

**BEFORE THE HEARING COMMISSIONERS
AT TAURANGA**

IN THE MATTER

of the Resource Management Act 1991
(the Act)

AND

IN THE MATTER

of an application under section 88 of the
Act

LEGAL SUBMISSIONS FOR ZIWI LIMITED

23 MARCH 2022



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INTRODUCTION AND OVERVIEW

1. Ziwi Limited (**Ziwi**) applied for a resource consent for discharges to air in July 2020, in relation to its production of pet food at its facility at 18 Boeing Place, Mount Maunganui (**Site**).
2. The resource consent application was in response to enforcement orders made by the Environment Court in February 2020. The enforcement order required an odour management plan and further odour mitigation works.
3. Since the enforcement orders were made, Ziwi has undertaken to improve the odour mitigation methods at the Site. Ziwi is also leaving the Site later this year and relocating to the Hawke's Bay.
4. The mitigation measures include implementing the interim odour management plan and installing an ozone scrubber system on the four process dryers which treat the odour discharged during the drying process.
5. The resource consent will authorise Ziwi's operations and allow it to continue while ensuring odour is mitigated and managed, until the operation can move to the Hawke's Bay in the second half of this year.
6. The resource consent application were publicly notified by the Bay of Plenty Regional Council (**Council**) on 20 May 2021. 123 submissions on the Project were lodged. Of those, 4 were in support, and 119 were in opposition.
7. The Council appointed Commissioners to consider, hear and determine the resource consent application.

Structure of submissions

8. These submissions are structured as follows:
 - (a) Background and context;
 - (b) Planning framework;
 - (c) Effects on the environment;
 - (d) Odour mitigation undertaken; and
 - (e) Conclusion.

Evidence

9. Ziwi has prepared written pre-circulated evidence from:
 - (a) Tom Coughlan – Operations Manger at Ziwi;
 - (b) Roger Cudmore – Principal Technical Director Environment at WSP Golder (air quality / odour evidence);
 - (c) Dirk Haselhoff – Director and Owner of Ozone Technologies Limited (evidence on scrubber design); and
 - (d) Deanne Barretto – Senior Planner at WSP Golder (planning evidence).

BACKGROUND AND CONTEXT

10. The Ziwi Site is located within the Industry Zone in the Tauranga City Plan. The site operations were established in 2002 and include the receipt and processing of raw animal materials by application of heat within an enclosed plant.
11. The Site is within an industrial area that is immediately adjacent to the north of Tauranga Airport and is surrounded by a mix of industrial activities including timber treatment, steelwork manufacturers, steel reinforcing services, fuel refineries, fibre glassing, warehousing, bulk storage of palm kernel, commercial business units and offices.¹ Due to the industrial nature of the surrounding environment, and the odours that are emitted from all sorts of industry that are present, it remains unclear whether Ziwi is the sole cause of odour discharges in the Mount Maunganui industrial area.
12. 400 complaints were received by the Council in the period from the start of October 2019 to the end of May 2020. None of these complaints resulted in a finding of offensive or objectionable odour.² The field investigations undertaken in response to complaints indicate that chronic odour exposure is probably the primary odour issue and mechanism for causing annoyance, which resulted in frequent complaints.

¹ Golder Assessment of Environmental Effects (**AEE**), page, 6.

² AEE, page 19.

Enforcement Orders

13. Enforcement orders were made in February 2020, following an application by the Council in respect of odour complaints at Ziwi's site in Mount Maunganui.³ On the advice of its insurer's Ziwi pled guilty to the charges of causing such levels of odour on isolated occasions dating back to 2017 and was prosecuted for specific events.
14. The enforcement orders were resolved by consent between Ziwi and the Council and the orders were made by the Environment Court on 20 February 2020.⁴ In June 2020 the parties sought to vary the enforcement orders by consent. The variation related to the timeframe in which Ziwi had to apply for a resource consent for discharges to air. The Court agreed to vary the consent.⁵ Through the enforcement orders, Ziwi agreed to:
 - (a) Prepare an interim odour management plan (**IOMP**) by the end of April 2020 to provide to BOPRC; and
 - (b) Lodge a resource consent application and AEE for an air discharge consent by July 2020.⁶

Consents required

15. Ziwi has applied for an air discharge permit:⁷
 - (a) for the discharge of contaminants into air as a discretionary activity pursuant to Rule 19(z) of the Operative Bay of Plenty Regional Air Plan, where the discharges are from pet food processing by application of heat; and
 - (b) for the discharge of contaminants into air from pet food manufacturing by application of heat, as a discretionary activity pursuant to Rule AIR-R15(18) of Proposed Plan Change 13 to the Regional Natural Resource Plan.

