

**BEFORE AN INDEPENDENT HEARING PANEL
FOR THE TARANAKI REGIONAL COUNCIL**

IN THE MATTER of the Resource Management Act 1991 (**RMA**)

AND

IN THE MATTER of a resource consent application by Airport Farm Trustee Limited

LEGAL SUBMISSIONS FOR TARANAKI REGIONAL COUNCIL

11 March 2022

 **Simpson Grierson**
Barristers & Solicitors

M G Conway
Telephone: +64-4-499 4599
Email: matt.conway@simpsongrierson.com
PO Box 2402
Wellington

1. INTRODUCTION

1.1 These legal submissions are made on behalf of Taranaki Regional Council (**TRC**) and address the following questions that have been asked by the Hearing Panel:

- (a) Adopting a "*real world*" view, it is "*reasonably foreseeable*" that New Plymouth District Council (**NPDC**) will zone area Q3E as residential A within an eight-year consent period?
- (b) Should "*reasonably foreseeable*" be regarded as more likely than not?

1.2 These submissions also comment on:

- (a) the proposed consent conditions, as offered by the applicant on 25 February 2022 and subsequently commented on by submitters on 4 March 2022; and
- (b) the supplementary evidence of Duncan Backshall and Donovan Van Kekem.

2. HEARING PANEL QUESTIONS

What is a "*real world*" view?

2.1 Section 5 of the legal submissions for TRC dated 16 February 2022 traverses the leading case law on the "*real world*" approach, particularly in the context of planning provisions which signal future urbanisation of an area.

2.2 Further to that discussion, we have identified case law which discusses the *Queenstown Lakes District Council v Hawthorn Estate Ltd* and *Queenstown Central Limited v Queenstown Lakes District Council* decisions, and may be of assistance to the Hearing Panel.

2.3 *Speargrass Holdings Ltd v FPM and DMJ Brandenburg (As trustees of the Flax Trust)* identifies *Queenstown Central* as an example of "a "*real world*" approach to analysis, without artificial assumptions creating an artificial future environment."¹

¹ *Speargrass Holdings Ltd v FPM and DMJ Brandenburg (As trustees of the Flax Trust)* [2021] NZHC 3391, at [107]. See also *Speargrass Holdings Ltd v Queenstown Lakes District Council* [2018] NZHC 1009, at [64].

2.4 In *Saddle Views Estate Ltd v Dunedin City Council*, the Environment Court questioned the approach in *Queenstown Central*, and placed weight on *Hawthorn*, noting it was higher authority:²

[18] As it happens the (rather vague) concept of a "real world" analysis was referred to by Fogarty J when considering the "environment" in *Queenstown Central Ltd v Queenstown Lakes District Council* (called *Pak 'N Save*). He wrote:

Section 104D ... calls for a "real world" approach to analysis, without artificial assumptions ... creating an artificial future environment. Read as a whole (the Court of Appeal decision in) *Hawthorn* endorses having regard to [an] objective ... and its policies.

Fogarty J actually went rather further than that. First, he recognised that the first threshold test "... is plainly intended to be applied without the obligation to have regard to either the operative district plan or proposed district plan". We respectfully agree. But then he continued:

In context, it may be appropriate, and was here, to recognise that there was a plan change in process implementing objective 6 and policies 6.1 and 6.2. [Emphasis added.]

We are uncertain about that because it both appears to conflict with earlier authorities and appears to trespass on questions of fact.

[19] Higher authority on the meaning of the "environment" is to be found in *Queenstown Lakes District Council v Hawthorn Estate Ltd* (shortened *Hawthorn*)...

[20] Recently, in *Far North District Council v Te Runanga-A-Iwi O Ngati Kahu*, the Court of Appeal stated:

In its plain meaning and in its context, we are satisfied that "the environment" necessarily imports a degree of futurity. [Emphasis added].

The cautious reference to a "degree of futurity" suggests that the Court of Appeal is anxious for consent authorities, when considering applications for resource consents, to avoid speculating too widely about the future environmental setting of each case.

