

IN THE MATTER of the Resource Management Act 1991 (**RMA**)

AND

IN THE MATTER of an application by Taha Fertilizer Industries Limited for land use consent to store of Ouvea Premix in the former Mataura Paper Mill buildings under s 88 of the RMA

BETWEEN **TAHA FERTILIZER INDUSTRIES LIMITED**
Applicant

AND **GORE DISTRICT COUNCIL**
Consent Authority

**MEMORANDUM OF LEGAL COUNSEL FOR
TAHA FERTILIZER INDUSTRIES LIMITED**

28 May 2015

Counsel Acting

ROBERT MAKGILL
BARRISTER

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MAY IT PLEASE THE COMMISSIONERS -

INTRODUCTION

1. I write on behalf of Robert Makgill, Counsel acting for Taha Fertilizer Industries Limited (**Taha**).
2. Taha seeks land use consent from Gore District Council (**Council**) to store Ouvea Premix in the former Mataura Paper Mill buildings.
3. The resource consent application hearing was adjourned on 14 May 2015 pending the provision of further information as requested by the Commissioners.
4. On 20 May 2015, a Memorandum of Counsel was filed outlining the information Taha would provide to the Commissioners and a timeframe for providing this information. The timeframe included the provision of readily available information by 29 May 2015, and the provision of all remaining information by 3 July 2015.
5. The Commissioners, in their Minute of 22 May 2015, accepted the provision of information and timeframe. The Commissioners also provided a list of additional information requested. The Commissioners sought confirmation from the applicant that:
 - (a) The applicant would provide the information requested by 3 July 2015;
 - (b) The application would be placed on hold pending the provision of this information;
 - (c) The applicant approves the commissioning of a peer review of the testing methodology conducted to inform the Hazard Identification and Risk Assessment (**HIRA**) Report;
 - (d) The applicant approves the Council seeking independent advice on a bond relating to costs, including how the material will be moved, where it will be moved to and under what circumstances; and

(e) The applicant agrees to pay the costs of the review and advice.

6. I will address each of these matters in turn.

SUPPLEMENTARY INFORMATION

7. I note that much of the supplementary information requested by the Commissioners in their Minute of 22 May 2015 is a re-wording of information the applicant proposed to provide in the Memorandum of Counsel dated 20 May 2015. For consistency, I have compiled a list that combines information listed in both the Memorandum of Council on 20 May 2015 and the Minute of 22 May 2015. I have appended the list as Appendix A.
8. The applicant agrees to provide all information listed in the combined list in Appendix A by the dates indicated in this list, namely 29 May 2015 and 3 July 2015.

APPLICATION TO BE PLACED ON HOLD

9. The applicant agrees to place the application on hold pending the provision of all supplementary information by 3 July 2015. This agreement is based on the understanding that the hearing will be reconvened no later than the week of 27 July 2015.

PEER REVIEW OF THE TESTING METHODOLOGY USED FOR THE HIRA REPORT

10. The applicant agrees to Gore District Council (**Council**) obtaining a peer review on the methodology and accuracy of testing conducted by Jacobs New Zealand Limited (**Jacobs**) in the HIRA Report, which was presented as evidence by Mr Bruce Clarke at the resource consent hearing.
11. In particular, the applicant agrees to a peer review being conducted of the methodologies used for the bag test and the benchtop test, as further described in Appendix D of the HIRA Report.
12. Jacobs has provided a list of suitable individuals / organisations to conduct the peer review. Given the highly technical nature of the peer review, the applicant requests that the Council seeks advice from Mr Clarke as to the

nature and scope of the review prior to the review being commissioned. The applicant also requests that Mr Clarke has the opportunity to respond to the outcomes of the review prior to the hearing. This will likely include caucusing with the expert prior to the hearing on any matters raised.

INDEPENDENT ADVICE REGARDING BOND

13. Paragraph [10(f)(ii)] of the Memorandum of Counsel dated 22 May 2015 states that Taha will be submitting supplementary planning evidence regarding further consideration and advice on a bond.
14. Taha and Jacobs, together with Mr William Watt, are working to identify the steps and costs involved to remove the product from the site, and suitable locations for the product to be safely stored or disposed should immediate removal be required. While this work is underway, it is not considered appropriate or necessary for the Council to obtain independent advice regarding these potential options and costs.
15. Once the relevant information has been filed as supplementary information, the Commissioners may choose to have this information peer reviewed. The applicant will agree to any peer review of the information at this later stage.

