

Report

**Section 42A
Land use resource consent
Resource Management Act 1991**

Applicant:	Taha Fertilizer Industries Limited (on behalf of Taha Asia Pacific Industries Limited and Taha Fertilizer Industries Limited) "Taha"
Reference:	LU 2014/95
Location:	109 and 116-130 Kana Street, Mataura
Proposal:	Storage of Class 6 and Class 9 hazardous substances
Type of Consent:	Land Use Consent
Legal Description:	Section 6-8 and 10, Part Section 9 and 11, Section 12 and Closed Road, of Block I Town of Mataura Bridge; Section 4, 5 Block XVI Town of Mataura Bridge; and Lot 1 and Part Lot 2 DP 147
Zoning:	Industrial
Activity Status:	Restricted Discretionary
Commissioners:	Colin Weatherall (Chair) and David Pullar
Date of Report:	4 May 2015
Recommendation:	None

Index

Introduction	3
Background	3
Description of the proposal	3
Written approvals	5
The site	5
Building suitability	6
Reasons for the application	7
Processing the application	9
Matters for consideration	10
RMA Part II matters	10
Effects on the environment	11
National policy statements, NZ Coastal Policy Statement, Regional Policy Statement	18
District Plan provisions	18
Recommendation and possible conditions	21

Appendices

- I. The application
- II. Further technical reports from the applicant
- III. Officer Comments
- IV. Submissions
- V. Summary of submissions
- VI. Part II of the RMA
- VII. Persons served with the application

Introduction

This report has been prepared by me, Howard Alchin, Senior Planner with the Gore District Council. I have the qualifications of B.Soc.Sci (Waikato) and B.Plan (Auckland) and am a Graduate Plus member of the New Zealand Planning Institute. I have 12 years' experience in a planning role, predominantly employed by territorial authorities. I have been in my current position since 23 September 2013.

This report has been prepared on the basis of the information available as at 4 May 2015. The purpose of the report is to provide a framework for the Hearing Commissioners consideration of the application and the Commissioners are not bound by any comments or recommendations made within this report. The Commissioners will make their own assessment of the application, taking into account the submissions lodged, and material presented at the hearing within the statutory framework of the Resource Management Act 1991 (the Act) before reaching a decision.

Background

The background to this application is set out in the application as follows:

Taha has developed an aluminium recovery and recycling process on the property of the existing NZAS Smelter. One of the outputs of the process is Ouvea Premix, which has multiple industrial uses including fertilisers, refractory, cement additive, and others. Ouvea Premix is made up of approximately 30% aluminium oxide, 30% aluminium nitride, 30% magnesium aluminate – other components include aluminium fines, sodium and calcium salts, and other trace metals.

Taha currently stores the Ouvea Premix in a number of sites in Invecargill and at the Maitara site. Taha is in the process of identifying a production site where Ouvea Premix can be converted into a compound fertiliser through a granulation process. Taha proposes to store the Ouvea Premix and other materials at the various storage sites until a suitable site is secured.

During initial consultation with the Council and affected persons on the Maitara site the applicant proposed that in addition to the storage of the premix on the site processing also be undertaken. An application was lodged to this effect on 23 October 2014 but later withdrawn in January 2015 following concerns raised.

Regard was given to issuing an enforcement order to remove the material but with the lodging and notification of an amended application such action was not taken. However, if the current application is declined the option of taking formal action is still a possibility. A revised proposal was received from the applicant on 12 March 2015 by file transfer.

Description of the proposal

The applicant, Taha, wishes to store Ouvea Premix and other products in a cluster of existing buildings on the subject (composite) site at 109 and 116-130 Kana Street, Maitara. A copy of the application is attached as Appendix I.

The following table sets out details of the various products, the maximum volume to be stored on site and action taken to avoid spills.

Product Name HSNO Class (and Description)	Max Volume	Storage type	Spill prevention
Ouvea premix 6.3A; 6.4A; 9.1C (Granular/ powder)	9,951 Tonnes	1 Tonne double layer heavy duty bags with mesh woven outside layer and plastic lining.	Stored indoors to prevent contact with moisture. Temp will be controlled and is not to exceed 50 ⁰ Celsius
Sulphate of Ammonia 6.1D; 9.1D, 9.3C (Granular/Powder)	8 Tonnes	1 tonne double layer heavy duty bags with mesh woven outside layer and plastic lining.	Stored indoors to prevent contact with moisture. Temperature will be controlled and is not to exceed 50 ⁰ Celsius
Diesel 3.1D, 6.1E, 6.3B, 6.7B, 9.1B (Liquid)	100 litres	20 Litre diesel drums	Stored indoors, temperature will be controlled and is not to exceed 50 ⁰ Celsius
Citric Acid 6.1E, 6.3B, 8.3A (Powdered Crystals)	350 kg	25 kg woven mesh bags	Stored in closed container indoors to prevent contact with moisture. Temperature will be controlled and is not to exceed 50 ⁰ Celsius.
Silica Sand Not hazardous (Fine powder)	150 Tonnes	1 Tonne fork lift bags	Not hazardous, shovel and wheelbarrow. Return to stock pile if uncontaminated.

