

Edgar Tulepu

From: Emma Bailey <EBailey@linz.govt.nz>
Sent: Friday, 2 February 2024 9:16 am
To: David Falconer
Cc: Natasha Wall
Subject: SIRRL - comment requested re approved feedstock
Attachments: Draft Conditions letter - SIRRL responses 1 Feb.docx

Morena David

We sent the draft conditions to the Applicant a week or so ago and have received their feedback (attached). Of note (in terms of MfE) is the proposed change to the wording of Approved Feedstock. You will see that the Applicant wants this to be established by the Environment Court only. Is he correct that the Environment Court will regulate the feedstock? They have accepted the South Island only limitation.

As discussed previously we will also look to include a condition (through the national interest process) around returning the land to a 'contamination free' state in the event that the Applicant abandons the investment/facility.

If you're able to provide your comment on the above by cob Monday 5 Feb, that would be great.

Many thanks
Emma

Ngā mihi
Emma

Emma Bailey

Rōia ā-Tari Matua / Senior Solicitor

Overseas Investment

ebailey@linz.govt.nz DDI 04 462 4407



Wellington Office, Level 6, Radio New Zealand House, 155 The Terrace
PO Box 5501, Wellington 6145, New Zealand
www.linz.govt.nz | data.linz.govt.nz



This message contains information, which may be in confidence and may be subject to legal privilege. If you are not the intended recipient, you must not peruse, use, disseminate, distribute or copy this message. If you have received this message in error, please notify us immediately (Phone 0800 665 463 or info@linz.govt.nz) and destroy the original message. LINZ accepts no responsibility for changes to this email, or for any attachments, after its transmission from LINZ. Thank You.

Our Ref: 202200376

23 January 2024

Wellington Office

Radio New Zealand House

155 The Terrace

PO Box 5501

Wellington 6145

New Zealand

T 0800 665 463

F +64 4 472 2244

E oio@linz.govt.nz

BY EMAIL

Attention: Robert Huse

SOUTH ISLAND RESOURCE RECOVERY LIMITED - DRAFT CONDITIONS www.linz.govt.nz

1. We refer to the application letter dated Thursday, April 13th 2023.

Draft consent wording

2. Although we are still assessing the application, we note that if consent was to be granted, it would be granted in the form set out below:

Draft Consent	<p>The Consent holder may acquire the Land <u>and establish a business in New Zealand (being the operation of the Facility) where the total expenditure expected to be incurred in establishing that business exceeds NZ\$100 million</u> subject to the Conditions set out below.</p> <p><i><u>[Commentary for the OIO: As per the application, the Applicant is requesting OIO consent to both acquire the Land (section 12(1)(a) of the Act) and to spend more than \$100m in establishing its business (section 13(b) of the Act).]</u></i></p>
Consent holder/s	<p>South Island Resource Recovery Limited (company number 8165807)</p> <p>(You or the Consent Holder)</p>
Land	<p>A freehold interest in approximately 14.85 hectares of farm land at Morven Glenavy Road, Waimate, South Canterbury, currently contained within Record of Title CB27B/314.</p>
Timeframe	<p>You have until 31 March 2025 to acquire the Land.</p>

Draft conditions

3. Before deciding the application, we invite the Applicant to review and comment on the current draft conditions of consent attached as **Appendix 1**.
4. The Applicant should carefully review the draft conditions to ensure that they can be fully complied with. We monitor compliance with all consent conditions. **Failure to**

comply with the conditions of consent is a serious matter and may result in enforcement action.

5. The relevant Ministers have not seen the draft conditions, and may amend them prior to deciding whether or not to grant consent. If this was to occur, the Applicant may not necessarily be consulted further.

6. Please have the Applicant comment on the draft conditions of consent by **COB on Friday 26 January 2024** or if they do not wish to comment, tell us so as soon as possible.

