compliance with the requirements of the Proposed Waikato District Plan. There is no requirement for WDC to certify;
- e. We accept the applicant's offer to amend the WDC complaints condition to require response to complaints within 48 hours of receiving the complaint;
- f. We accept WDC's request to add a new condition and advice note addressing a defects liability period for assets to vest;
- g. We do not consider there is any need to limit the colour of the lighting. As noted by the applicant, this will be the subject of detailed design of the factory with the input of lighting specialists and discussions with FENZ will continue as the design progresses;
- h. We have added lapse dates to most of the consents;
- i. As mentioned in other parts of this Decision, we have added a general review condition to the WDC land use consent which includes the ability to review of there are adverse effects from the rail siding. The WRC review condition has been discussed more fully under the stormwater issues.

475. We are satisfied that the adverse effects of the proposal are able to be remedied or mitigated through the imposition of the conditions in Appendix 4.

## **PART 2 RESOURCE MANAGEMENT ACT 1991**

476. There is nothing unclear about the relevant plan policies and these incorporate Part 2 matters. Undertaking a further analysis under Part 2 would not add anything to our evaluative assessment.

477. However, we are mindful that Clause 9(1)(g)(i) of Schedule 6 FTCA provides that every application for a referred project must include an assessment of the activity against Part 2 of the RMA. Clause 31(1) of Schedule 6 FTCA requires us to consider matters that are subject to Part 2. For the sake of completeness, we have therefore undertaken that assessment of Part 2 matters.

478. We have reviewed the AEE, the appendices and the information and comments received both on the AEE and the draft conditions. We consider the project will better enable the communities of this part of the Waikato to provide for their social, economic and cultural wellbeing and for their health and safety. The project will also enable the people of Ohinewai, Huntly and other nearby settlements to meet the reasonably foreseeable needs of future generations. The environmental bottom lines in section 5(2) will be met.

479. The project will protect the natural character of Lake Rotokawau wetland and its margins. Its existing natural character will not be affected. As an outstanding natural feature, Lake Waikare will not be adversely affected. Stormwater management measures are intended to ensure this. The relationship of Maori and their culture and

traditions with water has been recognised and implemented through the close working relationship with tangata whenua. The site is not subject to natural hazard risks. Potential flooding has been accounted for in the flood modelling and engineering design.

480. The project has had particular regard to kaitiakitanga, the efficient use and development of natural resources, the maintenance and enhancement of amenity values and the quality of the environment.

481. As noted earlier in our discussion, section 8 of the RMA does not apply.

482. Subject to the conditions attached, the proposal is consistent with Part 2 RMA.

### **PURPOSE OF THE FTCA**

483. We addressed the purpose of the FTCA earlier in our Decision. We are satisfied that the FTCA, Schedule 6 considerations are all met and that the dual purposes of the FTCA and the RMA are achieved by this Decision.

### **FINAL DECISION OF PANEL (CLAUSES 37 AND 38 SCHEDULE 6)**

#### **The consents granted and conditions of consent**

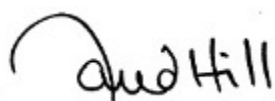
484. The consents are granted as sought, along with additional consents identified as being required through this FTCA process. The consents are granted subject to the Conditions appended as Appendix 4. As noted earlier, only one rail siding option may be implemented.

485. As required by Clauses 38 and 45 of Schedule 6, FTCA persons entitled to appeal are to commence any appeals within the 15-day working period from the day they are notified of this Decision.



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Jan Caunter (Chair)



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David Hill (Member)

*T. Manukau*

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Tim Manukau (Member)

## **APPENDIX 1**

### ***Consents applied for and granted***

<b>Operative Waikato District Plan</b>		
Rule 25.10.2	Discretionary	The factory is an industrial activity in the Rural zone.
Rule 25.15.2	Discretionary	The site entrance at Lumsden Road does not comply with the sight distance requirements
Rule 25.16.2	Discretionary	Traffic movements associated with earthworks are likely to exceed 200 vehicle movements per day
Rule 25.25.2	Discretionary	Earthworks on site exceed 1000m <sup>3</sup> in a single calendar year
Rule 25.27.1	Discretionary	Earthworks filling greater than 200m <sup>3</sup> in volume and 1m depth
Rule 25.31.2	Discretionary	The factory involves the storage and use of hazardous materials in quantities in excess of those outlined in Appendix H of the OWDP.
Rule 25.39.3	Discretionary	The proposed signage in the western elevation of the factory exceeds the size set out as Permitted or Restricted Discretionary in the OWDP.
Rule 25.49	Discretionary	The proposed factory has a maximum building height of 17.9m. This exceeds the permitted height limit by 7.9m.
Rule 25.51.2	Discretionary	The proposed factory covers approximately 6.1% of the total site area and is greater than 500m <sup>2</sup> .
Rule 25.52.2	Discretionary	The proposed factory exceeds the gross floor area limit of 500m <sup>2</sup> .
<b>Proposed Waikato District Plan</b>		
OHI-EIT-R8	Restricted Discretionary	Earthworks are required for the construction of

		infrastructure that exceed the Permitted standard
OHI-EIT-R64	Restricted Discretionary	The proposed stormwater system does not meet all of the conditions outlined
OHI-EIT-R78(2)	Restricted Discretionary	The minimum sight distances from the proposed Lumsden Road entrance cannot be met due to overgrown vegetation. Clearance of vegetation in order to comply with this rule is proposed.
OHI-EIT-R81	Restricted discretionary	Construction traffic for the importation of clean fill is unlikely to comply with the traffic generation requirements
OHI-HR-R2	Discretionary	Storage, handling or use of hazardous substances in a Major Hazard Facility PREC3 – Ohinewai Industrial Precinct
PREC3-R4(1)	Restricted Discretionary	Industrial activity provided that infrastructure upgrades are being constructed as per Tables OHI-1 and OHI-2
PREC3-S4	Restricted Discretionary	Part of landscape strip does not comply
PREC3-S10(2)	Restricted Discretionary	Earthworks for the purposes of building platforms involving clean fill
PREC3-S11(2)	Restricted Discretionary	General earthworks
PREC3-S13(2)	Restricted Discretionary	Proposed signage on Building 2 exceeds the permitted activity standards
PREC3-S17(2)	Restricted Discretionary	Exceedance of maximum height in Industrial Precinct
<b>Waikato Regional Plan</b>		
Rule 3.3.4.24	Discretionary	Excavations may encounter groundwater and require pumping of greater than 15m <sup>3</sup> per day
Rule 3.6.4.13	Discretionary	Diversion of surface water
Rule 3.5.11.4	Discretionary	The discharge of stormwater runoff from impermeable surfaces may

		not comply with the conditions of Rule 3.5.11.4 at all times
Rule 5.1.4.13	Discretionary	Soil disturbance may not be able to comply with the Permitted activity standards of Rule 5.1.4.11 and conditions of 5.1.5 at all times
Rule 5.2.5.5	Controlled	Stage 1B earthworks includes the importation of approximately 210,000m <sup>3</sup> of fill to provide for the material needed for cut to fill and pre-loading existing ground

## **APPENDIX 2**

### ***Persons and bodies who were invited to comment on the applications and later on draft conditions, and responded***

Heritage New Zealand Pouhere Taonga

Waikato Regional Council

Waikato District Council

Waka Kotahi NZ Transport Agency

Hon Dr Woods, Minister of Housing, supported by Ministry of Housing and Urban Development

Hon Andrew Little, Minister for Treaty of Waitangi Negotiations

Hon Carmel Sepuloni, Minister for Arts, Culture and Heritage

Lumsden Family Trust

Ohinewai Lands Limited

David Whyte

Ohinewai Area Committee

Environmental Defence Society Inc

Iain Macdonald

Rolf Stucki

Richard and Shanette Marsh

The Ralph Estates



## **APPENDIX 3**

### ***Summary of Comments on Draft Conditions***

Source	Summary of Comments
Waikato Regional Council	Earthworks consent – recommend a condition restricting the total area of exposed works to 15ha between the two sites at any one time, unless otherwise agreed with WRC. This would minimise the potential for adverse effects such as dust and/ or sediment discharges.
	Stormwater consent – Stage 2 maintains the same management measures for the Stage 1 foam factory catchment (at-source filters/ wetland) however it is proposed to redirect all treated/ attenuated outflows from the Stage 1 area away from the Balemi Road drain and to a new outlet at Lake Rotokawau. WRC considers it is unclear whether the Stage 2 consent is proposed to supersede the previous Stage 1 consent so that flows from Stage 1 are diverted to a new discharge outlet to the receiving environment of Lake Rotokawau. Clarification should be sought from the applicant on this. If it is intended to supersede the Stage 1 consent, existing Stage 1 conditions have not as yet been transferred to the Stage 2 consent (e.g. industrial contaminants).
	Water take/ diversion consents – no comments.
	Environmental enhancement – application had limited information on environmental and enhancement requirements directed by the Waikato River Vision & Strategy. Applicant has now clarified 1 ha of native plantings proposed in an area towards Lake Rotokawau. No consent conditions are proposed for this environmental enhancement – WRC recommends conditions should specify this requirement (i.e. the provision of a detailed planting management plan) to provide greater certainty.
Waikato District Council	Conditions 7, 9, 11, 18, 24 – change 5 working days to 10 working days. 10 working days is Council’s typical condition timeframe for provision of plans to be certified and it will allow the monitoring officer to carry out the review and certification of the plan prior to the pre-construction meeting (as required by Condition 6). Additionally, WDC is experiencing record work volumes and 5 working days will be difficult to achieve.
	Conditions 9, 11, 24 – query whether specified plans should require certification.
	Condition 15 – suggested change to earthworks condition to better reflect the level of reporting/ certification required of the earthworks, to support proposed future development on site and the level of reporting required for other processes such as building consents.
	Condition 26 – add Advice Note regarding any moving of haul road requiring the consent holder to demonstrate that noise

	standards will still be able to be complied with and there is no impact on residents' amenity as a result of the change.
	Condition 42(h) – suggested change to wording – delete some words in the condition.
	Condition 44 – add further Advice Note requiring that any acquisition of land for rail (or road to enable rail) will require consent holder to provide evidence it has entered into binding agreement for the acquisition of the necessary land before the condition can be given effect to.
	Condition 47(a) (and (b) – suggested change to wording.
	Condition 65 – suggested change to wording to enable WDC to attend meetings with Ohinewai Area Committee and Tangata Whenua Governance Group.
	Condition 69 – suggested certification of landscape planting plans.
	New condition – standard condition requested requiring ongoing maintenance and replacement of planting where necessary
	New condition – consent holder to provide a Stormwater and Maintenance Plan for the stormwater management systems within the site. (as per WRC conditions)
	New condition – any changes to the SOMP to be confirmed in writing by the consent holder and approved in writing by WDC (as per WRC conditions)
	New condition – SOMP to be submitted to WDC for approval prior to commencement of stormwater discharge activities within the site and to be implemented on site for duration of stormwater diversion and discharge activities. (as per WRC conditions)
	New condition – defects liability period of 12 months to apply to all assets to vest
Heritage New Zealand Puhere Taonga	Supports WDC land use condition, WRC condition 46 and associated advice notes.
Lumsden Family Trust	WDC conditions 40-44 – add an additional noise monitoring condition for the effects of the use of the rail siding and particularly to address effects from train squealing on tracks – applies to Options 1 and 2
	Stormwater discharge consent:
	Conditions 13-16 should be subject to monitoring and 6 monthly reporting
	Conditions 13-16 – any breach should trigger a review of consent conditions
	Conditions 14 and 15 – should contain specific limits for both suspended solids and for other contaminants
	Conditions 17-18 should be subject to monitoring and 6 monthly reporting of stormwater volumes and of any adverse

	impacts on the pre-development flooding and stormwater management for the adjoining land
	There is currently no requirement in the conditions for maintenance of the stormwater network. To the extent that the stormwater management plan relies on the existing stormwater drains, there should be a requirement that the consent holder can give effect to the stormwater management plan to avoid increased flooding effects on adjoining land
	Any breach of the stormwater quantity conditions should trigger a review.
Waka Kotahi/ NZ Transport Agency	Largely support the relevant land use conditions as they reflect Waka Kotahi's feedback on application 18 June 2021.
	Remain concerned about the signage on the western side of Building 2 being a distraction to northbound users of the Waikato Expressway. Seek a condition requiring the advertising signage to be located on the northern façade of Building 2.
Ohinewai Lands Limited	Stormwater discharge conditions:
	Amend Condition 8 so that the Stage 1 resource consent is surrendered at specified time
	Support requirement in Condition 17 for consent holder to manage stormwater network to avoid adverse flooding of land and property (amongst other things)
	Condition 18 does not state who is responsible for determining what measures must be implemented or that the consent holder is required to implement any measures. Amendment suggested to address this.
	Seek a review condition on the stormwater discharge consent.
R & SJ Marsh	WDC land use conditions:
	Condition 36 – access from Lumsden Road for trucks and length of trucks –design should be set for the longest trucks
	Condition 40 – rail options 1 and 2 – no consultation with applicant about this other than short discussion before application lodged
	Condition 47b – would like to have input into building design
	Condition 53 – why is foam only being manufactured 23 hours per day (concerned that “serious issue with the manufacturing process”)
	Condition 56 – no orange or yellow lighting should be used. Local fire brigades have had unnecessary night time call outs to local saw mills with lighting in these colours – have impression of fire in foggy or misty conditions
	Condition 65 – community engagement should occur 3 monthly until project is complete and then moved to longer spacings at discretion of OAC and TWGG