I do note however that the Consent Application Form does not specify the actual volumes of materials listed above, rather it merely seeks approval to store Class 6 and 9 materials in excess of what is permitted by the District Plan. The volumes above are listed in Table 3 of the application Assessment of Effects. It is of concern to me that in Table 2 of the Environmental Management Plan (page 6 of Appendix D) a figure of 10,000 tonnes of Ouvea Premix is shown, while Figure 2 in Appendix A of that Management Plan refers to 7,000 tonnes. If approved, a condition of consent will be required specifying exactly how much material is to be stored on the site.

Taha states in the application that they do not intend to store any additional materials at the site. As such there will be no further inward truck movements for unloading materials. Taha state further, that they propose to remove the material from the site once a processing site is fully operational and within 2 years of the resource consent being granted. No Taha staff will be permanently located at the site while it is used for storage. Rather staff from Invercargill will undertake regular storage checks.

During the removal process Taha anticipate an average 1-2 truck movements per day to remove the material over this time. Site access will be on week days only between the hours of 9am – 5pm. Incident responses outside these hours will be attended as needs be.

Parking provisions form part of the application and the proposal states the following:

There is sufficient onsite parking for Taha's storage activities. The site has two main parking areas – one to the north and south of the area marked 'office' on the site layout plans, and a large yard to the south of 109 Kana Street. There are no other parties using the complex, so there is no competition for these car parks. Also, there will be no FTE's on site requiring parking, other than temporary parking for staff conducting the regular storage checks

Written Approvals

The application submitted has included written approvals from the following:

- D J Harvie being an owner of 121 Kana Street
- Gregory Paterson (Niblick Trust) being an owner of 121 Kana Street
- NZ Transport Agency - although this has since been withdrawn because it applied to the earlier application.

In assessing the application, the Council cannot take into account any adverse impacts on these persons. I do note however that two of the written approvals are signed by the owners of the subject site.

The site

The site is located at the former pulp and paper mill site in Mataura comprising land on both sides of Kana Street (State Highway 93). The addresses are 109 Kana Street, and 116-130 Kana Street, and the sites are legally described as:

- Section 6-8 and 10, Part Section 9 and 11, Section 12 and Closed Road, of block I Town of Mataura Bridge;
- Section 4, 5 Block XVI Town of Mataura Bridge; and
- Lot 1 and Part Lot 2 DP 147.

A site aerial photograph showing the relevant titles is in section 2 of the application, with fuller site and detailed site layout plans shown in Appendices A and B.

The western buildings at 109 Kana Street are adjacent to the Mataura River and a channel for the Waikana Stream running along the road side before being diverted under the main building via culvert to the Mataura River. The Waikana Stream runs across the northern end of the buildings at 116-130 Kana Street, located on the eastern side of Kana Street.

The land in the immediate area is largely flat as is the subject site, however the buildings on the eastern side of Kana Street sit at the base of a steep hill and a small drain runs along the rear of these buildings. The application does not mention this, but there is an electricity generating plant embedded in the building at 109 Kana Street with associated pen-stocks. This is a legacy from the paper mill and it still generates power today which is fed back into the national grid.

The site is located in the Industrial Zone of the Gore District Council, District Plan. The site is also shown on the planning maps as being in a floodway as being potentially flood prone. Residential properties are located in the industrial zone to the north and south of the site and atop the hill above the buildings located at 116-130 Kana Street. The Council is not aware of any other activity in this area that has not been lawfully established, notwithstanding that the applicant is seeking to lawfully establish their activity retrospectively.

Kana Street is a State Highway 93 and is therefore under the control of the New Zealand Transport Agency and is shown as Designation 24 in the District Plan. This State Highway intersects with State Highway 1 on the south side of the Mataura Bridge.

The site has access off Kana Street which will be used for removing the materials.

The 109 Kana Street site has three site access points, as indicated on the site map included with the application – these are:

- A southern access – which is external to the building and has an off-road loading area and truck turning bay;
- Road side access which enables trucks to enter the building for internal loading and manoeuvring inside the building to be able to exit in a forwards direction; and
- A northern access to the site marked 'Ouvea Premix store D' on the site layout plan referred to above.

116-130 Kana Street for Store A has only one access point at the north end of the building. Trucks access this site by pulling off the road at the north end of the building before being off-loaded by a fork lift. All bags will be moved by fork lift for transportation around the site. The applicant notes that the following 'notable' activities occur near the site:

- A traditional Lamprey collecting area which is approximately 200 metres south of the site along the Mataura River;
- Mataura School which is approximately 500 metres south west of the site, and separated by the Mataura River;
- Mataura Medical Centre which is approximately 500 metres south west of the site on Bridge Street;
- The Trust Bank Park which is west from the site across the Mataura River.

In addition a Kohanga Reo is located immediately south of the site on the same side of the river.

The Council records also record that site is a contaminated site with the known hazards being storage tanks (which may be still in the ground), liquid fuels, and chemical wastes.

