

Before the Independent Commissioner
Appointed by the Canterbury Regional Council

Under the Resource Management Act 1991

In the matter of an application by Tegel Foods Limited for resource consent for
the discharge contaminants to air at 112 Carmen Road

Legal submissions on behalf of Tegel Foods Limited

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Introduction

- 1 Tegel Foods Limited (**Tegel**, the **Applicant**) is seeking resource consent for the continued operation of its processing plant at 112 Carmen Road, Hornby, Christchurch (the **Site**). Resource consent is required for the discharge of contaminants to air as a non-complying activity.
- 2 Tegel is the largest producer of poultry products in New Zealand, and distributes products in both the domestic and international markets. The processing facility has been operating at the Site since the 1950s, and is the only Tegel processing plant located in the South Island. The Site is appropriately located in the heavy industrial and industrial zones in the Christchurch District Plan.
- 3 Significant upgrades have been proposed, and in most cases already implemented, by Tegel to ensure any potential adverse effects (primarily odour) associated with the discharges are avoided or appropriately mitigated. This includes upgrades to the protein recovery plant (**PRP**) ventilation, enclosure of the wastewater tank, and redesign and installation of a new biofilter (all completed), as well as a replacement of the front boiler house and stacks (currently in the early stages of construction). The comprehensive management and monitoring of the Site as demonstrated through evidence provided by Tegel, the conditions proposed as part of this application, and the updated Odour Management Plan, provide confidence that effects of the discharges will be comprehensively managed and the adverse effects of the discharges will be no more than minor.

Statutory framework

- 4 This application is for a non-complying activity, to be assessed under sections 104, 104D, and 105 of the Resource Management Act 1991 (**RMA**). We summarise the statutory tests below, before turning to an assessment of each relevant consideration.
- 5 Section 104D RMA requires that in order to assess the consent application under section 104, you must first be satisfied that either:
 - (a) the adverse effects of the discharge will be minor; or
 - (b) the activity will not be contrary to the objectives and policies of the Canterbury Air Regional Plan (**CARP**).
- 6 Under Section 104 RMA you must have regard to:
 - (a) Actual and potential effects of the application, including both positive and adverse effects, and proposed mitigation measures;

- (b) Relevant provisions of planning documents, including the CARP, Canterbury Regional Policy Statement (**RPS**) and the National Environmental Standards for Air Quality (**NES-AQ**); and
 - (c) The value of the Applicant's investment in the existing activity.
- 7 Ms Andrea Brabant confirms that the proposal will meet the regulations of the NES-AQ, and provides detail on compliance with the relevant regulations in her evidence.¹
- 8 Section 105 RMA specifies matters relevant to an application for discharge that you must also have regard to:
- (a) the nature of the discharge and the sensitivity of the receiving environment to adverse effects;
 - (b) the applicant's reasons for the proposed choice; and
 - (c) any possible alternative methods of discharge, including discharge into any other receiving environment.

Assessment of effects

- 9 At the outset I note that a number of submitters have commented on previous experience of odours from the site. The appropriate assessment for this application is of effects that will occur in the future if this consent is granted. The upgrades which have been proposed (and in most cases implemented) have been committed to following internal assessment, and on the advice of technical specialists, to improve the quality of discharges to air from the site.
- 10 There is a high level of agreement between expert witnesses and the section 42A Officers' report that the effects of the proposal will be minor.

Boiler combustion

- 11 Mr Jason Pene has provided evidence that the potential effects of boiler combustion will be minimal. Reconfiguration of the combustion appliances, including boiler replacements and conversion to mainly diesel fuel, will contribute to a "substantial reduction" in effects.² The Council Officer agrees, noting the effects will be acceptable and result in an improvement in discharge quality,³ and

¹ Evidence of Andrea Brabant at [29]-[32].

² Evidence of Jason Pene, at [15], and at 6.2.

³ Section 42A report of Myles McCauley at [143].

an improvement in local air quality.⁴ Mr Myles McCauley comments that while a complete change to diesel use in the boilers would be ideal, the Applicant's assessment of air quality impacts demonstrates acceptable effects despite this.⁵ Further, Mr Pene notes there are potential environmental benefits through providing the range of fuels in the proposal.⁶

- 12 On the whole Mr McCauley and Mr Pene agree the effects from boiler combustion are anticipated to be minor. Additionally, we note that the Applicant's assessments are based on conservative modelling, and the reductions are expected to be greater than predicted.⁷

