

Reference: 20210200



10 June 2021

Phil Pennington  
RNZ  
Phil.Pennington@rnz.co.nz

Dear Phil

Thank you for your Official Information Act request, received on 12 May 2021. You requested the following:

*[information on the] 2021 Mātaura dross indemnity*

### Information being released

Please find enclosed the following documents:

Item	Date	Document Description	Decision
1.	7 December 2017	Aide Memoire: Tiwai Point Aluminium Dross Crown Indemnity	Release in part
2.	19 January 2021	Annual review topic - FEC - Project 14 – delayed closure of NZAS Tiwai Point	Release in part
3.	29 January 2021	Treasury Report: Indemnity request from the Ministry for the Environment to expedite removal of ouvea premix from the former Mātaura Paper Mill	Release in part

I have decided to release the relevant parts of the documents listed above, subject to information being withheld under one or more of the following sections of the Official Information Act, as applicable:

- sensitive information, under section 9(2)(b)(ii) – to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information,
- sensitive information, under section 9(2)(ba)(ii) – to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely otherwise to damage the public interest

1 The Terrace  
PO Box 3724  
Wellington 6140  
New Zealand  
tel. +64-4-472-2733

<https://treasury.govt.nz>

- names and contact details of officials, under section 9(2)(g)(ii) – to maintain the effective conduct of public affairs through protecting ministers, members of government organisations, officers and employees from improper pressure or harassment,
- privileged information, under section 9(2)(h) – to maintain legal professional privilege,
- confidential information, under section 9(2)(j) – to enable the Crown to negotiate without prejudice or disadvantage, and
- direct dial phone numbers of officials, under section 9(2)(k) – to prevent the disclosure of information for improper gain or improper advantage.

Some information has been redacted because it is not covered by the scope of your request. This is because the documents include matters outside your specific request.

In making my decision, I have considered the public interest considerations in section 9(1) of the Official Information Act.

Please note that document 3 attached is incorrectly dated 29 January 2020. This should read 29 January 2021.

Please note that this letter (with your personal details removed) and enclosed documents may be published on the Treasury website.

This reply addresses the information you requested. You have the right to ask the Ombudsman to investigate and review my decision.

Yours sincerely

Jean Le Roux  
**Manager, Transitions Regions and Economic Development**

# 20210200

## Table of Contents

---

1.	<a href="#"><u>Aide Memoire: Tiwai Point Aluminium Dross Crown Indemnity</u></a>	1
2.	<a href="#"><u>Annual review topic - FEC - Project 14 – delayed closure of NZAS Tiwai Point</u></a>	4
3.	<a href="#"><u>Treasury Report: Indemnity request from the Ministry for the Environment to expedite removal of ouvea premix from the former Mataura Paper Mill</u></a>	8

## IN-CONFIDENCE

Reference: T2017/2776

SE-0

Date: 7 December 2017

To: Minister of Finance (Hon Grant Robertson)

Deadline: None

**Aide Memoire: Tiwai Point Aluminium Dross Crown Indemnity**

s9(2)(j)

**IN-CONFIDENCE**

s9(2)(j)

**Background to the 2003 Indemnity**

Southland Metal Recoveries Ltd (SMRL) was an aluminium dross recycler that obtained dross from the Tiwai Aluminium smelter. In 1996 SMRL went bankrupt. At the time it had stored around 11,000 tonnes of aluminium dross in various warehouses that were owned by P&O New Zealand Ltd (P&O). P&O did not wish to take ownership of the dross and in 2002 sought a statutory judgement that the Crown become the owner of the dross. However an alternative agreement was reached between P&O, New Zealand Aluminium Smelters (NZAS), Comalco and the Crown whereby:

- P&O removed the dross at its own expense and placed the dross at landfills owned by NZAS and Comalco.
- NZAS and Comalco disposed of the aluminium dross at their landfill site at their own cost.

However, if an appropriate authority (local or regional council) required the dross to be removed from NZAS and Comalco's landfills and placed at alternative suitable sites,

**IN-CONFIDENCE**

the Crown gave an indemnity to NZAS and Comalco to cover the costs of that dross removal and relocation. Thus the Crown has the following indemnity on its books in perpetuity.

