Consents.

Before the Independent Hearing Commissioners
Appointed by the Taranaki Regional Council

Under	the Resource Management Act 1991
In the matter of	a resource consent for air discharge relating to the poultry farm operation at 58 Airport Drive, New Plymouth (5262-3.0)

Legal submissions on behalf of Airport Farm Trustee Limited

15 February 2022

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Introduction

1 These submissions are presented on behalf of Airport Farm Trustee Limited (**Airport Farm**, the **Applicant**). Airport Farm is a family business seeking consent for an air discharge required for its poultry farming operation at 58 Airport Drive, New Plymouth (the **Application Site**).

2 The poultry farm has been established for decades and the surrounding environment has modified from rural to include rural-residential activities. The Applicant took ownership in 2013[1] and has consistently sought to lift environmental performance of the farm, including through better technology and systems.

3 Before you is evidence of onsite air quality assessments, compliance monitoring and odour diaries of the existing operations. There is a discrepancy between the odour observations of submitters, the extensive field observations of the Council and observations of the experts. Importantly, there are fundamental changes proposed to the poultry farm operations, which will reduce the impacts of the air discharges applied for in this Application, including[2]:

(a) the discharge consent is sought for a free-range broiler operation with a reduced stocked rate of a maximum of 15 birds per square metre (61,020 birds);

(b) roof fans with misting devices will be installed on the roof of the existing sheds (and will be at least 100m from the closest off-site property at 62 Airport Drive) (this work is underway);

(c) hot water boilers and DACS AddAir heaters will be installed to provide dry heat, and the ability to reduce humidity and dry existing air within the shed (to lower moisture);

(d) additional devices to monitor carbon dioxide and ammonia concentrations will be installed inside each shed; and

(e) an additional windbreak along the northern boundary of the site, additional plantings around the sheds in the free range areas (400 Feijoa trees), and shade cloths will be provided.

4 It is not disputed that reductions in discharges should occur, but it is the assessment of the acceptability of the potential air discharge effects (i.e. primarily odour, but also loss of amenity to air and dust) from this changed operation that

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[1] Mr Ed Whiting, at [8].

[2] Mr Ed Whiting, at [20].

must be assessed. Discharges to air from poultry farms are provided for in the Regional Air Quality Plan for Taranaki (**RAQP**) provided significant adverse effects on the amenity and aesthetic qualities of air are avoided, remedied or mitigated to the extent possible.[3]

5 The case for Airport Farm is that it operates to at least the industry best practice. Of most relevance, the changes proposed will significantly reduce the likelihood (frequency, intensity and duration) of detectable offsite odours such that these levels will be acceptable for the receiving environment. In particular, dispersion and dilution via tall roof mounted stacks will reduce any existing effects likely to be associated with the current side wall ventilation. Conservative dispersion modelling demonstrates the likelihood of a significant reduction, while not accounting for all improvements such as the DACs balanced ventilation proposed to be installed.

6 It is submitted that a grant of resource consent, on the conditions offered by the Applicant, would meet the sustainable management purpose of the Resource Management Act 1991 (the **RMA**).

Matters in issue

7 The key matters addressed in these submissions are:

(a) scope of application;

(b) whether the activity is a new or existing activity;

(c) statutory assessment and restricted discretion;

(d) the existing environment from which to assess effects;

(e) actual and potential effects beyond the boundaries of the Application Site when received by an ordinary reasonable person:

(i) can odour can be managed sufficiently so not to have an adverse effect? and

(ii) if there is an adverse effect, is this effect acceptable (as opposed to an unacceptable significant adverse effect)?

(f) the consistency of the Application with existing established legal principles from odour cases;

(g) consent term;

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[3] RAQP, Objectives 1-4, Policy 1.2.

(h) property values; and

(i) conditions of consent.