[21] ... It is also relevant to this case... – since SVEL's witnesses gave evidence that the area is "in transition" – that in *Hawthorn* the Court of Appeal was contemplating environments where change is occurring rapidly. Cooper J wrote:

Difficulties might be encountered in areas that were undergoing significant change, or where such change was planned to occur. However, even those areas would have an applicable policy framework in the district plan that, together with

2 *Saddle Views Estate Ltd v Dunedin City Council* [2014] NZEnvC 243; citing *Queenstown Central Limited v Queenstown Lakes District Council* [2013] NZHC 815 (HC); *Queenstown Lakes District Council v Hawthorn Estate Ltd* [2006] NZRMA 424 (CA); and *Far North District Council v Te Runanga-A-Iwi O Ngati Kahu* [2013] NZCA 221, at [80].

the rules, would give considerable guidance as to the nature and intensity of future activities likely to be established on surrounding land.

Quite clearly the Court of Appeal contemplates having regard to operative or proposed and accepted objectives and policies. It does not refer to having regard to proposed but challenged objectives and policies when predicting the reasonably foreseeable environment.

2.5 The Court in *Saddle Views Estate* appears to have had particular concern with placing weight on a plan change that is still subject to challenge. It also cautioned against viewing one type of future activity "*as being the likely future environment*" where the objectives and policies contemplate different activities (e.g. both rural and rural-residential activities).³

2.6 We do not comment on whether it is "*reasonably foreseeable*" that this urbanisation will occur within an eight-year period, as this is a factual judgement that is best informed by NPDC commenting on its intended planning actions. However, some discussion of judicial commentary on "*reasonably foreseeable*" is provided below.

Should "*reasonably foreseeable*" be regarded as "*more likely than not*"?

2.7 On multiple occasions the Environment Court has, in the context of determining whether a resource consent will be implemented and therefore form part of the reasonably foreseeable future environment, used the test of whether it is "*more likely than not*" that the consent will be given effect to.⁴

2.8 This has been based on the comments in *Hawthorn* that a factual determination is required on whether "*consents are likely to be implemented*".⁵

2.9 We acknowledge that the question of whether a zoning change will occur is different from the question of whether a consent will be implemented. For example, a consent that has already been granted signals that there is a consent holder who took steps to secure the right to carry out the relevant activity, whereas a zoning change may or may not represent the will of the particular land owners.

3 *Saddle Views Estate Ltd v Dunedin City Council* [2014] NZEnvC 243, at [24].

4 *Te Runanga a Iwi O Ngati Kahu v Far North District Council* [2010] NZEnvC 372, (2010) 16 ELRNZ 259, at [98] to [100], and [111]; *Burgess v Selwyn District Council* [2014] NZEnvC 11, at [74]; and *Otway Oasis Soc Inc v Waikato Regional Council* [2020] NZEnvC 169, at [15].

5 *Queenstown Lakes District Council v Hawthorn Estate Ltd* [2006] NZRMA 424 (CA), at [75], [82] and [84].

2.10 In *Hawthorn* the Court of Appeal's overall concern was with prediction of "*the likely future state of the environment*" (emphasis added). To carry out this prediction in relation to potential future activities under a potential future zoning change requires a two step inquiry, involving consideration of the likelihood of the zoning change, followed by consideration of the likelihood that any permitted activities that would be enabled by such a plan change would in fact be carried out.

2.11 That is, an assessment would need to be made of the overall likelihood that:

- (a) the rezoning would occur; and then
- (b) the rezoning would be followed by the utilisation of the resulting permitted activity rules.

The likely timing of such steps would also require assessment.

2.12 Given the "*more likely than not*" test has been accepted by the Environment Court for determining whether unimplemented resource consents will be given effect to, there appears to be a reasonable basis to apply the same test to determining other elements of the likely future environment, including the carrying out of future permitted activities as foreshadowed by district plan objectives and policies.

2.13 Based on the Court of Appeal authority discussed in the passages of *Saddle Views Estate* quoted above, the likelihood of future activities under future zonings should be determined with reference to objectives and policies that are not subject to challenge, and without favouring one foreshadowed activity over others.

3. CONDITIONS OF CONSENT

Consent Duration

3.1 TRC acknowledges that the discussion above primarily goes to the issue of consent duration. Should activities that would be permitted as a result of a future rezoning be considered part of the future environment, and if the anticipated effects on such activities warrant cessation or scaling back of the poultry farm, the question arises as to whether consent should:

- (a) end when this rezoning is expected, or "*more likely than not*", to be operative; or

- (b) end when this rezoning is expected to be operative and to have been implemented through the taking up of the resulting permitted activity rights (including any consideration of whether infrastructure upgrades are a precursor to such implementation).