<b>Party indemnified</b>	<b>Instrument of indemnification</b>	<b>Actions indemnified</b>
New Zealand Aluminium Smelter and Comalco	The Minister of Finance signed indemnities in November 2003 and February 2004 in respect of aluminium dross currently stored at another site in Invercargill	Costs incurred in removing the dross and disposing of it at another site if required to do so by an appropriate authority

**James Forsberg**, Senior Analyst, Commercial Operations - Commercial Advice,  
s9(2)(k)

**Chris White**, Director, Commercial Operations, Commercial Operations - Commercial Advice, s9(2)(k)

## Project 14 – delayed closure of NZAS Tiwai Point


Prepared in draft 19 Jan on basis negotiations continue (at least to time when FEC occurs 10 Feb).

Updated 3 Feb to reflect public announcement of Maitaia dross resolution plan. Assuming indemnity not yet tabled.

Reviewed 22 Jan by Jean Le Roux, James Shannon.

Who might speak to this issue: Secretary

Deleted - Not Relevant to Request



Deleted - Not Relevant to Request





Deleted - Not Relevant to Request



## Re Mataura dross agreement

### Key messages:

The agreement is between the Ministry for the Environment (MfE) and New Zealand Aluminium Smelters (NZAS) who will equally share the additional costs required to accelerate the removal of the material from the Mataura site.

It is a separate agreement to resolve the current situation and is not related to any agreement on the smelter's future or environmental remediation.

We are continuing to work on that, as instructed by the Minister of Finance and his colleagues.

**Does the indemnity mean the Crown will pay NZAS additional funds for this arrangement?**

Not necessarily. An indemnity provides for a contractual shift of risk of loss from one party to the other on the occurrence of a particular future event. The indemnity would only be actioned in a specific set of circumstances.

**What is Treasury's estimate for this what this could cost – how much have are you accounting for the indemnity?**

The indemnity will be made public when it is tabled in the House by the Minister of Finance. We are working to value the indemnity but it has not been finalised. I can undertake to report back to the committee on that.

**What is the Public Finance Act requirement for any indemnity?**

In New Zealand, only the Minister of Finance can provide a Crown indemnity. He does this on the advice of Treasury, which works with other agencies to ensure any proposed indemnity is in the public interest.

Any indemnities provided exceeding \$10 million become public when the Minister of Finance presents a statement to the House of Representatives that the guarantee or indemnity has been given. This is a requirement of the Public Finance Act (1989).

**What is the indemnity in this case ?**

An indemnity can be described as a contractual shift of risk of loss from one party to the other on the occurrence of a particular future event. In this case, the Crown has taken on the risk of additional costs to NZAS of storing the Maitai dross at Tiwai Point – because the Crown felt it necessary to secure resolution to this issue both for the sake of the community and the environment.



**Treasury Report:** Indemnity request from the Ministry for the Environment to expedite removal of ouvea premix from the former Maitava Paper Mill

<b>Date:</b>	29 January 2020	<b>Report No:</b>	T2020/3757
		<b>File Number:</b>	DH-36-2-1

**Action sought**

	<b>Action sought</b>	<b>Deadline</b>
Hon Grant Robertson <b>Minister of Finance</b>	<p><b>Agree</b> to provide an indemnity to New Zealand Aluminium Smelters Limited</p> <p><b>Sign, date</b> and have <b>witnessed</b> the attached s9(2)(h) [redacted]</p> <p><b>Sign</b> and <b>date</b> the attached Statement of Indemnity and present it to the House of Representatives.</p>	1 February 2021

**Contact for telephone discussion (if required)**

<b>Name</b>	<b>Position</b>	<b>Telephone</b>		<b>1st Contact</b>
Lewis Gillon	Analyst, Natural Resources	s9(2)(k) [redacted]	s9(2)(g)(ii) [redacted]	✓
Gwen Rashbrooke	Manager, Natural Resources	[redacted]	[redacted]	
Stacey Lulham	Senior Solicitor	[redacted]	[redacted]	

**Minister's Office actions (if required)**

**Return** the signed report and the signed, witnessed and dated s9(2)(h) [redacted] to Treasury.

**Arrange** for the Statement of Indemnity to be presented to the House.

**Forward** this briefing to the Minister for the Environment.

Note any feedback on the quality of the report

**Enclosure:** Yes (attached)

## Executive Summary

---

You are requested to provide an indemnity under the Public Finance Act 1989 (PFA) to expedite the removal of potentially harmful material from the former Mataura Paper Mill (Mill). Officials consider that, based on an assessment of the risks to the Crown associated with the indemnity, the benefits of the proposed indemnity outweigh those risks when mitigations are taken into account.

