Before Hawkes Bay Regional Council and Hastings District Council

In the matter of	the Resource Management Act 1991
And	
In the matter of	Application by Te Mata Mushroom Company Ltd (**TMM**) to Hawkes Bay Regional Council (**HBRC**) to discharge contaminants into air from a composting and mushroom growing operation at 174–176 Brookvale Road, Havelock North (**air discharge application**)
And	
In the matter of	Application by TMM to Hastings District Council (**HDC**) to increase production of mushrooms from 25 tonnes per week to 100 tonnes per week, including increased compost production, extending existing and constructing new buildings and retrospective consent for an oxidation pond at 174–176 Brookvale Road, Havelock North (**land use application**).

Evidence of Philip Brown for Hastings District Council as Submitter
Planning

Dated 24 July 2019

INTRODUCTION

1. My name is Philip Michael Brown. I am a Director of Campbell Brown Planning Limited, a firm of planning consultants. I hold the qualification of Bachelor of Town Planning from the University of Auckland. I am a full member of the New Zealand Planning Institute.

2. I have more than 30 years' experience in planning and resource management. My experience has included work in both the private and public sectors and has encompassed a full range of resource management matters including preparation and assessment of resource consent applications and district plan development and implementation.

3. I have appeared as a witness at Council hearings and before the Environment Court on numerous occasions, relating to both resource consent and district plan change matters. I have been appointed to the Auckland Council's pool of independent hearings commissioners and undertake functions in that capacity on a regular basis.

4. I have previously held the position of Group Manager: Planning & Community Services with the former Waitakere City Council. In that role I managed a section of the Council that had responsibility for initiating and processing district plan changes, processing complex or significant resource consent applications, heritage protection, processing notices of requirement for designations, developing structure plans, and providing guidance and technical support to the Council's Hearings Committee.

5. Of particular relevance to these proceedings is my extensive experience in the preparation and assessment of applications for resource consent, including applications for rural industries that raise issues of reverse sensitivity.

6. I appear to present evidence on behalf of Hastings District Council in its capacity as a submitter to the TMM air discharge application. I am authorised to present this planning evidence for HDC.

7. In the course of preparing my evidence I have read and carefully considered the relevant air discharge application and related land use application, the background documents, the expert evidence of TMM's witnesses, the submissions received, and the section 42A reports prepared by the respective councils' reporting planners, Mr Barrett and Ms Kydd-Smith. I have visited the site and I am familiar with the surrounding environment at that location. I have also visited the composting and mushroom growing operations of Meadow Mushrooms in Christchurch, and I am generally familiar with the mushroom growing process from commencement of compost manufacture to the harvesting of mushrooms.

CODE OF CONDUCT

8. I confirm that I have read the 'Expert Witnesses Code of Conduct' contained in the Environment Court of New Zealand Practice Note 2014. My evidence has been prepared in compliance with that Code in the same way as I would if giving evidence in the Environment Court. In particular, unless I state otherwise, this evidence is

within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

SCOPE OF EVIDENCE

9. My evidence is focused primarily on the air discharge application and will cover the following matters:

   (a) My comments on the application as lodged;

   (b) The amendments to the proposal and the implications that arise; and

   (c) Appropriate conditions of consent if consent were to be granted.

COMMENTS ON THE APPLICATION AS LODGED

10. I understand TMM's proposal has changed somewhat in respect of the total proposed increase in production volume, the timing of volume increases, and the timing of implementation of mitigation measures. However, I consider it useful to first comment on the proposal as lodged, before considering the implications of the more recent amendments.

11. The proposal comprises a continuation of contaminant discharges into air from the mushroom growing and compost production operations conducted at the site. The current operation holds an existing air discharge consent (DP100128A), which includes a condition[1] requiring that "*There shall be no objectionable or offensive odour to the extent that it causes an adverse effect at or beyond the boundary of the site (see Advice Note 1)*". I note that the condition reflects Policy 69 in the Hawke's Bay Regional Resource Management Plan (RRMP), which seeks to manage the effects of activities affecting air quality so that, in respect of odour, "*there should be no offensive or objectionable odour beyond the boundary of the subject property*".