Building suitability

Following receipt of the original application concerns were raised with the applicant over the condition and therefore the suitability of the buildings on the site. In response to this, the application states:

The cluster of buildings that Taha is using to store material used to house the old Mataura paper mill until 2000. The buildings have however now been vacant since 2002. The building owner has recently undertaken a range of repair works on the building to ensure it is still suitable for industrial activities, including Taha's storage activities. These works include:

- Re-guttering and extensive roof maintenance, including re-routing internal guttering, installing extra downpipes to safeguard from overflows that may occur in high rainfall events, and relining gutters

- with water proof membranes;
- Undertaking works to re-commission and add safety mechanisms to the fire sprinkler system so that it would be suitable for Taha's hazardous substances storage;
- Covering internal water races with concrete over reinforced steel to prevent water ingress into the building;
- Waikana Stream maintenance including clearing the stream of debris after rain events; and
- Re-digging the ditch behind the eastern building to enable free draining of water.

Reasons for the application

The site is zoned Industrial in the Gore District Plan. Permitted activities allowed as of right on the site, subject to meeting various standards in the District Plan include the following:

- (a) Agriculture;
- (b) Animal Boarding Activity;
- (c) Commercial Recreation Activity;
- (d) Communal Activity;
- (e) Essential Services;
- (f) Health Care Activity;
- (g) Industrial Activity;
- (h) Land Development;
- (i) Service Station.

Industrial activity is defined as:

Industrial activity: means land and/or buildings used for the manufacturing, repairing, engineering, fabricating, processing, packing or storing of products or materials. This includes any ancillary retail sales, any public display or tour operations within the land or premises, and associated offices, staff facilities and caretaker's accommodation. Industrial activity includes, but is not limited to, contractor's yard or depot, the bulk storage of fertiliser, power generation station, substation not provided for as *infrastructure*, the transfer, storage, treatment or disposal of waste not otherwise defined.

The storage of various products on the site is therefore permitted. Table 6.2 of the District Plan however limits the volumes of Classes 3, 6 and 9 hazardous substances that can be stored on any site as follows, together with what is proposed:

Class	Permitted in Industrial Zone	Proposed
3. Flammable Liquids 3.1D Aboveground Storage Underground Storage	5,000 litres 60,000 litres	100 litres
6. Poisonous Substances	1,000 kg	18,350 kg The application does not provide a breakdown by each class, so it is assumed the volumes should be aggregated.
8. Corrosives	1,000 kg	
9. Agrichemicals	5,000 kg	

Regard must also be had to the definition of site in the District Plan, as follows:

Site: means any area of land comprised wholly of one Certificate of Title or any **Allotment** as defined by Section 218 of the RMA.

The land subject to this application is held in five different Certificates of Title and it could be argued that the permitted volumes are allowed on each Certificate of Title. However, I reject that approach. The nature of buildings on the Mataura River side of the highway, being 109 Kana Street is such that this should be considered one site. Similarly, all buildings on the other side of the road, being 116 - 130 Kana Street should be considered one site.

Regardless of how site is defined and applied the proposed activity exceeds the threshold allowed for the storage of hazardous substances provisions. Where the threshold is exceeded Rule 6.9(2) requires consideration of a resource consent as a **restricted discretionary activity**. The rules also provides that the matter over which the Council shall exercise its discretion shall be "the environmental effects of storing or using hazardous substances in quantities in excess of those specified in Table 6.2".

Resource consent is also required because of the quantum of parking provided on the site. The application summarises the relevant rules and assesses them as follows:

Rule	Explanation	Assessment
5.9.2	Off-road parking requirements for industrial activities:	Total GFA of buildings on site is approx. 10,400 m ² , equating to a requirement for approximately 55 car parks.
5.9.4	<ul style="list-style-type: none"> • One car park per 50m² for the first 200m², then one car park per every additional 200m², and • An area for loading/unloading of goods onsite for any activity in excess of 1000m², • Parking design complying with appropriate dimensions. • Identify spaces for staff parking, and • For more than five cars: <ul style="list-style-type: none"> ○ For every 20m² of parking 1m² of landscaping either trees or shrubs shall be provided. ○ Onsite manoeuvring shall be provided to ensure no vehicle is required to reverse onto or off any arterial road. ○ Storm water shall be contained and treated. ○ Surface of car park area and access to parking area shall be maintained to a dust free standard and to avoid tracking loser materials on public roads. ○ Clearly defined access to parking areas with a physical barrier separating road from parking area. ○ Provide onsite manoeuvring for 90 percentile car. 	<p>There are several car parks provided that come with the lease of the office. There is also a large yard that can be used for car parking if required, but this area may come shy of 45 additional parks.</p> <p>The main parking area is not screened and storm water is not collected.</p>

I agree with that assessment. Under rule 5.9.4 any land use that does provide the required parking requires resource consent as a **restricted discretionary activity**. The rule also provides that the matters over which the Council shall exercise its discretion are the adverse environmental effects of the matters with which there is non-compliance.

In assessing this application I have also had regard to the following matters:

(a) National Environmental Standard for Managing Contaminants in Soil and their Effect on Human Health.

This NES applies to contaminated sites when there is:

- soil disturbance above permitted levels
- change of use

- subdivision; or
- removal of storage tanks

None of these triggers apply in this case. It should also be noted that shifting from one permitted industrial activity to another does not constitute a change of use. I am therefore satisfied that a Preliminary Site Investigation (PSI) pursuant to the NES on Assessing and Managing Contaminants in Soil to Protect Human Health is not required for the storage proposal.

(b) Historic Heritage

As the site pre-dates 1900 it requires consideration under the Heritage New Zealand Pouhere Taonga Act 2014. An Archaeological Authority would be required if site works were proposed. However this is not part of the proposal for storage.

