

Decision of Hearing Commissioners

In the matter of the Resource Management Act 1991

And in the matter of an application by The Te Mata Mushroom Company Limited to discharge contaminants into air from a composting and mushroom growing operation and associated activities including an increase in mushroom and compost production, at 174-176 Brookvale Road, Havelock North

And in the matter of an application by The Te Mata Mushroom Company Limited to expand an existing intensive rural production activity at 174-176 Brookvale Road, Hastings

Decision of Hearing Commissioners
Dated: 19 December 2019

INTRODUCTION

1. The Te Mata Mushroom Company Ltd is applying for new resource consents for its existing facilities at Brookvale Road, Havelock North in order to provide for an increase in mushroom production and to provide upgraded facilities to control odour emissions associated with mushroom production.
2. Specifically, the company is seeking a discharge permit to discharge contaminants into the air from the composting and mushroom production activities from the Hawkes Bay Regional Council.
3. The company is also seeking a suite of land use consents from the Hastings District Council to:
 - increase mushroom production from 25 tonnes per week to 100 tonnes per week;
 - increasing compost production from 120 tonnes per week to 350 tonnes per week;
 - to extend buildings to provide for the almost total enclosure of the mushroom composting and growing operations; and
 - obtain a retrospective resource consent in respect of the existing water/oxidation pond and associated structures.
4. It is the consent application involving odour discharges that became the focal point in the consideration of the joint consent applications. That was due to the need for us to consider closely whether the odour control measures offered by the company would be sufficient to address and avoid ongoing, significant odour complaints from neighbouring residences. We will discuss these matters later in our decision.
5. The application for consent to HBRC was notified on the 13th of May 2017 and attracted 317 submissions. Of these submissions, 6 were neutral, 133 were in support and 178 were in opposition. The comprehensive list of those who submitted are contained in the respective HBRC and HDC s42A reports, together with the matters raised by submitters.
6. Submitters supporting the application primarily noted the positive influence of the company on the region's economy with many being directly employed, or with friends and family employed, by the company. Some supporting submitters also sought a staged approach to increased production and improved odour mitigation.
7. Many opposing submissions focussed on the adverse effects of odour from the existing operation, describing how it impacts on their way of life through:

- odour permeating into the house and into clothes that have been hung outside to dry;
 - preventing them from enjoying the use of outside areas of their properties;
 - forcing them to close windows and doors; and
 - making them feel nauseous.
8. Some opposing submitters were particularly against the proposed expansion in production, considering that odour controls should first be established to address current adverse odour effects. Some submitters also raised issues of noise and water quality and questioned the need for additional resource consents for discharges to land.
 9. The HDC submission identified that a land use consent was required from HDC and requested this be lodged under s91 of the Resource Management Act 1991 (**RMA**). Accordingly, an application for land use consent to HDC was notified on the 23rd of March 2019 and attracted 163 submissions. Of these, 82 were in support, one was neutral and 77 were in opposition. Of the remaining three submissions, two submissions did not have a stated position and one submission supported and opposed different parts of the application. The submissions were similar to those to HBRC overall, being divided between a number of submitters supporting the proposal and many others opposing it mainly for odour reasons.
 10. The Commissioners appointed to hear and determine the two applications were Bill Wasley (Chair), Louise Wickham and Paul Cooney. Although separate applications for consents were filed with the HBRC and the HDC, both applications were heard together.
 11. A hearing was held in Ellwood Function Centre, Otene Road, Waitapu on the 31st July 1st and 2nd August 2019. A list of those who appeared at the hearing and/or provided evidence to us is attached to this decision. We also undertook a site visit prior to commencement of the hearing.
 12. During this hearing there was persuasive evidence from the air quality experts that the most effective way to control odour emissions from mushroom farms is to provide for the complete physical enclosure of the composting operations. Complete enclosure was not envisaged in the original proposal.
 13. We therefore invited the applicant to consider revising their proposal. The applicant accepted our invitation and submitted a substantially revised application in time for a reconvened hearing on the 11th of October 2019. This hearing was held in the Hawkes Bay Regional Council Chambers, Napier.