12. The starting point, which I do not understand to be substantially in dispute, is that TMM is in breach of this condition on a regular basis, and is also not complying with a number of other conditions that require mitigation works to be implemented within certain timeframes.

[1] Condition 6 of air discharge consent DP100128A.

13. The original application to HBRC proposed additional odour control measures, together with a greater compost production limit.[2] It also proposed no additional odour control measures within eight months of consent being granted. Once that time period had elapsed, some specific odour mitigation measures and practices were proposed to address those parts of the process with the potential to give rise to the most significant odour effects. Further mitigation measures were proposed to be implemented once compost production levels exceeded 200 tonnes per seven days.

14. There are a number of concerns with the proposal as originally lodged. The proposal did not address existing adverse odour effects, yet sought to significantly increase production. While mitigation was proposed, it would not be implemented until production reached certain predetermined thresholds. That raised two issues.

15. First and foremost, the application as originally proposed would not have addressed significant existing adverse effects in respect of odour and breaches of current resource consent conditions. It would be inappropriate in my opinion to enable greater production levels unless there can be certainty that existing adverse odour effects can be properly and permanently addressed, and the potential odour effects from the additional production can also be effectively controlled.

16. Secondly, the proposal did not require progressive improvements to odour mitigation unless certain production increases were achieved. The proposed mitigation threshold of 200 tonnes of compost production per seven days provided scope for the consent holder to increase production by two thirds without undertaking any of the more substantial odour management measures that would occur beyond the 200 tonne trigger. That could have produced an outcome that was considerably worse than the situation that currently exists.

17. Based on the application as lodged, I could not have supported the grant of consent, as unacceptable adverse odour effects would have potentially been allowed to continue without mitigation for a significant period. Given the increases in compost production and the uncertainty associated with the mitigation, there is

[2] Compost production is currently limited to 120 tonnes per seven-day period and the application sought to increase production to 500 tonnes per seven days.

potential for odour emissions to have increased further from the existing unacceptable level.

THE AMENDMENTS TO THE PROPOSAL AND THE IMPLICATIONS THAT ARISE

18. Mr Drury's evidence outlines a number of amendments to the proposal[3] as a result of further information and in response to the matters raised in the HBRC s42A report. The amendments relate to a reduction in the total volume of compost enabled to be produced (350 tonnes per week, instead of 500 tonnes), and to the nature, timing and sequence of odour mitigation upgrades.

19. He notes that the remaining points of contention between TMM and Mr Barrett relate to the sequencing and timing of odour mitigation measures.[4] These differences are summarised as:

    (a) Whether an additional Phase 1 bunker is required immediately, rather than once production reaches 200 tonnes;
    (b) Whether the bale breaking line should be installed within 8 months (as proposed by Mr Curtis) or within 30 months, as now proposed by TMM; and
    (c) The increases in compost production volume authorised once certain mitigation measures are in place.

20. An additional important amendment to the proposal is that, while some minor mitigation will start to occur immediately from the commencement of consent, the Phase 2 transfer building and extension of eaves and extraction system will now not be implemented for over a year after the consent commences. Previously, these mitigation measures were proposed to be implemented 8 months from commencement of the consent. Mr Drury proposes a four-month period for lodging building consent applications, and a further 8-month period for construction after the grant of building consent, with the period for processing the building consent excluded.

21. I do not agree that the time for processing the building consent should be excluded. To do so could create a situation where the consent holder might be rewarded for

[3] Evidence of Cameron Drury, paragraph 15.
[4] Ibid, paragraph 21.

lodging a deficient application, requiring the provision of further information with consequent delays in processing during which the statutory processing period is on hold. I consider, if the Commissioners accept that the 4-month and 8-month period are appropriate, that only one month should be allowed for the building consent process. This would provide certainty to all parties and should ensure that the consent holder makes its best endeavours to ensure the application is complete at the outset.