Please provide further information

7. Please provide us with the following:
 - (a) Confirmation that the description of the Investment above is accurate and covers the proposed transaction;
 - (b) The Applicant's comments on the attached draft conditions, or the Applicant's confirmation that they do not wish to comment. If you comment, or advise that the Applicant does not wish to comment, on the Applicant's behalf, please include a statement confirming your authority to do so;
 - (c) Confirmation that all updates to information in the Investment Plan have been included in the final version of that document.
8. Please provide the information requested above by **COB on Friday 26 January 2024**. We may lapse an application if the information we request is not provided by the deadline given. More information on lapsing of applications can be found [here](#). Please contact me if you have any queries or wish to discuss.

Yours sincerely,



Natasha Wall
Matanga Ture Kiritaki / Customer Regulatory Specialist - Assessment
Overseas Investment
DDI: +64 4 460 0159
Email: nwall@linz.govt.nz

Appendix 1– Draft Conditions

Conditions

Your Consent is subject to the Special conditions, Standard conditions and Reporting conditions (Conditions) set out below. You must comply with them all. Be aware that if you do not comply with the Conditions you may be subject to fines or other penalties, and you may also be required to dispose of the Land.

In the Consent and the Conditions, we refer to Toitū Te Whenua Land Information New Zealand as **LINZ, us** or **we**.

Act means the Overseas Investment Act 2005.

Approved Feedstock means ~~municipal and construction solid~~ combustible waste that is permitted by any necessary consents and approvals (including any Environment Court decision, resource consent or similar) which has no more than incidental hazardous material, sourced exclusively from within the South Island.

[Commentary for the OIO:]

As noted in our 27 September 2023 memo, the environmental effects of the Facility will be robustly and extensively considered by experts as part of the Minister for the Environment's required "called in" and fast-tracked Environment Court process. This will include determining the "approved feedstock" and any environment effects from that feedstock. Those matters will be assessed under the correct Resource Management Act framework and the Minister for the Environment's required Environment Court process.

The Environment Court is the only correct forum for determining any environmental effects of the project and the related definition of approved feedstock. This approach has been recognised by the OIO in other consent decisions and confirmed by the High Court's decision in Coromandel Watchdog of Hauraki v Minister of Finance [2020] NZHC 2345. As background, the Environment Court process will involve extensive Applicant and independent expert evidence to be presented to the Environment Court, and subject to cross-examination and questions from the Court.

It is very important for the definition of "approved feedstock" in the OIO consent to be consistent with the definition determined through the Environment Court process.

Any inconsistency in the previously approved OIO consent feedstock definition and the later approved Environment Court resource consent will result in the Applicant needing to apply to vary the OIO definition.

This creates time, cost and regulatory uncertainty issues for the Applicant (and its financiers) at a very late stage in its project – when only one regulator (being the Environment Court) should determine the approved feedstock for the Facility.]

DOC means the Department of Conservation.

Facility means the waste-to-energy plant which you intend to construct and operate on the Land and which will incinerate Approved Feedstock and convert it into energy (in the form of electricity or steam).

[Commentary for the OIO:]

The above is a technical clarification. The Facility will generate energy via steam that can be provided direct to industry or converted into electricity through a steam powered turbine.]

Mudfish means the Canterbury mudfish species called *Neochanna burrowsius*.

Regulations means the Overseas investment Regulations 2005.

Any terms of expression that is defined in the Act or Regulations and used, but not defined, in this consent has the same meaning as in the Act or Regulations.

Special conditions

You must comply with the following **special conditions**. These apply specifically to this Consent and include conditions that we must impose under the Act.