14. We closed the hearing on the 28th November 2019. Those persons who attended the hearings and/or presented or provided evidence and submissions, are listed in Appendix 1 of this decision.
15. In order to help us determine this proposal we received and read the following;
- the applications for a discharge permit and land use consents with supporting assessments of environmental effects;
 - submissions in support, in opposition and neutral towards the applications;
 - s42A Reports for both applications;
 - further submissions and evidence presented at the first hearing 31st of July – 2nd August 2019;
 - a revised proposal with supporting documents;
 - supplementary s42A Reports and further submissions and evidence relating to the revised proposal for the hearing on the 11th of October 2019.
16. We were also greatly assisted by conferencing statements provided by the air quality experts and the planning experts in response to our directions issued during the course of these proceedings.
17. It is unnecessary to describe in detail the original proposal except to say that it would only provide for the partial enclosure of composting operations and that all (five) air quality experts expressed disquiet over whether the proposed upgrades would prevent objectionable or offensive odour occurring beyond the boundary of the site. For example, Ms Tracey Freeman expressed reservation about the effectiveness of the upgrades noting;¹
- “I am unable to state confidently that the residual odours, following the implementation of mitigation, will not on occasions still result in odour nuisance that would be considered to be an offensive or objectionable effect”*
18. We now turn to consider the revised proposal put forward by the applicant and background information relevant to our decision.

Background and Existing Environment

19. The Te Mata Mushroom Company Ltd has been operating at its Brookvale Road site in Havelock North since 1967. The mushroom farm currently operates under resource consents granted by HBRC including an air discharge permit granted in 2011 which

¹ Supplementary evidence of T Freeman, July 2019, para 9.

allows the company to produce up to 120 tonnes of compost per week. The current owner, Mr Michael Whittaker, bought the site in 2012.

20. The company was described to us as a significant employer in the region with 120 full-time employees and an annual wage expenditure in excess of \$4 million.² This has relevance for potential positive impacts of the proposal on the region's economy.
21. The 22.9-hectare site is surrounded by rural land, comprising vineyards, orchards and cropping and grazing land uses. The area immediately to the west, between Arataki Road and the site, is rural land consisting of a series of paddocks with some houses, outbuildings and a campervan site. The site itself and all of the land immediately adjoining the site is zoned Plains Productions.
22. The land to the west of Arataki Road is zoned Havelock North General Residential and has undergone significant development into a residential area over the last 10 – 15 years. This encroaching residential development has resulted in an increasing number of odour complaints about the company's operations. Things came to a head in 2015 when the company was prosecuted by HBRC, and again in 2018. The company pleaded guilty to charges of causing offensive or objectionable odour effects beyond the boundary of the site in breach of its discharge permit consent.
23. Leaving aside the outcome of the prosecutions, we accept it was always the company's intention since early 2015 to adopt better odour control methods on site in order to address the odour complaints that began increasing from around 2013 onwards.
24. Under the consents the company is seeking to expand its business which will also help fund the proposed odour mitigation measures costing some \$3-4m. For the company to continue to operate on its current site, it had little option in our view other than to upgrade its existing facilities otherwise it will continue to be faced with odour complaints from people living in the surrounding neighbourhood including those residing in the nearby residentially zoned area fronting Arataki Road approximately 200m south west of the site.
25. The company's current predicament may not be all of its own making (although there is some debate it should have acted sooner to address the odour complaints). As the Court acknowledged in the prosecution proceedings allowing residential development to move closer to the sites boundary in recent years has resulted in a reverse sensitivity situation occurring. That may explain why there has been an increase in odour complaints since 2013 but the company must accept the environment as it exists today and is obliged to take steps to internalise odour effects.

Current Compost and Mushroom Production Activities

26. Before describing the companies revised proposal a brief outline of how the applicant currently produces mushrooms is warranted. A full description of the company's

² Evidence of M Whittaker dated 17 July 2019, para 3.

operations can be found in the various reports accompanying the applications and in the S42A Reports so is not repeated here except in summary form.

27. Mushrooms are grown in compost. Making compost on site is, therefore, an essential part of mushroom production. Compost manufacture begins by dunking up to 5,000 straw bales laid in rows on a concrete pad with 'goody' water over a seven- day period. 'Goody' water is leachate from composting and site stormwater runoff that is collected and returned to a holding pond.
28. After this time, the bales are broken open and have gypsum/chicken litter placed on top. The bales are then mixed using a turning machine to form windrows. The mixed material is then transferred by front end loader into an empty bunker for composting over a period of 12 days. During this time, the compost is turned by being transferred sequentially every three days to other bunkers using the front-end loader. While in the bunkers the compost is aerated with extraction to a biofilter prior to discharge to air. All of this process is described as the Phase 1 process.
29. Once Phase 1 has been completed, the compost is removed from the bunkers by front end loader and deposited in a hopper before being conveyed into pasteurising tunnels. This is known as the Phase 2 process. From there the compost is removed after around 6-7 days and inoculated with spores and placed in mushroom growing sheds, referred to as Phases 3 and 4.
30. In this process we are told the primary odour sources are (in descending order of significance):³
 - The transfer of compost from the Phase 1 bunkers into Phase 2 tunnels;
 - Loading and unloading of the Phase 1 bunkers;
 - Bale breaking and mixing with chicken manure / gypsum and transferring to bunkers;
 - Bale wetting; and
 - Phase 2 composting.

