

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 66 Montgomery Crescent, Upper Hutt.

WGN 190198

APPLICANT'S OPENING SUBMISSIONS

Dated: 3 August 2021

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Introduction

1. These submissions are intended to assist the Panel with its decision-making on this application – WGN190198-20916372229-249.
2. NCI applies for consent to discharge contaminants to air associated with the operation of its steel and aluminium can manufacturing plant, which includes coating processes, at 60-66 Montgomery Crescent, Clouston Park, Upper Hutt. This consent seeks to renew the activities previously authorised in WGN110219 [30888].
3. The primary issue is with the odour given off by the contaminants rather than with the content of the contaminants or other effects that might be caused by them.
4. The Officer's Report accepts that the other aspects of the contaminants are relatively minor and that there is unlikely to be a meaningful public health issue.
5. The Officer's Report traverses the odour history of the operation. That report is accepted as being reasonably accurate particularly as to the difficulties determining the source or sources of odour being complained of by a few (one or two?) Mountbatten Grove residents.
6. The compliance history of NCI is characterised by difficulties determining the source or sources of odour being complained of. The Council appears to have withdrawn its enforcement/abatement proceedings for that reason.
7. From July 2020 Tonkin and Taylor (T+T) have been given responsibility for assessing odour emissions and making recommendations. Those recommendations included:
 - a programme of odour field observations,
 - the implementation of a biofilter trial, and
 - a sensitivity analysis of odour dispersion for differing stack heights using air dispersion modelling.
8. The findings of that work have been incorporated into this application as additional information and shared with interested parties.

9. The Council has commissioned independent expert review of the findings. Mr Bluett has informed the process and recommended conditions of consent. Ms Simpson for NCI and Mr Bluett are the two independent odour experts closely involved with this application. They have confirmed that:
- a reasonable control of the odour issue should be able to be achieved by an effective odour mitigation strategy,
 - the residential standard of 2 OU/m³ is appropriate at this location – when measured at the boundary shared by the site with dwellings on Mountbatten Grove,
 - that the results of the biofilter test are promising enough to include conditions as to the treatment of emissions by appropriate biofilter capacity,
 - in the event that the introduction of biofilter treatment proves to be inadequate, a modest increase in stack height should achieve the desired improvement.
 - Control of other aspects of the emissions require additional specific conditions as to testing and the standards to be applied, and
 - Through such a regime of conditions, effective odour mitigation is achievable, including as to the potential for cumulative effects.
10. With some exceptions touched on in its evidence and in these submissions, NCI accepts the recommended suite of conditions. Those exceptions will be a critical focus of NCI's approach to this hearing.
11. Although the Officer's Report is written without the benefit of the applicant's written evidence there has been a relatively detailed exchange of information which enables the formulation of reasonably reliable conclusions. Included in such conclusions is her agreement at the middle of page 30 that NCI's Condition 19 represents an acceptable solution.

Effects

12. At page 45, the Report concludes, based on Mr Bluett's assessment, that health effects are "unlikely". Ms Simpson concurs.
13. The same conclusion is reached in respect of effects on the values of Tangata whenua.

14. Mr Bluett concludes that particulate discharge so as to cause damage to paintwork of neighbouring dwellings is at odds with “the discharge of VOCs from the NCI Plant”.

15. The Report's conclusion on odour and other effects is at 9.4.5:

...Mr Bluett has concluded that the potential effects from the discharge of VOCs and combustion products will be less than minor. I agree with this conclusion if the recommended conditions are adopted and adhered to.

16. In the absence of expert evidence from the submitter(s) you are left with the evidence of two independent experts, the benefit of which is their almost complete agreement as to the effects of the emissions and the conditions to be imposed for those effects to be less than minor in the future. In this respect it is notable that Ms McLintock is able to conclude that once the proposed mitigation is installed, the proposal will likely be consistent with the RPS Objective 1:

Discharges of odour, smoke and dust to air do not adversely affect amenity values and people's well-being.

17. NCI supports that conclusion and the Council's findings as to the effects of the proposal and submits that they will be minor or less than minor once the proposed mitigation is implemented.

The statutory analysis

18. NCI supports and adopts the Council's approach to s 104(1)(b) and its assessment of the relevant planning instruments at Part 10 of the Officer's Report.

19. Ms McLintock's approach to the NESAQ; the RPS and the PNRP is the correct approach. She is able to conclude that:

- The NESAQ regulations are unlikely to be breached.
- The relevant RPS objective is able to be met.¹
- The proposal including the proposed mitigation is consistent with the PNRP's standard for ambient air quality and *...is generally consistent with the intent of the PHRP once the mitigation tools have been installed on site.*²

¹ Paragraph 16 above

² S 42A report at Page 43

There being no evidence to the contrary, the Panel is able to rely on these conclusions. Crucially, there are no environmental bottom lines that are offended by this application.