Ohinewai Area Committee	WDC land use conditions:
	Condition 16 – is the dB measured at the boundary?
	Condition 20 – Request that cell phones can be used for noise monitoring
	Condition 27 – the fist wheel wash was inadequate for the level of mud and debris coming off the site. Acknowledge this has now been upgraded and led to improvements. Would like to see a system to remove rocks from places on vehicles before they exit the site, request that wheel wash also wash the underside of the trucks as well as wheel and outside of trucks.
	Condition 39 – request that there is weed control of the Ohinewai Interchange off ramp as part of the vegetation control of the sight line
	Conditions 52-55 – concerned about long hours of operation and impact on community. How will hours of operation of rail siding be enforced/ kept to?
	Conditions 56-57 – 10 lux is pretty dark
	Condition 65 – accept condition
	Condition 75 – accept complaints register condition, would like this condition amended to add the time in which the complaint must be responded to
	Other matters requested/ raised: <ul style="list-style-type: none"> <li>• No engine braking</li> <li>• Would like to see sweeping of road and clearing of drainage</li> <li>• Fixing of rail bridge damage and fixing of pre-existing damage</li> <li>• State of signage on the interchange</li> <li>• Shrinkage/ slippage of west side roundabout at Ohinewai Interchange</li> </ul>
	Waikato Regional Council:
	Conditions 41-43 – can conditions include dust on the road? Can there be dust suppression on the weekend if dust issues continue to be an issue on the road surface
Applicant	It is not clear that the land use consent, stormwater management relates to both the foam factory and rail siding. Suggested amendments to Conditions 66 and 68 to address this.
Applicant in response to comments on draft conditions from parties above	WRC: <ul style="list-style-type: none"> <li>• Accept amendment to Condition 45 appropriate to address area of open ground – propose wording</li> <li>• No restrictions necessary for erosion and sediment control due to flat nature and relatively low risk profile of site</li> </ul>

	<ul style="list-style-type: none"> <li>Existing resource consent granted for stormwater discharge (AUTH142166.03.01) will be held alongside any stormwater discharge granted for the rail siding</li> <li>Implementation of landscape plans proposed for the development captured in draft WDC conditions 69-73</li> </ul>
	<p>WDC:</p> <ul style="list-style-type: none"> <li>Accept changes to Conditions 7, 9, 15, 18 and 24</li> <li>Accept certification of plans</li> <li>Accept suggested change to Condition 15 (a) and (b) but not (c). A “geoprofessional” will not necessarily be qualified to comment on water supply, wastewater management and stormwater management. Stormwater certification captured by Condition 67. Water supply can be captured in building consent process. No wastewater works proposed as part of this development (have an existing system in place).</li> <li>Accept Advice Notes 26 and 44</li> <li>Accept change to Condition 42(h)</li> <li>Accept change to Condition 47(a), but consider existing Condition 47(b) to be appropriate</li> <li>Accept change to Conditions 65 and 69</li> <li>Accept change to Condition 70(a)</li> <li>Do not accept new conditions requiring SOMP as this process is required through the regional consents. Could be problematic if two authorities were tasked with approving the same plan.</li> <li>Accept new condition regarding defects and liability period for the vesting of assets.</li> </ul>
	<p>Lumsden Family Trust:</p> <ul style="list-style-type: none"> <li>Rail siding not to be used at night and Condition 55 of WDC conditions enforces that. Marshall Day’s further assessment of squeal from trains Option 1 is that noise complies with District Plan noise limits of 55 dB <math>L_{Aeq}</math>.</li> <li>Regional stormwater consent requires monitoring and no further monitoring necessary</li> <li>Any non-compliance of consents subject to enforcement action. Review condition proposed in response to Ohinewai Lands Limited</li> <li>Do not accept condition necessary specifying specific limits for suspended solids and other contaminants. Stormwater management consistent with currently consented factory stormwater consent and relevant technical guidance</li> <li>Do not accept further monitoring and reporting necessary through Conditions 17-18. Stormwater</li> </ul>

	<p>management appropriately considered by technical specialists.</p> <ul style="list-style-type: none"> <li>• Maintenance of stormwater network already required through Condition 4 and management of stormwater quality through Condition 7. Maintenance of the Balemi Drain downstream of the site is not the responsibility of the applicant. Extensive consultation undertaken with WRC as part of development of stormwater development plan.</li> </ul>
	<p>Waka Kotahi:</p> <ul style="list-style-type: none"> <li>• Do not agree to request to place signage on northern side of Building 2. Rely on technical assessment provided to the Panel on 1 July 2021.</li> </ul>
	<p>Ohinewai Lands Limited:</p> <ul style="list-style-type: none"> <li>• See comment above in responding to WRC on existing stormwater discharge consent. Do not consider relief sought by OLL through Condition 8 is necessary and do not agree to surrender consent.</li> <li>• Accept suggested amendment to Condition 18</li> <li>• Accept suggested addition of review condition and propose wording based on review condition in existing consent AUTH142166.03.01</li> </ul>
	<p>R &amp; SJ Marsh:</p> <ul style="list-style-type: none"> <li>• ITA addressed necessary tracking curves and safety matters for trucks</li> <li>• BBO to discuss with applicant consultation and any agreements recorded</li> <li>• Buildings will for the most part to be largely screened by 15m wide landscaping strip along Lumsden Rd</li> <li>• The 3 hour period for the manufacture of foam provides for the volume required for the current production needs. It also matches the regional air discharge permit granted in early 2021. The hours of foam production may increase in the future as demand/ production increases – this would require additional resource consents or variations to existing consents and associated technical reporting</li> <li>• Lighting specialists will consider detailed design of lighting and applicant will continue to engage with FENZ as design of plant progresses towards building consent lodgement</li> <li>• Proposed annual meeting is considered sufficient. The community can approach the WDC monitoring and compliance team with any concerns at any time</li> </ul>
	<p>Ohinewai Area Committee:</p>

	<ul style="list-style-type: none"> <li>• Noise monitoring to be undertaken with specialist equipment and noise loggers currently set up at the site for Stage 1 A earthwork activities. Queries on noise levels from site should go to WDC monitoring team in first instance.</li> <li>• Mud tracking off vehicles has been addressed. BBO will contact APL and site manager to draw attention to OAC concerns</li> <li>• APL not responsible for control of weeds in state highway areas and outside their control. Will be seeking Waka Kotahi approvals as required through implementation of consents and will discuss ongoing vegetation control at this location</li> <li>• Hours of operation provide for efficient operation of plant – 50 staff staggered across the day and don't all start at 4am</li> <li>• Condition of consent to control operating hours of rail siding and APL has offered condition to provide annual community engagement meeting to discuss compliance issues as needed</li> <li>• Propose addition to draft Condition 75 to require consent holder to respond to complaint within 48 hours of its receipt</li> <li>• Engine braking outside applicant's control</li> <li>• Road sweeping is a compliance issue. AOC should contact WDC in first instance. APL and site manager to be made aware of this concern</li> <li>• Maintenance of the overbridge is responsibility of Waka Kotahi</li> <li>• Draft Condition 34 provides for consent holder to undertake a pre-works survey of interchange pavements and undertake remedial work if required</li> <li>• Dust control from material on the road should be managed at source – to be raised with APL directly</li> </ul>
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## **APPENDIX 4**

### ***Conditions of consent***

**WAIKATO DISTRICT COUNCIL MATTERS**  
**LAND USE CONDITIONS – SECTION 9 RMA**

- 1 The development shall be undertaken in general accordance with the information and plans submitted by the Consent Holder in support of application number FTC000023 as listed in Attachment 1 (Tables 1 and 2) below and officially received by the Environmental Protection Authority on 14 May 2021, and in particular the plans listed in Table 2. In the case of inconsistency between the application and the conditions of this consent, the conditions of consent shall prevail.

**Earthworks**

- 2 The hours of operation for the earthwork activities shall be:

- (a) 7am to 6pm Monday to Saturday.

No earthwork activities shall be undertaken outside of these hours or occur on Sundays or public holidays.

Archaeological sites may be affected by the proposal

- 3 The Consent Holder shall take all practicable steps to ensure that the exercise of this resource consent does not disturb any sites of archaeological value or of cultural significance to Tangata Whenua. In the event of an archaeological discovery, which may include the following: Burnt and fire cracked stones, charcoal, rubbish heaps including shell, bone and/or glass and crockery, ditches, banks, old building foundations, artefacts of Maori and European origin or human burials, works in the area of the discovery must cease immediately if the presence of an archaeological site is suspected, and the following parties contacted:

- Waikato District Council Monitoring Department ([monitoring@waidc.govt.nz](mailto:monitoring@waidc.govt.nz)) with consent number, address of property and date of when works ceased;
- Heritage New Zealand Pouhere Taonga- Senior Archaeologist Rachel Darmody at: [rdarmody@heritage.org.nz](mailto:rdarmody@heritage.org.nz);
- Representatives of local iwi;
- Project archaeologist;
- NZ Police (in the event of human remains koiwi tangata).

Works may recommence after obtaining the written approval of Waikato District Council to recommence and after considering the requirements of the parties and the need or otherwise for an Archaeological Authority from Heritage New Zealand Pouhere Taonga under the Heritage New Zealand Pouhere Taonga Act 2014.

**Advice Note:**

The Consent Holder is reminded of its responsibilities under the Heritage New Zealand Pouhere Taonga Act 2014 regarding any potential archaeological discoveries and the requirement for archaeological authorities.

Pre-Works Notification

- 4 The Consent Holder must notify the Waikato District Council Monitoring Department at least 5 working days prior to the commencement of activities associated with this consent.

**Advice Note:**

To notify Waikato District Council Monitoring Department, email [monitoring@waidc.govt.nz](mailto:monitoring@waidc.govt.nz) with the consent number, address of property and date for when the works will commence.

- 5 The Consent Holder must appoint a Developer's Representative prior to the exercise of this resource consent who shall be the Waikato District Council's principal contact person in regard to matters relating to this resource consent. The Consent Holder shall inform the Waikato District Council of the representative's name and how they can be contacted, prior to this resource consent being exercised. Should that person change during the term of this resource consent, the Consent Holder must immediately inform the Waikato District Council and shall also give written notice to the Waikato District Council of the new representative's name and how they can be contacted.
- 6 The Consent Holder must arrange and conduct a pre-construction site meeting and invite, with a minimum of 5 working days' notice, the Waikato District Council, the Waikato Regional Council, the site representative(s) nominated, the contractor, and any other party representing the Consent Holder prior to any work authorised by this consent commencing on site.

**Advice Note:**

In the case that any of the invited parties, other than the site representative does not attend this meeting, the Consent Holder will have complied with this condition, provided the invitation requirement is met.

Construction Management Plan

- 7 The Consent Holder must provide the Waikato District Council with a Construction Management Plan (CMP), at least 10 working days prior to the proposed commencement of activities authorised by this consent. The objective of the CMP is to document the measures by which the Consent Holder intends to comply with all conditions of resource consent during the construction phase and shall include, but not be limited to, the following:
  - (a) The proposed start date of the works authorised by this resource consent;
  - (b) A schedule of construction activities;

- (c) The commencement date and expected duration of the major cut and fill operations;
  - (d) The location of the major cut and fill operations;
  - (e) The location of topsoil stockpiles;
  - (f) The proposed construction methodology, including staging of earthworks;
  - (g) An Erosion and Sediment Control Plan (E&SCP) based on the Woods ESCP provided with the application. The E&SCP shall set out the proposed erosion and sediment control methodologies and practices to be implemented on site – as required by Condition 11;
  - (h) A Dust Management Plan (DMP) that outlines methods and mitigation to manage dust emissions – as required by Condition 22;
  - (i) A Fish Management Plan (FMP) that sets out the methods for monitoring the drain diversions and if necessary capturing and relocating fish and eels – as required by Condition 26;
  - (j) A Bat Management Plan (BMP) or Vegetation Removal Protocol (VRP) that will outline the requirements for vegetation removal across the site;
  - (k) If undertaking restoration planting, a Pest and Predator Control Plan (PPCP);
  - (l) A Construction Noise and Vibration Management Plan (CNVMP) - as required by Condition 18;
  - (m) Proposed spill prevention and response measures;
  - (n) Monitoring procedures and responsibilities;
  - (o) Construction Traffic Management Plan (CTMP) - as required by Condition 24;
  - (p) Methodology for certification of Stage 1B earthworks;
  - (q) Detailed earthworks design plans; and
  - (r) Detailed design of clean water diversions confirming conveyance of upstream catchments.
- 8 The CMP must be certified in writing (email is acceptable) by the Waikato District Council acting in a technical certification capacity prior to any works authorised by this consent commencing and the Consent Holder shall undertake all activities authorised by this consent in accordance with the certified CMP.

#### Ecological Rehabilitation and Management Plan

- 9 The Consent Holder must provide the Waikato District Council with a finalised Ecological Rehabilitation and Management Plan (ERMP), at least 10 working days prior to the proposed commencement of activities authorised by this consent. The ERMP shall include the relevant information set out in Rule OHI-INFO 1 of the Proposed

Waikato District Plan and include a detailed planting management plan for the 1 hectare of native planting required to mitigate stormwater effects. The ERMP must be certified in writing (email is acceptable) by the Waikato District Council acting in a technical certification capacity prior to any works authorised by this consent commencing and the Consent Holder shall undertake all activities authorised by this consent in accordance with the certified ERMP.

- 10 The ERMP shall include evidence of the involvement of the Ohinewai Tangata Whenua Governance Group in its preparation, including, but not limited to matters relating to:
- (a) Kaitiaki being involved in topsoil stripping across the area of works;
  - (b) Implementing fish management plans;
  - (c) Implementing bat management or vegetation removal protocols; and
  - (d) The planting of 1 hectare of native vegetation to mitigate stormwater effects.

#### Erosion and Sediment Control

- 11 As required by CMP condition 7, at least 10 working days prior to the commencement of activities authorised by this resource consent, the Consent Holder shall provide the Waikato District Council with an updated "Erosion and Sediment Control Plan" (E&SCP). The E&SCP shall as a minimum be based upon and incorporate those specific principles and practices which are appropriate for the activity authorised by this consent and contained within the Waikato Regional Council document titled "*Erosion and Sediment Control – Guidelines for Soil Disturbing Activities*" (Technical Report No. 2009/02 – dated January 2009), and shall include at least the following;
- (a) Details of all principles, procedures and practices that will be implemented to undertake erosion and sediment control to minimise the potential for sediment discharge from the site, including flocculation if required;
  - (b) The design criteria and dimensions of all key erosion and sediment control structures;
  - (c) A site plan of a suitable scale to identify;
    - i. The locations of waterways;
    - ii. The extent of soil disturbance and vegetation removal;
    - iii. Any "no go" and/or buffer areas to be maintained undisturbed adjacent to watercourses;
    - iv. Areas of cut and fill;
    - v. Locations of topsoil stockpiles;
    - vi. All key erosion and sediment control structures;
    - vii. The boundaries and area of catchments contributing to all stormwater impoundment structures;

- viii. The locations of all specific points of discharge to the environment;  
and
  - ix. Any other relevant site information
- (d) Construction timetable for the erosion and sediment control works and the bulk earthworks proposed;
  - (e) Timetable and nature of progressive site rehabilitation and re-vegetation proposed;
  - (f) Maintenance, monitoring and reporting procedures;
  - (g) Rainfall response and contingency measures including procedures to minimise adverse effects in the event of extreme rainfall events and/or the failure of any key erosion and sediment control structures;
  - (h) Procedures and timing for review and/or amendment to the E&SCP; and
  - (i) Identification and contact details of personnel responsible for the operation and maintenance of all key erosion and sediment control structures.