The requested indemnity relates to 10,000 tonnes of ouvea premix (the material) that was left at the Mill by Taha Asia Pacific Limited and Taha Fertilizer Industries Limited, following the liquidation of those entities in 2016. The material was disclaimed under the Companies Act 1993 by the liquidators. No one claims ownership of the material abandoned at the Mill.

The material is a class 6 hazardous substance, meaning it is toxic to humans. When the material becomes wet it releases ammonia gas. The presence of the material at the Mill represents a risk as the Mill is situated on the bank of the Mataura River, which is prone to flooding events. In February 2020, there was a flood that led to many residents being evacuated. There are existing arrangements in place that will remove the material from the Mill by August 2022. However, there are strong arguments in favour of moving the material to a more secure site sooner.

Arrangements for the removal are agreed. Regarding storage, it is proposed that New Zealand Aluminium Smelters Limited (NZAS) store the material in shipping containers at Tiwai Point, pending its export. **NZAS have advised that they are unwilling to agree to provide the storage services without an indemnity** to cover their risks in relation to the direct costs, losses or liabilities they may face from the transport, handling, monitoring, storage and disposal of the material that do not result from a breach of their contractual obligations (including to comply with relevant statutes). The requested indemnity will also cover any ongoing costs, losses or liabilities (such as storage) should the disposal arrangements for the material break down.

Section 65ZD of the PFA empowers you, as the Minister of Finance, to give an indemnity on behalf of the Crown. It is a matter for you to decide whether you are satisfied that it is necessary or expedient in the public interest to grant an indemnity to NZAS in the terms outlined in the s9(2)(h) [REDACTED]. The following are factors that officials consider are relevant to that assessment. You may decide to ignore these factors, or take into account other factors you consider relevant:

s9(2)(h) [REDACTED]

- b. The risk of a significant flooding event at the NZAS site is lower than at the Mill;
- c. NZAS are obligated to address other risks that may arise from the storage of the material;

s9(2)(h) [REDACTED]

- e. If an indemnity is not granted to NZAS, negotiations will likely break down, leading to further delays in removing the material from the Mill;

s9(2)(h) [REDACTED]

- g. Facilitating the expedited removal of the material will address the nervousness from the local Mataura community around the proximity of the material to the Mataura River.

## Recommended Action

---

We recommend that you:

- a **note** that New Zealand Aluminium Smelters Limited requires an indemnity to be given for the purpose of storing ouvea premix (currently located at the former Mataura Paper Mill) at their own site
- b **note** that the indemnity is not within the permitted categories of indemnity that the Ministry for the Environment can give under section 65ZE of the Public Finance Act 1989 and the Public Finance (Departmental Guarantees and Indemnities) Regulations 2007
- c **note** that under section 65ZD of the Public Finance Act 1989, the Minister of Finance may, on behalf of the Crown, give an indemnity if it appears to the Minister to be necessary or expedient in the public interest to do so
- d **note** that the Treasury considers giving an indemnity to New Zealand Aluminium Smelters Limited to be necessary or expedient in the public interest
- e **agree** to provide an indemnity to New Zealand Aluminium Smelters Limited under section 65ZD of the Public Finance Act 1989

*Agree / Disagree*

- f **sign, date and have witnessed** the attached s9(2)(h) in order to grant the indemnity
- g **note** that as the contingent liability of the indemnity could be over \$10.0 million, section 65ZD(3) of the Public Finance Act 1989 requires you to present as soon as practicable a statement to the House of Representatives that the indemnity has been granted
- h **agree** to present a statement to the House of Representatives that this indemnity has been given, as soon as practicable after giving the indemnity