Scope of application

8 Amendments to design and other details of an application may be made up until the close of a hearing, provided they are within the scope defined by the original application.[4] Whether an amendment to an application is within scope is determined by how that amendment sits within the overall application in terms of (a) being of a significantly different scale and intensity and (b) having significantly different effects.[5] Additional mitigation and changes to the site have been proposed since the original application was lodged to respond to concerns raised about air quality effects, and to further reduce the potential for unacceptable odour effects. It is submitted these changes are within scope of the Application.

The application – a new or existing activity?

9 This application has been made under Rule 52 of the Regional Air Quality Plan for Taranaki, which reads as follows:

> Discharges of contaminants to air from intensive poultry farming when more than 30 000 poultry are kept at any one time, and where;
>
> the poultry farm is an existing operation and a new consent is being applied for to replace or renew an existing consent

10 Within the RAQP[6] it includes an introduction and explanation of the regional rules for poultry farming (set out in full below, emphasis added).

> ***Rule 52: Discharges from existing poultry farming processes***
>
> *Activity classification: Restricted Discretionary*
>
> *This Rule applies to discharges of contaminants to air from larger scale existing intensive poultry farming operations when a new consent is being applied for to replace or renew an existing consent. Provided the nature and scale of the effects of the activity are unchanged a consent may be granted as a restricted discretionary activity.*
>
> *The Council will be guided by the relevant policies in the Plan and the good management practice guidelines contained in Appendix V of the Plan. However, the Council's power to decline a resource consent and to impose conditions are*

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[4] *Darroch v Whangarei District Council* A18/93 at page 27, as confirmed more recently in *Simons Hill Station Ltd v Canterbury Regional Council* [2013] NZEnvC 62 at [20].

[5] *Atkins v Napier City Council* (2008) 15 ELRNZ 84 at [32].

[6] RAQP, Section 4.3 – Listing and explanation of rules

restricted to the matters to which the Council has restricted the exercise of its discretion, noted in the 'control/discretion' column of the rule table and includes such matters as effects relating to odour and loss of amenity.

The notification requirements, when the Council is satisfied that the adverse effects of the activity will not be more than minor, are restricted to those that were located within the buffer (refer to Table 1 Appendix V), at the time this Plan became operative or the time the activity was first established[7], whichever is the earlier.

This approach has been designed to acknowledge the issues that are currently being faced by intensive farming operations, that is, new developments are establishing near lawfully established intensive farming operations, that have addressed off site effects as far as is practicable and reasonable, and are now becoming constrained by the emergence of new and often incompatible land uses in the neighbourhood, especially at the time of consent renewal or consent replacement.

11 A number of submitters have raised issue with the change from broiler to free range farming, and consider this equates to a change in activity, meaning Rule 52 cannot apply. The RAQP makes no distinction between broiler and free range farming for the purpose of Rule 52, which addresses only "intensive poultry farming". Both broiler farming and free range farming are captured in the definition of 'intensive poultry farming', and are therefore the same activity for the purposes of the RAQP. The RAQP clearly anticipates some variation in the manner of intensive poultry farming, whether it be chickens being fully contained indoors,[8] or also roaming outdoors. This interpretation is consistent with that of Mr McDean and the Officer's Report[9].

12 It follows the farm is an existing intensive poultry farming operation. This is not disputed in any planning evidence.[10]

13 The application is for a new resource consent to replace the existing resource consent[11].

14 Rule 52 further provides the following standard to be complied with:

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[7] Activity first established' means the date an air discharge consent was first issued by the Taranaki Regional Council for the activity.

[8] The Regional Air Quality Plan defines 'intensive poultry farming' as: ***Intensive poultry farming** means the keeping, rearing or breeding of 12 or more poultry, whether in relation to the production of poultry for human consumption or in relation to egg production, where the predominant productive processes are carried out primarily within buildings and includes free-range poultry farming activities, but excludes **low density free-range poultry.***

[9] Officer's Report at [207].

[10] Officers report at [6]-[9], and [206-207]; Mr McDean at [3.2]-[3.6]; and Mr Cameron Twigley at [31].