***Advice Note:***

The E&SCP is provided to Waikato District Council for its information only. The certification of the E&SCP is to be undertaken by Waikato Regional Council under stormwater discharge consent forming part of this application and bundle of consents.

- 12 The Consent Holder shall ensure that a copy of the E&SCP, including any confirmed amendments, is kept on site and this copy is updated within 5 working days of any amendments being confirmed.
- 13 At the completion of earthworks, installed erosion and sediment control measures shall not be removed until approval is obtained from a Monitoring Officer of the Waikato District Council.
- 14 All areas of earthworks (excluding any area covered by buildings or hardstand areas) shall be revegetated to achieve 80% ground cover within 12 months of the earthworks being commenced to the satisfaction of a Monitoring Officer of the Waikato District Council.

Certification of earthworks

- 15 On completion of earthworks associated with this consent being completed (including geotechnical remediation, pre-loading and a back filling) an approved Geo-professional must provide a Geotechnical Completion Report in accordance with the Regional Infrastructure Technical Specifications (RITS) for certification by the Land Development Engineer, Waikato District Council. This report must state the extent of inspection, supply test results and a statement of professional opinion with regard to the following:

- a) That the nominated building site/s are suitable for the proposed foam factory buildings; and
- b) Support construction of pavements and the proposed rail siding.

Noise & Vibration

16 Construction noise shall be measured and assessed in accordance with the provisions of New Zealand Standard NZS 6803:1999 “Acoustics - Construction Noise”, and comply with the following Project Standards at any occupied building:

Time Period	Weekdays (dB)		Saturdays (dB)		Sundays and Public Holidays (dB)	
	LAeq	LAfmax	LAeq	LAfmax	LAeq	LAfmax
06:30-07:30	55	75	45	75	45	75
07:30-18:00	70	85	70	85	55	85
18:00-06:30	45	75	45	75	45	75

17 Construction vibration shall be measured and assessed in accordance with German Standard DIN 4150-3:2016 “Structural Vibration – Part 3: Effects of Vibration on Structures” and shall comply with the limits in Tables 1 and 4 therein.

18 At least 10 working days prior to the commencement of construction, the Consent Holder shall submit a Construction Noise and Vibration Management Plan (CNVMP) to Council for certification. The objectives of the CNVMP are to:

- (a) Identify and adopt the Best Practicable Option (BPO) for the management of all construction noise and vibration in order to avoid, mitigate or remedy adverse effects;
- (b) Inform the duration, frequency and timing of works to manage disruption to neighbours; and
- (c) Require engagement with affected receivers and timely management of complaints.

19 The CNVMP shall include:

- (a) The relevant measures from NZS 6803:1999 "Acoustics - Construction Noise", Annex E2 “Noise management plans”;
- (b) The relevant measures from DIN 4150-3:2016 “Structural vibration - Part 3 Effects of vibration on structures”, Appendix B “Measures for limiting the effects of vibration”;

- (c) Where construction vibration is predicted to exceed 2mm/s within an occupied dwelling, the activity shall be scheduled to take place outside occupied times, or temporary relocation of the occupants shall be considered, or permission shall be provided by the dwelling occupiers.
- 20 The Consent Holder must arrange for noise measurements to be carried out by a suitably experienced and qualified acoustic expert when:
- (a) Construction work that includes equipment such as a bulldozer, compactor or articulated dump truck operates within 50m of any occupied dwelling. Measurements must be representative of a noisy period;
  - (b) At the reasonable request of the Waikato District Council's Monitoring Team Leader which may be in response to any noise related complaint(s) received by Waikato District Council.
- 21 The measurement results and methodology for any measurements shall be set out in a report to the satisfaction of the Waikato District Council's Monitoring Team Leader. The report shall be submitted to the Waikato District Council's Monitoring Team Leader within ten (10) working days of the measurements being undertaken.

#### Dust Management

- 22 Activities under this consent must be in accordance with the Dust Management Plan (DMP) approved within the CMP (Condition 7). The DMP shall be based on the DMP by Woods as submitted with the application.
- 23 The Consent Holder shall ensure that all operations on the site are carried out in such a manner as to minimise dust emissions and that no dust causes an objectionable or offensive effect beyond the boundary of the site to the satisfaction of Waikato District Council's Team Leader Monitoring.

#### ***Advice Note:***

For the purposes of this condition, the Waikato District Council Monitoring Department will consider an effect that is objectionable or offensive to have occurred if any appropriately experienced officer of the Waikato District Council determines so after having regard to:

- (a) The frequency, intensity, duration, location and effect of dust emission(s); and/or,
- (b) Receipt of complaints from neighbours or the public; and/or,
- (c) Where relevant written advice from an experienced officer of the Waikato Regional Council or the Waikato District Health Board has been received.

#### Construction Traffic Management Plan

- 24 A Construction Traffic Management Plan (CTMP) must be submitted to Waikato District Council for certification at least 10 days prior to works commencing on site.



The CTMP shall be based on the draft submitted as part of the application. The CTMP shall also include the following:

- (a) Evidence that Waka Kotahi / NZ Transport Agency has been notified of the proposed commencement of works and how feedback has been accounted for, as appropriate.
- (b) Electronic cycle warning signs are to be installed at the Tahuna Road eastern and western approaches to the Ohinewai Interchange and the top of the southbound off ramp, with activation by appropriate detector systems when cyclists are present at the top of the south bound off-ramp or cycling over either of the overbridges.

#### Transportation – Construction

25 Access to the site during the Stage 1B Earthworks Operations must be as follows:

- (a) Light vehicles and fuel delivery/servicing vehicles shall enter the site via a new temporary entrance from Balemi Road and exit the site via an existing farm heavy vehicle access on Lumsden Road.
- (b) Heavy vehicles hauling fill material and earthworks machinery shall access the site only via the temporary new haul road access on Tahuna Road located approximately 190 m east of the Tahuna Road & Lumsden Road roundabout.

26 The location of the haul road from Tahuna Road to the earthworks area may be varied by the Consent Holder, subject to the following information requirements being provided to and accepted by Waikato District Council's Team Leader Monitoring:

- (a) The site entrance from Tahuna Road shall not change.
- (b) The written approval of any landowner whose land is traversed by the haul road not in the ownership of the Consent Holder shall be submitted to the Waikato District Council.
- (c) Confirmation from a suitably qualified ecologist that the FMP required under Condition 7 has accounted for the revised haul road location and any vegetation clearance has been accounted for in the BMP or vegetation removal protocol.
- (d) Appropriate erosion and sediment controls for the haul road are accounted for in the E&SCP to be submitted as per Condition 11.

#### **Advice Note:**

If the haul road is proposed to be moved closer to any properties with occupied dwellings, it will need to be demonstrated that noise standards are still able to be complied with and that there is no impact on the residents' amenity as a result of the change.

27 An automated wheel wash facility shall be installed immediately before the sealed surface of the Tahuna Road access and all trucks departing the facility shall be required

to wash their tyres to prevent the tracking of mud and debris on to Council Roads and / or onto the state highway network, including the Ohinewai Interchange.

- 28 Heavy vehicle movements on the haul road shall be managed by the earthwork's contractor through a CTMP. The maximum daily total movements on the haul road shall be 300 movements per day, while the average shall not exceed 200 movements per day (two-way movements) over a rolling 14-day period (i.e. two working weeks).
- 29 Daily monitoring by the Consent Holder of construction traffic, including a daily record of truck movements, shall occur over the course of the construction activity, and be made available at the request of Waikato District Council's Team Leader Monitoring.
- 30 Temporary traffic management plans (TTMP) shall also be prepared and submitted to Waikato District Council for approval for the works associated with the construction of the proposed construction site accesses. The TTMPs shall be designed in accordance with NZTA CoPTTM requirements and no works shall commence without Waikato District Council approval.

**Advice Note:**

If the temporary traffic management measures extend on to the state highway and/or the Ohinewai Interchange controlled and managed by Waka Kotahi/ NZ Transport Agency, a separate TTMP will be required to be prepared and submitted to Waka Kotahi / NZ Transport Agency for approval. No works shall commence without Waka Kotahi / NZ Transport Agency approval of the TTMP required for roads, bridges, and/or interchange ramps that form part of the state highway network.

- 31 The Consent Holder must maintain the Tahuna Road and Lumsden Road sealed pavements adjacent to the construction entrances to the satisfaction of Waikato District Council's Team Leader Monitoring, for the duration of the earthworks activities.
- 32 A pre and post-construction pavement inspection of Lumsden Road and Balemi Road shall be carried out. Any remedial work attributed to the activities approved by this consent shall be remedied by the Consent Holder within 20 working days of the inspection to the satisfaction of Waikato District Council.
- 33 A pavement impact fee of \$5,940 is to be paid to Waikato District Council by the Consent Holder (paid as a lump sum) at completion of the approved earthworks.
- 34 A pre and post-construction pavement inspection of the on and off ramps of the Ohinewai Interchange shall be carried out prior to the commencement of the Stage 1B earthworks activities. Any remedial work attributed to the activities approved by this consent shall be remedied by the Consent Holder within 20 working days of the inspection.

**Advice Note:**

Any remedial work attributed to the activities approved by this consent and remedied by the Consent Holder shall be to the satisfaction of Waka Kotahi / NZ Transport Agency.

## **Transportation – Operational**

### Foam Factory Access

- 35 All factory operational traffic shall enter and exit the site via a single access on Lumsden Road, connecting to an internal one-way circulating “ring” road.
- 36 An assessment of the vehicle swept path of a large design vehicle shall be undertaken as part of the detailed design of the access on Lumsden Road. It shall be designed so that the spatial needs of the appropriate design vehicle (19.45 m semi-trailer (HPMV)) are met.
- 37 A 30km/h speed limit shall be imposed along the internal road.
- 38 Prior to construction, the Consent Holder shall prepare and submit detailed design drawings of the proposed site accesses to Waikato District Council for approval.

### Ohinewai Interchange Road Safety Improvements

- 39 The following safety improvement works are to be implemented prior to commencement of the foam factory operation. The improvement works shall be designed and constructed in accordance with the relevant District Plan and Waka Kotahi / NZ Transport Agency design requirements, including the RITS standards. No works shall commence without Waka Kotahi/ NZ Transport Agency and Waikato District Council engineering design approval.
  - (a) Installation of an electronic warning sign on the SH1 southbound off-ramp which is activated by an approaching vehicle travelling above a specific speed. The sign will activate to alert an approaching driver to the presence of the stop-controlled intersection. The minimum speed at which the sign lights up is to be based on the distance and time available to safely decelerate to a stop at the stop line.
  - (b) Installation of static cyclist warning signs on the Tahuna Road approaches to the SH1 and rail overbridges, as well as on the off-ramps of the Interchange.
  - (c) Vegetation is to be removed on both sides of the southbound off-ramp where sight distance to Tahuna Road is obstructed.
  - (d) Relocating the stop line from current position to 1.0 m from the continuity edgeline – (rural).

### **Lumsden Road, Rail Siding & Level Crossing Design and Approvals**

- 40 If Rail Option 1 is implemented, detailed design plans and drawings for the rail siding, level crossing and Lumsden Road realignment shall be provided to Waikato District Council’s Roading Team Leader and KiwiRail’s Senior Safety Engineer for written approval prior to any construction works commencing on the rail siding or road realignment.

The design shall be in general accordance with that shown on Gaze Commercial drawings ARC 119 REV 4 ‘SITE PLAN OVERALL FAST TRACK DEVELOPMENT’, ARC 120

REV 1 'OPTION 1 KIWI RAIL DESIGNATION OPERATIVE DISTRICT PLAN' and ARC 121 REV 1 'OPTION 1 RAIL KIWI RAIL DESIGNATION PROPOSED DISTRICT PLAN' and include geometric details, drainage design, level crossing and pavement design details and safety features to meet KiwiRail and Waikato District Council's infrastructure design standards. The design drawings shall address the recommendations and Safety Engineer decisions in the Road Safety Audit Report (Traffessionals, May 2020), and the recommendations of the Level Crossing Safety Impact Assessment (WSP March 2020) including but not limited to:

- (a) Crossbucks on the Flashing Light and Bells (FLB) assemblies;
  - (b) A yellow cross hatched clear zone between the limit lines at the level crossing;
  - (c) Correctly oriented advance PW57 steam engine signs are to show the train facing towards the road on both sides of the road. The drawings show the signs duplicated but the train facing the same way on both signs. PW57 (left) should be on the LHS and PW57 (right) should be on the RHS;
  - (d) A warning sign on Balemi Road of the level crossing on the side road ahead;
  - (e) Suitable fencing of the siding;
  - (f) Vegetation management plan; and
  - (g) Confirmation from KiwiRail of the acceptance of the proposed rail siding and level crossing design.
- 41 If Rail Siding Option 2 is implemented, detailed design plans and drawings for the rail siding, level crossing and Lumsden Road realignment shall be provided to Waikato District Council's Roading Team Leader and KiwiRail's Senior Safety Engineer for written approval prior to any construction works commencing on the rail siding or road realignment.

The design shall be in general accordance with that shown on the Gaze Commercial drawings ARCRO 119 REV 1 'SITE PLAN OVERALL FAST TRACK DEVELOPMENT – RAIL OPTION 2', ARC 125 REV 1 'OPTION 2 RAIL KIWI RAIL DESIGNATION OPERATIVE DISTRICT PLAN' AND ARC 126 REV 1 'OPTION 2 RAIL KIWI RAIL DESIGNATION PROPOSED DISTRICT PLAN' and include geometric details, drainage design, level crossing and pavement design details and safety features to meet KiwiRail and Waikato District Council's infrastructure design standards.