*Agree / Disagree*

- i **sign and date** the attached Statement of Indemnity to the House of Representatives
- j **refer** a copy of this briefing to the Minister for the Environment

*Referred / Not Referred*



Gwen Rashbrooke  
**Manager, Natural Resources**

Hon Grant Robertson  
**Minister of Finance**

## **Treasury Report: Indemnity request from the Ministry for the Environment to expedite removal of ouvea premix from the former Maitua Paper Mill**

---

### **Purpose of Report**

---

1. This report seeks your agreement to provide New Zealand Aluminium Smelters Limited (NZAS) with an indemnity with respect to hazardous material currently stored at the Maitua Paper Mill (Mill) in order to facilitate its expedited removal.

### **Background**

---

2. The material is a by-product from the processing of aluminium dross and is a class 6 hazardous substance, meaning it is toxic to humans. When the material becomes wet it releases ammonia gas.
3. Approximately 10,000 tonnes of the material was left at the Mill by Taha Asia Pacific Limited and Taha Fertilizer Industries Limited. Following the liquidation of those entities in 2016, the material was disclaimed under the Companies Act 1993 by the liquidators. No one claims ownership of the material abandoned at the Mill.
4. The presence of the material at the Mill represents a risk as the Mill is situated on the bank of the Maitua River, which is prone to flooding events. In February 2020 there was a flood that led to many residents being evacuated. Concerns were raised at this time around the storage of the material at the Mill.
5. s9(2)(h)

### **Litigation**

---

6. On 6 July 2020 the Environmental Defence Society filed proceedings with the Environment Court seeking declarations that New Zealand Aluminium Smelters Limited (NZAS) has breached provisions of the Resource Management Act 1991 (RMA) in respect of the material stored at the Mill, as it originated from the NZAS premises at Tiwai Point. The Minister for the Environment has joined the proceedings.
7. The parties to the litigation are currently engaged in negotiations aimed at agreeing expedited arrangements for the removal of the material from the Mill, given the risks posed by its storage on the banks of the Maitua River and the poor condition of the buildings on the site.
8. The Crown has an interest in expediting the removal of the material as it decreases the potential harm caused to the surrounding area and residents from a flooding event.
9. The Minister for the Environment has previously forwarded you briefings that give further information on the court proceedings and negotiations. Refer to MfE briefings [2021-B-07524], [2020-B-07431], [2020-B-07276] and [2020-B-07133].

## Removal of the Material

---

10. There are existing arrangements in place that are intended to have the material removed from the Mill by August 2022 at the latest. The existing arrangements involve Inalco Processing Limited (Inalco) uplifting and disposing the material off-shore for use as fertiliser and in roading material.
11. MfE and NZAS have been working together on options for expedited removal of the material from Mataura. Removal involves two steps:
  - a. Removing the material from Mataura as quickly as possible; and
  - b. Storing it at a safer alternative site pending its removal to off-shore markets.
12. Arrangements for the removal are agreed. Inalco has advised that it is possible to increase the rate at which the material is prepared for transport and loaded onto trucks. The best estimate available is that it would take 10-12 weeks to fully remove the material from the Mill. Starting now, the material is expected to be removed from the Mill by March 2021, 17 months ahead of the previously agreed schedule.
13. Inalco are considered the most appropriate party to work with for the removal as:
  - a. They provide an option that addresses both the immediate issue for removal at the Mill and the long term disposal of the material;
  - b. There is an existing contract in place with Inalco in respect of the material;
  - c. Inalco has plant and equipment already available at the Mill; and
  - d. Inalco processes the aluminium dross produced on an ongoing basis from the smelting process at Tiwai Point. This means they can combine the Mill material with new material as needed to meet required export standards.
14. It is proposed that NZAS store the material in shipping containers at its premises at Tiwai Point, pending its removal and export by Inalco.
15. As part of these arrangements, NZAS have advised that they are unwilling to agree to provide the storage services without an indemnity to cover their risks relating to any direct costs, losses or liabilities that they may face arising from transport, handling, monitoring, storage and disposal of the material that do not result from a breach of their contractual obligations (including to comply with relevant statutes). The requested indemnity will also cover any ongoing costs, losses or liabilities (such as storage) should the disposal arrangements for the material break down.
16. MfE have advised that the proposed indemnity below represents the most reduced scope that NZAS would agree to through negotiations.