[11] It is acknowledged that the "renewal" box was ticked on the Application, but this makes no material difference.

> a) Nature and scale of the effects of the activity are unchanged from that of the existing consent that is to be replaced or renewed

15 In the case of a poultry operation that does not comply with the standard above, Rule 54 applies:

> Discharges of contaminants to air from intensive poultry farming, where;
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> the discharge is not listed in Rules 51, 52 or 53 or does not meet the conditions in Rule 51, Rule 52 or Rule 53

16 Therefore the question of whether the application is appropriately addressed under Rule 52 or Rule 54 turns on whether the nature and scale of the effects are unchanged from the existing consented effects.

17 It is well-established that interpretation requires a purposive approach and a consideration of the context surrounding a word or phrase[12]. In my submission the intent of Rule 52, and the interpretation of an ordinary and reasonable member of the public examining the plan is to provide a more enabling consenting pathway not just for existing activities with unchanged effects, but also for existing activities with reduced effects. There is no need to further look at the words in context or look at other principles of statutory interpretation for guidance as an injustice, anomaly or absurdity arises if the plan is not read in this manner[13].

18 The effects that the Commissioners are assessing which are to be assessed as whether they remain unchanged are those beyond the boundary of the Application site, which relate to the discharges to air application for consent (i.e. odour and to a lesser extent dust). As Mr McDean addresses the nature and scale of the current application is unchanged from what could currently operate on site under the existing consent (i.e. a reduced bird numbers in a free range configuration) [14], and all of the air discharge specialists have acknowledged the change and improvements should result in a reduction of odour[15].

19 I submit you can have confidence in the evidence before you that no increase in effects beyond the boundary will result from this Application, and that the activity is appropriately assessed under Rule 52.

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[12] The meaning on an enactment must be ascertained from its text and in light of its purpose: Section 5(1) Interpretation Act 1999.

[13] *Powell v Dunedin City Council* [2004] NZRMA 49 (HC), at [35], affirmed by the Court of Appeal in *Powell v Dunedin City Council* [2005] NZRMA 174 (CA), at [12].

[14] Summary and Rebuttal Statement of Mr McDean, at [3]-[6].

[15] Evidence of Duncan Backshall at [4.16]; Evidence of Donovan Van Kekem at [8.1]-[8.3].

Statutory assessment

20 Section 104, 104C and 105 RMA provide the criteria against which the application must be assessed. Your evaluation requires giving 'genuine thought and attention'[16] to the various matters set out in section 104(1) RMA: actual and potential effects, relevant provisions, and any other matter considered relevant.

21 Section 104C RMA identifies the limits for restricted discretionary activities such as this Application. The scope of your assessment is limited to the matters of discretion identified in Rule 52. The matters in s104(1) are restricted to the extent they are relevant to the restricted matters of discretion.[17] These matters are:

(a) Duration of consent;

(b) Monitoring;

(c) Effects relating to odour and dust and loss of amenity value of air;

(d) Imposition of limits on or relating to discharge or ambient concentrations of contaminants, or on or relating to mass discharge rates;

(e) Best practicable option to prevent or minimise any adverse effects on the environment;

(f) Any matter contained in Appendix V in the RAQP (Best Practice); and

(g) Review of the conditions of consent and the timing and purpose of the review.

22 The Commissioners discretion to consider duration of consent is directly relevant to the list of matters for discretion (specific operational matters of poultry farms and associated discharges and effects), it is 'of the same kind', and cannot be read as applying more broadly to matters such as integrated land use. It is submitted that potential future changes to the planning environment by a district council, do not fall within the bounds of these matters and are outside scope of your discretion. Even if you considered you did have discretion to consider integrated district and land use matters, there is no certainty of an outcome or timing. Both the operative and proposed District Plans provide for this activity on the Application Site.

