

Memo

To Environmental Protection Authority
Ohinewai Foam Factory Expert Consenting Panel

From Stuart Penfold

Date 1 July 2021

Subject **Ohinewai Foam Factory Development – response to comments received under clause 19 of Schedule 6 of the COVID-19 Recovery Act 2020**

Please find set out below a response to the comments received by the parties invited for comment under clause 19 of Schedule 6 of the COVID-19 Recovery Act 2020 (the Act) received on the 24 June 2021.

The format of this response comprises a summary response to particular matters raised by each party. The response is not intended to be a point by point response, however has been prepared to summarise the key issues and APL's response.

The response from the Minister for Treaty of Waitangi Negotiations is acknowledged, however is not covered any further in this memorandum. The Minister for Arts, Culture and Heritage comments are acknowledged, and comments with respect to amended conditions are covered below under Heritage New Zealand Pouhere Taonga.

APL also acknowledge the position of the Environmental Defence Society Incorporated and the Minister of Housing in supporting the application (subject to appropriate mitigation of effects).

Please note that where references are made to Appendices below, these are to the reports provided in the AEE documentation as lodged. References to Attachments relate to additional information provided as part of this response.

1. Iain Macdonald

APL have acknowledged the potential for increased traffic on Lumsden Road, and in the early stages of the project committed to constructing a haul road from Tahuna Road through to the project site to avoid additional heavy traffic having to pass the Lumsden Road properties. The haul road has been established on the site as part of the Stage 1A earthworks and only light vehicles are using Lumsden Road for construction. The haul road will remain in place and be the heavy vehicle entrance for the Stage 1B earthworks and foam factory construction.

Associated with the realignment of Lumsden Road required for the rail siding is a proposed speed limit reduction. Those works are anticipated to decrease the speed of traffic passing past the existing Lumsden Road properties.

As part of the wider development enabled by the rezoning, an upgrade of Lumsden Road to include an upgraded road carriageway and shared walkway/cycleway is proposed along the eastern side of Lumsden Road. That will be required for Stage 3B of the development, due in approximately 2024. It is not required for the current foam factory application given the small number of staff.

2. Richard and Shanette Marsh

APL acknowledge that there will be a change of character in the vicinity of the site as a result of the development. Extensive plantings within a 15m landscape buffer on Lumsden Road are proposed to create a visual buffer between the development and the Marsh property.

3. Ohinewai Area Committee

The Ohinewai Area Committee (OAC) seek that a forum be established between APL (or NZ Comfort Group as the plant operator) and the OAC in order to provide updates on plant operations. APL agree that this would be a useful forum, and propose to meet on at least an annual basis. APL representatives met with the OAC on 21 June 2021 and confirmed their willingness to meet regularly. APL proposes a condition of consent in order to confirm that opportunity. Condition 63 in the updated set of Waikato District Council - Land Use draft conditions (**Attachment 1**) is as follows:

The consent holder shall invite the Ohinewai Area Committee to meet at least annually to provide an update on key aspects of plant operations and compliance including maintenance and monitoring activities.

Fire and Emergency NZ have been involved in the development of the design of the foam factory and this engagement will continue through the detailed design and implementation process.

4. David Whyte

David Whyte raises concerns regarding noise and air discharges as a result of plant operations. As noted in the application and the technical report prepared by Marshall Day Acoustics, the factory can be operated in compliance with the relevant noise standards, both during construction and operation.

The air discharge consent was granted for the factory in March 2021 and requires appropriate monitoring and maintenance of the plant filters.

5. Ohinewai Lands Limited

APL acknowledge Ohinewai Lands Limited (OLL) support for the project. OLL suggest that conditions of consent regarding connections to municipal water supply and wastewater be considered as well as a condition seeking confirmation that the long-term stormwater discharge to Lake Rotokawau will be implemented. Further, a condition is sought requiring the plant be constructed as per the submitted plans.

The foam factory is self sufficient in terms of water supply and wastewater and hence conditions requiring the connection to a municipal supply once available is unnecessary. Further expansion of the factory will however be required to connect to a municipal supply, and this is required under the plan provisions within the Proposed District Plan – Decision Version, Rule OHI-P6(1) and Table OHI-1 Infrastructure Upgrades.