3.2 The TRC officers' section 42A report recommended 1 June 2038 as the expiry date.

3.3 The conditions offered by the applicant on 25 February seek to set alternative expiry dates, being the 2038 expiry recommended by the TRC officers or some earlier point triggered by a combination of operative zoning and the construction of infrastructure that would unlock the development potential of the surrounding area.

3.4 We submit that, in the interests of certainty, a fixed expiry date would be preferable to the construction of an expiry date in the alternative, and the TRC officers maintain their recommended expiry date as noted above. If the hearing panel concludes that the potential effects of the poultry farm warrant its cessation (or at least re-consenting) when the surrounding area is urbanised, TRC considers it would be reasonable to set that expiry date based on the approach set out in paragraph 3.1(b) above, because:

- (a) It can be expected that there will be some lag time in between rezoning becoming operative and new urban activities being established; reverse sensitivity effects would not arise instantly upon the rezoning becoming operative.
- (b) It would help to guard against the consent expiring in circumstances where the subject site and its surrounds had been rezoned but the necessary infrastructure for redeveloping the site and its surrounds does not exist. Such a situation could result in a stranded asset that no longer has consent to operate as a poultry farm, but cannot be redeveloped due to a lack of urban infrastructure.
- (c) It would provide the consent holder with a reasonable period of time to wind down operations from the date that the expected future rezoning is anticipated to become operative.

- (d) Enforcement action and the review condition would remain available as means of addressing the effects of the consented activity if required.

Special Conditions

3.5 In relation to the Special Conditions (**SCs**) of consent, as commented on by the applicant and submitters, the TRC officers consider that:

- (a) a general accordance condition should be used to provide certainty as to what is consented but that this should provide reasonable scope for changes to daily operations, as provided for in SC 5;
- (b) SC 7 should provide for assessing of the efficacy of ridgeline fans six months after their installation, as the proposed misting devices are experimental;
- (c) SC 14 should provide adequate protection from malicious or vexatious anonymous complaints, and to provide its contact number for complaints as an advice note;
- (d) SC 15 should provide for certification of an odour scouting programme "*as suitable to meet its purpose*"; and
- (e) the production of the SC 18 report should not be at TRC's discretion, and that SC 18(a) is useful for clarity and completeness.

3.6 The TRC officers agree with:

- (a) SC 19 providing for total suspended particles (TSP) monitoring;
- (b) not using 1-hour averages for SC 21(vii)(a)(i); and
- (c) including a consent condition requiring a weather station, with minimum parameters.

3.7 A marked up version of the consent conditions is provided as **Appendix A**.

4. SUPPLEMENTARY EVIDENCE

- 4.1** TRC notes that the modelling of Jason Pene commented on in the supplementary evidence of Duncan Backshall and Donovan Van Kekem is outside the area of expertise of Gary Bedford who has provided scientific advice for TRC.
- 4.2** TRC wishes to record that its assessment of the application as represented by the officers' report relies on rigorous real world monitoring of actual effects, not on modelling, which is of necessity hypothetical and approximate, and cannot fully represent the real world experiences. This should not be taken as a comment on the robustness of the modelling that has been carried out in the present situation; TRC does not express a view on that for the reason noted in the paragraph above.
- 4.3** Accordingly, while modelling is an additional tool that may provide a further point of reference, if any uncertainty was to be identified in the modelling, that would not affect or undermine the TRC officers' recommendation.

M G Conway

Counsel for Taranaki Regional Council

APPENDIX A

Airport Farm - Conditions of consent

Key

Officer's Report proposed conditions – 24 January 2022

Applicant's proposed conditions – 15 February 2022

Applicants proposed changes 25 February 2022 (including conditions offered in response to Commissioners queries/indications in respect of dust and odour scouting)

Submitters proposed amendments and comments 02 March 2022. Changes shown underlined or in strikethrough

General conditions

a. The consent holder shall pay to the Taranaki Regional Council all the administration, monitoring and supervision costs of this consent, fixed in accordance with section 36 of the Resource Management Act, 1991.

b. Upon commencement of this resource consent pursuant to section 116 Resource Management Act 1991, the consent holder will surrender its existing air discharge permit (RC 5262-2).

c. This resource consent expires on 1 June 2038; or at a time after 1 June 2032 when the property has an operative residential or commercial rezoning in the New Plymouth District Plan, whichever occurs first, and there are no major structural impediments (i.e. infrastructure upgrades) to developing the property in accordance with those zoning requirements (if this date is earlier than 1 June 2038).

