

20 July 2026

Environmental Protection Agency
Private Bay 63002
WELLINGTON 6140
Attention: Ben Bond

BY EMAIL: [REDACTED]

BRYMER FARMS LIMITED – REFERRED FAST-TRACK APPLICATION

Tēnā koe Ben

Introduction

1. I am advising Brymer Farms Limited (**Brymer**), through its agent Fraser McNutt (Barker & Associates), in relation to the Brymer fast-track project (**Project**). The Project is at the stage of preparation of the substantive application, having been the subject of a notice of decision by the Minister to refer the Project dated 4 September 2025 (**Referral Decision**).¹
2. Through more detailed design and site investigations, in preparation for lodging the substantive application, Brymer proposes to change two aspects of the Project from that identified in the referral application form dated 23 May 2025 (**Referral Application**).²
3. Both changes involve a reduction in scope of the referred activity, rather than the addition of a new activity, and therefore (based on a recent High Court decision³) are permissible amendments which the EPA is required to accept pursuant to s46(2)(b) of the Fast-track Approvals Act 2024 (**FTAA**).
4. Given the investment by Brymer in preparing the substantive application for lodgement, and the importance of ensuring the Project progresses in a timely, efficient and cost effective manner (consistent with the principles of the FTAA), Brymer has asked me to draw the EPA's attention to these proposed changes and the recent High Court decision (which I appreciate you will be familiar with) to ensure there are no surprises when the substantive application is lodged.

¹ [FTAA-2505-1063 Brymer - Letter - Stage 2 Notice of decisions](#)

² [Referral Application Form](#)

³ *Jones and Wedd v EPA* [2026] NZHC 1872 (**Jones and Wedd case**). Copy attached to this letter.

Legal position relating to scope

5. The law is now clear that a substantive application can involve changes that reduce the scope of the project, but cannot increase the scope, between the stage of listing or referral and lodgement of the substantive application. The issue was recently considered by the High Court in the *Jones and Wedd* case, relating to a listed application. The Court held that the FTAA sets an “outer limit” for scope, but not an “inner limit”. In other words, a project cannot be expanded between listing and the substantive stage, such as by adding in a new matter that was not referred to in the Schedule 2 listing. But the listed activity can be reduced in scope such as, in that case, by reducing the term and area of the proposed quarrying.
6. The High Court distinguished the *Stella Passage*⁴ judicial review proceedings, where the Court in that case found that adding a new item (the Mount Maunganui wharves) at the substantive application stage, where the listing referred only to the Sulphur point wharves, was out of scope because it did not relate “solely to the listed project”. It therefore failed to meet the scope test under s46(2) FTAA, which the EPA must assess the substantive application against.
7. The High Court in the *Jones and Wedd* case observed that the FTAA envisages that projects will be modified as they progress. It gave the example of a housing project which reduces the number of dwellings. The Court observed there would be practical consequences if the number of houses specified in the project listing must be precisely replicated in the substantive application and indicated that the language used in project listings will often imply an element of flexibility such as reference to an “approximate” number of dwellings.
8. Finally, the Court noted that the FTAA has recently been amended to allow a substantive application to be reduced in scope once it has been lodged. The Court did not consider those amendments to affect its decision. Indeed, those amendments lend further support for the position that a project can be reduced in scope between the referral and substantive application stages, provided the activity remains the same. It would make no sense if a project could be reduced in scope the day after the substantive application has been lodged, by notice to the Panel under s68A FTAA, but could not be reduced in scope the day before the substantive application is lodged. Ultimately the Panel must still make a determination on the merits of the proposal (including whether the reduction in scope affects the benefits of the project) as part of its substantive assessment.
9. The High Court’s observations and findings apply equally to a referral application. A Schedule 2 listing is even more specific than a project description in a referral decision, which is taken from the referral application. It follows that, if a reduction in scope is lawful for a listed project (as the High Court found), it is also lawful for a referred project.

⁴ *Ngāti Kuku Hapū Trust v Environmental Protection Agency* [2025] NZHC 2453, [2025] 3 NZLR 380.

Application of law to Brymer facts

10. The Referral Decision describes the Project (**Project Description**) as:

A master-planned residential and mixed-use development and involves the construction and operation of: **approximately** 1,650 residential units, **including** a 250-unit retirement village and a 0.3-hectare mixed-use neighbourhood centre with commercial properties (a café and superette) b. **open spaces including** ecological restoration/offsetting, retention of natural wetlands and riparian revegetation c. **transport infrastructure including** local roads, cycle connections and pedestrian pathways d. **services infrastructure including** a pump station, water discharge, takes and treatment areas, stormwater ponds and use of existing water bores."⁵ [emphasis added]

11. Bymer proposes two reductions in scope as follows:

- (a) Reduction in number of residential units from approximately 1,650 to 1,200; and
- (b) Removal of the retirement village component (although some “retirement living” units might still be offered depending on market conditions).

12. Neither of these changes involve the addition of a different type of activity to the activities referred to in the Project Description. Rather, they are changes to the type, number and location of residential units that will be provided as part of the “master-planned residential and mixed-use development.” It is clear from the *Jones and Wedd* decision that reductions in scope can relate to quantity (such as volumes of material or numbers of houses) as well as staging and location of the relevant activity type. The use of flexible and inclusive language (“approximately” and “including”) is consistent with the approach taken by the Court in *Jones and Wedd* whereby the Project Description sets an outer but not an inner limit.

13. A substantive application containing these changes is therefore “solely on the referred project” and passes the s46(2) scope test. The question of whether the changes are appropriate and meet the regional benefit test will be one for the expert panel. In this case, Brymer has undertaken an economic assessment which concludes that the changes do not materially affect the Project’s regional benefits. That information will be presented to the Panel for its consideration.

⁵ The Referral Decision does not refer to the geographical area in which the Project is to be undertaken, but this would be defined by the Referral Application, which refers to “... a master-planned residential and mixed-use development bounded by Brymer and Whatawhata Roads, on the western edge of Hamilton City.”

14. For completeness, the substantive application will necessarily include supporting infrastructure (such as road connections, a water reservoir and public open space) which were not specifically identified in the high-level Referral Application documentation, although the broader categories of supporting infrastructure were referred to (transport, services infrastructure and open spaces), followed by the word “including”, meaning the items listed are not exhaustive. Consistent with the EPA's position on scope in the *Surf Park* application,⁶ these are all types of supporting infrastructure which have a demonstrable functional link to the project and are therefore within scope.
15. Given the investment being made by Brymer in developing the Project to the substantive application stage, and in view of the clear direction provided by the High Court, I would be grateful if you would confirm that the EPA's position on scope is aligned with that set out in this letter.

Nāku noa, nā



Mary Hill
Barrister

⁶ Record of Decision on Completeness and Scope – Auckland Surf Park Community Stage 2: https://www.fasttrack.govt.nz/_data/assets/pdf_file/0025/27763/FTAA-2604-1220-Record-of-Decision-on-Compliance-with-s46.pdf

Memorandum on Completeness and Scope: https://www.fasttrack.govt.nz/_data/assets/pdf_file/0024/27762/FTAA-2604-1220-Memo-on-assessment-of-compliance-with-requirements-of-Fast-Track-Approvals-Act-Auckland-Surf-Park-1.pdf