Applicant's Revised Proposal

31. The new consent applications are being made to increase production and to upgrade facilities on site to control odour emissions.
32. The applicants revised proposal is for enclosure of the Phase 1 and Phase 2 processes in three steps as follows;

³ Simpson Evidence- Para 8

- Step 1 – construct a spent compost storage pad with roof within 3 months of commencement of consent. Construct a Phase 1 filling hall (at the end of the existing Phase 1 bunkers) within 13 months of commencement of consent.
 - Step 2 – construct a third bunker as an addition to the Phase 1 filling hall. Construct a Phase 2 filling hall and encapsulate the conveyor. Together, these will ensure that all Phase 1 composting (including turning the compost and placement into different bunkers) is completely enclosed.⁴ This is expected to be completed within 19 months of commencement of consent. At the completion of Step 2, the applicant is seeking to increase compost production from 120 tonnes to 160 tonnes per week.
 - Step 3 – install a chicken manure hopper, bale breaker machine, bale conveyor with extraction and partial enclosure. This is expected to be completed within 30 months of commencement of consent. At the completion of Step 3, the applicant is seeking to increase compost production from 160 tonnes to 350 tonnes per week.
33. Appendix 2 shows schematic diagrams of the proposed upgraded facilities. We note that the applicant is seeking retrospective consent for the recycled water/ oxidation pond which is in place but some of the pump shed and pond infrastructure extend partly over an adjoining property. In addition, the pond does not meet the required minimum setback distance from a property boundary. It is proposed to address these matters through the current application process.

Status of the Applications

34. Under the Proposed Hastings District Plan which is to be treated as operative for this land use activity proposal, the site is located within the Plains Production Zone. Under that Zone the proposal to increase mushroom production and upgrade facilities is to be assessed overall as a discretionary activity.
35. Under the Hawkes Bay Regional Resource Management Plan the application for a discharge permit to discharge contaminants into air is a discretionary activity.

Legal Considerations

36. The legal framework for considering these applications is relatively straightforward. As a discretionary activity, s104 and s104B of the RMA requires us to consider:
- the actual and potential effects of the proposal (which in this case centres on odour effects);
 - any offset or compensation offered by the applicant for any adverse effects caused by the proposal;

⁴ NB: This air quality joint witness statement dated 1 August 2019 referred to an earlier revision of the proposal in which partial enclosure was proposed for the Phase 1 processing.

- what the relevant planning provisions say about this type of proposal; and
- any other relevant matters.

These are to be evaluated against the purpose and principles in Part 2 of the Act. In the case of the discharge permit application before HBRC, we are also obliged to have regard to the matters listed in s105.

Consideration of the Revised Proposal

37. The air quality experts who presented evidence to us in the first hearing were in common agreement that the best practice option for effectively controlling odour emissions on the site is to provide for the total enclosure of the composting operations. Those air quality experts were Ms Tracey Freeman, called by the applicant, Mr Andrew Curtis called by the HBRC, Ms Jenny Simpson called by HDC, Mr Duncan Backshall called by the Hawkes Bay District Health Board, Dr Terry Brady called by CDL Land New Zealand Ltd, a submitter that owns land immediately adjacent to the Te Mata mushroom site on Arataki Road.
38. Under its revised proposal the company is now seeking to provide for almost total enclosure of its composting operations. The exception is bale breaking and mixing which will be partially enclosed with extraction hoods.
39. Ms Freeman considers that at the completion of the upgrade work it is unlikely that any residual odours (from the composting operations) would be considered offensive or objectionable.⁵
40. By the time of the reconvened hearing in October the concerns expressed by the other remaining air quality experts, Dr Brady, Mr Backshall and Mr Jason Pene,⁶ had narrowed considerably. The focus was now on:
- the adequacy of proposed designed odour extraction and treatment systems; and
 - whether there should be any increase in compost production pending completion of all the upgrade work.
41. Dr Brady and Mr Backshall expressed concerns over the lack of design detail, the absence of which meant they had no certainty regarding the efficacy of proposed odour controls.