- 42 If Rail Siding Option 2 is implemented, the design submitted as per Condition 41 shall include the following:
- (a) Crossbucks on the Flashing Light and Bells (FLB) assemblies;
  - (b) A yellow cross hatched clear zone between the limit lines at the level crossing;
  - (c) Correctly oriented advance PW57 steam engine signs are to show the train facing towards the road on both sides of the road. The drawings show the signs

duplicated but the train facing the same way on both signs. PW57 (left) should be on the LHS and PW57 (right) should be on the RHS;

- (d) A warning sign on Balemi Road of the level crossing on the side road ahead;
  - (e) Suitable fencing of the siding;
  - (f) Vegetation management plan;
  - (g) Confirmation from KiwiRail of the acceptance of the proposed rail siding and level crossing design;
  - (h) Any recommendations of the detailed design safety audit; and
  - (i) An acoustic fence shall be constructed as per Marshall Day Acoustics Drawing 'Sleepyhead Ohinewai – Train Noise Barrier', dated 5/08/2021.
- 43 The realignment of Lumsden Road shall include the following, as a minimum:
- (a) Design based on a speed limit reduction on Lumsden Road from 100 km/h to 60 km/h between Tahuna Road and 280 m north of Balemi Road, and installation of a 60 km/h gated speed threshold treatment on the southbound approach to the 'S' bend on Lumsden Road;
  - (b) Narrowing of the road carriageway at the threshold pinch point;
  - (c) 20 m long solid built outs on the northern approach at the threshold pinch point;
  - (d) Kerb & channel shall be implemented on the eastern side of Lumsden Road from the Balemi Road intersection and the northern boundary of 58 Lumsden Road;
  - (e) Installation of roadside barriers, chevron boards and speed advisory signs on the 'S' bend curves;
  - (f) Installation of street lighting on the eastern side of Lumsden Road; and
  - (g) Realignment of the 'Tee' intersection of Lumsden Road / Balemi Road, and inclusion of street lighting in accordance with the performance requirements of AS/NZS 1158.
- 44 Balemi Road shall be upgraded, including the following:
- (a) Widening and sealing to a minimum six-metre-wide trafficable carriageway from Lumsden Road to the eastern most access to the site, including kerb and channel drainage along the westbound carriageway edge; and
  - (b) Design based on a speed limit reduction to 60 km/h from the existing 100 km/h speed limit (over full length) in line with the identified safe and appropriate speed for the road.

### **Advice Notes:**

The Council will implement the speed limit reductions referred to in Conditions 43 and 44 in consultation with the Consent Holder.

The Consent Holder shall be aware that any acquisition of land for rail (or road to enable rail) will require the Consent Holder to provide evidence that it has entered into a binding agreement for the acquisition of the necessary land, before the condition can be given effect to.

- 45 A post-construction safety audit is to be completed by a suitably qualified person within 3 months of the road realignment and level crossing being completed. Any recommendations as agreed shall be implemented.
- 46 As Built information for all works covered in the approved Engineering Design Plans shall be provided to Council for acceptance. As Built information shall be in accordance with Section 1.7.3 of the requirements of the RITS and shall also include all details of street lighting installed, in a format suitable for entering into Council's RAMM database.

### **Factory Construction**

- 47 Prior to the issuing of building consent, the Consent Holder shall provide confirmation to Waikato District Council that the design of the factory has accounted for the following:
  - (a) cultural narratives by providing evidence of design consultation with the Ohinewai Tangata Whenua Governance Group; and
  - (b) additional colour variations and alternate cladding forms.

### **Factory Operations**

#### General

- 48 The Consent Holder shall appoint a representative(s) prior to commencement of any works authorised by this resource consent, who shall be the Waikato District Council's principal contact person in regard to matters relating to this consent. The Consent Holder shall inform the Waikato District Council of the representative's name and how they can be contacted prior to this consent being exercised. Should that person(s) change during the term of this resource consent, the Consent Holder shall immediately inform the Waikato District Council and shall also give written notice of the new representative's name and how they can be contacted.

#### Water Supply

- 49 Prior to the commencement of operations, the Consent Holder shall confirm to Waikato District Council that a potable water supply is available.
- 50 Prior to the commencement of operations, the Consent Holder shall confirm to Waikato District Council that a suitable firefighting water supply and operations plan

is in place. This notification shall confirm that FENZ has confirmed the proposed firefighting plan.

#### Wastewater

- 51 Prior to the commencement of operations, the Consent Holder shall confirm to Waikato District Council that the private wastewater system has been connected.

#### Hours of Operation

- 52 Hours of operation for the foam factory shall be between the hours of 4am to 6pm Monday to Friday and 4am to 1pm Saturday.
- 53 The manufacture of foam shall occur for no more than three hours per day between the hours of 7am to 3pm Monday to Friday and 7am to 1pm Saturday.
- 54 The manufacture of underlay shall only occur between the hours of 4am to 4pm Monday to Friday and 7am to 1pm Saturday.
- 55 Hours of operation for the rail siding shall be between the hours of 7am and 7pm Monday to Friday and 7am to 2pm Saturday.

#### Lighting

- 56 External lighting shall be managed so light levels measured at the boundary are no more than 10 LUX.
- 57 Luminance levels from the sign located on Building 2 shall be managed to control the level of illumination of the clock when ambient light levels change.

#### Hazardous Substances

- 58 Prior to the commencement of operations on site, a copy of the site's Emergency Plan shall be provided to Waikato District Council.
- 59 No more than 90,000 litres of toluene di-isocyanate (TDI) shall be stored on site.
- 60 No greater than 46,000 litres of methyl diphenyl di-isocyanate (MDI) shall be stored on site.
- 61 The maximum usage of TDI or MDI for foam manufacture shall be no greater than 6,000 kg/hr for the manufacture of foam.
- 62 The maximum usage of TDI or MDI for the manufacture of carpet underlay shall be no greater than 16.5 kg/hr.
- 63 The Consent Holder shall maintain accurate records for determining compliance with Conditions 58-62 of TDI and MDI usage and Conditions 53-54 of production and operational uptime of the foam and underlay manufacturing lines on a daily basis which shall be made available to the Waikato District Council upon request.

- 64 The Consent Holder shall notify the Waikato District Council when it intends to transition the facility from a lower tier Major Hazardous Facility to an upper tier Major Hazardous Facility.
- 65 Before commencing use of the rail siding (and regardless of whether Option 1 or 2 is implemented), the Consent Holder shall provide to Waikato District Council written evidence of its agreement with KiwiRail to lubricate all railway tracks for the rail siding at an agreed frequency sufficient to ensure that no objectionable wheel squeal occurs or in response to objections reasonably made by Ohinewai residents.

### **Community Engagement**

- 66 The Consent Holder shall invite the Ohinewai Area Committee, the Tangata Whenua Governance Group, the Waikato Regional Council and the Waikato District Council to meet at least annually to:
- (a) provide an update on key aspects of plant operations and compliance including maintenance and monitoring activities; and
  - (b) discuss and respond to any issues of concern raised by the Ohinewai Area Committee and the Tangata Whenua Governance Group about the operations of the foam factory, including the rail siding.

### **Stormwater Management**

#### Detailed Engineering Design

- 67 The Consent Holder shall retain an appropriately qualified and experienced person to complete the finalised/detailed stormwater design for the site. More specifically, the Consent Holder shall submit to Waikato District Council a detailed stormwater design report and plans for the development which confirms provision of the following stormwater management functions for the various components of the stormwater management system in accordance with the Waikato Regional Council's Waikato Stormwater Management Guideline (WRC, 2020) and Waikato Stormwater Runoff Modelling Guideline (WRC, 2018) along with any changes made from the preliminary/consent level design plans:
- (a) Stormwater reticulation network including all catchpits, pipelines and overland flowpaths;
  - (b) Controlled drainage system including shut off valves if required;
  - (c) Stage 1 treatment system comprising in-line proprietary filtration devices for runoff from ground level/factory and rail yard surfaces;
  - (d) Stage 2 treatment wetlands (Wetlands 1 and/ or 2) and associated swales; and
  - (e) Conveyance swale and discharge outfall structures.



### As-builts

- 68 The Consent Holder shall submit to Waikato District Council final "as built" details and drawings of the stormwater management system for each development stage, including the stormwater reticulation system and the stormwater treatment and attenuation systems associated with the stormwater management system.

The "as built" details and drawings shall be submitted to the Waikato District Council within one (1) month of final completion of construction works associated with the stormwater management devices for each development stage. The "as built" plans shall be certified by an appropriately qualified engineer as a true record of the completed stormwater management system and that the completed stormwater management system is in accordance with the detailed design plans submitted in accordance with this condition.

- 69 At the completion of the rail siding, the as-built details and drawings shall confirm that any stormwater discharges to the Balemi Road drain from the Ohinewai Foam Factory have been disestablished.

### **Landscape Planting**

- 70 Prior to the construction of the foam factory, landscape planting plans shall be submitted to Waikato District Council's Team Leader Monitoring for certification. The landscape plans shall be based on the MGLA Mitigation Planting Plans, P2- P5 dated 01/04/21 included in the application and include:

- (a) Details on the staging of the planting programme;
- (b) The species, locations and expected heights of any proposed plants;
- (c) Details of a maintenance programme.

- 71 Within 12 months of the foam factory being operational, the landscape mitigation planting required under Condition 70 shall be implemented on site. The landscape mitigation planting must be maintained to the satisfaction of Waikato District Council. If any of the landscaping dies and/ or becomes diseased, the dead and/ or diseased landscaping shall be replaced in the same or similar location within the next planting season (generally between May and October) by a same or similar species of landscaping.

- 72 Prior to the construction of the rail siding and realignment of Lumsden Road and Balemi Road, landscape planting plans shall be submitted to Waikato District Council's Team Leader Monitoring for approval. The landscape plans shall be based on the MGLA Mitigation Planting Plans P1- P8 dated 01/04/21 included in the application and, if Rail Siding Option 2 is implemented, the MGLA APL Rail Siding Option 2 Mitigation Planting Plan P10 dated 9/08/21 (Mitigation Planting Plan drawing P10 shall replace Mitigation Planting Plan P2).

- 73 If Rail Siding Option 2 is implemented, the Consent Holder shall obtain any resource consent required for the removal of the large Plane tree on the western boundary of the site before undertaking any work required to implement Rail Siding Option 2.

- 74 Within 12 months of the rail siding being operational, the landscape mitigation planting required under Condition 72 shall be implemented on site. The landscape mitigation planting must be maintained to the satisfaction of Waikato District Council. If any of the landscaping dies and/ or becomes diseased, the dead and/ or diseased landscaping shall be replaced in the same or similar location within the next planting season (generally between May and October) by a same or similar species of landscaping.

Mitigation for loss of bat habitat

- 75 If the monitoring undertaken as part of the BMP finds bats located within vegetation felled as part of the works, mitigation is required to be undertaken within 3 months of the vegetation removal. The mitigation shall comprise the following:
- (a) 32 trees (no less than PB18 in size) planted as a hedgerow on the site boundary;  
OR
  - (b) 9 bat roost boxes shall be located within the remaining Japanese Cypress hedgerow.

**Defects Liability Period**

- 76 A Defects Liability Period of 12 months shall apply to all assets to vest, including but not limited to roading, streetlights, street furniture and stormwater infrastructure. The Defects Liability Period will commence on agreement of practical completion of the works between the Consent Holder and Waikato District Council.

***Advice Note:***

If during the Defects Liability Period Council considers that any remedial works need to be carried out in respect of the subdivision works, the Consent Holder shall be required to undertake these at its own cost, for certification by the Council. Engineering design plans for remedial works must be submitted to and accepted by Council prior to construction.

**Complaints**

- 77 Any complaints received by the Consent Holder as a result of the operation of the activities authorised by this consent shall be recorded by the Consent Holder in the form of a written complaints register. The information recorded shall include:

The date, time and nature of the complaint;

- (a) Name, phone number and address of the complainant unless the complainant wishes to remain anonymous;
- (b) Action taken by the Consent Holder to remedy the problem, including confirmation that the complainant has been responded to within 48 hours of the complaint being received;
- (c) Any equipment failure and remedial action taken;

(d) The weather conditions at the time, including wind direction, wind strength and temperature, and;

(e) Date and name of the person making the entry.

A copy of this complaints register shall be made available to the Waikato District Council within 24 hours upon request from Waikato District Council's Monitoring Team.

### **Lapse period**

78 Under section 125 of the Resource Management Act 1991, this consent lapses two years after the date of commencement under section 116 of the Act unless:

(a) The consent is given effect to; or

(b) The Council extends the period after which the consent lapses.

### **Review**

79 The Council may, in accordance with Sections 128 and 129 of the Resource Management Act 1991, serve notice on the Consent Holder of its intention to review the conditions of this resource consent for any of the following purposes:

(a) To deal with any adverse effects on the environment that may arise from the exercise of the consent which were not foreseen at the time the application was considered and which it is appropriate to deal with at a later stage;

(b) To deal with any adverse effects on the environment which may arise from the exercise of the consent and which could not be properly assessed at the time the application was considered;

(c) To avoid, remedy and mitigate and adverse effects on the environment which may arise from the exercise of the consent and which have been caused by a change in circumstances or which may be more appropriately addressed as a result of a change in circumstances, such that the conditions of this resource consent are no longer appropriate in terms of the purpose of the Resource Management Act 1991;

(d) To review any adverse effects arising from the use of the rail siding (whether Option 1 or 2).