Special Conditions

1. This consent authorises emissions to air from up to four poultry sheds and associated free-range areas located and configured generally as shown in the application for this consent.

2. The total area of the four sheds used for intensively housing poultry shall not exceed 4,068 square metres, and each shed shall have an associated free-range area that is no less than 1.5 times equal to the shed area.

3. The stocking intensity of poultry in any shed shall not exceed 15 birds per square metre at any time.

4. That at all times the consent holder shall adopt the best practicable option (as defined in section 2 of the Resource Management Act 1991) to prevent or minimise any actual or likely adverse effect on the environment associated with the discharge of contaminants into the air from the site.

5. That prior to undertaking any alterations to the poultry unit's processes, operations, equipment or layout, as specified in the application for this consent and subsequent information provided to the Taranaki Regional Council and taken into account in assessing the application, or any subsequent application to change consent conditions, which may significantly change the nature or quantity of contaminants emitted from the site, the consent holder shall consult with the Chief Executive, Taranaki Regional Council, and shall obtain any necessary approvals under the Resource Management Act 1991 and its amendments.

6. The consent holder shall minimise the emissions and impacts of contaminants discharged into air from the site by installation and implementation of:

- i) process equipment;
- ii) process control equipment and emission control equipment;

Commented [CT1]: Recommend including a general accordance condition to provide certainty as to the nature of the consented activity. The absence of a general accordance condition on the existing consent led to conjecture over a number of matters at the hearing.

Commented [SG2R1]: TRC officers agree with this. They want to make sure that there is enough scope within the wording for changes to be made easily for daily operations. Does SC 5 suffice for this purpose?

Commented [CT3]: Amended wording provides more certainty

Commented [SG4R3]: TRC officers' recommendation is for a set date only, for the reasons set out in the accompanying legal submissions.

If the expiry date is expressed in the alternative as is proposed here, TRC officers recommend keeping the part about infrastructure in as it makes it clear that TRC is trying to avoid creating stranded assets - where the consent holder is unable to redevelop the site for other uses because of a lack of Council infrastructure

Commented [DVK5]: SPCA blue tick requires 1.5 times the shed area for ranging area. From discussions with Mr Whiting it is my understanding that the ranging area was going to be 1.5x.

Commented [SG6R5]: TRC officers understood that Mr Whiting was going to achieve the intent of the blue tick requirements by reducing bird stocking intensity rather than relying upon floor/land area. Therefore, they are uncertain as to whether this is necessary, particularly as the Council's role does not include enforcing Blue Tick requirements.

iii) supervision and operation management;

iv) management of timing of litter removal, to those meteorological conditions least likely to cause odour to neighbours;

v) the proper and effective operation, supervision, calibration, maintenance and control of all equipment and processes; and

vi) the proper care of all poultry on the site in terms of litter management, bird care, and diet; as described in the application or by subsequent improvement.

7. In particular, the applicant consent holder shall install-

i) 3 roof ridgeline exhaust fans on each shed by 1 March 2022;

ii) misting devices on ~~each exhaust fan by 1 December 2021 for existing fans and ofn the new ridgeline fans~~ on each shed by 1 March 2022;

iii) hot water indirect shed heaters in ~~and shall remove gas-fired heaters from~~ each shed by 1 March 2022;

iv) devices to monitor the atmospheric conditions inside each shed, including but not limited to carbon dioxide, temperature, humidity and ammonia concentrations, and shall retain monitoring records for a period of three months beyond the end of each broiler rearing cycle, by 1 March 2022.

8. The exit ports for the roof ridgeline fans shall be located at a minimum height of 7.0 metres above ground level, and the roofline fans on shed 3 shall be located at a minimum distance of 100 metres from the dwelling house at 62 Airport Drive.

9. The consent holder shall maintain a shelterbelt on the property's boundaries. The shelterbelt shall be in the form of a dense row of trees, which reach a height of at least ~~four~~ 4.0 metres; or a windbreak to a height of 3.0 metres on the northern and southern boundaries in the absence of trees.

10. Within six months following the initial exercise of this consent and thereafter, natural ground cover shall be maintained over 70%, at a minimum, of the range area of each shed.