23 Section 105 RMA provides relevant considerations for a discharge application:

105 Matters relevant to certain applications

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[16] *Foodstuffs South Island Limited v Christchurch City Council* (1999) 5 ELRNZ 308 (HC), at p 309.

[17] *Summerset Villages (Lower Hutt) Ltd v Hutt City Council* at [41].

> (1) If an application is for a discharge permit or coastal permit to do something that would contravene section 15 or section 15B, the consent authority must, in addition to the matters in section 104(1), have regard to—
>
> > (a) the nature of the discharge and the sensitivity of the receiving environment to adverse effects; and
> >
> > (b) the applicant's reasons for the proposed choice; and
> >
> > (c) any possible alternative methods of discharge, including discharge into any other receiving environment.

24 Mr Jason Pene has assessed the sensitivity of the receiving environment, concluding it has a greater level of sensitivity than a typical rural environment given the density of residential dwellings present. This has been taken into consideration in his assessment. The Council planner is satisfied there are no more practicable methods of managing the discharge.[18] This is supported by the Applicant evidence demonstrating best practice is being undertaken at the Application Site.

Existing environment

25 When assessing an application for resource consent a decision maker is required to consider the effects of that activity on the "environment". The Courts have determined that the environment should include all existing activities, and should also include all activities for which a resource consent has been granted but have not yet been implemented (but are likely to be) at the current time[19]. That is, the existing environment before you today, not in 2026. The Applicant offers a condition of consent where it will surrender its existing resource consent upon the commencement of its new consent pursuant to s116 RMA (i.e. at the time when no appeals are made, or any appeals made are resolved and decided upon should the recommended term be granted.).

26 Mr McDean's evidence confirms that no additional dwellings can be constructed in close proximity to the Application Site without a discretionary activity consent[20]. Any potential future planning changes and resource consents to be granted for residential development do not form part of the existing environment from which to assess effects.

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[18] Officer's Report at 11.7

[19] *Queenstown-Lakes District Council v Hawthorn Estate Limited* (2006) 12 ELRNZ 299.

[20] SoE Mr McDean, at [3.17].

27 In terms of the level of effects currently permitted, provided there is no offensive or objectionable odour or dust at or beyond the boundary, Rule 51 of the Regional Air Quality Plan permits the following:

> Discharges of contaminants to air from intensive poultry farming when no more than 30 000 poultry are kept at any one time

28 The Application Site has already lawfully established discharges of contaminants to air from its intensive poultry farming at the Application site for 30 000 poultry[21].

29 All submitters record their reliance on the consent not being renewed beyond 2026 in their original submissions, and refer to developers and owners looking to subdivide their land once it is rezoned as residential. The planning evidence of Mr Twigley is full of presumptions of timings, predictions and uncertainties relating to future district (not regional) plan provisions. It is submitted no weight can be given to matters which don't form part of the existing environment. Any future change is within the control of NPDC, outside of this forum. Interestingly, NPDC is progressing its current second generation plan (still to be heard and decided) and has not proposed to lift the prohibited activity status for development in proximity to the farm, or seek to rezone the land subject to the poultry farm land (nor is there scope within submissions to do so). Once operative plans are not required to be reviewed for 10 years. The Applicant is not involved in this process. The poultry farm is an appropriate and anticipated activity in the existing environment on the Application Site in the operative and proposed District Plans.

Shelterbelts

30 The existing environment includes the future state of the environment, as modified by implementation of permitted activities. Applying the test of Hawthorn[22] to whether something will not exist in future, the question is whether it is likely (as opposed to fanciful) that the trees could be removed (whether by an act of nature or intentional) in future. Since Hawthorn, the Environment Court has found that "likely" means "more likely than not".[23] The trees on the McDonald's property are currently part of the existing environment and it is submitted it is not "more likely than not" that an act of nature would remove all the trees within the term of consent. In any event, these trees are not relied on by Mr Pene and Ms Ryan when forming an opinion as to the acceptability of effects.