## Attachment 1: Tables

**Table 1: Application Documents**

Document Title	Author	Reference/ Version	Date
Assessment of Environmental Effects	Bloxam, Burnett & Olliver		14 May 2021
Integrated Transport Assessment	Bloxam, Burnett & Olliver	V1	31/03/2021
Signage Safety Assessment Memo	Bloxam, Burnett & Olliver		1 July 2021
Geotechnical Interpretative Report – Stage 1 and 2 Sleepyhead Factory Development	Initia	REV 1	May 2020
Geotechnical Report – Rail Siding	Initia	REV A	May 2021
Ecological Impact Assessment Ohinewai Foam Factory and Railsiding	Ecology New Zealand	Revision 0	2021/03/21
RFI 4 Response Memo	Ecology New Zealand		5 August 2021
Archaeological Assessment of Effects	W Gumbley Ltd		June 2019
Preliminary Site Investigation	Geosciences Limited		11 June 2019
Detailed Site Investigation	Geosciences Limited		14 August 2019
Remediation Action and Site Management Plan	Geosciences Limited		14 August 2019
Civil Infrastructure Report – Ohinewai Foam Factory and Rail Siding	Woods	V1	1/04/2021
RFI 4 Stormwater Memo	Woods		5 August 2021
Ohinewai Foam Factory & Rail Siding Acoustic Assessment	Marshall Day Acoustics	R02	1 April 2021
Train Noise Assessment Memo	Marshall Day Acoustics		27 July 2021
Hazardous Substances Qualitative Assessment	Jacobs	Issue Rev. 5	26 March 2021
Hazardous Substances Technical Assessment	Tonkin & Taylor	Version 1	July 2020
Landscape and Visual Assessment Report Note RFI response	Mansergh Graham Landscape Architects	R5	March 2021
Landscape and Visual Effects Project Memorandum	Mansergh Graham Landscape Architects		21/06/2021
Draft Emergency Plan	The Comfort Group	Draft #7	15 October 2020

Greenhouse Gas Emissions Assessment	Atmospheric Science Global		March 2021
RFI 2 Response Memo	Atmospheric Science Global		undated
Sleepyhead Factory & Rail Siding Economic Effects Report	Property Economics	51919.4	March 2021
Social and Cultural Wellbeing Memo	Quigley & Watts		31 August 2020

**Table 2: Drawings and Plans**

Drawing Title	Drawing reference	Revision	Author
<b>Rail Option 1</b>			
Cover, Locality & Content Index	P20-353- 00- 0000 to 0001 - GE		Woods
Development Scheme Plan	P20-353- 00- 0005 - GE	1	Woods
Staging Plans	P20-353- 00- 0050 to 0051 - GE	2	Woods
Title Boundary Plan & Existing Features	P20-353- 00- 0060 to 0070 - GE	1	Woods
Existing Contours Plans	P20-353- 00- 1000 to 1005 -EW	1	Woods
Proposed Contours Plans - Stage 1	P20-353- 00- 1110 to 1112 -EW	1	Woods
Cut Fill Depth Contours Plans - Stage 1	P20-353- 00- 1120 to 1122 -EW	1	Woods
Proposed Contours Plans - Stages 1 & 2	P20-353- 00- 1210 to 1215 -EW	1	Woods
Cut Fill Depth Contours Plans - Stages 1 & 2	P20-353- 00- 1220 to 1225 - EW	1	Woods
Geotechnical Remediation Plans	P20-353- 00- 1300 to 1320 -EW	1	Woods
Land Drainage Plan	P20-353- 00- 1600 - EW	1	Woods
Erosion and Sediment Control Plans	P20-353- 00- 1800 to 1803 -EW	1	Woods
Construction Haul Road Plans	P20-353- 00- 1850 to 1861 -EW	1	Woods
Pavement Layout Plans	P20-353- 00- 2000 to 2003 -DR	1	Woods
Stormwater Layout Plans	P20-353- 00- 3000 to 3004 -DR	1	Woods
Stormwater Primary Treatment Device Layout Plans	P20-353- 00- 3150 to 3152 -DR	1	Woods
Stormwater Wetland 1 Plan & Sections	P20-353- 00- 3201 to 3211 -DR	1	Woods
Stormwater Wetland 1 Plans & Sections	P20-353- 00- 3251 to 3261 -DR	1	Woods
Typical Wetland Details	P20-353- 00- 3280 to 3284 -DR	1	Woods
Swale Layout Plans & Sections	P20-353- 00- 3300 to 3360 -DR	1	Woods
Wetland Catchment Plans	P20-353- 00- 3500 to 3502 -DR	1	Woods
Wastewater Layout Plan	P20-353- 00- 5100 -DR	1	Woods
Sprinkler Drainage Layout Plan	P20-353- 00- 5900 -DR	1	Woods

Drawing Title	Drawing reference	Revision	Author
Water Supply Layout Plan	P20-353- 00- 6800 to 6802 -WS	1	Woods
LOCATION PLAN & INDEX	ARC 000	4	Gaze
EXISTING SITE CONTOUR PLAN WITH BUILDING OUTLINE	ARC 101	4	Gaze
EXISTING PART SITE CONTOUR PLAN WITH BUILDING OUTLINE	ARC 102	3	Gaze
PART SITE PLAN	ARC 105	4	Gaze
SITE PLAN SPRINKLER OUTFLOW	ARC 113	4	Gaze
SITE PLAN OVERALL FAST TRACK DEVELOPMENT	ARC 119	4	Gaze
OPTION 1 RAIL KIWI RAIL DESIGNATION OPERATIVE DISTRICT PLAN	ARC 120	1	Gaze
OPTION 1 RAIL KIWI RAIL DESIGNATION PROPOSED DISTRICT PLAN	ARC 121	1	Gaze
ELEVATIONS BUILDING 1 FOAM PLANT	ARC 300	3	Gaze
ELEVATIONS BUILDING 2 FOAM PROCESSING	ARC 302	3	Gaze
ELEVATIONS BUILDING 3 FOAM PROCESSING	ARC 304	3	Gaze
ELEVATIONS BUILDING 4 & 5 REBOND & BEAN	ARC 306	3	Gaze
COLOURED PART ELEVATIONS	ARC 320	4	Gaze
Planting overview	P1		Mansergh Graham
Mitigation planting	P2		Mansergh Graham
Wetland planting	P3		Mansergh Graham
Swale planting	P4		Mansergh Graham
Swale planting	P5		Mansergh Graham
Wetland planting	P6		Mansergh Graham
Swale planting	P7		Mansergh Graham
Swale planting examples	P8		Mansergh Graham
<b>Rail Option 2</b>			
Cover, Locality & Content Index	P20-353- 02- 0000 to 0001 - GE	1	Woods

Drawing Title	Drawing reference	Revision	Author
Development Scheme Plan	P20-353- 02- 0005 -GE	1	Woods
Staging Plans	P20-353- 02- 0050 to 0051 -GE	1	Woods
Title Boundary Plan & Existing Features	P20-353- 02- 0060 to 0070 -GE	1	Woods
Existing Contours Plans	P20-353- 02- 1000 to 1005 -EW	1	Woods
Proposed Contours Plans - Stages 1 & 2	P20-353- 02- 1210 to 1215 -EW	1	Woods
Cut Fill Depth Contours Plans - Stages 1 & 2	P20-353- 02- 1220 to 1225 -EW	1	Woods
Geotechnical Remediation Plans	P20-353- 02- 1300 to 1320 -EW	1	Woods
Land Drainage Plan	P20-353- 02- 1600 -EW	1	Woods
Erosion and Sediment Control Plans	P20-353- 02- 1800 to 1803 -EW	1	Woods
Construction Haul Road Plans	P20-353- 02- 1850 to 1861 -EW	1	Woods
Pavement Layout Plans	P20-353- 02- 2000 to 2003 -RD	1	Woods
Stormwater Layout Plans	P20-353- 02- 3000 to 3004 -DR	1	Woods
Stormwater Primary Treatment Device Layout Plans	P20-353- 02- 3150 to 3152 -DR	1	Woods
Stormwater Wetland 1 Plan & Sections	P20-353- 02- 3201 to 3210 -DR	1	Woods
Stormwater Wetland 2 Plans & Sections	P20-353- 02- 3251 to 3261 -DR	1	Woods
Typical Wetland Details	P20-353- 02- 3280 to 3284 -DR	1	Woods
Swale Layout Plans & Sections	P20-353- 02- 3300 to 3360 -DR	1	Woods
Wetland Catchment Plans	P20-353- 02- 3500 to 3502 -DR	1	Woods
Wastewater Layout Plan	P20-353- 02- 5100 -DR	1	Woods
Sprinkler Drainage Layout Plan	P20-353- 02- 5900 -DR	1	Woods
Water Supply Layout Plan	P20-353- 02- 6800 to 6802 -WS	1	Woods
LOCATION PLAN & INDEX - RAIL OPTION 2	ARCRO 000	1	Gaze
EXISTING SITE CONTOUR PLAN WITH BUILDING OUTLINE - RAIL OPTION 2	ARCRO 101	1	Gaze
EXISTING PART SITE CONTOUR PLAN WITH BUILDING OUTLINE - RAIL OPTION 2	ARCRO 102	1	Gaze



Drawing Title	Drawing reference	Revision	Author
PART SITE PLAN - RAIL OPTION 2	ARCRO 105	1	Gaze
SITE PLAN SPRINKLER OUTFLOW - RAIL OPTION 2	ARCRO 113	1	Gaze
SITE PLAN OVERALL FAST TRACK DEVELOPMENT - RAIL OPTION 2	ARCRO 119	1	Gaze
OPTION 2 RAIL KIWI RAIL DESIGNATION OPERATIVE DISTRICT PLAN	ARC 125	1	Gaze
OPTION 2 RAIL KIWI RAIL DESIGNATION PROPOSED DISTRICT PLAN	ARC 126	1	Gaze
ELEVATIONS BUILDING 1 FOAM PLANT	ARC 300	3	Gaze
ELEVATIONS BUILDING 2 FOAM PROCESSING	ARCRO 302	1	Gaze
ELEVATIONS BUILDING 3 FOAM PROCESSING	ARC 304	3	Gaze
ELEVATIONS BUILDING 4 & 5 REBOND & BEAN	ARC 306	3	Gaze
COLOURED PART ELEVATIONS	ARC 320	3	Gaze
Planting overview	P1		Mansergh Graham
Wetland planting	P3		Mansergh Graham
Swale planting	P4		Mansergh Graham
Swale planting	P5		Mansergh Graham
Wetland planting	P6		Mansergh Graham
Swale planting	P7		Mansergh Graham
Swale planting examples	P8		Mansergh Graham
Mitigation planting	P10		Mansergh Graham
Train noise barrier			Marshall Day Acoustics

## WAIKATO REGIONAL COUNCIL MATTERS

### LAND USE (EARTHWORKS), STORMWATER DISCHARGE, WATER TAKE, WATER DIVERSION CONDITIONS

#### LAND USE CONSENT – LAND DISTURBANCE (EARTHWORKS)

##### General

1. The soil disturbance and cleanfilling activities authorised by this resource consent shall be undertaken in general accordance with the application for this resource consent FTC000023, and supporting documentation titled *Ambury Properties Limited – NZ Comfort Group - Ohinewai Foam Factory – Assessment of Environmental Effects Report* prepared by Bloxam Burnett & Olliver and dated 14 May 2021 and officially received by the Environmental Protection Authority on 14 May 2021 and, as appropriate, all supporting information referenced in Tables 1 and 2 (**Attachment 1**) except where otherwise required in the resource consent conditions below. Where there is any discrepancy between the application documents and the resource consent conditions then the conditions below shall prevail.
2. The consent holder shall appoint a representative(s) prior to commencement of any works authorised by this resource consent, who shall be the Waikato Regional Council's principal contact person in regard to matters relating to this consent. The consent holder shall inform the Waikato Regional Council of the representative's name and how they can be contacted prior to this consent being exercised. Should that person(s) change during the term of this resource consent, the consent holder shall immediately inform the Waikato Regional Council and shall also give written notice to the Waikato Regional Council of the new representative's name and how they can be contacted.
3. The consent holder shall be responsible for all contracted operations relating to the exercise of this resource consent, and shall ensure contractors are made aware of the conditions of this consent and ensure compliance with those conditions.
4. A copy of this resource consent shall be kept on-site at all times that the works authorised by this consent are being undertaken, and shall be produced without unreasonable delay upon request from a servant or agent of the Waikato Regional Council.

##### Winter Works

5. The works authorised by this resource consent shall not be carried out during the winter period 1<sup>st</sup> May to 30<sup>th</sup> September inclusive in any year that this consent is current unless authorised by the Waikato Regional Council as per condition 7.
6. The consent holder shall ensure that the site is appropriately stabilised by 30 April of each year unless otherwise approved in writing by the Waikato Regional Council. Stabilisation shall be undertaken by providing adequate measures (vegetative and/or structural and including, pavement, metalling, hydroseeding, revegetating and mulching) that will minimise erosion of exposed soil to the extent practicable.

7. Requests to undertake works during the period 1<sup>st</sup> May to 30<sup>th</sup> September inclusive shall be submitted in writing to the Waikato Regional Council by 1<sup>st</sup> April, and shall be in the form of amendments to the approved Earthworks and Sediment Control Plan (E&SCP).

**Advice Note:** *In considering a request for the continuation of winter works, the Waikato Regional Council will consider a number of factors; including:*

- *the nature of the site and the winter soil disturbance works proposed; the quality of the existing/proposed erosion and sediment controls;*
- *the compliance history of the site/operator;*
- *seasonal/local soil and weather conditions;*
- *sensitivity of the receiving environment; and*
- *any other relevant factor.*

### **Pre-works Requirements**

8. The consent holder shall inform the Waikato Regional Council in writing, prior to commencement of any works, of the start date of the works authorised by this resource consent
9. The consent holder shall arrange and conduct a pre-construction site meeting and invite the Waikato Regional Council, the site representative nominated under condition 2 of this consent, the contractor, and any other party representing the consent holder prior to any works authorised by this consent commencing on the site.

**Advice Note:** *In the case that any of the invited parties, other than the site representative does not attend this meeting, the consent holder will have complied with this condition, provided the invitation requirement is met.*

### **Haul Road**

10. The consent holder may vary the finalised alignment of the haul road from Tahuna Road to the earthworks site area upon the following information requirements being provided to the Waikato Regional Council:
  - a. The site entrance location from Tahuna Road shall not change from the location outlined on the design plans submitted with the consent application;
  - b. The design width/c carriageway of the haul road and associated earthworks shall not increase from the design plans submitted with the consent application;
  - c. The written approval of any landowner whose land is traversed by the haul road not in the ownership of the consent holder shall be submitted to the Waikato Regional Council.
  - d. Confirmation from a suitably qualified ecologist that the Fish Management Plan required under Condition 29 has accounted for the revised haul road location and any vegetation clearance has been accounted for in the Bat Management Plan / Tree Felling Protocol required under Condition 30.

- e. Appropriate erosion and sediment controls for the Haul Road are accounted for in the E&SCP to be submitted as per Conditions 11 and 12.