The proposal is assessed overall as having a **restricted discretionary activity** status.

Processing of the application

The Resource Management Act 1991 in sections 95A – 95F sets out the matters that the Council is required to consider and assess in determining how to process the application as regards notification. Having regard to these provisions, acting under delegated authority I determined that full public notification was required.

The proposal was notified on the 13th of March 2015 in the local newspaper. Signs were erected on the site and various statutory bodies and persons considered to have an interest greater than the public generally were sent the formal notice, a copy of the application, and a submission form. A list of the persons served is contained in Appendix VII. Given the public interest in this proposal the same information was provided to members of the Maitua Community Board.

Submissions closed on 14 April and 64 were received. Two were neutral and 62 were in opposition. A copy of the submissions and a summary of them is attached as Appendix IV.

34 submitters have indicated that they wish to appear at the hearing.

The applicant has reviewed the notification advice prepared, the initial submissions and prepared additional information in response to the matters raised, particularly in relation to:

- Building Warrant of Fitness and earthquake prone issues
- Progress on a permanent integrated storage and manufacturing facility
- Details of the classification of the Ouvea Premix by the Environmental Protection Agency
- Consideration of Flooding Issues and Further testing of storage bags in flood simulations
- An updated Environmental Management Plan
- Hazard Identification and Risk Assessment

Some of the additional information supplied is of a highly technical nature and lengthy. As it did not form part of the advertised application I have not had regard to it. If the applicant considers the information relevant then it should be presented by appropriately qualified and experienced persons at the hearing.

Matters for consideration

The application is for a discretionary restricted activity. As a consequence, the Commissioners in considering this application and the submissions lodged to it are required to have regard to sections 104 and 104C of the RMA, the relevant portions of which state:

104 Consideration of applications—

- (1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—
 - (a) any actual and potential effects on the environment of allowing the activity; and
 - (b) any relevant provisions of—
 - (i) a national policy statement;
 - (ii) a New Zealand coastal policy statement;
 - (iii) a regional policy statement or proposed regional policy statement;
 - (iv) a plan or proposed plan; and
 - (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

104C Determination of applications for restricted discretionary activities —

- (1) When considering an application for a resource consent for a restricted discretionary activity, a consent authority must consider only those matters over which -
 - (a) A discretion is restricted in national environmental standards or other regulations;
 - (b) It has restricted the exercise of its discretion in its plan or proposed plan.
- (2) The consent authority may grant or refuse the application.
- (3) However, if it grants the application, the consent authority may impose conditions under section 108 only for those matters over which –
 - (a) a discretion is restricted in national environmental standards or other regulations;
 - (b) it has restricted the exercise of its discretion in its plan or proposed plan

Section 104 lists various matters to be considered. However, section 104C(1)(a) restricts the matters that can be considered to those specified in the District Plan. In this case such restriction is to the adverse environmental effects arising from the non-compliance with the district plan rules, namely the volume of hazardous substances to be stored on the site, and the shortfall in parking provided on the site.

In assessing the application no regard can be given to the fact that material has already been stored on the site. The retrospective nature of the consent has caused some concern and added to fears in the community. Legally it is not there and no regard can be given to that.

RMA Part II matters

Attached as Appendix VI is a copy of the Part II of the RMA. In considering Part II matters, only those that are relevant to the matters to which the Council has restricted discretion need be assessed.

Sections 6 and 7 of the RMA sets out various matters to be had regard to and taken into account in assessing the application. In my view there are no matters in these sections that impinge on the current application.

Section 8 requires taking into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). In my view there are no relevant Treaty issues to consider.

Section 5 however is relevant. It requires a balance between providing for activities to be undertaken while safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and avoiding, remedying, or mitigating any adverse effects of activities on the environment. In that regard, to be compatible with Section 5 it is necessary for the applicant to satisfy the Commissioners that the proposed activity can be undertaken while protecting the environment. Such protection can be enabled by conditions imposed on any consent granted. However, if the Commissioners cannot be satisfied that the environment will be protected then the application should be declined.

A number of submissions state that the proposal is contrary to Part II of the RMA but there is little analysis of the statement and I anticipate further comment on this at the hearing. Alliance submits that the proposal is contrary to section 5 in that it does not promote the sustainable management of natural physical resources.

I consider the proposed use suitable for the site provided that the environment can be protected. However, on the basis of available information I am unable to draft appropriate conditions that will satisfy me that this will be the case. I will reassess this matter after the presentation of evidence by the applicant and hearing in more detail the concerns of the submitters.

Effects on the Environment

(a) Parking Issues

The District Plan requires provision of 55 car parks. However, given the nature of the proposed activity, with no staff being permanently located on the site, the provision required for parking is minimal. I consider the shortfall in parking to be acceptable and this will not give rise to any adverse effects on vehicle movements in the locality.

Parking can be provided at the plant offices and on other open land. The current parking provided was established many years ago, well before the current district plan rules came into effect. I therefore consider it unreasonable to require any upgrading of potential parking areas to meet the current district plan requirements.