11. The consent holder shall attend a Neighbourhood Liaison Group (NLG), to be convened and chaired by the Taranaki Regional Council, with meetings to be scheduled ~~at least~~ every six months or as often as is considered appropriate or necessary by the Taranaki Regional Council until 1 December 2024 ~~or as is considered appropriate or necessary~~. All neighbours within a 300m radius of the site will be invited to attend, however interested parties beyond the radius may also attend with prior approval from the Consent Holder or Taranaki Regional Council.

12. The consent holder shall provide to the Taranaki Regional Council notification of a provisional schedule of bird capture and litter removal, at least 24 hours prior to the first bird capture at the end of each rearing cycle. Notification shall include the consent number, a brief description of the work, and the intended commencement date. Unless the Chief Executive advises that an alternative method is required this notice shall be served by completing and submitting the 'Notification of work' form on the Council's website (<http://bit.ly/TRCWorkNotificationForm>).

Odour & Dust Conditions

13. The discharge authorised by this consent shall not give rise to an odour or dust discharge that in the opinion of at least one Compliance Officer of the Taranaki Regional Council as determined in accordance with Council's standard field odour methodology is noxious,

Commented [DVK7]: Is this requirement now redundant, as we are beyond December?

Commented [DB8]: This may be of value on the side fans, but I am unsure of how effective these will be on the vertical fans. There may be negative effects, such as reducing plume buoyancy by cooling the exhaust air.

Commented [SG9R8]: The misters on these fans are experimental, so TRC officers recommend adding "and shall assess the efficacy of misters on the ridgeline roof extraction fans by 1 September 2022". This will give time to undertake field temperature and air flow velocity rate measurements, look at whether there is moisture deposition back in to the sheds, and do some modelling.

Commented [CT10]: I'd recommend this is retained.

Commented [DVK11]: I think it would be appropriate to define who can attend these meetings. I've made a suggestion of wording.

Commented [CT12]: This condition should outline what the objective/purpose of the NLG is e.g. a forum for relaying community concerns about the operation of the farm, developing acceptable means of addressing and managing these concerns and reviewing the implementation and effectiveness of these measures.

I'd also recommend that the NLG runs for a longer period or has the flexibility to do so if it is considered necessary.

dangerous, offensive or objectionable at any location beyond the boundary of the property. The boundaries of the property are as shown in the application report 'Airport Drive Free Range Poultry Farm Odour Assessment, June 2021', Tonkin and Taylor.

14. The consent holder shall document any ~~allegations~~ ~~complaints~~ of offensive odour or dust notified to brought to it by neighbours at any time after the issue of this consent, shall provide details of the allegation to Taranaki Regional Council as soon as possible and within 24 hours, and shall retain the documentation for the duration of the consent, and shall make the record available upon request to (i) the informant-complainant, and (ii) the Taranaki Regional Council. In order to be documented, any ~~allegation~~ ~~complaint~~ made must provide the name of the complainant (if provided) together with the date and the location, at which the alleged event occurred. Unless the Chief Executive advises that an alternative method is required this notice shall be served by completing and submitting the 'Notification of work' form on the Council's website (<http://bit.ly/TRCWorkNotificationForm>).

Advice Note: It is expected that the Taranaki Regional Council would be the initial contact point (0800 736 222) for any complaints/allegations regarding the operation of the site. The consent holder could be notified within the same complaint/allegation.

15. Should the If requested by Taranaki Regional Council, determine through following its own investigations that an into an odour allegation that could have the potential to cause a breach of condition 13, it may require the consent holder to shall prepare and implement an independent odour scouting program with the objective of determining whether it is likely or not there is a chronic or acute odour effect beyond the boundary.

a) The odour scouting programme shall be developed by an independent air quality expert and certified as suitable to meet its purpose by the Taranaki Regional Council and provided to the NLG for their information;

b) The independent air quality expert shall provide the necessary training to independent people who have been selected to undertake observations;

c) Odour scouting shall take place over a minimum of two bird rearing cycles;

d) Odour scouting must be undertaken at a frequency that is representative of the entire cycle including specific events during the cycle such as bird catching and shed clean out.

Advice Note: It is anticipated that the odour scouting will be able to occur on adjoining/adjacent properties, otherwise all odour scouting will take place on the site boundary and publicly accessible areas.

16. The results of the odour scouting program set out in condition 15 shall be provided to the Taranaki Regional Council for certification and to the NLG for their information within one month of the completion of the certified odour scouting programme.