### **Erosion and Sediment Control**

- 11. The consent holder shall provide the Waikato Regional Council with a finalised **Erosion and Sediment Control Plan (E&SCP)**, at least 10 working days prior to the commencement of activities authorised by this consent. The objective of the E&SCP shall be to minimise sediment discharge from the site to the extent practicable over the earthworks period.
- 12. The E&SCP shall as a minimum be based upon and incorporate those specific principles and practices which are appropriate for the activity authorised by this consent and contained within the Waikato Regional Council document titled "*Erosion and Sediment Control – Guidelines for Soil Disturbing Activities*" (Technical Report No. 2009/02 – dated January 2009), and shall include at least the following;
  - a. Details of all principles, procedures and practices that will be implemented to undertake erosion and sediment control to minimise the potential for sediment discharge from the site;
  - b. The design criteria and dimensions of all key erosion and sediment control structures;
  - c. A site plan of a suitable scale to identify;
    - i. The locations of waterways;
    - ii. The extent of soil disturbance and vegetation removal;
    - iii. Any "no go" and/or buffer areas to be maintained undisturbed adjacent to watercourses;
    - iv. Areas of cut and fill;
    - v. Locations of topsoil stockpiles;
    - vi. All key erosion and sediment control structures;
    - vii. Erosion control methods;
    - viii. The boundaries and area of catchments contributing to all stormwater impoundment structures;
    - ix. The locations of all specific points of discharge to the environment; and
    - x. Any other relevant site information.
  - d. Construction timetable for the erosion and sediment control works and the bulk earthworks proposed;
  - e. A detailed staging plan for the works including details of how the extent of exposed works will be minimised on site;
  - f. Dewatering methodology;

- g. Timetable and nature of progressive site rehabilitation and re-vegetation proposed;
- h. Maintenance, monitoring and reporting procedures;
- i. Provision of all-weather access for machinery to all sediment control devices;
- j. Rainfall response and contingency measures including procedures to minimise adverse effects in the event of extreme rainfall events and/or the failure of any key erosion and sediment control structures;
- k. Procedures and timing for review and/or amendment to the E&SCP; and
- l. Identification and contact details of personnel responsible for the operation and maintenance of all key erosion and sediment control structures.

The E&SCP shall be approved in writing by the Waikato Regional Council acting in a technical certification capacity prior to any works authorised by this consent commencing, and the consent holder shall undertake all earthworks authorised by this consent in accordance with the approved E&SCP.

- 13. Any changes proposed to the E&SCP shall be confirmed in writing by the consent holder and approved in writing by the Waikato Regional Council acting in a technical certification capacity, prior to the implementation of any changes proposed.
- 14. The consent holder shall ensure that a copy of the approved E&SCP, including any approved amendments, is kept on-site and this copy is updated within 5 working days of any amendments being approved.
- 15. Prior to bulk earthworks commencing on any area, the consent holder shall submit to the Waikato Regional Council a certificate signed by an appropriately qualified and experienced erosion and sediment control practitioner to certify that the erosion and sediment controls have been constructed in accordance with the approved E&SCP and in accordance with the document titled "*Erosion and Sediment Control Guidelines for Soil Disturbing Activities January 2009*". Certified controls shall include any sediment retention ponds, decanting earth bunds, silt fences and diversion channels/bunds. The certification for these measures shall be supplied within five working days of completion of construction of those measures.

Information supplied if applicable shall include:

- a. Contributing catchment area; and
- b. Retention volume of structure (dead storage and live storage measured to the top of the primary spillway); and
- c. Shape and dimensions of structure; and
- d. Position of inlets/outlets; and
- e. Stabilisation of the structure; and
- f. Compliance with the Waikato Regional Council document titled "*Erosion and Sediment Control Guidelines for Soil Disturbing Activities January 2009*" (Technical Report No. 2009/02); and

- g. Compliance with any relevant conditions of this consent.
16. The consent holder shall ensure that all sediment laden run-off from the site is treated by sediment retention structures. These structures are to be fully operational before bulk earthworks commence and shall be maintained to perform at least at 80% of their full operational capacity.
  17. The consent holder shall ensure that all clean water run-off from stabilised surfaces including catchment areas above and around the site shall be diverted away from the earthworks area via a stabilised diversion system.
  18. The consent holder shall ensure that all runoff diversion systems are designed and installed to convey flows from contributing catchment areas up to the 20% AEP rainfall event without overtopping and shall also ensure that these systems incorporate adequate protection against erosion.
  19. The consent holder shall ensure that all erosion and sediment controls are inspected and in good working order prior to, and immediately after rain events. The consent holder shall further ensure that all erosion and sediment controls are maintained such that optimal sediment capture efficiency is achieved at all times.
  20. The erosion and sediment controls specified in the approved E&SCP shall not be disestablished without the prior written approval of the Waikato Regional Council.
  21. The consent holder shall construct a stabilised construction entrance at the site entrance point and shall manage all traffic leaving the site to prevent the tracking of sediment onto the public road surface. In the event that adverse sediment tracking effects are identified, the consent holder shall implement a suitable wheel wash system to the satisfaction of the Waikato Regional Council to prevent any further sediment tracking effects onto the public road.

### **Staging**

22. The earthworks shall be planned, programmed and implemented to occur in a staged manner to ensure the extent of exposed surfaces at any one time is minimised to the satisfaction of the Waikato Regional Council over the duration of the earthworks.

### **Flocculation**

23. Prior to the commencement of bulk earthworks the consent holder shall undertake flocculant bench testing to determine the reactivity of the site's soils to chemical treatment within those areas of the site where runoff is proposed to be treated by sediment retention ponds and decanting earth bunds.

Should this flocculant bench testing confirm improved sediment treatment efficiencies, all decanting earth bunds or sediment retention ponds established on site in accordance with the approved E&SCP shall incorporate a suitable rain activated flocculant dosing system unless otherwise approved by the Waikato Regional Council

24. Prior to the commissioning of any flocculation treatment system (confirmed by bench testing), the consent holder shall provide the Waikato Regional Council with a Flocculation Management Plan (FMP), for the written approval of the Waikato Regional Council. The FMP shall include as a minimum:

- a. Specific design details for the flocculation system;
  - b. Monitoring, maintenance (including post-storm) and including a record system;
  - c. Details of optimum dosage (including assumptions);
  - d. Results of any initial flocculation trial;
  - e. A spill contingency plan; and
  - f. Contact details of the persons responsible for the operation and maintenance of the flocculation treatment system and the organisational structure to which this person shall report.
25. Any FMP required by condition 24 shall be approved in writing by the Waikato Regional Council acting in a technical certification capacity prior to any works authorised by this consent commencing.
  26. Any changes proposed to the FMP required by condition 24 shall be confirmed in writing by the consent holder and approved in writing by the Waikato Regional Council acting in a technical certification capacity, prior to the implementation of any changes proposed.

### **Machinery**

27. All earthmoving machinery, pumps and generators shall be operated in a manner which ensures that spillages of fuel, oil and similar contaminants are prevented, particularly during refuelling and machinery servicing and maintenance. Refuelling and lubrication activities shall be carried out away from any surface water such that any spillage can be contained and does not enter any surface water.
28. Prior to entering the site all machinery shall be appropriately cleaned and inspected to minimise any 'containment and/or 'eradication' plant pest species being introduced to the site.

***Note:** For the purposes of this condition, 'containment' and 'eradication' plant pest species are those species that are listed as such in the Waikato Regional Pest Management Strategy 2014 - 2024, or any subsequent version of that publication that is published after the granting of this resource consent.*

### **Ecological Management**

29. The consent holder shall prepare a Fish Management Plan which outlines proposed methods for capture and transfer of any fish from any areas of flowing or standing water, prior to and during the channel disturbance activities.

The Fish Management Plan shall be submitted to the Waikato Regional Council for approval at least 10 working days prior to the commencement of the drain diversion works occurring as part of earthworks activities authorised by this consent and shall be implemented prior to and during those activities.

30. Any vegetation clearance/tree felling works shall be undertaken with an appropriate Bat Management Plan/Tree Felling Protocol to ensure that any potential effects on Long Tailed Bats are minimised to the greatest extent possible.

## **Cleanfill**

31. The consent holder shall ensure that any importation of fill from off-site sources must meet the definition of Class 4 cleanfill material as defined in the Waste Management Institute New Zealand document 'Technical Guidelines for Disposal to Land' April, 2016. More specifically, cleanfill deposition authorised by this consent shall comprise placement of quarry sourced aggregate or sand material or virgin soil material sourced from a location which has been confirmed as free of soil contamination risks and shall exclude:
  - a. material that has combustible, putrescible or degradable components;
  - b. materials likely to create leachate by means of biological or chemical breakdown;
  - c. any products or materials derived from hazardous waste treatment, hazardous waste stabilisation or hazardous waste disposal practices;
  - d. materials such as medical and veterinary waste, asbestos, or radioactive substances that may present a risk to human health; and
  - e. soils or other materials contaminated with hazardous substances or pathogens.
32. To ensure that all material imported to site meets the cleanfill definition as outlined within condition 31, the consent holder shall undertake routine monitoring of all fill material imported to site and shall maintain records of the source, type and volume of all cleanfill material. These records shall be made available to the Waikato Regional Council upon request.

## **Monitoring and Maintenance**

33. The consent holder shall ensure that the erosion and sediment controls at the site are inspected a minimum of once per week and within 24 hours of each rainstorm event that is likely to impair the function or performance of the controls.
34. The consent holder shall carry out monitoring and maintenance of erosion and sediment controls in accordance with the conditions of this consent and shall maintain records detailing:
  - a. The date, time and results of the monitoring undertaken;
  - b. The erosion and sediment controls that required maintenance;
  - c. The time when the maintenance was undertaken; and
  - d. The type of maintenance carried out.

These records shall be provided to the Waikato Regional Council on request.

## **Sampling**

35. If requested in writing by the Waikato Regional Council the consent holder shall take samples of the discharges from all sediment retention ponds and decanting earth bunds on the site a minimum of once per month and after all rainfall events greater than 20 millimetres in the preceding 24 hours, excepting times when there are no discharges.



The consent holder shall take the samples within four hours of becoming aware of a rainfall event greater than 20 millimetres in the preceding 24 hours.

36. Within one working day of taking any samples required, the consent holder shall have those samples analysed for suspended solids and turbidity and (if flocculants are being used to treat any sediment retention pond) pH, and soluble aluminium. The results of the analysis shall be forwarded to the Waikato Regional Council within 7 days of analysis.
37. The consent holder shall ensure that the soluble aluminium concentration of any discharge from a sediment retention pond flocculated in accordance with a Flocculation Management Plan approved in accordance with condition 24, shall not exceed 0.2 grams per cubic metre.
38. The consent holder shall ensure that the pH of any discharge from a sediment retention pond flocculated in accordance with a Flocculation Management Plan approved in accordance with condition 24, shall not be less than 5.5 or greater than 8.5 pH units.
39. Any sampling required by this resource consent, the frequency of sampling, analyses and reporting may be altered or reduced with the written agreement of the Waikato Regional Council.

### **Discharges**

40. The concentration of suspended solids in the Balemi Road drain or any other downstream water body shall not exceed 150 grams per cubic metre suspended solids concentration as a result of the exercise of this consent. This standard shall apply, except where the suspended solids concentration in the named water body, unaffected by the activity, is greater than the standard specified. When the concentration of suspended solids in the named water body, unaffected by the activity, exceeds 150 grams per cubic metre then there shall not be any increase in the suspended solids concentration in the named water body as a result of activities authorised by this consent.

**Advice Note:** *When assessing compliance with this condition a minimum of three water samples should be collected: (a) upstream and unaffected by the activities authorised by this consent; (b) the point source discharge from the activities authorised by this consent; and (c) downstream after reasonable mixing.*

### **Dust**

41. All earthworks activities carried out on site shall be conducted and managed in such a manner as to ensure that all dust and particulate emissions are kept to a practical minimum to the extent that there are no dust discharges beyond the boundary of the site that cause an objectionable effect.
42. The consent holder shall ensure that, at all times, an adequate supply of water for dust control and an effective means for applying that quantity of water, is available to ensure that the soil moisture of exposed areas is maintained at sufficient levels, under prevailing wind conditions, to prevent dust generated by normal earthmoving operations from remaining airborne beyond the boundary of the work site until such time as the site is fully stabilised.
43. The consent holder shall ensure that, outside of normal working hours, staff are available on-call at all times to operate the water application system for dust suppression.

44. If so required by the Waikato Regional Council, the consent holder shall carry out immediate sealing of any problematic dust generating surfaces within the site using hydro-seed/hydro-mulch, polymer soil stabilisers or a similar dust control product to provide instant remediation of any areas to prevent any on-going dust effects.
45. The consent holder shall provide the Waikato Regional Council with a detailed **Dust Management Plan (DMP)**, at least 10 working days prior to the commencement of activities authorised by this consent. The objective of the DMP shall be to outline the site management methods to ensure that compliance with conditions 41 to 44 is achieved throughout the earthworks and as a minimum shall address the following items:
  - a. Confirmation of the parties responsible for dust management throughout the works;
  - b. Detailed monitoring methods for weather/soil conditions to ensure that any periods of elevated dust risk are appropriately anticipated and managed;
  - c. Finalised works staging plan to ensure exposed surfaces at any one time are minimised in accordance with the requirements of this consent;
  - d. Proposed dust control methods to ensure damp ground conditions can be maintained within the site during high dust risk periods;
  - e. Confirmation of a suitable capacity water supply for dust suppression;
  - f. Methods for targeting dust control measures within high risk works areas including works in proximity to any residential neighbours
  - g. Methods for managing dust risk outside of standard working hours, e.g weekends;
  - h. Contingency methods for controlling any identified dust effects, e.g cease works/site stabilisation; and
  - i. Protocols for responding to and addressing any dust complaints received; and
  - j. For times where more than 15ha of the site is open (exposed ground), the Waikato Regional Council monitoring officer shall be contacted and any additional dust control measures required shall be implemented.

The DMP shall be approved in writing by the Waikato Regional Council acting in a technical certification capacity prior to any works authorised by this consent commencing and the consent holder shall undertake all earthworks authorised by this consent in accordance with the approved DMP.

### **Archaeology**

46. The consent holder shall take all reasonable steps to ensure that the exercise of this resource consent does not disturb any sites of archaeological value or of cultural significance to Tangata Whenua. In the event of an archaeological discovery, which may include the following: Burnt and fire cracked stones, charcoal, rubbish heaps including shell, bone and/ or glass and crockery, ditches, banks, old building foundations, artefacts of Maori and European origin or human burials, works in the area of the discovery must

cease immediately if the presence of an archaeological site is suspected, and the following parties contacted:

- Waikato Regional Council
- Heritage New Zealand Pouhere Taonga – Senior Archaeologist Rachel Darmody at: [rdarmody@heritage.org.nz](mailto:rdarmody@heritage.org.nz)
- Representatives of local iwi;
- Project archaeologist;
- NZ Police (in the event of human remains koiwi tangata)

Works may recommence after obtaining the written approval of Waikato Regional Council to recommence and after considering the requirements of the parties and the need or otherwise for an Archaeological Authority from Heritage New Zealand Pouhere Taonga under the Heritage New Zealand Pouhere Taonga Act 2014.