The Council's Roading Manager agrees with this approach, stating:

Access standards contained in the Gore District Council Subdivision and Development Bylaw 20011 apply to this situation. The site distances available at the existing vehicle access meets the requirements. Although some onsite parking does not meet the requirements of the Bylaw there appears to be more than adequate onsite parking available to cater for the proposed operation. It is recommended that a dispensation, in favour of the applicant be made for this aspect of the proposal.

Submitters have raised issues in relation to parking issues seeking:

- Landscaping around open or parking areas.
- Containment of storm water on parking areas.

As no new parking is being provided it is not appropriate to require action on these matters.

(b) Storage of Hazardous Substances

The issue to be assessed here is "what are the adverse environmental effects that arise from storing hazardous substances on the site in excess of those allowed for as a permitted activity?". In that regard in preparing the District Plan it was envisaged that industrial activities would utilise and store some hazardous substances on their site to facilitate production of goods and provisions of services. It was not envisaged that the sole activity on the site would be storage of hazardous substances, yet it is accepted that the District Plan enables that, albeit at volumes far less than what is sought.

The application and the submissions lodged highlight the following potential adverse environmental effects arising from the storage of hazardous substances on the site:

1. Spillage of hazardous substances onto the ground with discharges to air (dust) and ammonia discharges to air as a result of Ouvea premix becoming damp or wet.

Submitters seek information on the potential impacts of these discharges on the health of people and these discharges. In particular there is community concern over the location and proximity of the Kohanga Reo – how safe is it in this location?

Some residents are already reporting fumes noting they are closing windows at night and suffering symptom of irritation. However, there are currently no receptors in the residential area or monitoring from which reliable data can be sourced to back up the anecdotal evidence of submitters.

2. Discharge of hazardous substances into waterways as a result of flooding on the site or spillage of hazardous substances onto the ground with discharges waterways (Waikana Stream and Mataura River).

Submitters express concern about the drain along the rear of the buildings known as store A which sit below a large bank. This drain is shallow and was observed to be in need of being cleaned out when inspected in November 2014. Ingress of water along this side of the building is raised in several submissions.

Submitters have also raised concerns at potential impacts on fish and other wildlife, and the gazetted mataitai area. No details on these issues are included in the material submitted with the application.

Reference is made in submissions to the Water Conservation (Mataura River) Order 1997. That Order is relevant in considering any takes from and discharges into the Mataura River and its tributaries. I agree with the applicant that while the proposed activity is located adjacent to the Mataura River, Taha is not seeking any resource consent to discharge contaminants to or take water from the Mataura River. As such, the Mataura River Order is not relevant to this application. In the event that a water take or discharge became sought this would be to the regional council not the district council.

Submitters also ask whether the mitigation measures for spillage and flooding are adequate, for example, does the build-up of gravel up stream mean that the current flood modelling is inaccurate. How effective are the flood mitigation measures? Should they be in place at all times and inspected regularly. What is the likely impact of global warming?

Given all Taha staff are located in Invercargill submitters question the ability of the company to put in place measures in the event of a flood.

3. Noise from activities on the site.

It would appear that the activities on the site can be undertaken in conformity with the District Plan noise rules. No dispensation from the District Plan standards has been requested and no further action is required on this issue.

4. Increased traffic movements to and from the site

Except when material is being brought to the site (which has already occurred) or removed traffic movement to and from the site will be very low. There are no district plan restrictions on traffic movements. Further consideration of this issue is not required.

5. The safe storage of material on the site.

In this regard the structural integrity of the building is relevant. Submitters ask whether the building is sound, for example, are there leaks, or holes in the floor or roof, broken windows, leaks from old infra-structure under the building into the Waikana Stream or Mataura River? Is the location of all these pipes known and are they sealed? Is asbestos a concern, how effective a sprinkler system when the product is known to react with water. How secure is the building in terms of preventing public access (what are the dangers and risks of the product falling into the wrong hands). Has the roof been completely fixed, are all downpipes and spouting now operational? Are all windows fixed? How will temperature in the building be regulated? Is the roof single skinned and is it susceptible to condensation and dripping?

With the exception of 3 and 4 above, central to all these issues is the effectiveness of the plastic bags being used for storage. There appears to some acknowledgement of

an issue by the applicant. I share the concerns of submitters in this regard.

The RMA defines effects as including those of low probability which has high potential impact. As a consequence it is appropriate to consider the impact of a catastrophic failure and whether there is a potential for substantial environmental damage to the river and coastal environment. Is any environmental damage reversible?

Arising from the matters above there are also the following issues:

6. Whether a timeframe of two years is appropriate and what milestones can be identified, how can the community be kept informed of progress? Is immediate removal and an exit strategy more appropriate?
7. What would a community evacuation plan look like? Is it required and if so under what circumstances?
8. The ability of the local fire service to deal with any event has been questioned. It is noted however that the fire service did not submit but it cannot be assumed that this is not a potential issue.

Several submitters have asked if the fertiliser that the company is trying to produce is viable. That is not a relevant issue under the RMA but rather a financial decision of the applicant.

Submitters also suggest that their by-products of the aluminium smelting process should be stored at Tiwai and manufactured into something else there rather be transported and stored over a number of Southland sites. None of these matters are relevant to the current application.

Submitters also raise that the company is reported as not having any public liability insurance. If true this would be a concern, but again it is not a relevant factor in considering the application. Raising this issue does however reflect a public concern, and highlights the need for clear and tight conditions to provide confidence to the public that significant adverse environmental effects will not result. The question of potential conditions is discussed later in this Report, but one valid condition that could be imposed on any consent granted would be in relation to a bond.