⁵ Supplementary evidence of TJ Freeman 17 September 2019, para 14.

⁶ We note that Ms Simpson (called by HDC) and Mr Curtis (called by HBRC) were unable to attend the reconvened hearing. Mr Pene attended on behalf of Ms Simpson. Mr Peter Stacey, available by phone on behalf of Mr Curtis was not called.

42. In this regard we agree with Dr Brady and Mr Backshall that the paucity of design information raises concerns over certainty. At the completion of the reconvened hearing we directed the planning experts for the various parties to confer and provide us with a set of draft conditions that specifically addressed a number of matters including specifying the best practicable option for managing odour capture and treatment, defining performance standards to ensure compliance with the best practicable option and to provide appropriate certification and peer review of design plans by experts approved by the HBRC. On balance, in considering the revised proposal and the proposed draft conditions, we are persuaded that Dr Brady and Mr Backshall's concerns can be addressed by suitably specific conditions of consent. These (conditions of consent) are discussed in more detail below.
43. With respect to the increase in production, the company is seeking an allowance under its consents to increase compost production from 120 tonnes/week to 160 tonnes/week after completion of the step 2 upgrade work. (Step 2 is the total enclosure of the Phase 1 and Phase 2 processes). To support this, the company proposes that any increase in production would be subject to a validation report from an appropriately qualified expert that the completed step 2 upgrade work meets design and operational standards. The reason for the increase in production is to help defray upgrade costs.
44. In support of its request for an increase in production Counsel for the company, Ms Blomfield points to the evidence of Mr Pene and Mr Curtis. Mr Pene and Mr Curtis say they could support an increase in compost production after completion of the step 2 upgrade work so long as:
- there was a rigorous validation process in place as to the efficacy of the odour control systems; and
 - there was no increase in odour at the completion of step 2 above an established baseline operating at 120 tonnes/week.

Ms Blomfield also submits that the air quality experts are in agreement that this increase in production will not represent a tipping point because the relatively small increase in odour duration from the bale breaking would not alter the odour to the point where it becomes offensive or objectionable.⁷

45. The s42A Reporting Officer Ms Kydd-Smith for the HDC, the planning experts called by CDL Mr Holder and Mr Brown called by HDC as a submitter all take a more conservative view and consider there should be no increase in production until all the upgrade work has been completed to avoid the risk of further offensive odour occurrences. Ms Kydd- Smith also advised that she was concerned about potential for 'detectable adverse odour effects' from bale wetting and maturation which would continue to be undertaken outdoors.
46. Having considered closely the competing submissions and evidence on this issue, we are of the view that there are odour risks associated with an increase in production

⁷ Reply submissions 14 November, para 25.4, para 26.

after completion of the step 2 upgrade work and we remain uncertain if those risks can be mitigated and whether compliance can be achieved until validation has occurred. We are of the opinion that a conservative approach in this matter is required and is necessary in terms of minimising any likely offensive and objectionable odours beyond the boundary of the subject site.

47. In reaching our conclusion we have taken into account the opinions of the air quality experts where there are some differences and uncertainty in respect of potential odours arising from the bale-breaking activity. We note that both Mr Backshall and Dr Brady stated that they were not certain how significant bale break was (it was not quantified relative to other sources) and that it could cause offensive or objectionable odour.
48. The matter regarding whether a condition ought to be imposed requiring that there be no offensive or objectionable odour beyond the boundary of the site pending the completion of the work was highlighted by several of the planning witnesses such as Mr Drury, Mr Brown, Ms Kydd-Smith and Mr Barrett .
49. As to the offensive odour condition, the company is seeking a deferment of the condition until the step 2 work has been completed and then except on a Thursday when bale breaking takes place. The condition would take full effect after all the upgrade work had been completed plus 1 month to optimise commissioning. The company is concerned that until the upgrade work is fully operative it would still face an ongoing risk of the activity generating occasional odours which are offensive or objectionable beyond the boundary of the site. It says in those circumstances it could again face enforcement action and prosecution proceedings which would be a distraction to its efforts to provide upgraded facilities to better manage odour emissions on the site. Based on its history with the enforcement arm of the HBRC, the company has no confidence that Council would not prosecute for a breach of the offensive odour condition despite the company taking active steps to address odour problems. The company claims that an odour condition will potentially set the company up to fail.
50. We note the Ministry for the Environment good practice guidance recommended consent condition for managing offsite effects of odour is (MfE, 2016):⁸

There shall be no noxious, dangerous, offensive or objectionable odour to the extent that it causes an adverse effect at or beyond the boundary of the site.