With respect to matters relating to development proceeding in accordance with the proposal and stormwater management, APL offer the following conditions (included in this response as **Attachment 1**):

Waikato District Council - Land Use

- Condition 1 – construction in general accordance.

Waikato Regional Council stormwater discharge

- Condition 8 – Interim discharge to Balemi Road Drain to be disestablished.



6. Lumsden Family Trust

The Lumsden Family Trust (LFT) have provided extensive comment to the Expert Consenting Panel, however it is not APL's intention to respond to each point. A summary of the key issues and APL's response is set out below.

Lumsden Road Realignment

- APL has engaged with LFT regarding the project extensively since early 2019. Engagement was generally positive and a written approval to a similar resource consent proposal to that proposed as part of the current application was provided by LFT in July 2019 (included as **Attachment 2**). That proposal included the foam factory but did not include the rail siding.
- Engagement continued and a Memorandum of Understanding and written approval of initial earthworks was signed by the Lumsdens in March/ April 2021. That agreement related primarily to the Lumsden's concerns over security of supply for water supply and potential impacts of the proposed earthworks Stage 1A. That written approval is included as **Attachment 2**.
- Discussions regarding the realignment of Lumsden Road and the land required from LFT commenced in November 2020 and a meeting was held on 2 February 2021. The size and location of the relevant area was confirmed and Malcolm Lumsden requested that the area be surveyed and flags attached so it could be identified. A valuation exercise was also discussed and APL committed to paying for that valuation.
- At that meeting, the realignment of Lumsden Road was discussed and LFT expressed their support for the realignment.
- A draft MoU to formalise the land acquisition for the realignment of Lumsden Road was sent to LFT on 13 February 2021, however there has not been progress made on that since.
- The proposed Lumsden Road alignment ensures that the road crosses the rail at a safe angle.
- Additional safety benefits include reduced vehicle operating speeds over the level crossing and along the urbanised section of Lumsden Road as the existing posted speed limit is at 100 km/h. With the road alignment changes, speeds will reduce to below 60 km/h (posted speed limit).
- Lumsden Road residents have expressed concerns over existing trucks associated with activities to the north of Lumsden Road speeding along the residential area on Lumsden Road. As a result of the realignment, truck speeds will be reduced to match the future urbanised environment.
- Gated 60km/h threshold and traffic calming treatments are proposed as part of the proposal to ensure that road safety risks associated with the realignment are appropriately mitigated.
- Traffic volumes over the level crossings are expected to remain low (between 600 and 700 vpd) with ample spare capacity on Lumsden Road. On this basis, the level crossing (which will be actively controlled, with a maximum of two train movements per day) and associated road alignment changes will not preclude future development of land located to the north of Balemi Road (subject to separate investigations and reporting if that was to occur).
- A response to LFT's comments on the ITA has been provided by the report's author and is included as **Attachment 3**.
- APL has commenced property acquisition in a transparent manner in good faith, and with initial discussions progressing. If matters relating to the acquisition of the land cannot be completed, then detailed design will be undertaken to avoid the land acquisition.

Rail siding

- Extensive discussions between APL and KiwiRail have been held regarding the construction and operation of the proposed rail siding and the necessary investigations and reporting for such infrastructure has been completed.



- The proposed location of the rail siding is key to the successful operation of the foam factory and future expansion of the Sleepyhead Group on the site (as per the Ohinewai Structure Plan). The rail siding has also been proposed as a catalyst for other industrial operations in the area to access if they so choose. Access to the rail siding from existing businesses on Lumsden Road has been offered and there are no restrictions to access, subject to the appropriate commercial arrangements being agreed.
- That access could include any future development areas as identified by LFT (as per Waikato 2070 – Growth Strategy). Confirming the appropriate zoning and development for that area will be subject to separate Waikato District Plan Change or resource consent processes.