COSTS OF REVIEW AND BOND ADVICE

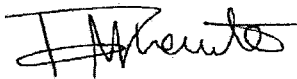
16. The applicant agrees to pay the reasonable costs for conducting the peer review of the testing methodologies. However, the applicant requests that the Council provides an estimate of these costs to the applicant for final written approval prior to the review being conducted.
17. For the reasons identified in paragraphs [13] to [15], the applicant does not agree to pay the costs for independent advice obtained from the Council regarding the structure of a bond prior to additional information being presented by Taha by 3 July 2015.

DIRECTIONS SOUGHT

18. We seek confirmation from the Commissioners that the combined list of information the application has agreed to provide, as contained in Appendix A, is acceptable.

19. We also seek confirmation from the Commissioners that:
- (a) the Council will consult with Jacobs regarding the scope and nature of the peer review, and provide the applicant with an estimate of the costs for the review for written approval prior to the review being conducted; and
 - (b) the Council will not seek independent advice on a bond at the expense of the applicant until the applicant has provided all requested information by 3 July 2015, including advice on a bond.

Dated 28th May 2015



T Drewitt
Environmental Consultant for Taha Fertilizer Industries
Limited

Appendix A

	Task	Date to be provided
General		
	Details of Taha management structure and relationships between various companies and personnel, including contact details and who should be contacted when.	29-May-15
	Update on progress with Awarua including a detailed timeframe for removal and project management breakdown	29-May-15
	Correct Street Address	29-May-15
	Status of discussions with NZTA	29-May-15
	Draft communications plan through the Community Liaison Group	29-May-15
Ouvea Premix		
	Process for drafting MSDS and SoS and status for Ouvea Premix	29-May-15
	Correct MSDS for Ouvea Premix and Aluminium Dross	29-May-15
	Copy of EPA SoS and Appendices	29-May-15
	Clear statement on chemistry of Ouvea Premix	3-Jul-15
Buildings		
	Site layout plan showing location of material and amounts	29-May-15
	An assessment of the feasibility of removing (non-Ouvea) product	29-May-15
	An assessment of the feasibility of removing / moving any other product	3-Jul-15
	Description of power generation activities and marked-up Site Layout Plan showing location of water flows and machinery	3-Jul-15
	Assessment of stability of chimney on the site	3-Jul-15
	Assessment on the strength of the floor of the buildings, including assumptions and uncertainties	3-Jul-15
	Marked-up draft Stormwater Management Plan showing location of existing operational and redundant stormwater pipes, as well as nature and timing of any works.	3-Jul-15
	Provision of information on how sprinkler system will operate and marked-up Site Layout Plan	3-Jul-15
Traffic Management		
	Draft Traffic Management Plan including: loading process; conditions for loading; plans showing where loading will take place; on-road traffic management required; consultation; pedestrian access.	3-Jul-15
Flood Assessment		
	Further information to indicate the impact of a 2% AEP on the buildings, including potential volume/depth of seepage.	3-Jul-15
	Assessment on the need or otherwise to revisit gravel build up	3-Jul-15
	Draft Flood Response Plan (as described in Minute and Memorandum) - including existing and proposed flood protection measures, details of triggers for action, roles and responsibilities, risks, and the role and capacity of local fire brigade.	3-Jul-15
	Further comment on movement of water in buildings in a flood	3-Jul-15
	Further comment on estimated standing times and potential to contain water following a flood	3-Jul-15
Risk Assessment		
	Qualitative Assessment of fire risk, including potential for ammonia gas generation and capacity of local fire brigade	3-Jul-15
	Draft Fire Response Plan, including clarifying PPE requirements and sprinkler operation.	3-Jul-15
Planning		
	Consent status regarding emissions to air	3-Jul-15
	Statement re GDP planning provisions and HSNO inconsistencies	3-Jul-15
	Further consideration and advice on a bond	3-Jul-15
	Proposed consent conditions	3-Jul-15
	Indication on removal plan and timeframe should consent be declined	3-Jul-15