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[21] The standards are enforced by the Taranaki Regional Council, and no non-compliance with conditions requiring no offensive and objectionable odour beyond the boundary has occurred, which by the same application would apply to a smaller operation also.

[22] QLDC v *Hawthorn* (2006) 12 ELRNZ 299

[23] *Burgess v Selwyn District Council* [2014] NZEnvC 11, [74] and [79]; affirmed in *Otway Oasis Society Inc v Waikato Regional Council* [2020] NZENvC 169 at [15].

Actual and potential effects

31 It is submitted that the odour, dust and loss of amenity to air effects of the Application against the receiving environment need to be carefully assessed.

Odour

32 It is insufficient for odour to be simply detected at or beyond the boundary of a site. The odour must be sufficient to create an adverse effect and the odour must be objectionable or offensive as determined an ordinary reasonable person[24].

33 The words objectionable and offensive are not defined in the RMA. The Environment Court has previously applied that these words mean "undesirable, displeasing, annoying and open to objection"[25].

34 Historical complaints, and issues or feelings which don't fairly reflect the future operations need to be carefully considered.

35 The evidence of the air quality experts appearing for the Applicant both consider the proposed changes in the Application will provide certainty of acceptable environmental effects from the operation.

(a) Mr Pene considers that existing odour emissions are neither offensive nor objectionable, and the changes proposed incorporate further mitigation measures that will substantially reduce any existing impact of emissions, and will result in appropriate odour management in the context of the sensitivity of the local environment. Existing management procedures are at a high standard; and

(b) Ms Ryan considers that while there is no evidence of widespread significant odour impacts in the surrounding community, with the existing operation and discharge configuration there was potential for chronic odour effects to be experienced off-site, particularly under low wind speeds blowing from the south-to-south-east; but that the mitigation measures will affectively alleviate this impact and combined with the dispersion modelling provide a reasonable basis to demonstrate acceptability of effects[26].

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[24] *Zdrahal v WCC* [1995] NZLR 700; more recently cited in *Waikato Environmental Protection Society Inc v Waikato Regional Council*, ENC Auckland W060/07, 23 July 2007 at [34].

[25] *Waikato Environmental Protection Society Inc v Waikato Regional Council*, ENC Auckland W060/07, 23 July 2007 at [161]

[26] Summary and Rebuttal Statement, Ms Ryan at [14] and [21].

36 While the Applicant's investment in the farm is not a mandatory consideration for the Commissioners[27] it is directly relevant to the potential air discharge effects of the Application. All the experts agree that the proposal will reduce odour. This has been confirmed through conservative dispersion modelling predictions which include that further reductions in ambient odour levels are likely to be achieved through installation of relatively tall chimney vents, and that peak odour concentrations at local dwellings are predicted to be reduced with both the reduction in birds and chimney vents in place by up to 58%.[28] The predictions also indicate that the odour to which the closest properties are likely to be exposed is unlikely to be offensive or objectionable. This will be monitored by means of a condition requiring a complaints register.

37 Reservations from experts representing submitters'[29] remain with regard to the certainty of the odour reduction and whether the mitigation measures are sufficient to completely remove adverse effects beyond the boundary of the site[30]. As discussed above, there is no requirement to remove adverse effects *per sec*, but rather the acceptability of these effects need to be considered.

38 It is relevant that several Council Officers, who have been trained and tested to determine their sensitivity to odour[31], on multiple occasions covering various phases of three separate bird rearing cycles and weather conditions have not determined existing operations to have unacceptable adverse odour effects (i.e. objectionable and offensive odour). At no time did officers determine that odours at or beyond the boundary could be considered offensive or objectionable despite the last 4 weeks conditions been a "worst case" scenario for odour generation and perception around broiler farms[32]. The Officer's Report which is thorough and carefully considered recorded that the character of shed emissions is less unpleasant than those experienced at other poultry farms in Taranaki (of which there is approximately 40)[33].