Odour

- 13 As detailed in evidence, primary potential (and historical) sources of odour from the Site are the PRP and the wastewater tank.⁸ This has been the focus of recent upgrades to improve both the capture and treatment of these odours.
- 14 With respect to capture of odours, enclosure of the wastewater tank and upgrades to the ventilation of the PRP have been designed to reduce the potential for fugitive emissions. For other parts of the process with a lower potential for odour generation, control of odour focusses on minimisation at source, and capture and dispersion.
- 15 With respect to treatment of the odour, the replacement biofilter has been designed and constructed to achieve a high level of odour reduction, and to ensure that it will be readily monitored and maintained to sustain this performance into the future. The evidence provided by Mr Roger Cudmore finds that the replacement biofilter will be a "significant improvement" on the previous biofilter and "should be able to effectively eliminate rendering odours".⁹
- 16 Mr Pene concludes that "the management measures employed at the site should provide effective control of the odour generated at the site".¹⁰ Mr McCauley agrees that the upgrades and modifications undertaken by Tegel should "markedly" reduce potential effects of odour.¹¹

⁴ Section 42A report of Myles McCauley at [105].

⁵ Section 42A report of Myles McCauley at [143].

⁶ Evidence of Jason Pene at [102]-[103], and [157].

⁷ Evidence of Jason Pene at [93]; Section 42A Report at [90(c)].

⁸ Evidence of Jason Pene at [120].

⁹ Evidence of Roger Cudmore at [47].

¹⁰ Evidence fo Jason Pene at [76]

¹¹ Section 42 A Report of Myles McCauley at [144].

- 17 A suite of conditions are proposed to ensure the anticipated effects are achieved into the future. In summary, these include requirements for:
- (a) Plant components and corresponding operating parameters that have been designed to achieve a high level of odour control;¹²
 - (b) A programme of daily boundary odour surveys;¹³
 - (c) Annual reporting to Environment Canterbury on the results of the odour surveys and compliance with the applicable conditions of consent;¹⁴
 - (d) An Air Discharge Management Plan. The draft Plan provided by Ms Fiona McAlpine confirms the level of detail contained in the Plan and the procedures in place to manage odour at the Site;¹⁵
 - (e) Five-yearly assessment and reporting to Environment Canterbury regarding the best practicable option for the control of odour from the Site;¹⁶ and,
 - (f) Recording and reporting of all complaints received relating to odour and particulate matter.¹⁷
- 18 In our submission, the evidence clearly demonstrates any adverse odour effects of the proposal will be minor. Confidence that this outcome will be achieved for the duration of the consent is provided by the comprehensive suite of conditions.

Positive effects

- 19 The assessment under section 104 RMA also requires consideration of positive effects, to achieve a balanced and complete assessment of the proposal.¹⁸
- 20 Discharges to air are a necessary component of the chicken processing activity undertaken at the Site. That processing activity has a range of significant positive benefits, as detailed in the evidence of Ms Robyn Marshall. These include food security through the supply of chicken and turkey products to the domestic, and

¹² Proposed Conditions of Consent: Conditions 1-9, 13-19, 21, 22, and 27

¹³ Proposed Conditions of Consent: Condition 23

¹⁴ Proposed Conditions of Consent: Condition 25

¹⁵ Proposed Conditions of Consent: Condition 27

¹⁶ Proposed Conditions of Consent: Condition 28

¹⁷ Proposed Conditions of Consent: Condition 29

¹⁸ *AFFCO v Far North District Council* (1994) NZRMA 224, at 233 (adopting what was said in *Te Aroha Air Quality Protection Group v Waikato Regional Council (No 2)* (1993) 2 NZRMA 574); see also *Baker Boys*, [111] at 463.

particularly South Island, market;¹⁹ employment of the local community;²⁰ and wider employment and economic benefits throughout the poultry supply chain and associated contracting services.²¹

- 21 These are important benefits which would not be realised, or would be heavily impacted, if the discharge consents were not granted.

Objectives and policies of the CARP

- 22 An assessment of the activity against the objectives and policies of the CARP is provided in the evidence of Ms Brabant. This evidence concludes that not only is the proposal not contrary to the CARP, it "is consistent with the objectives and policies and finds direct support in many of them".²² The Council Officer has also reached the conclusion that the application is consistent with the objectives and policies of the CARP.²³

- 23 Ms Brabant has provided a detailed assessment on all relevant objectives and policies in Appendix B to her evidence, from which the following comments are made:

- (a) The amenity values of the receiving environment will be improved as a result of the proposal, a step above the requirement to "maintain" amenity in Objective 5.6;
- (b) The environment surrounding the Site has evolved over time, and Tegel has continually responded to these changes. As required by Objective 5.8 the proposal represents a continuation of this commitment to manage activities in response to the evolving environment; and
- (c) The upgrades to plant are consistent with Objective 5.10 in that they enable innovations in technology to improve air quality, and are in line with Policy 6.22 by utilising the best practicable option to minimise effects.