One submitter asks whether there will be an opportunity for further submissions on previously unavailable technical information being supplied by the applicant. That is a matter for the Commissioners to determine. If the submitter requires additional time to assess any material presented by the applicant at the hearing, then that can be requested. However, there needs to be clear reasons for this and it should not result in undue delay in making a decision on the application. It should also be noted that the Commissioners themselves may request further reports and assessment of any material presented at the hearing.

The scale of the proposed activity and potential effects sits at the heart of the reason the Gore District Council exercised its discretion to notify the application. In my view the critical issue is the state of the building and associated performance of the structure including the roof, gutters, windows, guttering, old pipes under the building, the separation of the building from the Waikana Stream, the power plant operating in the building, ventilation and temperature control. My concerns are heightened by the submission from Public Health South that there is inadequate information on the discharges to air and ventilation with the building and that the procedure for odour control does not meet the Ministry of Health guidelines.

PHS also raise concerns about the bags not being sealed – again calling into question the exact nature of any reaction rates and the potential scale of this. What is the role of dampness? Environment Southland express similar concerns.

The Council's Building Control Officer has raised several pertinent questions in this regard as well:

1. Are there any issues with possible chemical reactions between ammonia content of the raw product and traces of the salts used in the previous activity in part of the premises involving animal hide processing?
2. Are there any known health risks to staff and occupants of the building under normal conditions, e.g. is there adequate ventilation available?
3. Are there any known issues with possible corrosion of the building structure and/or accelerated deterioration of the building due to the ingredients involved in this proposed activity.
4. The previous tenants only used one area of the river side building and it was assessed for compliance with the building code provisions via a building consent, which also required a Compliance Schedule (CS) and Building Warrant of Fitness (BWOFF) for the area being used.

Based on the application details supplied, the proposed occupancy is to be extended to the entire complex therefore the CS and BWOFF need to be brought up to date and amended to reflect that. A competent fire designer should be involved for fire safety advice and a report instigated to indicate how this can be achieved for the entire site, including the west side buildings and the office block and storage buildings on the east side of Kana Street. A building consent is most likely required for any fire safety systems to be installed.

Building Control Officer also noted that a structural report and supporting information including a fire safety information and safety data sheet information was received late on 1 May not allowing time for this to be reviewed by Council officers prior to this report being prepared.

The Southland District Council is contracted to provide environmental health advice to the Gore District Council. They report in this case as follows, requesting additional information relevant to the effects of the proposal:

Ouvea pre-mix falls within the EPA Site Storage Conditions for Toxic, corrosive and Ecotoxic substances. This standard has requirements concerning stationary container systems (not triggered), emergency management, and signage. This standard, along with the HSNO Regulations, do not give sufficient detail to manage the hazards, and this detail must be sourced elsewhere.

1. Provide a 'safety report' and documentation advising of compliance with the Approved Code of Practice for Managing Hazards to Prevent Major Industrial Accidents, 1994. This COP is current and may be downloaded from the WorkSafe New Zealand website. In preparing this documentation, reference shall be made to AS/NZ 3833:2007 The storage and handling of mixed classes of dangerous goods, in packages and intermediate bulk containers.

The concern with this activity is a major industrial accident given the extremely large quantities of hazardous substances, emissions of ammonia gas, and possible exo-thermic reactions (and potential combustion) of the Ouvea Pre-mix during storage and processing.

2. Provide a complaint safety data sheet for Ouvea Pre-mix; the sheet provided is 'draft', and does not comply with the data sheet requirements of either the Additives Process Chemicals and Raw Materials (Subsidiary Hazard) Group Standard 2006 or the Hazardous Substances (Identification) Regulation 2001.

Safety data sheet accuracy is of concern, with a recent EPA audit showing a number being non-complaint, some critically so.

3. Provide comment with regard to approved handler compliance at the Ouvea processing sites in Invercargill.

The Council's 3 Waters Manager sought additional information from the applicant regarding any intention to wash down vehicles and any intention to use council infra-structure, water waste water or storm water? While no response was received, it is noted that the application states that they will contain and treat storm water.

As an important component of any decision reached by the Commissioner is around the chemistry of the material being stored the Commissioners will have to make a determination in this regard and assess the technical information submitted by the applicant, submitters and statutory agencies which have raised questions in this regard. Submitters have questioned the adequacy of the chemical analysis.

As a note of further caution the applicants planning consultant advised in early April that they now had concerns about the efficacy of both the flood mitigation measures and the ability of the bags being used to perform under adverse circumstances. As a matter of priority the Commissioners will need to test and assess the technical and expert evidence on the flood mitigation measures and the ability of the building to contain any product spill or leak. To this end it may be an appropriate condition on any consent given that the flood measures are permanently in place and that the efficacy of this is regularly monitored.

In my initial report on the original application lodged, I raised the following concerns:

The scale of the proposal may exceed the capacity of the site and an appropriate storage level has yet to be confirmed. The applicants initial contact with the Council suggested that a just in time process whereby the amount of product on site was sufficient to allow for the manufacturing of fertiliser product, with minimal quantities of pre-mix and manufactured product on site at any one time. The current volume of class 6 Hazardous goods currently on site are stored in a manner much improved upon the previous in ground storage. However, given the issues raised in this report, I am not satisfied that the effects long term of the on-site storage of this volume of product are able to be considered to be 'no more than minor.