³ *Bay of Plenty Regional Council v Ziwi Limited* [2020] NZEnvC 14.

⁴ *Bay of Plenty Regional Council v Ziwi Limited* [2020] NZEnvC 14.

⁵ *Bay of Plenty Regional Council v Ziwi Limited* [2020] NZEnvC 95.

⁶ Through the original enforcement order (*Bay of Plenty Regional Council v Ziwi Limited* [2020] NZEnvC 14) the resource consent needed to be filed by June 2020. However, this was extended to July 2020 in *Bay of Plenty Regional Council v Ziwi Limited* [2020] NZEnvC 95.

⁷ AEE, page 3.

16. Overall, the activity for which the air discharge consents are sought is a discretionary activity. As such, an assessment of environmental effects must be undertaken.

Term of Consent and Relocation of Operation

17. Ziwi originally applied for a 20 year consent. This was because Ziwi had intended staying at the Mt Maunganui site. This duration was amended in December 2021 to a term of 12 months from the date consent was granted (assuming no appeals), or when Ziwi relocates to the Hawke's Bay, whichever comes first. Ziwi has updated its position to seeking a consent of 12 months, but with the note that if it fully completes its move from the Site earlier than 12 months from the grant of consent, it will notify the Council that the resource consent is no longer being exercised.
18. The shortened consent term was solely due to Ziwi having confirmed that it was planning to move the entire operation to a purpose-built facility in the Hawke's Bay by November 2022. It will also have the consequential effect of completely dealing with the concerns of some submitters that the consent duration was too long.

PLANNING FRAMEWORK

19. The Commissioners are directed by section 104 to have regard to the relevant regulations and provisions of the statutory policy and planning documents, as well as any other matter the Commissioners consider relevant and reasonably necessary.
20. The key relevant regulations, policy and planning documents are identified in the Assessment of Environmental Effects (**AEE**). These are:
- (a) Resource Management (National Environmental Standards for Air Quality);
 - (b) Bay of Plenty Regional Policy Statement;
 - (c) Operative Bay of Plenty Regional Air Plan (**RAP**);
 - (d) Regional Natural Resources Plan (Proposed Plan Change 13 'Air Quality') (**RNRP**)
21. The AEE includes a detailed analysis of the activity against the relevant provisions of each of these documents.

22. In the Section 42A report (**Officer's Report**) Mr Steens confirmed that he agrees with the AEE that the activity is a discretionary activity and requires consents under rules in the RAP and RNRP.⁸ Mr Steens concludes that Application is consistent with the pre-operative RNRP and that the mitigation measures "put forth in the consent application in conjunction with the proposed consent conditions will mean that adverse environmental effects can be mitigated or avoided."⁹ Further, Mr Steens notes that he is "confident that the proposed mitigation aligns with the intended policy direction" of the RNRP.¹⁰
23. The planning framework is clear that the consents required are for a discretionary activity and that the Application aligns with the intended policy direction.

EFFECTS ON THE ENVIRONMENT

24. In a case such as this, the effects on the environment of granting the resource consents are central to the Commissioners' consideration under section 104.
25. Both effect and environment are broadly defined in the Act. Importantly, the Commissioners must consider both the positive and adverse effects of the activity.
26. We agree with the Officer's Report that the "effect of any discharge of odour lies with the respective discharge being offensive/objectionable."¹¹ Further, we adopt what the Officer's Report says about classifying odours as chronic or acute, with respect to the Court's guidance on what constitutes offensive or objectionable, as the terms are not defined in the Resource Management Act 1991.¹² Mr Cudmore's odour assessments have been made with these considerations in mind and include an assessment of the FIDOL factors (frequency, intensity, duration, offensiveness and location of the odour event).¹³

⁸ Section 42A Officer's Report (**Officer's Report**), page 12.