**Advice Note:** *The consent holder is reminded of its responsibilities under the Heritage New Zealand Pouhere Taonga Act 2014 regarding any potential archaeological discoveries and requirement for archaeological authorities.*

### **Stabilisation/Rehabilitation**

47. The site shall be stabilised against erosion as soon as practicable and in a progressive manner as earthworks are finished over various areas of the site. The consent holder shall monitor and maintain the site until vegetation is established to such an extent that it prevents erosion and prevents sediment from entering any watercourse.
48. The consent holder shall progressively stabilise all works within 14 days of completion, unless otherwise agreed with the Waikato Regional Council.
49. The discharge of untreated surface runoff from any area where soil has been disturbed as a result of the exercise of this resource consent shall only occur after consultation and the prior written approval of the Waikato Regional Council. In this regard, the main issues that will be considered by the Waikato Regional Council include:
  - a. The quality of the stabilisation and/or covering vegetation;
  - b. The quality of the water discharged from the property; and
  - c. The quality of the receiving water.
50. If so required by the Waikato Regional Council to manage any identified adverse erosion, sedimentation or dust effects, the consent holder shall carry out immediate stabilisation of any required area of exposed earthworks surfaces on site using straw mulching, pinned geotextile or similar instant stabilisation techniques to the satisfaction of the Waikato Regional Council.

### **Lapse period**

51. Under section 125 of the Resource Management Act 1991, this consent lapses two years after the date of commencement under section 116 of the Act unless:

- a. The consent is given effect to; or
- b. The Council extends the period after which the consent lapses.

## STORMWATER DISCHARGE PERMIT

### General

1. The stormwater discharge activities authorised by this resource consent shall be undertaken in general accordance with the application for this resource consent, and supporting documentation titled *Ambury Properties Limited – NZ Comfort Group - Ohinewai Foam Factory – Assessment of Environmental Effects Report* prepared by Bloxam Burnett & Olliver and dated 14 May, 2021) and officially received by the Environmental Protection Authority on 14 May 2021 and, as appropriate, all supporting information referenced in Tables 1 and 2 (**Attachment 1**) except where otherwise required in the resource consent conditions below. Where there is any discrepancy between the application documents and the resource consent conditions then the conditions below shall prevail.
2. The consent holder shall appoint a representative prior to commencement of any works authorised by this resource consent, who shall be the Waikato Regional Council's principal contact person in regard to matters relating to this resource consent. The consent holder shall inform the Waikato Regional Council of the representative's name and how they can be contacted prior to this resource consent being exercised and any time after when this representative changes.
3. The consent holder shall be responsible for all contracted operations related to the exercise of this resource consent and must ensure contractors are made aware of the conditions of this resource consent and ensure compliance with those conditions.
4. The consent holder shall be responsible for the design, structural integrity and maintenance of the stormwater system including piped reticulation network, proprietary filter devices, stormwater wetland device, attenuation basin and inlet and outlet structures and shall operate and maintain the stormwater system to avoid and/or mitigate any adverse effects of stormwater discharges to the downstream receiving environment.
5. The consent holder shall not undertake any changes to the stormwater system which would fundamentally alter the stormwater quality or quantity characteristics of the stormwater discharge activities authorised by this resource consent.

### Detailed Engineering Design

6. The consent holder shall retain an appropriately qualified and experienced person to complete the finalised/detailed stormwater design for the site. More specifically, the consent holder shall submit a detailed stormwater design report and plans for the development which confirms provision of the following stormwater management functions for the various components of the stormwater management system in accordance with the Waikato Regional Council's Waikato Stormwater Management Guideline (WRC, 2020) and Waikato Stormwater Runoff Modelling Guideline (WRC, 2018) along with any changes made from the preliminary/consent level design plans:
  - a. Stormwater reticulation network including all catchpits, pipelines and overland flowpaths;
  - b. Controlled drainage system including shut off valves if required;
  - c. Stage 1 treatment system comprising in-line proprietary filtration devices for runoff from ground level/rail yard surfaces;

- d. Stage 2 treatment wetlands (Wetland 2) and associated swales; and
- e. Conveyance swale and discharge outfall structures.

### **As-builts**

- 7. The consent holder shall submit final "as built" details and drawings of the stormwater management system for each development stage including the stormwater reticulation system and the stormwater treatment and attenuation systems associated with the stormwater discharge activities authorised by this resource consent. The "as built" details and drawings shall be submitted to the Waikato Regional Council within 1 month of final completion of construction works associated with the stormwater management devices for each development stage. The as built plans shall be certified by an appropriately qualified engineer as a true record of the completed stormwater management system and that the completed stormwater management system is in accordance with the detailed design plans approved in accordance with condition 6 above.
- 8. At the completion of the rail siding, the as-built details and drawings shall confirm that any stormwater discharges to the Balemi Road drain from the Ohinewai Foam Factory have been disestablished.

### **Erosion Protection**

- 9. All stormwater discharge outlet structures shall include provision of appropriate outlet erosion protection to prevent any adverse erosion or scouring effects at these discharge points. Design details of these provisions shall be in accordance with the Waikato Stormwater Management Guidelines, 2018.
- 10. The consent holder shall be responsible for maintaining the discharge outlet structures from the stormwater network and the site outlet clear of debris and other obstructions.
- 11. The discharge outlet structures from any part of the stormwater system shall not cause any conspicuous scouring or erosion effects at the point of discharge. In the event that effects do occur they shall be remedied without undue delay.
- 12. The consent holder shall be responsible for monitoring the discharge outlet structures and any future protection and/or erosion control works or associated maintenance that becomes necessary as a result of the exercise of this consent shall be carried out to the satisfaction of the Waikato Regional Council.

**Advice Note:** *A separate resource consent may be required as a result of the need to undertake installation of or erosion control works for any outlet structure that may be required to satisfy condition 12. Any such consent shall be obtained by the consent holder at their sole expense prior to any works being undertaken.*

### **Stormwater Quality**

- 13. The consent holder shall manage the stormwater network to avoid the discharge of any substance that is likely to cause the production of conspicuous oil, or grease films, scums or foams, or floatable suspended materials in stormwater receiving water bodies after reasonable mixing.
- 14. The consent holder shall manage the stormwater network to avoid the discharge of suspended solids and any other substances that are likely to cause the following effects in stormwater receiving water bodies after reasonable mixing:

- a. Conspicuous changes in colour or visual clarity;
- b. Increases in suspended solids concentrations by more than 10 percent; or
- c. 100 grams per cubic metre suspended solids concentrations or greater.

**Advice Note:** *For the purposes of this condition, the suspended solids discharge parameters referenced above shall only apply to the post development stormwater discharges authorised by this resource consent and do not apply to the earthworks activities which are authorised under a separate land disturbance resource consent.*

15. The consent holder shall manage the stormwater network to avoid the discharge of hazardous substances in concentrations that are likely to adversely affect aquatic life, or the suitability of water for human consumption after treatment. Where a question arises as to whether the concentration of any particular hazardous substance is causing these effects, it shall be determined through the application of the United States Environmental Protection Agency National Recommended Water Quality Criteria (USEPA, 2009) – Criteria Maximum Concentration, or any other technical publication approved in advance by the Waikato Regional Council.
16. All stormwater treatment devices which form part of the stormwater network and are designed to treat contaminated stormwater shall be operated and maintained by the consent holder to provide best practicable stormwater treatment efficiency at all times.

### **Stormwater Quantity**

17. The consent holder shall manage the stormwater network to avoid the following stormwater quantity effects:
  - a. Adverse scour, erosion and sediment deposition on land, property and within the beds of stormwater receiving water bodies;
  - b. Adverse flooding of land and property; and
  - c. Adverse effects on aquatic ecosystems.

**Advice Note:** *Stormwater diversion and discharge activities in conjunction with urban land-use, can adversely affect flood potential by either limiting the rate at which stormwater drains from a catchment, or by increasing the rate and volume of discharge to downstream catchments. Whilst such effects are the subject of this consent, it is also recognised that 'levels of service' for flood alleviation in urban catchments are established by territorial authorities through separate statutory procedures and community consultation. The 'levels of service' that are established between the territorial authority and the community are not the subject of this resource consent.*

18. As soon as practicable after becoming aware of any of the adverse effects of the nature specified in Condition 17 that are more than minor, the consent holder shall submit a report to the Waikato Regional Council in relation to the adverse effects. As a minimum, the report shall include:
  - a. A description of the adverse effects;
  - b. A description of the cause of the adverse effects;
  - c. An explanation of any measures taken to remedy or mitigate the adverse effects,

the outcome of those measures, and whether further measures are necessary and reasonably practicable; and

- d. If no measures have been taken in accordance with (c), a description of any reasonably practicable measures that could be taken to remedy or mitigate the adverse effects and a recommendation as to whether those measures are necessary.

The consent holder shall liaise with the Waikato Regional Council and shall implement the best practicable option at the direction of the Waikato Regional Council to achieve compliance with Condition 17 or to remedy or mitigate the adverse effects.

**Advice Note:** *Separate resource consents may be required to undertake remedial or mitigation works. The consent holder is advised to obtain all such consents at its sole expense, prior to any works being undertaken.*

### **Stormwater Device Planting Management**

19. A detailed Stormwater Device Planting Management Plan shall be prepared for the design and implementation of the plantings within the stormwater wetland device which forms part of the stormwater management system. This plan shall include but not be limited to:
  - a. Device planting details including species to be planted, size/number of plants, density of planting, sourcing of plants and fertilising;
  - b. On-going weed and pest control requirements;
  - c. Supplementary/replacement planting plans specifications; and
  - d. Timing of monitoring maintenance inspections.

The Stormwater Device Planting Management Plan shall be to a standard acceptable to the Waikato Regional Council and shall be submitted to the Waikato Regional Council for written approval in a technical certification capacity in accordance with the Detailed Engineering Design timeframes specified in Condition 6. The approved Stormwater Device Planting Management Plans shall be implemented on site to ensure the successful establishment of the required plantings.

**Advice Note:** *It is accepted that generic planting plans can be submitted which will be applicable to all of the raingarden devices, however individual planting plans are required for each of the basin/wetland devices. It is recommended that the planting plans can be submitted in conjunction with the detailed engineering design plans required by condition 6.*

### **Hazardous Substances Management**

20. The consent holder shall provide the Waikato Regional Council with a finalised Stormwater Emergency Management Plan (SEMP) which shall be based upon the preliminary emergency management design details and risk management procedures outlined within the following preliminary documents included within the consent application:



- Ohinewai Foam Factory Hazardous Substances Qualitative Assessment, Jacobs, Rev 5 26 March, 2021;
- Hazardous Substances Technical Assessment, Tonkin & Taylor, 3 July, 2020;
- Ohinewai Site Emergency Plan, NZ Comfort Group, 15 October 2020, or its latest iteration.

The objective of the SEMP shall be to outline the specific design and management procedures to be implemented at the site to minimise the potential for any hazardous substances, including all process chemicals and other industrial process contaminants, from entering the site stormwater system. The SEMP shall include but not be limited to:

- a. Identification of all hazardous substances to be held and used on site;
- b. Identification of all industrial site processes which present a risk for these substances to enter the stormwater system;
- c. Drainage design details (containment measures and shut off valves) and hazardous substance management procedures to be implemented at the site to minimise the potential for any hazardous substances to enter the stormwater system;
- d. System monitoring and maintenance to ensure optimum and effective performance in the event of any unforeseen spillage of any hazardous substance; and
- e. Spill management/response procedures including reporting of any spill events to the Waikato Regional Council.

The SEMP shall be submitted to the Waikato Regional Council for approval prior to the commencement of the stormwater discharge activities within the site and shall be implemented on site for the duration of the stormwater diversion and discharge activities authorised through this consent.

### **Operation and Maintenance**

21. The Consent Holder shall provide the Waikato Regional Council with a Stormwater Operation and Maintenance Plan (SOMP) for the stormwater management systems to be implemented within the site. The objective of the SOMP shall be to outline specific operation and maintenance procedures to be implemented to ensure the long-term effectiveness of the stormwater system in achieving the design stormwater management functions as outlined within the application for this consent and in accordance with the Waikato Stormwater Management Guidelines 2018. The SOMP shall provide for all operational, maintenance, planting, management and monitoring measures associated with the stormwater management system authorised by this resource consent and may include but not be limited to:
  - a. A programme for regular monitoring and inspection of the stormwater management system including details of monitoring and inspection frequency;
  - b. A programme for the regular collection and disposal of debris and sediment collected by the stormwater management devices to ensure that storage/soakage are not compromised and that appropriate contaminant removal procedures are established;

- c. A programme for the monitoring, maintenance and replacement of all proprietary stormwater treatment device filtration units;
  - d. Inspection checklists for all aspects of the stormwater management system including monitoring and maintenance of water quality and vegetation and all inlet/outlet structures;
  - e. Details of who will be responsible for the operation and maintenance works; and
  - f. Details of recording and reporting of operation and maintenance activities to the Waikato Regional Council.
22. Any changes to the approved SOMP shall be confirmed in writing by the consent holder and approved in writing by the Waikato Regional Council prior to the implementation of any changes proposed.
23. The SOMP shall be submitted to the Waikato Regional Council for approval prior to the commencement of the stormwater discharge activities within the site and shall be implemented on site for the duration of the stormwater diversion and discharge activities. A copy of the approved SOMP shall be provided to the Waikato District Council for its information.

#### **Lapse period**

24. Under section 125 of the Resource Management Act 1991, this consent lapses two years after the date of commencement under section 116 of the Act unless:
- a) The consent is given effect to; or
  - b) The Council extends the period after which the consent lapses.