Stormwater

- Extensive engagement with the Drainage team at the Waikato Regional Council (WRC) has been undertaken in order to progress the proposed stormwater management framework for the site. This was undertaken for the overall Ohinewai zone development as well as the initial foam factory development. The APL team deferred to the WRC in terms of its expertise and role as the regulatory authority and responsibility for the drainage scheme and a collaborative approach was taken from the early days of the project.
- In particular, consultation was undertaken with WRC on 23 October 2019 and 10 December 2020 and confirmed the Balemi drain is frequently at capacity and unable to adequately convey flows resulting from a lack of grade. The long-term strategy for the wider development has always been to discharge to designated stormwater management areas within the development area (known as the Central Park and Wetland Park) and discharging in a diffused manner to Lake Rotokawau.
- As part of the design and consenting process for the (now consented) Foam Factory stormwater management, the Foam Factory is proposed to discharge to Balemi Road drain as an interim discharge strategy ahead of the wider development. This was agreed with the WRC. This interim discharge also requires attenuation of the 10-year event due to the stringent requirements of discharging to Balemi Road drain which will limit the effects of increased impervious run off from the site. 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.
- The Rail siding forms the next stages of development (Stage 2), and accounting for pre-lodgement/preliminary design feedback from WRC, the discharge strategy is for stormwater to discharge to an area adjacent to Lake Rotokawau via a conveyance swale and dispersal area. That is in line with the long-term strategy.
- Upon completion of Stage 2, stormwater runoff from Stage 1 (foam factory) will be diverted towards the conveyance swale and dispersal area, discharging to an area adjacent to Lake Rotokawau, in line with the long-term strategy, and away from Balemi Drain.
- Beyond the interim stage of discharge to the Balemi Road drain as discussed above, no additional flows will discharge to the Balemi Road drain. This requirement is captured in a proposed condition within the WRC stormwater discharge consent¹.

¹ Condition 8



7. Waka Kotahi – NZ Transport Agency

As noted by Waka Kotahi – NZ Transport Agency (NZTA), discussions have been held to agree on conditions to alleviate their concerns. Please note Proposed Draft Condition set V2 (Waikato District Council – Land Use) as referred to has now been updated to V4 as enclosed in this response as **Attachment 1**.

The request for pre and post construction survey of the Ohinewai Interchange has now been agreed and is captured in proposed Condition 34 (Waikato District Council – Land Use).

Proposed signage – assessment of effects

The NZTA has set out concerns regarding the sign location and sought further information regarding the proposed signage on the western elevation of Building 2 as follows:

At the current time we retain the concern that the positioning of the sign may cause a distraction to northbound road users on the Waikato Expressway who would have to divert their gaze further from the carriageway (than southbound users) in order to view the sign. The greater the deviation of a driver's view to the sign from the driver's intended travel path, the greater the level of traffic safety risk. Positioning the sign on the northern facade of Building 2 would reduce the deviation of the driver's view which would be a safer outcome.

APL consider that the sign should remain on the western elevation of Building 2 to be viewed by all users of the State Highway and that any effect from the sign's location are appropriate. The information sought by the NZTA has been collated as part of a safety assessment completed specifically for the sign included as **Attachment 4**.

The assessment sets out a consideration of the effects on the sign relating to efficiency and safety in relation to the State Highway. In summary, the assessment finds that the sign does not have an adverse influence on the operational efficiency of the State Highway traffic and the main potential effect relates to safety. With respect to safety effects, the assessment shows that while there is non-compliance to the standards relating to illuminance (flashing clock symbols) and visibility sight distance for north-bound drivers, the transport safety effects are negligible.

A condition of consent² is proposed to confirm illumination of the sign complies with the 10LUX standard at the boundary of the site and that luminance levels adjust to ambient light levels.

8. Waikato District Council

We acknowledge that for the most part, Waikato District Council (WDC) are supportive subject to appropriate conditions of consent that have been proposed by APL. Other matters as outlined in the comments are also addressed below.

Proposed Conditions of Consent

To account for specific matters raised in the comments, we have updated the proposed conditions of consent (District Council, land use set) to account for the following:

- Potable water supply is to be confirmed (Condition 47);
- Establishment and operation of firefighting water supply is to be confirmed (Condition 48);
- Stormwater management requirements have been replicated from the Regional Consent conditions (Conditions 64-66);
- Detailed engineering matters for the level crossing and road realignments have been proposed (Conditions 41-44);

² Condition 53, Waikato District Council – land use



- Post construction safety audit (Condition 43);
- As-builts and RAMM data (Condition 44);
- Geotechnical certification (Condition 15);
- Hours of operation (Conditions 50-51);
- Lighting (Conditions 52-53); and
- Hazardous substances (Conditions 54- 62).