## Tiwai Point

---

17. The nature of the proposed s9(2)(h) (with the Crown meeting half the costs for processing the waste and assuming additional risk through the indemnity) may increase public and stakeholder expectation that the Crown will play a significant role in managing and funding the remediation of the Tiwai Point site.
18. The Treasury's view is that steps can be taken to mitigate this risk, primarily through proactive communications which would increase understanding of why the Crown has taken this approach. This may not entirely resolve the issue of public and stakeholder

expectations in regards to the Tiwai site more broadly. These communications would emphasise:

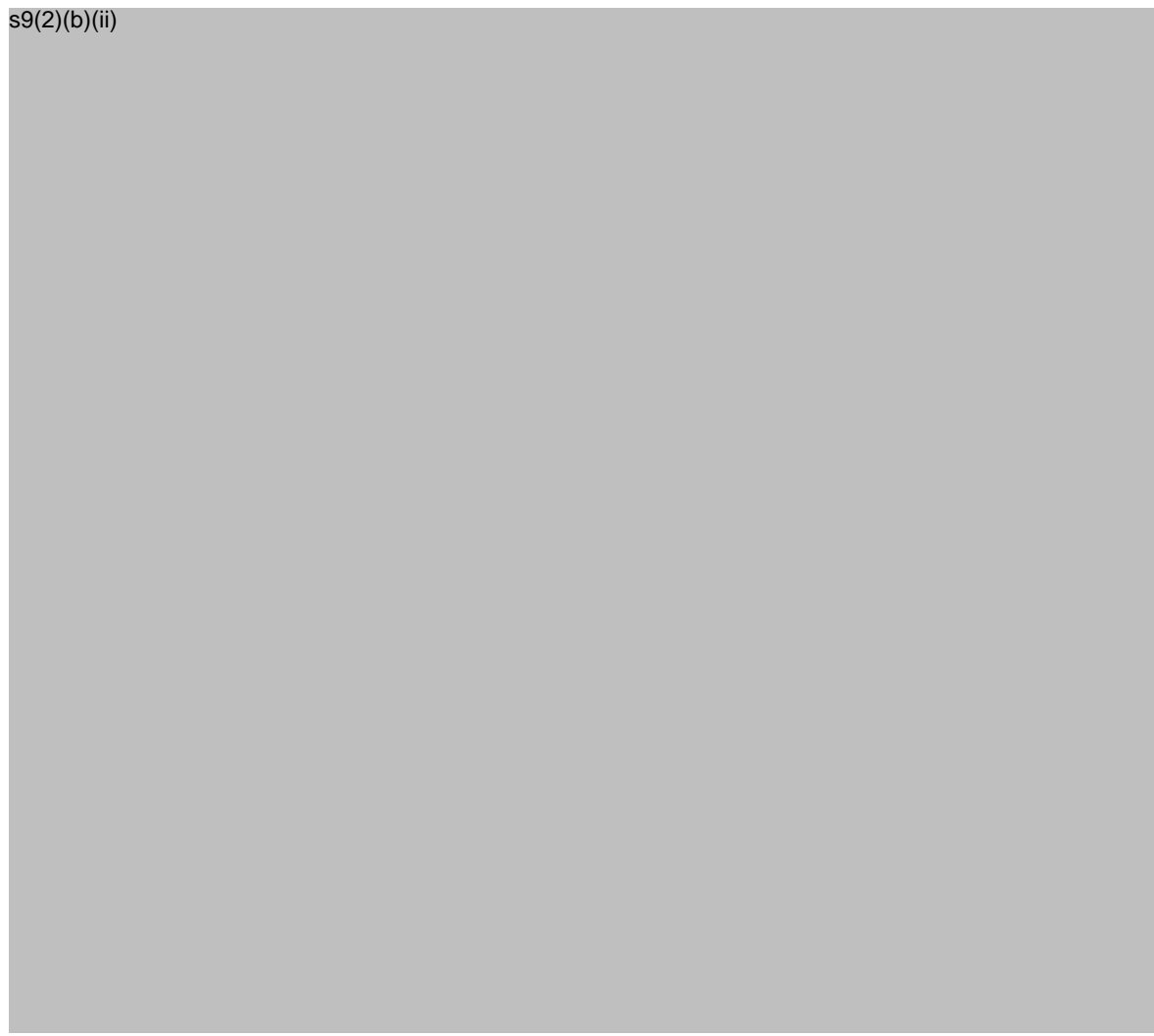
- a. The s9(2)(h) [REDACTED] as a pragmatic solution made in the interests of the community to expedite removal of ouvea premix; and
- b. The agreement being entirely independent of other Crown interest in the future of the Tiwai Point site, in particular NZAS responsibility for remediation of the site to an appropriate standard.