At this time I can confirm that this remains my position.

In considering the wider receiving environment which includes two waterways, residential activity and educational activity it becomes difficult to determine where immediate effects start and finish and where potential effects are the issue. Storage in and of itself is a passive activity even of a class 6 and class 9 hazardous substance. In maintaining this status quo the commissioners will need to arrive at a position on the effects both passive, immediate and potential as they could impact the wider environment. It is worth noting that neither Te Ao Marama, or Hokonui Runanga responded to the statutory notification for submissions. The Kohanga Reo is however well represented in the submissions received from the wider public.

Other aspects of my notification report remain relevant to an assessment of effects as follows:

Critical detail is missing from the proposal, including detailed site plans showing the location of pipes under the building, the isolation of the water race and associated plant for the production of power, and engineering reports and assessment on the state and suitability of the building. IN particular the state of repair of the pen stocks and the containment of hydraulic pressure are not addressed. While there are steel plates and concrete slabs on site for flood protection which were purpose built, these appear to have not been tested, and the state of the 'music seals' has not been checked.

I also raised concerns over the strength of the floors, the condition of the roof, guttering – both internal and exterior. I concluded then that 'to support the application to the level and intensity of use proposed, the application needs to be accompanied by a detailed structural site investigation, and associated maintenance plan by a suitably qualified person in order to determine that the proposed measures are robust and reliable.

At this point it is worth noting that the main statutory agencies to the application have either taken a neutral stance or have submitted in opposition pending further information. The agencies include Environment Southland, Southland District Council (they hold a contract for provision of Environmental Health support for the GDC), Public Health South, and the New Zealand Transport Agency have withdrawn their written approval.

The significance of this is that the Council works in a wider context when considering the impacts of activities on the environment and people. The Commissioners will need to address the concerns of these agencies as they work through the hearing process and in that regard the public can be reassured that the matters of concern will be thoroughly tested.

In conclusion, I am not able to make a final determination, and hence recommendation to the Commissioners on the level of effects. I will review this conclusion following the presentation of evidence by the applicant at the hearing.

National Policy Statements, NZ Coastal Policy Statement, Regional Policy Statement

The proposal does not trigger any assessment requirements in relation to national, or regional policy statements.

District Plan Provisions

The following Objectives and Policies of the district plan are relevant:

Objective/ Policy	Is the proposal consistent?	Explanation and Planner comment
<p><u>Objective 3.3(2) – Land Use</u> Ensure that the effects of land use activities do not adversely affect the quality of the environment and are compatible with the characteristics and amenity values of each locality.</p> <p><u>Policy 3.4</u> (2) Control the adverse effects of land use activities on the environment.</p>	<p>Yes – submitted by the applicant.</p> <p>GDC Snr Planner – conditional on hearing outcome, but must be determined consistent or not contrary to pass the approval test.</p>	<p><u>Applicant submits:</u> The AEE in Section 5 of this report (the application) found that the effects on the environment are considered to be no more than minor. The activity is within the Industrial zone so is compatible to the values of this locality.</p> <p><u>GDC Senior Planner:</u> The zoning supports industrial activity, however the proposed scale of the storage activity has potential risks associated which are yet to be fully tested through the hearing process. The Commissioners in granting any consent need to be satisfied that the effects are acceptable in order to satisfy this policy and objective.</p>
<p><u>Objective 4A.3(2) – Natural Hazards</u> Minimise the risk to people and property from inundation.</p> <p><u>Policy 4A.4</u> Within areas shown as ‘Subject to Actual or Potential Inundation’ on the District Plan Maps the Gore District will:</p>	<p>Yes – submitted by the applicant.</p> <p>GDC Snr Planner – conditional on hearing outcome, but must be determined consistent or not contrary to pass the approval test.</p>	<p><u>Applicant submits:</u> The activity is within an area shown as ‘subject to actual or potential inundation’.</p> <p>The buildings in which the activity will be conducted are existing. Environment Southland has been consulted with in the development of this consent application with regards to flooding and the application has been amended following Environment Southlands input.</p>