Hazardous substances

Matters raised during the previous application regarding hazardous materials were responded to in section 92 responses to WDC in October and November 2020. There was no further correspondence on those matters and it was APL's understanding that those matters had been resolved.

Matters addressed in the previous application have been incorporated into the reporting provided in support of the current application (**Appendices 14 & 16**).

Lumsden Road Realignment/ Level Crossing

Resource consents for the works associated with the road realignment and rail siding are sought as part of the application. However, as is the case for many infrastructure projects, property agreements and land acquisition can proceed outside of the resource consent process. Discussions have been underway with the landowner (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.

Operations and Maintenance Agreements

Preliminary discussions have been had with KiwiRail regarding agreements relating to the operation and maintenance of the Rail siding and connection to the NIMT. We agree with WDC that a memorandum of understanding is likely to be a suitable tool to address the roles and responsibilities in relation to the rail siding, level crossing and public roads. This can be addressed outside of the resource consent process.

Vesting and/ or Stopping Road

There are options available to APL (and WDC) with respect to the legalities of formalising the road reserve and road stopping is not likely to be required. It remains APL's position that without detailed design being completed, it is premature to address the available mechanisms. WDC will continue to be engaged throughout the process.

Landscape and Visual Assessment

The previous reporting completed for the foam factory as part of the WDC application has been superseded by both the report provided in the application (**Appendix 15**) and the additional memorandum that covers the implications of the recent rezoning decision (provided on 21 June 2021).

APL's position is that those reports are clear with respect to the landscape and visual impacts of the proposal and that the expert consenting panel has sufficient information.

9. Waikato Regional Council

APL acknowledge the broad comments noted by the Waikato Regional Council (WRC) that conditions of consent that are consistent to that of the existing resource consents for Stage 1A are appropriate for the additional work included in the application.

APL wish to address the following matters noted by the WRC in their comments to the Panel:

- Proposed 15ha restriction on open area for earthworks;
- Application for the diversion of surface water;



- Extent of ecological enhancement;
- Scale of proposed water take; and
- Location of the stormwater discharge.

Restrictions of open areas (earthworks)

As noted by Woods in their earthworks methodology report, the site is generally flat with generally low sediment generation potential during earthworks activities, particularly so when the import of aggregate material is placed soon after exposing ground and can be seen as being stabilised. The works methodology also provides for a staged approach to the working of the site.

Earthworks on Stage 1A have proceeded without incident and compliance scores are excellent. Given the site's excellent drainage characteristics due to the sandy soils, there has been minimal discharge from the sediment retention pond, with the majority of water soaking away.

It is Woods' opinion that a restriction on open areas is not required for the site during the summer earthworks seasons due to the site's low risk profile as outlined above. Any restrictions would make the works programme inefficient and lead to double handling. APL acknowledges that earthworks undertaken during the winter works season generally lead to elevated risk and these risks are addressed via the winter works approval process managed by the WRC. For the winter works approval in 2021, a 15ha limit of exposed areas has been applied. This is considered to be appropriate for winter works, but is not necessary for the summer earthworks season.

Application for the diversion of surface water

The formal application for a diversion of surface water is an oversight as the identification of the consent was omitted from Table 4.2 of the Assessment of Effects Report (AEE). For clarity, consent is required under [Rule 3.6.4.13](#) of the Waikato Regional Plan.

An assessment of effects of the impact of the filling within the 1% AEP was described in Section 8.7.2 of the AEE. That assessment referenced the extensive modelling undertaken by Woods, which concluded that the infill of the floodplain results in no significant effect on the downstream environment. No additional assessment is required to support the application.

Extent of ecological enhancement

As set out throughout the AEE, 1 hectare of native species planting has been proposed by APL as enhancement or restoration planting. This area of planting was not required to mitigate effects as such, it was volunteered by APL as a starting point and catalyst for the extensive wetland plantings that will be completed as part of later stages of development within the Ohinewai Zone.

APL considered 1ha to be generous and such an extent of planting was favourable in terms of providing a carbon 'credit' for the greenhouse gas emissions assessment required under the Act. The planting has been viewed favourably by Tangata Whenua and is seen as being an important first step in restoration of the Lakes and whenua.