Details	Required date
Special condition 1: Obtain resource consents	
<p>You must:</p> <p>a) obtain all necessary consents and approvals (including subdivision consent) and all resource consents from the Environment Court of New Zealand, or any other relevant body, required for the construction and operation of the Facility <u>(but excluding any building consents or Building Act code compliance certificates)</u>.</p> <p><u>[Commentary for the OIO:</u></p> <p><u>Date extension: The Applicant requests this condition date is extended by 6 to 12 months. The Applicant considers it will have obtained all required consents before 31 March 2026 (being now only two years away).</u></p> <p><u>However, if there are delays that are outside of its control (such as delays in the Environment Court process) then it considers it is now prudent to provide for an additional 6 to 12 month buffer period.</u></p> <p><u>This is to avoid the chance of the Applicant having to apply to the OIO for such a consent date variation (and the time and costs for the Applicant and the OIO in processing the same).</u></p> <p><u>The Applicant considers this extension is reasonable for an 9(2)(b)(ii) infrastructure project on a greenfield site.</u></p> <p><u>Removal of building consents: This a clarification amendment.</u></p> <p><u>Practically, the building consent and code compliance certificates for the Facility will only be applied for/issued after the resource consents have been obtained for the</u></p>	<p>a) By 31 March <u>2027</u>2026</p> <p>b) Within 30 days of your receipt of consents or approvals</p>

<p><u>Facility under this "obtain resource consents" condition.</u></p> <p><u>Also, the practical building construction and operation timeframes are included in Special Condition 3 "construct and operate the Facility".]</u></p> <p>a)b) provide us with a copy of any consents or approvals granted to you in relation to the Facility or the Land if requested in writing.</p> <p>If you do not comply with this condition, Standard Condition 6 will apply and we may require you to dispose of the Land.</p>	
Special condition 2: Comply with the all resource consents and approvals	
<p>You must comply with the terms of all relevant resource consent conditions and approvals <u>as required by the relevant consent authorities.</u></p> <p><u>[Commentary for the OIO: This a clarification amendment.</u></p> <p><u>Consent authorities may permit temporary non-material "non-compliances" with resource consent conditions, pending action by the consent holder to establish compliance.</u></p> <p><u>So again, the consent authorities are best placed to monitor and enforce their own resource consent conditions and not the OIO. This is to avoid any conflict between the OIO and those authorities.</u></p> <p><u>We note the OIO has previously accepted similar amendments to this condition for other large infrastructure projects.]</u></p>	<p>At all times</p>

Details	Required date
<p>If you do not comply with this condition, Standard Condition 6 will apply and we may require you to dispose of the Land.</p>	
Special condition 3: Construct and operate the Facility	
<p>You must:</p> <ul style="list-style-type: none"> a) construct the Facility on the Land; and b) Once constructed, you must operate the Facility on the Land <p>If you do not comply with this condition, Standard Condition 6 will apply and we may require you to dispose of the Land.</p>	<ul style="list-style-type: none"> a) By 31 March 20302029 b) At all times

<p><u>[Commentary for the OIO:</u></p> <p><u>The Applicant requests the OIO to consider extending the date for constructing, commissioning and operating the Facility by 6 to 12 months. Again, the Applicant expects to operate the Facility before 31 March 2029, but considers it is now prudent to request this date is extended by 6 to 12 months.</u></p> <p><u>This extension will provide an additional time buffer if there are any unanticipated delays in procurement of the Facility. This is noting the procurement and construction delays experienced during COVID-19 and that may be experienced due to international shipping and the conflict in the Red Sea.</u></p> <p><u>This request will again avoid the Applicant having to apply to the OIO for an extension to this condition date (and the time and costs for the Applicant and the OIO in processing the same).</u></p> <p><u>The Applicant considers this request is reasonable noting the scale of the project on the very small 14ha of Target Land. Providing for a 6 to 12 month extension (that may not be needed) has no material impact on the realisation of the substantial and identifiable to NZ benefits resulting from the</u> 9(2)(b)(ii) :</p>	
<p>Special condition 4: Capital expenditure</p>	
<p>You must spend at least 9(2)(b)(ii) within New Zealand on the construction of the Facility. If you do not comply with this condition, Standard Condition 6 will apply and we may require you to dispose of the Land.</p> <p><u>[Commentary for the OIO: as above]</u></p>	<p>By 31 March 20302029</p>
<p>Special condition 5: Use of Approved Feedstock only</p>	
<p>You must only use Approved Feedstock as combustible fuel for the operation of the Facility. If you do not comply with this condition, Standard Condition 6 will apply and we may require you to dispose of the Land.</p>	<p>At all times</p>
<p>Special condition 6: Protection of Mudfish</p>	