The value of the Applicant's investment in the Site

- 24 This matter is addressed in the evidence of Ms Marshall. The site has been in operation since the 1950s and has seen many upgrades since that time. Ms Marshall identifies that current investment in upgrades to the Site is in the order

¹⁹ Evidence of Robyn Marshall at [4], [5], and [10].

²⁰ Evidence of Robyn Marshall at [11], [13], [18].

²¹ Evidence of Robyn Marshall at [6], [9], [12], [17], [18].

²² Evidence of Andrea Brabant at [12].

²³ Section 42A Report of Myles McCauley at [177].

of \$3-5 million per annum. Tegel has estimated that a replacement processing facility would cost upwards of \$100 million, while a stand-alone rendering plant is estimated to cost \$15 – 20 million.²⁴ Approval of this application will enable Tegel to continue to utilise its investment in the Site and reflects an efficient use of the existing physical resources (plant).

Section 105 considerations for discharges

The nature of the discharge and the sensitivity of the receiving environment to adverse effects

25 These matters are addressed in the evidence of Mr Pene and Ms Brabant.²⁵ The Site is appropriately located in the Industrial and Heavy Industrial zones of the District Plan, but is proximate to residential and educational activity, as well as some moderately sensitive activities in the surrounding industrial area. The assessment of effects and conclusions reached, including in relation to potential for nuisance and health effects, has been undertaken with these sensitivities in mind.

The applicant's reasons for the proposed choice; and any possible alternative methods of discharge, including discharge into any other receiving environment.

26 The Applicant seeks to continue operations on a long-established Site. This decision reflects the sizeable investment in the Site and the assessment that relocation is not considered economically viable for the business.

27 The reasons for the methods of discharge are detailed in the evidence for Tegel.²⁶ In summary, Tegel has identified primary potential sources of odour and has sought to upgrade the existing plant, adopting best practice in these upgrades. Upgrades are also being made to the boilers to improve air quality effects associated with these discharges. The replacement front boilers will run on diesel, but may also use LPG in the future. Flexibility is sought to continue operation of the existing rear boilers using recycled lubrication oil (**RLO**), although the intention is to also convert these boilers to diesel and LPG in the future. Whilst not as clean burning, use of RLO has other sustainability benefits given the recycled nature of the fuel.²⁷

²⁴ Evidence of Robyn Marshall at [16].

²⁵ Evidence of Jason Pene at [32] – [41], Evidence of Andrea Brabant at [46].

²⁶ Evidence of Jason Pene at [62]-[76], Evidence of Roger Cudmore at [10]-[13].

²⁷ Evidence of Jason Pene at [101] – [104]; Evidence of Tony Atkinson at [21] – [22]

Submissions

- 28 Of the 24 submissions received on the Application, seven are in support, and five are neutral. These submissions refer to various positive effects of continuing operations at the Site including:
- (a) positive economic effects, including job opportunities, supply and support for the local area and wider industry;
 - (b) acceptable odour levels, and the effectiveness of measures already in place to regulate discharge; and
 - (c) responsible management of the Site by Tegel.
- 29 12 submissions opposing the application were received. Issues raised are addressed below.

Ministry of Education

- 30 The Applicant has met with representatives of the Ministry of Education to discuss the proposal. As a result, we understand that a number of the Ministry's concerns have been resolved. Outstanding issues raised in the evidence of Mr Paul Whyte are address below:
- (a) Odour issues after the implementation of improvements: Mr Whyte considers there is a lack of certainty that improvements to plant will effectively mitigate odour, and recommends an additional condition regarding the odour removal efficiency of the biofilter. A new condition has been proposed to address this, discussed further below and in supplementary evidence of Mr Pene;
 - (b) Closing of doors to the PRP: the conditions of consent and Odour Management Plan have been updated to reflect management of doors to the PRP, including a requirement that these be closed at all times with the exception of circumstances where the internal temperature poses a risk to health and safety, and for ingress and egress of goods and personnel. The updated Odour Management Plan will be provided by Ms McAlpine when she presents;
 - (c) Drafting of the Odour Management Plan: in addition to the above amendment, the Odour Management Plan has been updated to incorporate reference to Hornby Primary and High Schools as "sensitive activities", and to provide clarification on incorporation of relevant site documents into the Odour Management Plan; and

- (d) Consent duration: Mr Whyte favours a shorter term of consent, referring to uncertainty around effectiveness of the improvements to the plant. We address duration of consent below.

Other submissions in opposition

- 31 Other submitters in opposition raise the following additional matters:
 - (a) Whether the Site is an appropriate location for the activity, and/or whether the activity should relocate²⁸ – as detailed above, the activity is located in an appropriate zone, effects will be acceptable having regard to the sensitivity of receivers, and Site management procedures and conditions of consent provide certainty that this will be the case for the duration of consent. We are advised that relocation of the plant is cost prohibitive.
 - (b) Noise (including alarms), presentation of the site, etc – these are not effects associated with the discharge to air. In any event, we are advised that Tegel has taken this feedback on board and has taken, or is in the process of taking, steps to address these concerns.