<p>(a)... Refer all resource, subdivision and building consents to Environment Southland for comment prior to determining whether to approve or issue those consents.</p> <p>(c) ... in respect of all areas of Mataura shown as red, lime green or purple on the District Plan maps, require any buildings accommodating people to be built with their floor levels 300mm above the 1978 flood level.</p>		<p><u>GDC Senior Planner:</u> Environment Southland in their written submission refer to withholding their written approval pending the furnishing of further information which they will speak to at the hearing. Given the stage in processing this application written approvals are no longer relevant.</p> <p>ES Raise issues around the flood mitigation measures, the efficacy of the bag, the chemistry of the product, the state of the building, and issues arising from their extensive history of association with the site. In order for the commissioners to grant any consent these matters must be considered. Consent needs to be consistent with this Objective and policy in order to be granted.</p>
<p><u>Objective 5.3(2) – Transport</u> Protect where practical the quality of the adjoining environment and amenity values from the adverse effects of the land use of land transport routes.</p> <p><u>Policy 5.4</u></p> <p>(1) Control the adverse effects of land use activities on transport networks.</p> <p>(2) Control where practical, the adverse effects of land transportation networks and their use on the adjoining environment and amenity values.</p> <p>(3) Protect the integrity of the through-route function of state highways.</p>	<p>Yes – submitted by the applicant.</p> <p>GDC Snr Planner – conditional on hearing outcome, but must be determined consistent or not contrary to pass the approval test.</p>	<p><u>Applicant submits:</u> NZTA has been consulted and written approval has been obtained. Approval was obtained on an earlier version of the application; however, the potential traffic effects have been reduced further than the original proposal.</p> <p>An assessment of the effects of the proposal on traffic and the state highway has been provided in Section 6 of this report (the application) and the effects have been assessed as minimal.</p> <p>All loading and unloading will occur in off-site areas designed for truck access and manoeuvring. Trucks will be able to safely manoeuvre on site to enable them to enter and exit the site in a forwards direction.</p> <p><u>GDC Senior Planner:</u> As stated elsewhere in this report – the NZTA has withdrawn its written approval. It is hoped that they will be represented at the hearing in order to present their evidence and to answer questions. The movement, transport of this material are a concern that the commissioners are encouraged to explore and to reach</p>

		a position on as regards approval, further information, or conditions of consent.
<p><u>Objective 6.3(1) Hazardous Substances</u></p> <p>Prevent or mitigate adverse environmental effects and risks associated with the use, storage, transportation and disposal of hazardous substances.</p> <p>Policy 6.4</p> <p>(1) Limit the quantities of hazardous substances stored at sites to a level that is appropriate to the activities undertaken on that site and appropriate to the environment of that locality.</p> <p>(2) Encourage alternatives to the use of hazardous substances.</p> <p>(3) Minimise the risks associated with the transportation of hazardous substances.</p> <p>(4) Avoid, where practical, the disposal of hazardous substances within the Gore District.</p> <p>(5) Ensure that any disposal of hazardous substances is undertaken in such a manner as to avoid any actual or potential adverse environmental effects.</p>	<p>Yes – submitted by the applicant.</p> <p>GDC Snr Planner – conditional on hearing outcome, but must be determined consistent or not contrary to pass the approval test.</p>	<p><u>Applicant submits:</u> Taha’s site makes use of a hazardous waste product to produce mineral fertiliser. This avoids dumping the product into the land and ensuring it is reused.</p> <p>Risk associated with transportation has been minimised to the extent that Taha has control over – for example, Taha will ensure all hazardous substances are adequately packaged for travelling and will take particular care during loading and unloading materials. Taha has also selected certified companies for transporting the goods.</p> <p>There will be no disposal of hazardous substances.</p> <p><u>GDC Senior Planner:</u> At this time there are outstanding questions around the material, the quantities to be stored, the chemistry and the potential risks of storage and transport. These are critical matters for the commissioners to test and to form an opinion on in the granting or refusing any consent.</p>

At this time it is difficult to arrive at a position where I am satisfied that the proposal is entirely consistent with the relevant objectives and policies of the District Plan. The outstanding matters are referred to in the table above and will require the attention of the Commissioners to form an opinion on these matters. They will need to be satisfied that the proposal is acceptable in terms of and consistent with the objectives and policies of the District Plan.

It is my provisional conclusion that as an essentially permitted activity, notwithstanding the issue of scale, in an appropriate zone, that there is a possibility that the outcome of the hearing can be a consent granted which is consistent with the objectives and policies of the District Plan. Alternatively the commissioners may arrive at a position where they are unable to grant consent given the proposed fit of the activity in this location.

Recommendation and possible conditions

At this time I am unable to make a recommendation on whether I think that the Commissioners should grant consent, or decline the consent. There are a substantial number of issues requiring the Commissioner's attention and determination. As the proposal is a permitted activity at one level, the Commissioners will need to determine the level of storage activity at which the effects are not able to be avoided, remedied, or mitigated and if this involves the granting of consent the appropriate conditions that attach to this.

The submissions lodged make reference to potential conditions as follows:

- Imposition of suitable monitoring conditions
- Submission of a detailed emergency management plan – include procedures covering accidental release to water (ES)
- Imposition of a bond – how much, for what reason, held by who.
- Could a community liaison board be of assistance – how would this work?
- Clarify the two year period, only allow removal of product and no further storage, no right of renewal, consent to be in name of building owner as well.
- PHS seek a fuller set of mitigation and monitoring than has been suggested and seek a review of the proposal in terms of MoH Environmental Good Practice Guide for Assessing and Managing Odour in NZ.

In my view, if the application is approved then conditions are required to clarify the precise details of the proposal. Monitoring by the applicant and periodic inspection by the Council and its advisers, including Environment Southland is also of importance.

I support the concept of a bond in order to rectify any adverse effects that arise during and for two years after the material is stored on the site. The value of the bond is a matter that should be discussed at the hearing.

I will advise further on the issue of consent conditions at the conclusion of the hearing.

Any enquiries in relation to this consent should be directed in the first instance to Howard Alchin, Senior Planner at the Gore District Council on 03 209-0387 or by email on halchin@goredc.govt.nz

Howard Alchin
Senior Planner
Acting under delegation of the Gore District Council