We understand this condition, or minor variations thereof, has been standard in many air discharge permits around New Zealand for many years.

51. Having considered this issue, we are not persuaded the offensive odour conditions should be deferred for a number of reasons. It will take some 30 months before all the upgrade work is completed but in the meantime the community is entitled to expect the company to use its best endeavours in the way it continues its composting operations

⁸ Ministry for the Environment, (2016). *Good Practice Guide for Assessing and Managing Odour*. Wellington. November.

to avoid offensive odours from occurring. We note the evidence of Mr Brown⁹ where he observes that it would be inappropriate for the application to be granted with a consent condition (3), that is weaker than the one it would replace as it would contemplate and authorise the emission of offensive or objectionable odour off-site. He further noted that any determination of whether an odour is offensive and objectionable would be undertaken in accordance with the FIDOL factors which enable some discretion and judgment to be exercised by the HBRC.

52. Case law on odour, notably *Waikato Environmental Protection Society vs New Zealand Mushrooms*,¹⁰ clearly defines offensive or objectionable odour as a significant adverse effect. Therefore, we agree with Mr Brown that it would be inappropriate to authorise offensive or objectionable odours offsite. The claim that such a condition sets the company up to fail, that it cannot meet such a condition, and will expose it to further prosecutions is in our view over stating the situation. HBRC has a discretion whether to prosecute or take enforcement action for non-compliance with a condition of consent. We would expect in this case so long as the company was taking all practical steps such as complying with an approved Odour Management Plan that provides for interim measures to be implemented prior to the upgrades being completed the council could exercise its discretion and not prosecute if offensive odours periodically occurred. In other words, we hope a degree of tolerance would be exercised in those circumstances. In our view an offensive odour condition having immediate effect provides certainty for everyone and places an obligation on the consent holder to exercise the consent diligently. Such a condition gives the community some assurance as noted by Mr Casey, that there is an option to assist with compliance and ultimately enforcement. The responsibility is with the applicant to meet the consent obligations.

Other Matters

53. Concerns regarding the potential health impacts of discharge to air were raised in submissions. The Hawkes Bay District Health Board (DHB) gave us evidence on the potential risks of pathogenic bioaerosols.
54. Dr Jones¹¹ outlined that the DHB concerns were based on a theoretical potential for pathogens such as *Legionella* bacteria or *Aspergillus fumigatus* to be transmitted from compost by air. He had conducted a study on the rate of respiratory illness related hospital admissions in Brookvale compared with other parts of Havelock North for the years 2013 - 2018. This showed the rates in Brookvale were lower than other areas in all years except one (2016), although the numbers were too small to be statistically significant.
55. Dr Jones also presented a bioaerosol risk assessment prepared by ESR microbiologist Dave Harte.¹² This assessment noted that studies had measured concentrations of either *Aspergillus fumigatus* or total bacteria above the UK Environment Agency's

⁹ Brown Evidence Summary- August 2019-Paras 6-10

¹⁰ W 060/2007

¹¹ Jones Evidence (DHB)- Pages 2 & 3

¹² Bioaerosol Risk assessment- Harte- ESR Ltd

recommended threshold levels beyond 250 m from the composting site. Mr Hart, who has 20 years' experience managing and working in the Legionella Reference Laboratory and the Environmental Microbiology Laboratory at ESR noted there have been no incidents of legionellosis acquired by this exposure route identified in New Zealand to date. Both Dr Jones and Mr Harte concluded there was no increased risk of legionellosis to residents beyond 250 metres of the composting facility and did not recommend additional bioaerosol study or monitoring.