17. In the event that the results of the odour scouting conclude that there is the potential for a breach of condition 13 for odour the consent holder shall, as soon as practicable and no later than two months after providing the odour scouting results to the Taranaki Regional Council and NLG (as required by condition 16), provide a programme of additional measures to be implemented to reduce odour emissions to ensure compliance with the conditions of consent.

18. Within three months of implementing mitigation measures in condition 17 the consent holder shall if required by the Taranaki Regional Council test the efficacy of those mitigation measures by producing a report to the Taranaki Regional Council showing one of the following:

Commented [DB13]: Suggest the use of complaint rather than allegation in this and subsequent conditions.

Commented [DVK14]: In my experience some complainants wish to remain anonymous as they may not want their personal details to be listed. I suggest adding "where available" or "where provided".

Commented [SG15R14]: TRC officers are concerned that adding these may result in complainants using anonymity to make malicious or vexatious complaints, and want to protect the consent holder from that.

Commented [SG16]: TRC officers recommend including the phone number to alert the consent holder that the notification process is for them to action (rather than complainants).

Commented [DVK17]: I am happy with this condition as proposed and consider that it is practical and meets the intention of what was requested by the Commissioners.

Commented [DB18R17]: Agreed.

Commented [CT19]: Condition needs to place an obligation on the consent holder rather than the regulator.

Commented [CT20]: Certified against what or that it achieves what?

Commented [SG21R20]: TRC officers have added "as suitable to meet its purposes"

Commented [CT22]: Something missing at the end of this condition?

Commented [CT23]: Certified against what or that it achieves what?

Commented [DB24]: Suggest deleting (a) as the same method should be used to assess the effectiveness of the mitigation measures.

Commented [SG25R24]: TRC officers consider it could still be useful to have (a) for clarity and completeness.

Commented [CT26]: If there has been evidence of a breach of consent then this report should be produced rather than be at the discretion of the TRC

Commented [SG27R26]: TRC officers agree.

a. evidence of there being no further complaints in regard odour being offensive or objectionable beyond the boundary; or

ba. the results of further odour scouting over the duration of 2 bird rearing cycles conducted with the mitigation measures in place.

~~19. Should the Taranaki Regional Council determine through its own investigations that a dust allegation could have the potential to cause a breach of condition 13 it may direct the Consent Holder to undertake real-time PM₁₀ monitoring to demonstrate compliance within the maximum threshold value of a PM₁₀ concentration of ≥ 150 micrograms per cubic metre, as a rolling 1-hour average updated every ten minutes.~~

Commented [DB28]: PM10 monitoring may not be the most suitable method for determining whether there are nuisance effects from dust emissions. An alternative TSP condition is suggested below.

Commented [SG29R28]: TRC officers agree.

~~19. In the event of a dust complaint (from activities within the property), and the complaint has been upheld by Council, an instrumental monitoring plan for Total Suspended Particulates shall be prepared by the consent holder if requested by the Taranaki Regional Council. The purpose of the monitoring is to provide the consent holder with real-time data to assist with the management and minimisation of any off-site dust effects. The monitoring plan shall be submitted to the Taranaki Regional Council for certification prior to implementation and within two months of the request by Council. The Taranaki Regional Council will certify whether the location and methodology of the proposed monitoring will be likely to achieve the purpose of the monitoring.~~

~~10. The discharges authorised by this consent shall not give rise to suspended or deposited dust at or beyond the boundary of the site that, in the opinion of at least one Compliance Officer of the Taranaki Regional Council, is offensive or objectionable. For the purpose of this condition, discharges in excess of the following limits, beyond the property boundaries, are deemed to be offensive or objectionable:~~

~~i. dust deposition rate 0.13 g/m²/day; and/or~~

~~ii. suspended dust level 5 mg/m³ as a 1-hour average.~~

~~ensuring that the conditions are adequate to deal with any adverse effects on the environment arising from the exercise of this resource consent, which were either not foreseen at the time the application was considered or which it was not appropriate to deal with at the time.~~

Air Quality Management Plan Conditions

~~20. Within three months following the initial exercise of this consent, the Consent Holder shall provide the Taranaki Regional Council with an Air Quality Management Plan ("Management Plan") for the site certification that the Management Plan meets the objective outlined in condition 21.~~

~~The Consent Holder shall provide the Taranaki Regional Council with written notice of any subsequent material revisions or amendments to the Management Plan. At a minimum the Management Plan shall be reviewed by the Consent Holder every five years.~~