<p>You must, at your cost, engage an appropriately qualified and experienced ecologist to:</p> <p>(a) carry out an ecological assessment of Whitneys Creek <u>along the boundary of the Land</u> to establish if Mudfish is present in the waterway; and</p> <p>(b) <u>if required by any relevant resource consent conditions and approvals</u>, relocate the Mudfish population (if found) to an appropriate location <u>as required by such relevant resource consent conditions and approvals</u>, in consultation with DOC.</p> <p>If you do not comply with this condition, Standard Condition 6 will apply and we may require you to dispose of the Land.</p> <p><u>[Commentary for the OIO:</u></p> <p><u><i>This date is requested to extended by 12 months to match the date in Special Condition 1. Practically, any mudfish are likely to be required by a condition of resource consents to be relocated before construction.]</i></u></p>	<p>a) By 30 September 2025</p> <p>b) By 31 March 20272026</p>
---	--

Special condition 8: Consultation with local iwi

<p>You must consult with <u>mana whenua (including Ngāi Tahu)</u> to:</p> <p>(a) ensure there are no<u>identify</u> adverse effects from the construction and operation of the Facility on any wāhi tapu, archaeological sites or kai moana; and</p> <p><u>(b)</u> ensure opportunities for cultural engagement and monitoring are fully explored.</p> <p><u>[Commentary for the OIO:</u></p> <p><u><i>The Applicant will also consult with local runanga (in addition to Te Runanga o Ngai Tahu) to identify any adverse effects from the Facility.</i></u></p> <p><u><i>As above, any environmental, social and cultural effects of the Facility will be robustly and extensively considered by experts as part of the Minister for the Environment's required "called in" and fast-tracked Environment Court process. This process includes an assessment of impacts on cultural values.</i></u></p> <p><u><i>The Applicant considers the Environment Court process will appropriately and robustly address any adverse effects of the Facility on wahi tapu, archaeological sites, and kai moana]</i></u></p>	<p>a) & b) By 31 March 2026</p>
---	-------------------------------------

Automatic condition: National Interest

Details	Required date
You must not, in relation to the rights granted under the Consent, act or omit to act with a purpose or an intention of adversely affecting national security or public order.	At all times

DRAFT

Standard conditions

You must also comply with the **standard conditions** set out below. These apply to all overseas people who are given consent to acquire sensitive New Zealand land, including you:

Details	Required date
Standard condition 1: Acquire the land	
<p>You must acquire the Land:</p> <ol style="list-style-type: none"> 1. by the date stated in the Consent. If you do not, your Consent will lapse or become invalid and you must not acquire the Land, and 2. using the acquisition, ownership, and control structure you described in your application. Note, only you - the named Consent Holder - may acquire the Land, not your subsidiary, trust, or other entity. 	As stated in the Consent
Standard condition 2: Tell us when you acquire the Land	
<p>You must tell us in writing when you have acquired the Land. Include details of:</p> <ol style="list-style-type: none"> 1. the date you acquired the Land (Settlement), 2. consideration paid (plus GST if any), 3. the structure by which the acquisition was made and who acquired the Land, and 4. copies of any transfer documents and Settlement statements. 	As soon as you can, and no later than two months after Settlement
Standard condition 3: Allow us to inspect the Land	
<p>Sometimes it will be helpful for us to visit the Land so we can monitor your compliance with the Conditions. We will give you at least two weeks' written notice if we want to do this. You must then:</p> <ol style="list-style-type: none"> 1. Allow a person we appoint (Inspector) to: <ol style="list-style-type: none"> a. enter onto the Land, including any building on it, other than a dwelling, for the purpose of monitoring your compliance with the Conditions (Inspection), b. remain there as long as is reasonably required to conduct the inspection, c. gather information, d. conduct surveys, inquiries, tests, and measurements, e. take photographs and video records, and 	At all times