56. We note the revised proposal, when complete, will physically enclose all composting processes except bale break and initial pile formation, and this will considerably reduce the risk for bioaerosol generation. In light of Dr Jones and Mr Harte's recommendations we are comfortable that additional bioaerosol monitoring is not required. Should new information change this conclusion, the review clause condition provides an opportunity for council to amend this.
57. Concerns were raised about potential effects on water quality arising from the proposal. Mr Barrett¹³ advised that any discharges to land are authorised by a separate consent and is not part of our consideration of the proposal. While it was noted that a contamination event occurred in proximity to the subject site in August 2106, the event was not attributed to the current activity. We have considered Ms Kydd-Smith's¹⁴ commentary in respect of any effects on public drinking water and have imposed conditions regarding the preparation of a site management plan for the purpose of reducing or avoiding the potential for contaminants to be accidentally released onto land or into water.
58. We also were advised that any increase in compost production was unlikely to lead to a need to change or increase the existing waste- water consent.
59. In respect of potential stormwater runoff, the applicant had confirmed that there would be management of the spent compost through deposition on a concrete pad which is to be covered. Conditions of consent have been imposed to address this matter.
60. In regard to traffic generation, Ms Kydd-Smith's¹⁵ advice was that the proposal would not impact on the operational safety or capacity of the local road network. She also noted that given the size of the site, there were no issues in the provision of additional parking to comply with the relevant DP requirements.
61. Concerns had been raised by the HDC submission about the need to upgrade the existing vehicle entrance to the subject site, and this has been addressed through the imposition of appropriate conditions of consent.
62. It is considered that any adverse noise effects will be no more than minor. An acoustic report had been provided with the application and it predicted that any noise levels would comply with the relevant DP noise provisions at all times.

¹³ S42A Report- Barrett- Paras 158-162

¹⁴ S42A Report Kydd-Smith-Section 8.2.5

¹⁵ S42A Report- Kydd-Smith- Section 8.2.1

63. Having regard to existing character and amenity values, we conclude that the visual effects will generally be consistent with the current nature and character of the existing development on the subject site. There will be an increase in built area but a commensurate decrease in the hard stand area.
64. We further noted that the subject site is located below a terrace that runs adjacent to the western boundary of the property and is currently screened by tress. Due to its location it's not visible from the residential area. It is not considered that there will be any significant visual impact arising from the proposal when viewed from Brookvale road.
65. The subject site is located within the Plains Production Zone and as previously noted, part of the site is located within Scheduled Activities Site S37 which contains most of the site's existing buildings. The scheduling recognises long standing activities that provide for the social wellbeing of the community. In addition, the part of the site not scheduled also has as a permitted activity, intensive rural production activities.
66. Having regard to these matters, we consider that any adverse effects of the proposal on the Plains soils resource in respect of the proposal are less than minor, given the existing DP provisions in respect of the subject site.
67. We note that there are positive effects arising from the proposal and these include the contribution of the existing and proposed activities toward the Hawkes Bay economy, existing and increased employment opportunities for the local community and associated economic multiplier impacts. These effects were noted in many submissions and by several submitters who appeared at the hearing.

Conditions of Consent

68. As a result of the planners conferencing, we have now been presented with a suite of draft conditions that provide for the following:
 - requiring design plans to be certified prior to the commencement of any upgrades;
 - detailing design and performance requirements for the enclosed buildings and ventilation systems;
 - requiring as built certification within 3 months of completion of all the upgrades;
 - enabling the HBRC to initiate an independent peer review process if there is non-compliance with a no offensive odour condition;
 - an independent peer review condition; and

- a requirement for an Odour Management Plan to be provided within 3 months of the commencement of the consent.
69. We have accepted the majority of these conditions but made some amendments, notably:
- we agreed with the applicant's request for an additional 3 months (6 months total) for the completion of the Odour Management Plan. We consider this likely to be necessary to complete design of the biofilters and extraction plant and equipment;
 - we have amended the odour monitoring condition to provide for less frequent monitoring in the event that there is no offensive or objectionable odour offsite. We consider this approach to be a balance between the desire of the community for increased vigilance regarding compliance, and the applicant's concerns about the condition of consent being too onerous; and
 - we have amended the condition for independent peer review to require mediation between the parties in the event that agreement cannot be reached on actual and reasonable costs.
70. We further consider the provision of information to the community to be an integral part of how the company should operate. We have therefore, imposed a condition requiring the establishment of a community liaison group. While the applicant holds responsibility for ensuring regular meetings are held, we are of the view that HBRC should assist with facilitating administration of the group (e.g. provision of meeting rooms). If necessary, the Council could impose charges on the consent holder to recover any costs incurred.
71. It is our view that the conditions we have outlined will ensure the enclosure of the composting operations will achieve an outcome where there is likely to be no offensive or objectionable odour beyond the boundary of the site which is the primary objective in this case.