### The Proposed Indemnity

---


19. The indemnity outlined in the clauses below is comprised of two parts:
  - a. Indemnifying NZAS for any direct costs, losses or liabilities that they incur arising from transport, handling, monitoring, storage and disposal of the material that are not a result of their non-compliance with their contractual obligations (including to comply with relevant statutes). This commences immediately; and
  - b. Indemnifying NZAS for the ongoing costs of storage of the material if an event triggering clause 8.9(b) occurs. This will commence one year after the date at which said event occurs.
20. This indemnity request has been prepared in consultation with MfE and their legal team is comfortable with the proposed indemnity wording.

s9(2)(b)(ii)





s9(2)(b)(ii)



22. MfE proposes that the s9(2)(h) be signed directly by the Minister of Finance. The Minister of Finance would be party to the agreement only for the purposes of granting the indemnity under clause 8.9 and 8.10 as stated above. The grant of the indemnity is covered by clause 1.8 of the s9(2)(h) which provides:

*"The Minister of Finance is a party to this Agreement only for the purposes of, and is responsible for (jointly and severally with MfE), the obligations of MfE under clause 8.9 and 8.10".*

23. The Treasury legal team have advised that inserting these clauses into the appended s9(2)(h) is sufficient for the purposes of granting an indemnity under section 65ZD of the PFA, and a separate Deed of Indemnity is not required. This process is not uncommon and would simplify the contractual arrangements between the parties.
24. MfE have advised that the Crown's **total** exposure from the provision of this indemnity cannot be confidently estimated, however, the following factors should be taken into consideration:
- a. The exposure will reduce over time as the material is progressively sent overseas;

s9(2)(h)



- c. The storage conditions at the Tiwai Point site are considerably more secure than the storage at the Mill.
25. Through negotiations with NZAS, in addition to the limits set out in clause 8.10, the proposed indemnity has been limited in the following ways:
- a. NZAS's obligations under the s9(2)(h) (as referred to in clause 8.10(b)) include, but are not limited to, obligations under the Hazardous Substances New Organisms Act 1996, the Resource Management Act 1991 and the Health and Safety at Work Act 2015;
- b. The indemnity only extends to direct costs, losses or liabilities which includes reasonable third party costs or expenses, but **excludes** any indirect or consequential losses and any loss of profits, revenue, goodwill, business opportunity, anticipated saving or third party loss suffered;

- c. The parties will put in place arrangements for the installation of fixed ammonia monitoring equipment along with any other ongoing monitoring or inspection of the material as may be required; and
- d. If the existing arrangement for export with Inalco does not continue, NZAS have agreed to work with MfE in good faith to find alternative disposal arrangements. During the course of this work, NZAS will continue to meet half the costs of storage of the Maitai material at Tiwai Point.

### Your power under section 65ZD of the PFA to give an indemnity on behalf of the Crown

---

- 26. Clauses 8.9 and 8.10 in the appended s9(2)(h) are intended to be legally binding and, if you decide to execute the agreement, will constitute a commitment by the Crown to indemnify NZAS as described in its terms.
- 27. Section 65ZD of the PFA empowers you, as the Minister responsible for the administration of the PFA, to give an indemnity to a person, organisation or government if it appears to you to be 'necessary or expedient in the public interest' to do so, and to give such an indemnity on any terms and conditions that you think fit.
- 28. 65ZG of the PFA provides that any money paid by the Crown under a guarantee or indemnity given under section 65ZD and any expenses incurred by the Crown in relation to the guarantee or indemnity may be incurred without further appropriation, and must be paid without further authority than that section.