#### **Review**

25. The Council may, in accordance with Sections 128 and 129 of the Resource Management Act 1991, serve notice on the consent holder of its intention to review the conditions of this resource consent for any of the following purposes:
- a) To deal with any adverse effects on the environment that may arise from the exercise of the consent which were not foreseen at the time the application was considered and which it is appropriate to deal with at a later stage;
  - b) To deal with any adverse effects on the environment which may arise from the exercise of the consent and which could not be properly assessed at the time the application was considered;
  - c) To avoid, remedy and mitigate and adverse effects on the environment which may arise from the exercise of the consent and which have been caused by a change in circumstances or which may be more appropriately addressed as a result of a change in circumstances, such that the conditions of this resource consent are no longer appropriate in terms of the purpose of the Resource Management Act 1991;
  - d) To require the consent holder to adopt the best practicable option to remove or reduce any adverse effect on the environment;
  - e) To deal with any other adverse effect on the environment that the exercise of this consent may have an influence on;

- f) To review monitoring requirements to determine any actual or potential adverse effect on the environment;
- g) Within two months of the submission of a report prepared in accordance with condition 18 of this consent, review any adverse effects arising from stormwater management and/ or flooding.

Note: The costs associated with any review of the conditions of this resource consent will be recovered from the consent holder in accordance with the provisions of section 36 of the Resource Management Act 1991.

## **WATER PERMIT (WATER TAKE)**

### **General**

- 1 The water take activities authorised by this resource consent shall be undertaken in general accordance with the application for this resource consent, and supporting documentation titled *Ambury Properties Limited – NZ Comfort Group - Ohinewai Foam Factory – Assessment of Environmental Effects Report* prepared by Bloxam Burnett & Olliver and dated 14 May 2021 and officially lodged with the Environmental Protection Authority on 14 May 2021 and, as appropriate, all supporting information referenced in Tables 1 and 2 (**Attachment 1**) except where otherwise required in the resource consent conditions below. Where there is any discrepancy between the application documents and the resource consent conditions then the conditions below shall prevail.
- 2 The consent holder shall appoint a representative(s) prior to commencement of any works authorised by this resource consent, who shall be the Waikato Regional Council's principal contact person in regard to matters relating to this consent. The consent holder shall inform the Waikato Regional Council of the representative's name and how they can be contacted prior to this consent being exercised. Should that person(s) change during the term of this resource consent, the consent holder shall immediately inform the Waikato Regional Council and shall also give written notice to the Waikato Regional Council of the new representative's name and how they can be contacted.
- 3 The consent holder shall be responsible for all contracted operations relating to the exercise of this resource consent and shall ensure contractors are made aware of the conditions of this consent and ensure compliance with those conditions.
- 4 A copy of this resource consent shall be kept on-site at all times that the works authorised by this consent are being undertaken and shall be produced without unreasonable delay upon request from a servant or agent of the Waikato Regional Council.

### **Take Volume**

- 5 The daily take volume authorised by this consent must not exceed 2,000 cubic metres.

### **Water Management**

- 6 Any water taken in accordance with this consent shall not be subject to any usage for construction purposes or any other activities within the site and shall be discharged immediately to the receiving environment directly below the point of take following appropriate treatment (if required).
- 7 A water measuring system must quantify the volume of water taken on a continuous basis. The system must have a reliable calibration to flow and must be maintained to an accuracy of +/- 5%.
- 8 Prior to first commencing to take groundwater under this consent, evidence of the water measuring system's calibration to an accuracy of +/- 5% must be provided to the Waikato Regional Council.
- 9 Additional calibration of the water measuring system to ensure that the water measuring system has an accuracy of +/- 5% must be undertaken by the consent holder at the written request of the Waikato Regional Council. Evidence documenting each

respective additional calibration must be forwarded to the Waikato Regional Council within one month of the calibration being completed.

- 10 The consent holder must maintain a continuous record of water taken through this consent. The record must:
  - a. Specify the date on which the record was taken;
  - b. Include total daily volume of water abstracted (m<sup>3</sup>);
  - c. Include cumulative total of water abstracted (m<sup>3</sup>);
  - d. Specify zero values when no water is being taken;
  - e. Include pumping hours per day; and
  - f. Be reported to Waikato Regional Council via email within the first 10 working days of each month for the preceding month.

**Administrative**

- 11 The consent holder shall pay to the Waikato Regional Council any administrative charge fixed in accordance with section 36 of the Resource Management Act 1991, or any charge prescribed in accordance with regulations made under section 360 of the Resource Management Act.

## **WATER PERMIT (WATER DIVERSION)**

### **General**

- 1 The floodplain filling/diversion activities authorised by this resource consent shall be undertaken in general accordance with the application for this resource consent, and supporting documentation titled *Ambury Properties Limited – NZ Comfort Group - Ohinewai Foam Factory – Assessment of Environmental Effects Report* prepared by Bloxam Burnett & Olliver and dated 14 May 2021 and officially lodged with the Environmental Protection Authority on 14 May 2021 and, as appropriate, all supporting information referenced in Tables 1 and 2 (**Attachment 1**) except where otherwise required in the resource consent conditions below. Where there is any discrepancy between the application documents and the resource consent conditions then the conditions below shall prevail.
- 2 The consent holder shall be responsible for all contracted operations related to the exercise of this resource consent and must ensure contractors are made aware of the conditions of this resource consent and ensure compliance with those conditions.

### **Administrative**

- 3 The consent holder shall pay to the Waikato Regional Council any administrative charge fixed in accordance with section 36 of the Resource Management Act 1991, or any charge prescribed in accordance with regulations made under section 360 of the Resource Management Act.

## Attachment 1 - Tables

**Table 1: Application Documents**

Regional Consents			
Assessment of Environmental Effects	Bloxam, Burnett & Olliver		14 May 2021
Geotechnical Report – Rail Siding	Initia	REV A	May 2021
Ecological Impact Assessment Ohinewai Foam Factory and Railsiding	Ecology New Zealand	Revision 0	2021/03/31
Archaeological Assessment of Effects	W Gumbley Ltd		June 2019
Civil Infrastructure Report – Ohinewai Foam Factory and Rail Siding	Woods	V1	1/04/2021
Draft Emergency Plan	The Comfort Group	Draft #7	15 October 2020

**Table 2: Drawings and Plans**

Drawing Title	Drawing reference	Revision	Author
<b>Rail Option 1</b>			
Cover, Locality & Content Index	P20-353- 00- 0000 to 0001 - GE		Woods
Development Scheme Plan	P20-353- 00- 0005 - GE	1	Woods
Staging Plans	P20-353- 00- 0050 to 0051 - GE	2	Woods
Title Boundary Plan & Existing Features	P20-353- 00- 0060 to 0070 - GE	1	Woods
Existing Contours Plans	P20-353- 00- 1000 to 1005 -EW	1	Woods
Proposed Contours Plans - Stage 1	P20-353- 00- 1110 to 1112 -EW	1	Woods
Cut Fill Depth Contours Plans - Stage 1	P20-353- 00- 1120 to 1122 -EW	1	Woods
Proposed Contours Plans - Stages 1 & 2	P20-353- 00- 1210 to 1215 -EW	1	Woods
Cut Fill Depth Contours Plans - Stages 1 & 2	P20-353- 00- 1220 to 1225 - EW	1	Woods
Geotechnical Remediation Plans	P20-353- 00- 1300 to 1320 -EW	1	Woods
Land Drainage Plan	P20-353- 00- 1600 - EW	1	Woods
Erosion and Sediment Control Plans	P20-353- 00- 1800 to 1803 -EW	1	Woods
Construction Haul Road Plans	P20-353- 00- 1850 to 1861 -EW	1	Woods
Pavement Layout Plans	P20-353- 00- 2000 to 2003 -DR	1	Woods
Stormwater Layout Plans	P20-353- 00- 3000 to 3004 -DR	1	Woods
Stormwater Primary Treatment Device Layout Plans	P20-353- 00- 3150 to 3152 -DR	1	Woods
Stormwater Wetland 1 Plan & Sections	P20-353- 00- 3201 to 3211 -DR	1	Woods
Stormwater Wetland 1 Plans & Sections	P20-353- 00- 3251 to 3261 -DR	1	Woods
Typical Wetland Details	P20-353- 00- 3280 to 3284 -DR	1	Woods
Swale Layout Plans & Sections	P20-353- 00- 3300 to 3360 -DR	1	Woods
Wetland Catchment Plans	P20-353- 00- 3500 to 3502 -DR	1	Woods
Wastewater Layout Plan	P20-353- 00- 5100 -DR	1	Woods
Sprinkler Drainage Layout Plan	P20-353- 00- 5900 -DR	1	Woods
Water Supply Layout Plan	P20-353- 00- 6800 to 6802 -WS	1	Woods



Drawing Title	Drawing reference	Revision	Author
LOCATION PLAN & INDEX	ARC 000	4	Gaze
EXISTING SITE CONTOUR PLAN WITH BUILDING OUTLINE	ARC 101	4	Gaze
EXISTING PART SITE CONTOUR PLAN WITH BUILDING OUTLINE	ARC 102	3	Gaze
PART SITE PLAN	ARC 105	4	Gaze
SITE PLAN SPRINKLER OUTFLOW	ARC 113	4	Gaze
SITE PLAN OVERALL FAST TRACK DEVELOPMENT	ARC 119	4	Gaze
OPTION 1 RAIL KIWI RAIL DESIGNATION OPERATIVE DISTRICT PLAN	ARC 120	1	Gaze
OPTION 1 RAIL KIWI RAIL DESIGNATION PROPOSED DISTRICT PLAN	ARC 121	1	Gaze
ELEVATIONS BUILDING 1 FOAM PLANT	ARC 300	3	Gaze
ELEVATIONS BUILDING 2 FOAM PROCESSING	ARC 302	3	Gaze
ELEVATIONS BUILDING 3 FOAM PROCESSING	ARC 304	3	Gaze
ELEVATIONS BUILDING 4 & 5 REBOND & BEAN	ARC 306	3	Gaze
COLOURED PART ELEVATIONS	ARC 320	4	Gaze
Planting overview	P1		Mansergh Graham
Mitigation planting	P2		Mansergh Graham
Wetland planting	P3		Mansergh Graham
Swale planting	P4		Mansergh Graham
Swale planting	P5		Mansergh Graham
Wetland planting	P6		Mansergh Graham
Swale planting	P7		Mansergh Graham
Swale planting examples	P8		Mansergh Graham
<b>Rail Option 2</b>			
Cover, Locality & Content Index	P20-353- 02- 0000 to 0001 - GE	1	Woods
Development Scheme Plan	P20-353- 02- 0005 -GE	1	Woods
Staging Plans	P20-353- 02- 0050 to 0051 -GE	1	Woods
Title Boundary Plan & Existing Features	P20-353- 02- 0060 to 0070 -GE	1	Woods

Drawing Title	Drawing reference	Revision	Author
Existing Contours Plans	P20-353- 02- 1000 to 1005 -EW	1	Woods
Proposed Contours Plans - Stages 1 & 2	P20-353- 02- 1210 to 1215 -EW	1	Woods
Cut Fill Depth Contours Plans - Stages 1 & 2	P20-353- 02- 1220 to 1225 -EW	1	Woods
Geotechnical Remediation Plans	P20-353- 02- 1300 to 1320 -EW	1	Woods
Land Drainage Plan	P20-353- 02- 1600 -EW	1	Woods
Erosion and Sediment Control Plans	P20-353- 02- 1800 to 1803 -EW	1	Woods
Construction Haul Road Plans	P20-353- 02- 1850 to 1861 -EW	1	Woods
Pavement Layout Plans	P20-353- 02- 2000 to 2003 -RD	1	Woods
Stormwater Layout Plans	P20-353- 02- 3000 to 3004 -DR	1	Woods
Stormwater Primary Treatment Device Layout Plans	P20-353- 02- 3150 to 3152 -DR	1	Woods
Stormwater Wetland 1 Plan & Sections	P20-353- 02- 3201 to 3210 -DR	1	Woods
Stormwater Wetland 2 Plans & Sections	P20-353- 02- 3251 to 3261 -DR	1	Woods
Typical Wetland Details	P20-353- 02- 3280 to 3284 -DR	1	Woods
Swale Layout Plans & Sections	P20-353- 02- 3300 to 3360 -DR	1	Woods
Wetland Catchment Plans	P20-353- 02- 3500 to 3502 -DR	1	Woods
Wastewater Layout Plan	P20-353- 02- 5100 -DR	1	Woods
Sprinkler Drainage Layout Plan	P20-353- 02- 5900 -DR	1	Woods
Water Supply Layout Plan	P20-353- 02- 6800 to 6802 -WS	1	Woods
LOCATION PLAN & INDEX - RAIL OPTION 2	ARCRO 000	1	Gaze
EXISTING SITE CONTOUR PLAN WITH BUILDING OUTLINE - RAIL OPTION 2	ARCRO 101	1	Gaze
EXISTING PART SITE CONTOUR PLAN WITH BUILDING OUTLINE - RAIL OPTION 2	ARCRO 102	1	Gaze
PART SITE PLAN - RAIL OPTION 2	ARCRO 105	1	Gaze
SITE PLAN SPRINKLER OUTFLOW - RAIL OPTION 2	ARCRO 113	1	Gaze
SITE PLAN OVERALL FAST TRACK DEVELOPMENT - RAIL OPTION 2	ARCRO 119	1	Gaze

Drawing Title	Drawing reference	Revision	Author
OPTION 2 RAIL KIWI RAIL DESIGNATION OPERATIVE DISTRICT PLAN	ARC 125	1	Gaze
OPTION 2 RAIL KIWI RAIL DESIGNATION PROPOSED DISTRICT PLAN	ARC 126	1	Gaze
ELEVATIONS BUILDING 1 FOAM PLANT	ARC 300	3	Gaze
ELEVATIONS BUILDING 2 FOAM PROCESSING	ARCRO 302	1	Gaze
ELEVATIONS BUILDING 3 FOAM PROCESSING	ARC 304	3	Gaze
ELEVATIONS BUILDING 4 & 5 REBOND & BEAN	ARC 306	3	Gaze
COLOURED PART ELEVATIONS	ARC 320	3	Gaze
Planting overview	P1		Mansergh Graham
Wetland planting	P3		Mansergh Graham
Swale planting	P4		Mansergh Graham
Swale planting	P5		Mansergh Graham
Wetland planting	P6		Mansergh Graham
Swale planting	P7		Mansergh Graham
Swale planting examples	P8		Mansergh Graham
Mitigation planting	P10		Mansergh Graham
Train noise barrier			Marshall Day Acoustics