39 Further, the experts assessment and modelling does not consider the lawful existence of 30,000 birds within the existing environment. In reality, should consent

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[27] Despite the Application stating it is a renewal consent, Airport Farm does not seek to rely on the renewal provisions under s124 RMA and accepts this is a new resource consent.

[28] Evidence of Mr Pene at [10](k).

[29] The McDonalds, the Hibells, the Browns, and Poppas Peppers 2009 Ltd.

[30] SoE Mr Van Kekem at [10.5].

[31] Officer's Report at [223], [273].

[32] Supplementary Officer's Report at [29].

[33] Officer's Report at [243] and [244].

not be granted the poultry farm intends to continue to operate at the permitted lower density of 30,000 birds of which it is currently lawfully established.[34]

Loss of amenity to air

40 An assessment of amenity values must start with an understanding of the subjective, based on articulation by those who enjoy the values, but it must be able to be tested objectively with reference to the Plan[35].

41 An intensive poultry farm with up to 30,000 birds is a permitted activity on the Application Site provided there is no offensive and objectionable odour beyond the boundary. That is, an adverse effect of odour which is not significant (or objectionable and offensive) forms part of the expected amenity for the Application Site and is an odour which persons might reasonably expect to encounter on the Application Site. As noted above, the Officer Report refers to 40 poultry farms being established in Taranaki.

42 Within the RAQP[36] it includes an introduction and explanation of the regional rules for poultry farming. In relation to Rule 51, it states (set out in full below, emphasis added):

> ***Discharges from intensive poultry farming processes***
>
> ***Rule 51: Discharges from small intensive poultry farming processes***
>
> *Activity classification: Permitted*
>
> *This Rule applies to discharges to air from intensive poultry farming when no more than 30 000 poultry are kept at any one time.*
>
> *The Rule allows for the activity to occur without the need for a resource consent, provided there is no offensive or objectionable odour or dust at or beyond the boundary of the property. This is considered to be an appropriate level of control for this scale of operation.*
>
> *Problems from odour may arise from this type of activity because incompatible land uses are located near each other. This has occurred in the Taranaki region, particularly where residential development has occurred adjacent to already established intensive farming operations.*
>
> *The Council has designed this Rule to acknowledge that these activities when appropriately managed will not result in offensive or objectionable odour or dust at or beyond the boundary of the property.*

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[34] Mr Ed Whiting, at [49], Mr McDean at [3.23].

[35] *Schofield v Auckland Council* [2012] NZEnvC 68 at [51].

[36] RAQP, Section 4.3 – Listing and explanation of rules

43 Matters raised in submissions relating to noise and transport/vehicle movements do not fall within the bounds of amenity values, given it is the amenity values of *air* in question.

Dust

44 The management of potential for dust has been addressed in the evidence of Mr Whiting. Mr Whiting identifies the likely source of any potential dust is the clean-out process, which is managed by Osflo to ensure the transition of litter to enclosed containers is as efficient as possible, and only undertaken in appropriate conditions.[37] Additionally, the misting system along the end of the sheds provides an extra control on any potential dust and the new roof exhaust fans will minimise dust emissions. Other measures for minimising dust generation are the windbreaks, trees, and grass cover.[38] The Officer Report records similar conclusions, noting the new exhaust fans will result in less entrapment of dust in existing windflow, and windbreak will serve to trap any dust.[39] The Report concludes dust is not an issue under normal operations.[40]

Health effects

45 Regarding the potential for health effects cited by Glenis McDonald, Mr Pene, Ms Ryan[41] and Mr Bedford consider the low likelihood that adverse health effects would normally be associated with the observed air quality in the vicinity of the Farm, in particular the measured ammonia[42].

46 Of interest, the Council has not listed health effects as a matter of discretion for assessment, in Rule 52, as it has in other rules in the RAQP.

Principles established in odour cases

47 For completeness it is noted that previous case law on odour turns on its facts and the planning regime relevant to each case. However, general principles have arisen[43]:

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[37] Evidence of Mr Whiting at [30]-[32].