22. Mr Drury's position is that bringing forward some of the planned upgrades is "*simply not justified*"[5] or "*simply not possible*".[6] He goes on to say that reductions in overall compost production will logically reduce risk,[7] and that the risk of odour arising from increasing production volumes (with mitigation upgrades implemented) will be no different to the risk or odour from the current compost production limit of 120 tonnes per week.[8]

23. I have read the air quality evidence of Ms Simpson, which states that the current unacceptable situation will be improved, but that adverse effects are likely to continue for 31 months after consent is granted. She also identifies a risk that proposed mitigation will not be entirely effective at addressing odour effects. Ms Simpson recommends from an air quality perspective that no increases in compost production should be contemplated until the final stage of odour mitigation has been completed, and mitigation has been demonstrated to be effective in preventing offensive and objectionable odours.

24. I rely on Ms Simpson's expert opinion, and prefer it to the assumptions made by Mr Drury as to the implications of increasing production without ensuring odour mitigation is fully functional first.

25. I note that the increases in production are said to be required in order to fund mitigation, which the applicant uses as a reason to allow increases before all mitigation measures have been fully implemented. I consider that an argument for increased production to offset compliance costs, many of which are existing

[5] Ibid, paragraph 23.
[6] Ibid, paragraph 24.
[7] Ibid, paragraph 28.
[8] Ibid, paragraphs 28.1 and 28.2

obligations under current consent conditions, is tenuous and does not have a valid resource management basis.

26. In my opinion, the staging of production increases and the timing of odour mitigation measures needs to be considered in the context of an operation that is not currently complying with the conditions of its resource consent and where there is an acknowledged and well-documented history of adverse odour effects arising at existing production levels. I consider that a relatively cautious approach is justified when setting conditions in these circumstances. In my view, production increases should not occur until related mitigation has been implemented and proven to be effective.

27. Of particular concern is Mr Drury's suggestion that condition 3[9] be amended. Condition 3 as recommended by Mr Barrett replicates condition 6 of TMM's existing consent, requiring that there be no offensive or objectionable odour beyond the boundary of the site to the extent that it causes an adverse effect. Mr Drury's proposed amendments would mean that this 'bottom line' requirement would not apply at all for at least 14 months,[10] and then would not apply on Thursdays for 31 months. While it is proposed that there still be a requirement that the activity be undertaken in accordance with an odour management plan, and "*managed so as to as best as practicably possible*" avoid effects, the proposed amendments 'water down' the restrictions that the condition imposes, and would effectively contemplate and authorise the emission of offensive and objectionable off-site odour.

28. In my opinion, it would be inappropriate for the application to be granted with a condition that is weaker than that which it would replace, particularly where the existing operation has been in breach of the current condition and significant adverse effects have arisen as a result.

[9] Identified as condition 3 in Appendix 2 of HBRC s42A report, equivalent to condition 6 of the current consent.

[10] Condition 3 as sought to be amended by TMM provides that the 'no offensive odour' requirement does not apply while the upgrades set out in condition 9 are undertaken, plus one month to optimise commissioning. Condition 9 as sought to be amended by TMM proposes a four-month period for lodging building consent applications, and a further 8-month period for construction after the grant of building consent. The best case scenario then is a 14-month period (four months, plus one month for building consent processing, plus 8 months for construction, plus one month for optimisation). If the application for building consent is deficient and takes longer, this could easily extend to 18 months.

29. I also note that the condition as currently worded closely reflects the outcome sought through Policy 69 of the RRMP, and is consistent with a recommendation in the Ministry for the Environment '*Good Practice Guide for Assessing and Managing Odour*' (2016).[11]

30. I acknowledge that condition 3 imposes a measurable performance standard on the operations of the consent holder. That is both appropriate and warranted in my view. In my opinion, it is important to retain the 'bottom line' requirement that there shall be no offensive or objectionable odour beyond the boundary. Any determination of whether an odour is '*offensive and objectionable*' would be undertaken in accordance with the FIDOL factors,[12] which account for a range of considerations including the frequency and intensity of odours.