The 1ha of restoration is in addition the extensive plantings proposed for the stormwater management infrastructure, e.g. Wetland 2 and the conveyance swale. The extent of plantings are evident in the landscape plans provided with the Landscape and Visual Assessment (**Appendix 15**).

It is APL's view that the assessment of the proposal against Te Ture Whaimana o Te Awa o Waikato (the Vision and Strategy) as set out at Section 10.2 of the AEE provides for a positive response and can be taken as the 'betterment' as sought by the WRC. This is also supported by Tangata Whenua as set out in the support for the project (**Appendix 18**).



Scale of Water Take

The groundwater levels across the site are variable and it is difficult to predict the volumes of groundwater that will be encountered during the earthwork activities. Generally, for the Stage 1B earthworks, groundwater is likely to be encountered during excavations for the earthworks across the site including construction of Wetland 2 and the conveyance swale. APL anticipate that 2000m³ maximum daily take would be sufficient.

Draft conditions for the Waikato Regional Council consents have been updated to account for the groundwater take (**Attachment 1**).

Location of stormwater discharge point

The location of the stormwater discharge point (dispersal area) for the proposal is located within the subject site (within the area identified as the future wetland park area) and not in Lake Rotokawau as suggested by WRC.

The discharge point is greater than 100m in distance from the Lake margin and is indicated at Figure 14 (and Drawing P20-353-00-3310-DR) in the Stormwater Management Plan (**Appendix 10**) and included in this response as **Attachment 5**.

The flows are proposed to be dispersed through the level spreader outlet, reducing the risk of erosion and dissipating the flows prior to discharging from the site. The 10-year flows inclusive of climate change is 1.8m³/s with the 100-year flow inclusive of climate change being 2.89m³/s. It is noted these flows are conservative as realistically the flows discharged via the swale are static due to high flood levels on site.

Woods had undertaken 1D/2D flood modelling which indicated the development would result in negligible increase in water levels or flood extents within the site or any of the neighbouring lots including the downstream lake environment. Agreement has been reached on this during expert conferencing sessions during the rezoning hearing.

Evidence was presented by APL for the Rezoning hearing³ on the values of the downstream receiving environment of Lake Rotokawau. That evidence noted Lake Rotokawau is being classified as hyper-eutrophic in TR2011/05 – Significant Natural Areas of the Waikato Region: Lake Ecosystems, with poor water quality. This poor water quality is likely caused from the existing land use (farming) surrounding agricultural activities.

With the proposed development undergoing a treatment train approach (pre-treatment at source and second stage treatment in Wetland 2) and the change in land use from dairy farming to urban, this is anticipated to lead to a decrease of nutrients from existing runoff (nitrogen, phosphorus)⁴ to the Lake.

10. Ralph Estate

A response to the Ralph Estate comments are enclosed in **Attachment 6**.

11. Rolf Stucki

Technical information available from Waka Kotahi/ NZ Transport Agency⁵ outline that a small proportion of trucks operating in New Zealand have engine brakes that generate the loud and distinctive noise that

³ Primary evidence of Pranil Wadan, stormwater.

⁴ Note that further information will be provided as part of the response to the further information requested by the Panel, dated 25 June 2021.

⁵ <https://www.nzta.govt.nz/assets/Highways-Information-Portal/Technical-disciplines/Noise-and-vibration/Standards/Technical-memoranda/Tech-memo-NV6-Engine-braking-noise-v1.0.pdf>



Mr Stucki seeks to ban. Such bans do exist in New Zealand, however these are set under Bylaws and only on roads of speed limits of 70kph or lower.

Given the relatively low numbers of trucks associated with the foam factory operation and the expected limited numbers of those trucks using engine brakes, APL consider that a ban is unnecessary and further any ban is outside of APL's control. Furthermore, heavy vehicles associated with the construction use the haul road and therefore do not pass residential properties on Lumsden Road.

12. Heritage New Zealand Pouhere Taonga.

Condition 3 (Waikato District Council – Land Use) has been updated to account for the comments received by Heritage New Zealand and generally reflect the wording sought. Note that minor additional amendments have been made to account for the concept of 'take all practicable steps' as the nature of accidental discoveries is that finds are unpredictable. And that given the size of the site, accidental finds can be isolated from the wider works area, with works continuing elsewhere on the site.

Yours sincerely

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