Details	Required date
<p>f. do all other things reasonably necessary to carry out the Inspection.</p> <p>2. Take all reasonable steps to facilitate an Inspection including:</p> <ul style="list-style-type: none"> a. directing your employees, agents, tenants, or other occupiers to permit an Inspector to conduct an Inspection, b. being available, or requiring your employees, agents, tenants, or other occupiers to be available, at all reasonable times during an Inspection to facilitate access onto and across the Land. This includes providing transport across the Land if reasonably required. <p>During an Inspection:</p> <ul style="list-style-type: none"> a. we will not compel you and your employees, agents, tenants, or other occupiers to answer our questions or to let us look at, copy or take away documents, b. our Inspector will comply with any reasonable instruction and co-operate with any reasonable health and safety policy or procedure you notify to us before the Inspection. 	
Standard condition 4: Remain not unsuitable to Invest in New Zealand	
<p>You, and to the extent that you are not an individual, the Individuals Who Control You must remain not unsuitable to own or control the Assets in accordance with section 18A(1) of the Act.</p> <p>The Individuals Who Control You are individuals who:</p> <ul style="list-style-type: none"> a. are members of your governing body b. directly or indirectly, own or control more than 25% of you or of a person who itself owns or controls more than 25% of you, and c. are members of the governing body of the people referred to in paragraph (b) above. 	At all times
Standard condition 5: Tell us about changes that affect you, the people who control you, or people you control	
<p>You must tell us in writing if any of the following events happens to any of the Consent holders:</p> <ul style="list-style-type: none"> 1. You become aware that you and/or any Individual Who Controls you establishes any of the investor test factors listed in section 18A(4) of the Act. 	Within 20 working days after the change

Details	Required date
<p>2. You cease to be an overseas person or dispose of all or any part of the Asset.</p> <p>3. Your New Zealand Service Address changes. This is the address you provided us in your application as the address which we will send any legal document we need to serve on you.</p>	
<p>Standard condition 6: Dispose of the Land if you do not comply with key special conditions</p>	
<p>Some of the special conditions were key to the decision to give consent. If we consider you have failed to comply with one of those special conditions in a material way, we may require you to dispose of the Land.</p> <p>If all or part of this Standard Condition 6 applies to a special condition, we have said so in that special condition.</p> <p>We will give you written notice if we require you to dispose of the Land. After we have given you notice, you must:</p>	
<p>Value the Land: obtain and send us a copy of a market valuation of the Land from a New Zealand registered valuer.</p>	<p>Within six weeks of the date of our notice</p>
<p>Market the Land: instruct a licensed real estate agent to actively market the Land for sale on the open market.</p>	<p>Within six weeks of the date of our notice</p>
<p>Dispose of the Land: dispose of the Land to a third party who is not your associate.</p>	<p>Within six months of our notice</p>
<p>Offer without reserve: if you have not disposed of the Land within six months of our notice, offer the Land for sale by auction or tender without a reserve price or minimum bid and dispose of the Land.</p>	<p>Within nine months of our notice</p>
<p>Report to us about marketing: tell us in writing about marketing activities undertaken and offers received for the Land.</p>	<p>By the last day of every March, June, September, and December after our notice or at any other time we require</p>
<p>Report disposal to us: send us, in writing, evidence of the following:</p> <ul style="list-style-type: none"> a. that you have disposed of the Land (including copies of sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor), and b. that the purchaser is not your associate. 	<p>Within one month after the Land has been disposed of</p>