Conclusions on statutory tests

- 32 The evidence provided for Tegel, together with the Section 42A Report, demonstrates that both threshold tests under section 104D RMA are satisfied. The effects of the proposal from odour and combustion are considered to be minor, and represent an improvement in local air quality from the current situation. The proposal is not contrary to, and further is consistent with, the objectives and policies of the CARP.
- 33 When turning to an assessment under section 104, you should consider the additional factors of positive effects arising from the activity and the value of the Applicant's investment in the Site. In our submission, these factors, together with the history of the processing plant on this Site and the appropriate District Plan zoning, are important to your consideration of whether consent should be granted.
- 34 Evidence presented for Tegel addresses the relevant considerations under section 105 and further confirms that the discharge is appropriate having regard to the proposed methods and receiving environment.

²⁸ Submissions of Sandra Ainslie and Darrell Stuart; Brett Hargadon; Geeta Ratnam

Conditions

- 35 Mr McCauley has provided recommended conditions of consent in the Section 42A Report. These conditions are largely accepted by the Applicant. Proposed amendments to the section 42A conditions were provided with the evidence of Ms Brabant, and these amendments are explained in the evidence of Ms Brabant, Mr Pene and Mr Cudmore. In summary, amendments are generally proposed to capture the intent of the recommended conditions whilst better reflecting the specific detail and optimal operation of this Site.
- 36 We particularly note the amendment to condition 23, relating to daily site boundary odour assessments. This provides that the Regional Council may reduce the frequency of assessments by written notice. This is considered appropriate in the longer term in the event that the assessments demonstrate that odour effects beyond the boundary are consistently being managed to an appropriate level.
- 37 Further amendments to conditions have been made to address suggestions in the evidence of Mr Whyte, and those amendments will be addressed by Mr Pene and Mr Cudmore as they present. An updated set of conditions is attached to these submissions as **Appendix 1**.

Duration of consent

- 38 The Applicant has sought a consent duration of 20 years, however Mr McCauley recommends a term of 10 years. The reasons relied on for this include:
- (a) the continued use of boiler fuels in addition to diesel;
 - (b) uncertainty around ongoing odour effects and the effectiveness of the proposed upgrades; and
 - (c) the location of the Site.
- 39 In our submission, the concerns described by Mr McCauley can all be managed sufficiently through conditions of consent, rather than by imposing a shorter consent duration.
- 40 Tegel intends to predominantly use diesel to fuel boilers, which, as concluded in both the Section 42A Report and the evidence of Mr Pene, would lead to lower emissions than presently occur. However the section 42A Report and Applicant evidence also conclude the effects from the current range of fuels used are acceptable in terms of the air quality impact and the relevant statutory considerations. This does not provide sufficient reason to reduce the term of the consent.

- 41 Odour effects will be effectively managed through upgrades to plant, the updated Odour Management Plan, and the proposed conditions of consent. It is agreed by experts for the Applicant and by Mr McCauley that odour effects are expected to be minor. Tegel has made significant financial investment in upgrading the plant as part of the proposal to achieve these improvements and ensure they are maintained.
- 42 The Site is appropriately located in industrial zones and the sensitivity of receivers has been considered when reaching a conclusion that effects will be minor.
- 43 A further relevant consideration in assessing duration of consent is anticipated change in the environment.²⁹ It is submitted that the Site environment, being an industrial zone, has recently been subject to review through the Christchurch District Plan. The Plan, recently made operative in 2017, has retained industrial zoning of the immediate environment. We submit this provides certainty that the environment in which the Site is located will not be subject to significant change within the consent period, and that Site is a suitable location for the proposal.
- 44 The Environment Court in *Royal Forest and Bird Protection Society of New Zealand Inc v Waikato Regional Council* noted the importance of efficiency when assessing consent duration, particularly that a consent holder should not be required to re-apply for consent in a shorter timeframe than the activity and associated infrastructure is designed to last.³⁰
- 45 To require Tegel to undertake another application process again within only 10 years would be inefficient, given the conclusions regarding anticipated effects. Any outstanding concerns are capable of being appropriately addressed through conditions of consent and potential for review of conditions. We particularly note the requirement to undertake and report on an assessment of the best practicable option for the control of odour from the Site every five years. In these circumstances, it is appropriate to grant consent for a duration of 20 years.

Dated this 12th day of August 2020

Sarah Eveleigh / Jessica Hardman
Counsel for Tegel Foods Limited

²⁹ *PVL Proteins Ltd v Auckland Regional Council* A61/2001)

³⁰ *Royal Forest and Bird Protection Society of New Zealand Inc v Waikato Regional Council* A157/06, at