~~21. The Air Quality Management Plan shall have the purpose of The purpose of the Management Plan shall be to documenting the measures and procedures that will be implemented, with the objective of minimising the potential of adverse air quality effects beyond the boundary and to achieve compliance with conditions of this consent and shall include, but not be limited to the following matters:~~

(i) ~~Contact details and responsibilities of key personnel who are responsible for implementing the Management Plan.~~

- (ii) General odour and dust management procedures for the site;
- (iii) Identify potential sources of odour, dust and other air contaminants that may be emitted from the operation;
- (iv) Measures to be implemented to avoid, remedy or mitigate adverse effects of emissions from these sources;
- (v) Details of instrumental monitoring of shed conditions, including parameters to be measured, alert levels and response actions for alerts;
- (vi) The provision of contact details to neighbours for lodging complaints or feedback;
- (vii) Procedures to minimise dust and odour emissions during litter load out including but not limited to:
 - a. Clean out will not take place at times where the following wind conditions are forecast to occur in the area (unless operational requirements such as bird placement becomes necessary):
 - i. Wind from directions between 10° and 235° (as a 1-hour average); [or alternatively if predictions are in cardinal directions rather than in degrees "Wind from all directions except north, north-northwest, northwest, west-northwest, west and west-southwest"]; or
 - ii. Wind speeds of greater than 10 m/s (as a 1-hour average)
 - b. The use of misting devices at the end of the sheds where spent litter is being loaded out.
- (viii) Wind speed and wind direction as recorded by the onsite weather station shall be recorded and stored by the consent holder for a period of 12 months and provided to the Taranaki Regional Council or NLG upon request within that period.
- (ix) Protocols to regularly assess litter moisture content and the best practicable steps to be taken to comply with the conditions of this resource consent;
- (x) Protocols for maintenance of the climate control, heating and ventilation systems;
- (xi) Details of contingency measures for significant potential odour or dust events;
- (xii) Procedure for recording and responding to complaints relating to discharges to air. These procedures shall be generally in accordance with the procedures outlined in the Ministry for the Environment Good Practice Guide for Assessing and Managing Odour;
- (xiii) Procedures to be used to inform neighbouring property owners and occupiers of abnormal or isolated potential odour or dust events.

The poultry farm shall at all times be operated in general accordance with the current version of the Management Plan. In the event of any conflict or inconsistency between the conditions of this consent and the provisions of the Management Plan, then the conditions of this consent shall prevail.

22. The Air Quality Management Plan prepared in accordance with condition 21 shall be reviewed by the consent holder once every three years, at a minimum, and updated as required. The outcome of each review and any update shall be provided in writing to the Taranaki

Commented [DVK30]: We are looking at wind forecasts here, averaging period is not important. Whilst its likely that the consent holder will be using the MetService website to look at the forecast, not all future forecasts provide 1 hour average forecast data...

Commented [SG31R30]: TRC officers agree.

Commented [DVK32]: I consider that there should be a consent condition that requires the consent holder to have and maintain a weather station on-site. I also consider that there should be some minimum parameters for the weather station (i.e. must measure wind direction, wind speed, temperature, rainfall, etc. Also a minimum height above ground level and above the ridgeline of buildings on-site. The higher the better. I suggest minimum height of 6 or 10m and at least 3m above any building/structure... From my photos the silos could be 5m or more above the ground... Jason, what are your thoughts.

Commented [DB33R32]: Agreed, it should also include accuracy and resolution specifications for wind speed and direction.

Commented [SG34R32]: TRC officers agree with all of these suggestions.

Regional Council Monitoring Team Leader for certification within three months of receipt of the review. A copy of the certified Air Quality Management Plan shall be provided to the NLG for their information.

Review condition

23. In accordance with section 128 and section 129 of the Resource Management Act 1991, the Taranaki Regional Council may serve notice of its intention to review, amend, delete or add to the conditions of this resource consent by giving notice of review:

- a) annually during the months of June - August 2023 and/or June 2026 and/or June 2029 and/or June 2032 and/or June 2035 for the purpose of reviewing the effectiveness of the conditions of this resource consent in avoiding or mitigating any adverse effects on the air quality of the locality from the exercise of this resource consent and if necessary to avoid, remedy or mitigate such effects by way of further or amended conditions.
- b) within 6 months of receiving a report required by condition 18 showing that the site cannot comply with condition 13 relative to odour for the purpose of imposing new or amended conditions to ensure that the site can operate without causing an offensive or objectionable odour beyond the boundary.