20. Additionally, NCI agrees that the relevant provisions of the PNRP are able to be treated as operative. The RPS and PNRP presents as competently prepared instruments with no obvious flaws that would suggest that they are not successfully implementing and giving substance to Part 2 of the RMA. The NESAQ Regulations prepared in 2004 and updated in 2011 are comparatively recent and introduced ambient air quality standards for contaminants with a view to implementing the purpose of the RMA.
21. In these circumstances, there is no need to *refer back to Part 2* of the RMA in a King Salmon sense.³ Certainly, there is no call for resort to an overall judgement approach to *subvert* the directive policies of the RPS and PNRP to achieve ambient air quality and reasonable amenity outcomes.
22. If however, you conclude that Part 2 would assist your deliberations, or you seek verification of your thinking, then Ms McLintock's approach is open to you.

Conditions

23. Given the expert support for conditional consent it is reasonable to submit that this hearing is really about the conditions to be imposed to achieve acceptable odour effects.
24. With the exceptions identified by Ms Simpson and Mr Kevern, NCI and the Council are *ad idem* (on the same page) as to the proposed conditions. Where there is a conflict, NCI obviously prefers the versions advanced by its witnesses. Their approach to the conditions is a real-world view influenced by pragmatism and common-sense. Understandably, they take the view that there is nothing to be gained for this neighbourhood by imposing unrealistic constraints that do not take into account the other odour emissions occurring in this industrial enclave.
25. Ms Simpson's evidence on pages 7 – 9 is endorsed as a sensible approach to the future management of odour.

³ As confirmed for a resource consent application by *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316

26. One matter that Ms Simpson is silent on is the establishment by the consent-holder of a Community Liaison Group (CLG)(proposed Condition 27) although she may well have something helpful to say about it before the end of this hearing.
27. The stated purpose of the proposed CLG includes, at C 27 a. :
- ii. To promote the flow of information between the local community and the consent holder as to wherever possible, address any issues that may arise; and
 - iii. To discuss the results of monitoring and any matters that may arise as a result of monitoring;
- b. The CLG shall comprise of representatives of the consent holder, representatives of the Wellington Regional Council and any residential or industrial properties located within 250 metres of the site;
- ...
28. NCI submits that this is an unnecessary burden because it involves an unrealistic catchment, the vast majority of whom have not participated in this proceeding because they have no interest in it. As to catchment, the proposed expression "...within 250 metres of the site" can only reasonably be interpreted as within 250 metres of the site boundary. That requirement would involve NCI having to communicate with a large number of people unnecessarily. It is an unreasonable requirement and goes beyond the scope of s 108 RMA which requires conditions to be reasonably connected to the scope of effects of an activity.
29. The relevant evidence is that pre-bio filter odour emissions are less than 1/3 of the acceptable level for industrial zones and just 0.6 OU/m³ greater than the standard for a residential interface. With a prediction that the introduction of bio-filtering should reduce odour by about 30% there can be no rationale for including any occupants of the industrial zone in a liaison group and in any event, none have shown an interest in this application.
30. The same argument largely applies to the residential interface. Of the catchment within 250 metres of the NCI boundary 66 dwellings were notified of the application. Of those, only 4 persons submissions were received in opposition to the application with just 1 of that number indicating a wish to be heard. That level of interest cannot reasonably be described as 'community interest'. In my submission, there is no evidence of a community that is sufficiently interested in this activity to justify an onus to establish a CLG. The better course is to require that the annual review be provided

to submitters for as long as they wish to receive it. One of the intentions of condition 27 was to advise submitters of monitoring undertaken as part of the consent. The results of odour monitoring through the ambient odour survey could be provided to submitters if this is of interest to submitters. Condition 19 would then be edited by adding "and submitters to the application for this resource consent" after "... shall be reported to the Manager".

31. Condition 33 would be edited in a similar fashion to require the annual report to be provided to the submitters. A note at the end of condition 33 may be required to allow the submitters to advise they no longer wish to receive the reports on written advice to the consent holder.
32. If the Council wishes to convene meetings to discuss the Annual Report (Condition 33) and to invite a wider audience within 250 m of the boundary to the site including residents of Mountbatten Grove to attend, it can do so.
33. If this reasoning is accepted by you, proposed Condition 27 can be deleted together as well as reference to it in Conditions 28 and 33(g). NCI submits that sufficient opportunity will remain for residents of Mountbatten Grove to participate in the performance review of the proposed conditions. Condition 28 would then read "The consent holder shall provide the submitters to the application for this consent a dedicated telephone number for neighbours to contact the consent holder during day shift hours and after management day shift hours," presently, 6am to 3pm.

Witnesses

34. NCI relies on the pre-circulated written evidence of:
 - Shane Flitcroft
 - Rhys Kevern, and
 - Jennifer Mary Simpson

35. Finally, NCI's Managing Director is based in Melbourne and presently unable to travel but wishes the Commissioners to understand that but for the current travel restrictions she would be here to demonstrate how seriously the company takes its obligations.

Dated: 3 August 2021

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

Ian Gordon

Counsel for applicant