### Officials' assessment that granting an indemnity to NZAS in the terms outlined in the s9(2)(h) is 'necessary or expedient in the public interest'

---

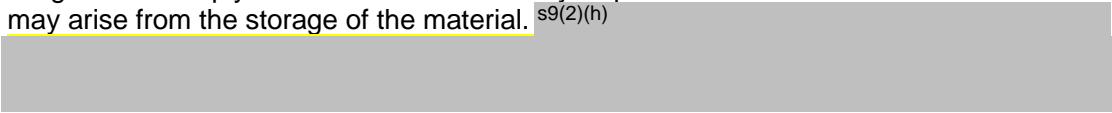
- 29. It is a matter for you to decide whether you are satisfied that it is necessary or expedient in the public interest to grant an indemnity to NZAS in the terms outlined in the s9(2)(h)
- 30. The following paragraphs set out factors that officials consider are relevant to that assessment. You may decide to ignore these factors, or take into account other factors you consider relevant, and you may give such weight to the factors referred to below as you deem fit. You should make an independent decision and are not bound to accept the assessment below.
- 31. In brief, we consider that in the circumstances, giving the requested indemnity on the terms set out in the s9(2)(h) satisfies the "public interest test" in section 65ZD of the PFA.

#### **Public interest**

- 32. The PFA does not define 'the public interest'. However, it is generally accepted that the public interest is broadly equivalent to the concept of the public good and can cover a wide range of values and principles relating to the public good, or what is in the best interests of society. In the context of the PFA, the public interest should be viewed in a New Zealand context, that is, in the interest of the New Zealand public.
- 33. As noted in paragraph 3 above, the material was disclaimed under the Companies Act 1993 by the liquidators of the company which placed the material at the Mill, and no one claims ownership of the material. s9(2)(h)

s9(2)(h)




37. The risk of a significant flooding event at Tiwai Point is lower than at the Mill. NZAS are obligated to comply with the relevant statutory requirements to address other risks that may arise from the storage of the material. s9(2)(h)
- 

38. The longer the material remains at the Mill, the higher the risk of a pollution event occurring, most likely due to flooding. Facilitating the expedited removal of the material will address the nervousness from the local Maitara community around the proximity of the material to the Maitara River. As we are in the period in which the greatest flooding risk arises for the Maitara River, the community concern is increasing which is subsequently impacting their wellbeing. The community are also extremely concerned about risks posed by a fire destroying the buildings and leaving the material exposed. A fire in August 2020 at the Mill site, but not where the material is located, attracted national media interest because of this potential risk.

***Necessary or expedient***

39. MfE consider that without an indemnity for NZAS, there is no viable option immediately on the table for expediting removal of the material from the Mill.
40. If the negotiations with NZAS fall through, MfE will need to begin the process of finding alternative arrangements again which will likely take many months. This would mean that a greater quantum of the material would be left at the Mill in the peak flooding period, increasing the potential environmental and human impact should a flooding event occur.

***Risks and mitigations***

41. The usual risks associated with indemnifying an organisation, particularly in uncertain times, are present. In particular, because there is no dollar cap on the indemnity, there is greater risk that the Crown's liability under the indemnity is significantly larger than expected. s9(2)(h)
- 

