

BEFORE THE GREATER WELLINGTON REGIONAL COUNCIL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an application by **NCI Packaging (NZ) Limited** for a resource consent in relation to the manufacture of metal cans and associated processes at 62-66 Montgomery Crescent, Upper Hutt.

WGN 190198

APPLICANT'S REPLY SUBMISSIONS

13 August 2021

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Introduction and relevant evidence

1. These reply submissions are intended to be confined to matters raised during the hearing and to assist the Panel with its decision-making.
2. Much of the evidence given at the hearing focused on proposed conditions of consent. One submitter, who wished to be heard, considered that the activity was capable of being successfully mitigated by appropriate conditions.
3. Ms Devlin confirmed:
 - Odour from the NCI Plant (the Plant) has improved in recent years
 - The proposed biofilter "sounds promising"
 - A Community Liaison Group (CLG) requirement is pointless
 - She is happy to pass on information she receives about the air quality aspects of the plant to relevant members of the neighbourhood.

Ms Devlin's input to the process is acknowledged by NCI as assisting it to gauge progress with meeting its obligation to avoid, remedy or mitigate adverse effects.

4. The public health witness, Dr McKenzie, confirmed that the proposed conditions of consent and AMOP are likely to ensure that health risks will be minimal.
5. Mr Bluett supports Ms Simpsons 2-3 stage approach to mitigation:
 - Installation of the proposed biofilter
 - Adding capacity to the biofilter
 - Adding 2 metres of stack height.

Conditions

6. Attached is a marked-up version of the proposed conditions. The mark-ups include Council proposals with suggestions/counterproposals from NCI. Some of the proposed changes are self-explanatory and relatively minor refinements such that they do not need any specific comment. Others are more significant or even contentious, and warrant comment, or supporting explanation.
7. Where NCI offers no comment or counterproposal, it accepts the proposed refinement.

8. At Condition 14 there is a proposed amendment to take into account NCI's assessment that the biofilter may take up to 6 months to build and commission. It is submitted that a condition that is unrealistic is inconsistent with the s 108 RMA requirements for conditions to be relevant nexus to the activities and be practicable.
9. The suggested refinements at Condition 14 a. – c. are self-explanatory and sensible.
10. The suggested refinements at Condition 16 are accepted.
11. At Condition 17 it is suggested that the daily rate of field odour inspections is disproportionate to the level of complaints being received and the improvement referred to by Ms Devlin. NCI submits that weekly inspections at the time the plant is operating would be more reasonable. Short of that, the rate of field odour inspections could be a matter of the AMOP such that the rate is consistent with the rate of issues arising.
12. At previous Condition 26 Council's initial CLG establishment and process is withdrawn and replaced with Condition 27 as to a local community communications plan. NCI submits that this is no more than a CLG in disguise. The short point is that there is no community that continues to be concerned about odour from the NCI plant. Just two persons attended the hearing, only one of whom was a submitter. There is no evidence of sufficient interest to justify use of the term 'community' to accurately describe the level of interest in the odour effects attributable to NCI.
13. NCI's push back is in response to the mechanics of the suggested process which seems likely to involve unnecessary obligations to communicate with uninterested persons. This point was traversed in NCI's Opening Submissions, and it remains pivotal. NCI is happy to deal with Ms Devlin and her immediate neighbours should they wish to receive information. NCI estimates this would be a residential catchment within 160 metres of the Internal Lacquer/Assembly Stack. This category could reasonably be described as 'immediate residential neighbours' or 'relevant neighbours.' Also, if effects for the nearest residential neighbours are able to be mitigated by use of a biofilter, any more widespread effects will also diminish.
14. The environment for the assessment of effects has been tested by the Council in its approach to limited notification when it adopted an area within 250 metres of NCI's boundary. This environment produced just one submitter wishing to participate in any hearing: Ms Devlin who resides at the south end of Mountbatten Grove about 160 metres from the Internal Lacquer/Assembly Stack. It is submitted that that is the best evidence as to the environment within which effects are experienced.

15. Accordingly, Conditions 28 and 33 could be modified to confine the recipients of the Annual report to immediate residential neighbours within 160 metres of the Internal Lacquer/Assembly Stack. NCI submits that this would better meet the test for conditions to have a reasonable nexus with an activity.
16. PDF and Word versions of the marked-up proposed conditions accompany these submissions. Mark ups have been made by Rubie McLintock for GWRC and Rhys Kevern and the writer for NCI.

Cumulative effects

17. The panel expressed concern with the potential for cumulative effects within the context of other odour producing activities in the vicinity. Whilst there is some evidence of other industrial odours, there has been no comprehensive study as to which activities are producing odours that might amount to adverse effects on any one day.
18. The most that can be said is that there is potential for odour to cumulatively exceed the Ministry for the Environment's residential standard of 2 OU/m³ and potential effects are able to be considered. On the other hand, if each of the odour producers in the vicinity of Mountbatten Grove were within 2 OU/m³, there is no evidence that the total at any one dwelling would exceed that level. Air dispersion modelling shows that the maximum concentration of activities at different locations are unlikely to coincide.
19. Therefore, whilst the panel is able to consider potential adverse effects as part of its section 104 process, it has to exercise caution as to the quality of evidence of potential effects and not reach conclusions that are unsupported by (expert) evidence. In that regard, the High Court in *RJ Davidson Family Trust v Marlborough District Council* [2017] NZHC 52 noted that, "...the definition of 'effect' does not include "accumulated effects", and the term was an unhelpful gloss on the statutory language of the RMA."

Conclusion

20. Subject to the modified conditions, consent as sought can properly be granted.
21. The Officer's Report accepted that there is unlikely to be a meaningful public health issue and that remained the position at the conclusion of the evidence.

22. There is no reason not to accept that an appropriate AMOP is likely to enable an enduring consent that enables NCI to fulfil its obligation to avoid, remedy or mitigate adverse odour effects.

Dated: 13 August 2021

A handwritten signature in blue ink, appearing to read 'Ian Gordon', is positioned above a horizontal line.

Ian Gordon

Counsel for the Applicant