Planning Documents

72. The s42A reporting officers provided a comprehensive analysis of the relevant regional and district planning objectives and policies. It is not intended to repeat that analysis in this decision but to distil the conclusions reached.
73. Mr Barrett discussed the Hawkes Bay Regional Policy Statement which outlines the need to remedy or mitigate off- site impacts or nuisance effects resulting from conflicting land-uses.¹⁶ He also identified that the Best Practicable Option (BPO) and how this could be applied.

¹⁶ S42A Report- Barrett- Paras 192-198

74. He further discusses the Hawkes Bay Regional Resource Management Plan (RRMP)¹⁷ where the relevant policies and objectives have a focus on air quality matters and that air quality is not detrimental to human health, and that Policy 69 requires the management of effects of activities affecting air quality to ensure that there is no offensive or objectionable odour beyond the boundary of the subject site.
75. The regional instruments provide for a clear objective and policy framework that provides for existing activities but that requires that they manage any odour effects to ensure that any offensive or objectionable odour effects are avoided beyond the boundary of the subject site. Given the suite of regional policy and objectives, it is our view they are in place to ensure that offensive and objectionable odours are not imposed on the community.
76. In respect of the Hastings Proposed District Plan (PDP), Ms Kydd-Smith¹⁸ also provided a comprehensive analysis of the relevant policies and objectives. She concluded that the DP provides for the continued operation of some long- established activities that have a proven economic benefit to the community and the subject activity is listed in the relevant DP schedule. However, it is not an unfettered right to operate, and the DP requires such activities to avoid, remedy or mitigate any adverse effects, provide a level of amenity which protects health and safety of people, and minimises adverse effects as far as practicable.
77. She concluded that that proposal would be able to avoid, remedy or mitigate any effects apart from odour, but noted that while the proposal was not entirely consistent with some objectives and policies, it was taking a balanced view, not contrary to the objectives and policies of the PDP.
78. Having considered the relevant objectives and policies of the regional and district planning documents, we are of the view that that the proposal is generally supported, but that any effects need to be avoided, remedied or mitigated. The primary effects arising in respect of the proposal is odour, and the need for no offensive or objectionable odour to occur beyond the boundaries of the subject site. The policies and objectives are very clear on this matter.
79. Notwithstanding the applicant's concerns regarding that there may be potential for such odours to occur pending completion of the upgrade work, we are of the opinion that it is appropriate for a condition requiring no offensive or objectionable odours beyond the boundary of the subject site to be imposed. Also, we have taken a conservative approach in respect of odour and do not believe it is appropriate for any increases in compost production to occur until all of Steps 1-3 are undertaken in respect of implementation of the amended proposal.
80. The condition referred to above and not permitting any production increases until the implementation of the proposed mitigation then allows us to conclude that any odour

¹⁷ S42A Report- Barrett- Paras 215-217

¹⁸ S42A Report- Kydd-Smith Section 10.6

effects can be adequately managed, avoided or mitigated as envisaged by the regional and district planning policy and objective frameworks.

81. On balance and having considered the planning evidence presented to us and taking into account the suite of conditions we intend to impose we are satisfied there is nothing in the relevant planning documents that would persuade us to refuse consents for this proposal. The RPS, the Regional Resource Management Plan and the Proposed District Plan recognise the use and development of rural resources so long as off- site impacts can be mitigated in order to retain the amenity values of the area. We believe this proposal is likely to achieve that outcome if it is designed, built and operated in accordance with the amended proposal and the conditions of consent imposed.

Part 2 Matters

82. In regard to s5, the proposal is consistent with the sustainable management purpose of the Act as it will provide for the social and economic wellbeing of the applicant and community through increased business opportunities, employment and additional intensive food production. Any effects on the Plains soils resource and other adverse effects are considered to be no more than minor. While potential adverse effects in respect of offensive or objectionable odours occurring beyond the subject site, a range of conditions have been imposed to address this potential situation.
83. No matters of national importance were highlighted to us for consideration.
84. It is considered that the proposal will be an efficient use of natural and physical resources through expansion of the facility on the existing site. However, there is as previously noted potential for an adverse effect on the amenity values of the area through odour effects. It is considered that the amended proposal together with the conditions of consent will address the potential impact on amenity values and quality of the environment. This will require sustained effort on behalf of the consent holder to ensure that such effects are and continue to be no more than minor.
85. No matters relating to the Principles of the Treaty of Waitangi were outlined that we needed to take account of.
86. We consider that the purpose of the Act can be achieved, but on the basis that there are no offensive or objectionable odours occurring beyond the boundaries of the site.