[38] Evidence of Mr Whiting at [33]-[34].

[39] Officer Report at [181].

[40] Officer Report at Table 2, p 53.

[41] Summary and Rebuttal Statement, Ms Ryan at [18].

[42] Officer's report at [138].

[43] *Winstone Aggregates and Others v Matamata Piako District Council (2004) 11 ELRNZ 48; Wilson and Rickerby*, ENC Christchurch C23/2004, 16 March 2004 cited in Waikato Environmental Protection Society Inc v Waikato Regional Council, ENC Auckland W060/07, 23 July 2007 at [185]-[186].

Winstone Aggregates and Others v Matamata Piako District Council

(a) In every case activities should internalise their effects unless it is shown that they cannot do so;

(b) There is a greater expectation of internalisation of effects of newly established activities than of older activities;

(c) Having done all that is reasonably achieveable, total internalisation of effects within the site boundary will not be feasible in all cases and there is no requirement in the RMA that that must be achieved.

Wilson and Rickerby v Selwyn District Council

(a) That the test for odour is objective;

(b) That there is a duty to internalise adverse effects as much as reasonably possible;

(c) That it is accepted that in respect of odour the concern is to ensure that odour levels beyond the boundary are not unreasonable (being the same as offensive or objectionable or significant adverse effects);

(d) That in assessing what is reasonable one must look into the context of the environment into which the odour is being introduced as well as the planning and other provisions (location).

48 These matters have been addressed in submissions and evidence. It is submitted that granting consent for the Application on the term recommended by the Council is consistent with these principles.

Consent term

49 The Applicant did not specify the consent term it sought in its application. The RMA provides for a maximum term of 35 years.[44] The Reporting Officer identifies that the Council has a well-established and accepted practice of ensuring common expiry, and consent review dates within a catchment being every 6 years (2026, 2032, 2038 or 2044). It is recommended that a 16-year term be granted for this Application (with the common expiry date of 2038) and this is accepted by the Applicant.

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[44] Section 123, RMA.

Property values

50 Submitters have also commented on the perceived potential for economic effects/potential effects on property value. The question of adverse effects on property values has been addressed by the Courts on several occasions. Effects on property values are not a relevant consideration *per se* in determining whether resource consent should be granted. If it occurs at all, diminution of property values is simply another measure of adverse effects on amenity values.[45] The poultry farm has been existing in the environment for approximately 40-50 years; it is not a new activity, and current values are not anticipated to be adversely affected by its continued presence.

51 Submitters have also expressed concern over an impaired ability to rezone their land as a result of the Application being granted. With respect I submit this is not an appropriate forum in which to raise these concerns. The Application was lodged under current plan rules which are enabling of rural activities that are existing in the environment provided effects are managed. The Applicant is entirely within its right to apply for the resource consent sought have it assessed within the ambit of the RAQP.

Conditions of consent

52 The Panel's finding of effects is directly relevant to the imposition of conditions of consent, should resource consent be granted. Section 108AA RMA requires that conditions must be directly connected an adverse effect of the activity on the environment or an applicable district or regional rule, or a national environmental standard (unless the Applicant agrees to the condition). This is relevant to the consideration of consent term.

53 Suggested conditions by Mr Van Kekem have been carefully considered and offered by the Applicant where practicable and appropriate.

Witnesses

54 The Applicant has produced the following evidence in support of its case:

(a) Mr Ed Whiting (Airport Farm);

(b) Mr Jason Pene (air quality);

(c) Ms Deborah Ryan (air quality); and

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[45] *City Rail Link Limited (CRRL) (Successor to Auckland Transport) & Ors v Auckland Council*, [2017] NZEnvC 204; See also *Wilson v Dunedin City Council* [2011] NZEnvC 164 at [28].

(d) Mr Christian McDean (planning).

Dated this 15th day of February 2022

Alex Booker
Counsel for the Applicant