31. The FIDOL factors enable some discretion and judgement to be exercised by HBRC officers, such that an incident of odour being discernible beyond the site boundary would not of itself mean that condition 3 has been breached. If the consent holder is complying with the odour management plan and managing odour to the best of its ability, it would not be expected that odour events would be of such frequency or magnitude to result in offensive or objectionable odours beyond the boundary of the site. I consider that retaining the 'bottom line' wording of condition 3 is important in order to reflect the aspirations of the RRMP and to set a clear standard of what is expected of this operation.

32. Mr Barrett considers, as do I, that the mushroom growing operation makes a valuable contribution to the local economy and to the district in terms of employment. Provided that existing and potential adverse odour effects can be adequately managed, I have no concerns with the activity in principle and would support consent being granted. However, like Mr Barrett, I am yet to be fully satisfied that sufficient mitigation will be in place to effectively manage adverse odour effects, particularly in the short to medium term where production volumes are proposed to be increased without full mitigation being in place and shown to be effective.

[11] HBRC s42A report, paragraph 238.
[12] Ibid, paragraph 118.

APPROPRIATE CONDITIONS OF CONSENT

33. I have reviewed the recommended conditions of consent proposed by Mr Barrett, and the amendments to those conditions sought by Mr Drury. I have discussed a number of the issues raised by the potential conditions of consent elsewhere in my evidence, and I make the following additional comments.

34. If consent is to be granted, then I support the imposition of conditions as generally set out by Mr Barrett. I note that some modifications to those conditions would be required to reflect the most recent amendments to the proposal (such as reference to the reduced overall limit on compost production, for example). In addition, I note that Mr Drury proposes that spent compost be stored on a concrete pad in the centre of the site from commencement of the consent, pending the construction and commissioning of the proposed compost storage building noted in Mr Barrett's condition 7. This appears to be an appropriate interim mitigation measure and I support it.

35. I note that recommended condition 45 states that the resource consent shall not be exercised until the previous consent (DP100128A) is surrendered. I understand that the new consent is intended to replace the existing one, and there is no need for the earlier one to be formally surrendered. The new consent (and its obligations which arise on commencement) will commence under s116 irrespective of whether the earlier consent is surrendered.

36. As currently drafted, there is potential for some confusion as to whether these obligations apply from the time of commencement or from when the old consent is surrendered. I consider that any potential for confusion can be avoided by deleting condition 45. Alternatively, the condition could be amended to simply say that consent DP100128A shall be treated as being surrendered immediately on commencement of the new consent under s116.

37. I have also considered Mr Drury's comments relating to the duration of the consent.[13] In my opinion, a consent duration of 20 years would be appropriate in this instance based on the direction contained in the RRMP, the level of capital investment that will be required for the odour mitigation measures, and due to the

[13] Evidence of Cameron Drury, paragraphs 41-54.

imposition of a review condition that is able to be invoked by the HBRC on an annual basis if required.

38. I acknowledge Mr Drury's concerns with the recommended odour monitoring and community consultation conditions. While these impose monitoring costs and obligations on the consent holder, I consider that they are not unreasonable given the history of monitoring and enforcement issues relating to the site. I also acknowledge Ms Simpson's comments on these conditions as set out in her evidence. I consider it is important that some form of monitoring and community engagement be required, and would not support their outright deletion as sought by Mr Drury.

CONCLUSION

39. I am of the opinion that consent should be refused unless the Commissioners are able to be satisfied with regard to the efficacy of proposed odour mitigation measures, including their effectiveness in mitigating existing adverse effects.

40. If consent is to be granted, I consider that increases in compost production should only occur following installation of the proposed odour mitigation measures and confirmation that they are effective and fit for purpose. I support the retention of an unequivocal condition requiring that there be no objectionable or offensive odour beyond the boundary of the site.

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Philip Brown