42. MfE have advised that insurance for this risk **would not** align with the risk NZAS is seeking to obtain an indemnity for. MfE would therefore be unable to obtain NZAS's agreement to remove the indemnity clause in favour of insurance arrangements.
43. It is difficult to quantify the possible losses that the Crown may face if the indemnity is called upon, due to the unpredictability of an event occurring that is not due to a breach of NZAS's contractual obligations (including to comply with relevant statutes). Such an event may arise from, but is not limited to one of the following examples:
- a. If the safety precautions put in place are ineffective or compromised by an external event such as a fire, leading to the release of ammonia and requiring subsequent remediation. Where such an event is not due to a failure of NZAS's obligations, the indemnity will likely be called upon; and
  - b. If removal arrangements with Inalco do not proceed as anticipated and the parties are unable to agree on alternative arrangements within the existing financial commitments, the indemnity will be called upon.
44. MfE have advised that the risk of a pollution event even in the situations described above is relatively low as the material will be stored in bags that are designed for the purpose of storing the material. Additionally, the material will be monitored regularly which will assist in providing early indication of any possible ammonia gas release.
45. Clauses 7.8, 7.10, and 7.11 of the s9(2)(h) set out general obligations that will fall on NZAS. Should NZAS breach these obligations, any costs, losses, or liability that arise from the storage of material would not be covered by the indemnity.
46. The indemnity may also be called upon should Inalco cease operations within New Zealand and therefore stop exporting the material offshore. In this scenario, NZAS and MfE will engage in good faith negotiations to find alternative disposal arrangements. Should these negotiations end with no alternative, the first year of ongoing storage costs will be met 50:50 by NZAS and MfE. After that year, the indemnity will be called upon to pay the ongoing costs of storage at Tiwai Point. MfE have estimated these costs to be \$200,000 per annum.
47. Due to the recent commitment of NZAS to continue operations until 2024, Inalco will have ongoing business interests at Tiwai Point irrespective of the Maitara material.

s9(2)(ba)(ii)

### **Benefits**

48. Providing the indemnity will allow the expedited removal of the material from the Mill to commence. Reducing the quantum of material that is stored at the Mill reduces the risk of environmental or human harm that may be inflicted from the release of ammonia gas, should the Maitara River have a significant flooding event between now and August 2022.

49. s9(2)(h)

***No viable alternatives to an indemnity***

50. MfE have attempted to identify a solution that does not require the need for a Crown indemnity such as finding an alternative location for storage of the material.
51. Alternative locations for storage were considered, but were subsequently ruled out for varying reasons such as capacity constraints, risk of flooding, or barriers that were met through negotiations. The most promising storage option, and the only option currently on the table that can store all of the material, is at the Tiwai Point site.
52. NZAS have made it clear that an indemnity would be needed for the storage agreement to proceed. It is likely that other storage facilities would also seek a similar indemnity arrangement.
53. MfE considered a solution whereby sufficient financial compensation could be provided to Inalco or NZAS to assume the risk of storage of the material for the duration of the storage arrangement. However, this option would crystallise any potential cost for the Crown, even if no event were to occur and therefore the cost is likely to be significant. This solution was disregarded for this reason.

***Assessment of risks and benefits against the public interest threshold***

54. In light of the above, officials consider that, based on an assessment of the risks to the Crown associated with the indemnity, the benefits of the proposed indemnity outweigh those risks when mitigations are taken into account.

**Next Steps**

---

55. If you agree that it is necessary or expedient in the public interest to give the indemnity, you are requested to sign the attached s9(2)(h)  .
56. Section 65ZD(3) of the PFA provides:  
  
*"If the contingent liability of the Crown under a guarantee or an indemnity given by the Minister under subsection (1) exceeds \$10 million, the Minister must, as soon as practicable after giving the guarantee or indemnity, present a statement to the House of Representatives that the guarantee or indemnity has been given."*
57. The total maximum value of the indemnity is unknown, however, the total exposure has the potential to exceed \$10 million. We therefore recommend that, if you decide to grant the indemnity, you present the required statement to the House. A draft statement is appended for your consideration (Appendix 2). Your office can liaise with the Office of the Clerk of the House about the necessary arrangements for presenting the statement to the House.

s9(2)(h)

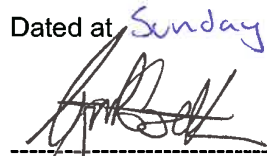


## Appendix 2: Statement of Indemnity for presentation to the House

**STATEMENT OF INDEMNITY GIVEN UNDER SECTION 65ZD OF THE PUBLIC  
FINANCE ACT 1989**

On 31 January 2021, I, Grant Robertson, Minister of Finance, on behalf of the Crown, gave an indemnity to New Zealand Aluminium Smelters Limited in relation to storage and associated services relating to ouvea premix.

Dated at Sunday this 31<sup>st</sup> day of January 2021



Hon Grant Robertson  
Minister of Finance