Other Relevant Matters and S105 of the RMA

87. There are no other relevant matters we should consider in deciding these applications except to briefly refer to s105. In considering the discharge permit application s105 requires us to have regard to the nature of the discharge and the sensitivity of the receiving environment to adverse effects, the applicant's reasons for the proposed choice and whether there are alternative methods of discharge.

88. Consideration of s105 brings into question whether the applicant could complete the proposed upgrade work over a shorter time period to reduce the risk of offensive odours occurring. Having heard Mr Whittaker explain the reasons for the extended work programme and the time needed to design and construct the facilities, we are satisfied the time period is reasonable in the circumstances.

Overall Assessment

89. In granting consents for the expansion of the business and to upgrade the facilities we acknowledge the company's intention to adopt the best practicable option recommended by the air quality experts of enclosing its composting operations to better control and manage odour emissions on site. We are confident that with our proposed conditions of consent the upgrade of facilities once completed will be designed and operated in a way that it is unlikely offensive odours will be a source of nuisance in the area unless the company fails to comply with its operating standards. In those circumstances it may face prosecution and be required to take further remedial action.
90. Until the upgraded facilities are completed over a period of 30 months, the company needs to exercise care to ensure offensive odour emissions are minimised. Overall, we consider allowing the company to increase production within upgraded facilities designed to capture odour emissions once all such upgrades are completed, meet the Acts purpose which is to provide for the sustainable management of natural and physical resources.

Decisions

Our formal decisions with conditions are attached as follows, to this decision.

Attachment 1 - Hawkes Regional Council: Discharge Permit

Attachment 2 – Hastings District Council: Land-use Consent

Reasons for Granting Consents

The reasons for granting consent to the applications are outlined in the decision report but can be summarised as follows;

- a. That the proposal is in general accordance with the matters outlined in Part 2 of the Act and will contribute to the sustainable management of natural and physical resources. It provides for the economic and social well-being of the applicant and the wider community through the continued provision of a business activity and provision of employment, and intensive food production.
- b. While there are potential effects particularly in respect of the discharge of odour, the conditions of consent are considered appropriate to address such matters and

ensuring that no offensive or objectionable odours occur beyond the boundaries of the subject site.

- c. That the proposal on balance, with the imposition of conditions particularly in relation to odour discharges, generally accords with the objectives and policies of the Hawkes Bay Regional Policy Statement and Regional Resource Management Plan and the Proposed Hastings District Plan. There are potential adverse effects in respect of odour discharge which can be mitigated as required by the objectives and policies of the abovementioned plans.
- d. The proposal is generally consistent with the purpose and principles of the Resource Management Act 1991.



Bill Wasley
Chair



Louise Wickham



Paul Cooney

19 December 2019

Appendix 1 - Appearances and /or Witnesses who Provided Evidence

Applicant
Michael Whittaker- Applicant/Owner
Mark Georgeson- Traffic: Appearance waived
Fadia Sami- Noise: Appearance waived
Tracy Freeman- Air Quality
Bryan Holyoake- Engineering
Cameron Drury- Planning
Lara Blomfield- Legal Counsel

Submitters
<p>Hastings District Council Asher Davidson & Matt Casey Legal Counsel Phillip Brown - Planning Jenny Simpson - Air Quality Jason Pene- Air Quality</p>
Darrel & June Hall
Paul Davey
John Scott
<p>Hawkes Bay District Health Board Dr Nicholas Jones - Medical Officer of Health Duncan Backshall – Air Quality David Harte - Microbiologist</p>
Paul Frost

CDL Land NZ Ltd

Matthew Lawson – Legal Counsel

Matt Holder - Planning

Terry Brady - Odour

Jason Adams - CDL

And on behalf of:

Allan Peter & Janet Karen Heeney

David & Sue Eddy

Caron & Carl Wezel

Mary and Rob Layton

**Hawkes Bay Regional Council and Hastings District
Council**

Paul Barrett- HBRC Reporting Officer

Andrew Curtis - Air Quality

Peter Stacey - Air Quality

Murray Arnold - HDC Environmental Consents Manager

Janeen Kydd-Smith - Consultant Planner - HDC

Appendix 2 – Schematic diagrams of proposed upgrades