⁹ Officer's Report, page 22.

¹⁰ Officer's Report, page 22.

¹¹ Officer's Report, page 16.

¹² Officer's Report, page 16.

¹³ Statement of Evidence of Roger Cudmore, dated 7 March 2022, at [38] to [47].

Positive Effects

27. As described in the AEE and further in Ms Barretto's evidence, there are a number of positive effects of the activity:
- (a) improved air quality and amenity values within the immediate area;
 - (b) ongoing employment for 60 people and indirectly supporting an estimated 120 people within the Bay of Plenty and wider New Zealand;
 - (c) the site's financial contribution to the local area is in excess of \$12M per annum;
 - (d) providing a use for edible waste products and turning them into high value products for export;
 - (e) economic benefits for the Applicant; and
 - (f) appropriate and efficient use of land zoned for industrial activity.
28. Mr Steens disagrees with some of the points in Ziwi's assessment of positive effects but considers that the main positive effects to be in terms of employment for local workers along with economic benefits for Ziwi and trickle-down effects for the wider region.¹⁴ It is these agreed positive effects that we highlight below.

Employment and support

29. For the duration of the consent Ziwi provides direct employment, as well as indirect support to the wider Bay of Plenty. The Officer's Report ultimately agrees with the conclusion that these are positive effects of the Application.
30. The Ziwi operation provides direct employment for approximately 60 people and indirectly supporting an estimated 120 people through the use of local suppliers and businesses in Bay of Plenty.¹⁵ Ziwi's financial contribution to the local area is in excess of \$12 M per annum in terms of revenue to staff, and other labour and services.¹⁶

¹⁴ Officer's Report, page 20.

¹⁵ AEE, page 35.

¹⁶ AEE, page 35.

31. It is noted that the employment and support effects will stop once Zivi relocates its operation to the Hawke's Bay, but at this point in time and for the duration of the consent, there are positive employment and wider support effects.

Sustainable use of resources

32. Further noted in the AEE and Ms Barretto's evidence another positive effect of the activity is the sustainable use of resources by processing edible waste by-products into high value products for the export market.
33. Zivi pet food is made from edible animal waste products of the meat processing industry for human consumption, such as bone, organs and offal, which would otherwise likely be unused and go to waste. By turning these products into pet food, Zivi creates a high value product for the export market. As recorded in the AEE, the *"capacity for Zivi to continue processing some of this waste raw animal material for use in pet food products, therefore represents a sustainable use of these resources and contributes to the New Zealand economy."*¹⁷
34. We note that the Officer does not comment on this in his report.
35. Overall, it is submitted that the Application has a number of positive effects for the duration of the consent sought.

Adverse Effects

36. As noted in the AEE, the Officer's Report, the submissions and in Zivi's evidence the actual and / or potential adverse effects of the activity are:
- (a) acute odour effects;
 - (b) chronic odour effects;
 - (c) human health;
 - (d) cultural effects; and
 - (e) odour mitigation.

¹⁷ AEE, page 35.

37. The submissions use various descriptions as follows:
- (a) bad odour;
 - (b) unable to enjoy outdoors (due to the odour);
 - (c) health concerns;
 - (d) impacts on affected schools and students;
 - (e) disrupted sleep due to odour and not being able to open windows;
 - (f) business productivity and customer impacts; and
 - (g) embarrassment for residents hosting visitors.
38. Zivi has accepted that such effects can occur as a result of the processing of animal waste for pet food at the Site. However, through the extensive odour mitigation that Zivi has implemented, we submit that the acute and chronic odour effects, affects on human health and odour mitigation effects can be effectively managed through consent conditions.
39. With regards to the cultural effects of the Application, it is noted in the evidence of Mr Coughlan, Ms Barretto and in the Officer's report, that no specific cultural effects have been identified.

ODOUR MITIGATION

40. Zivi has taken two major steps towards odour mitigation since the enforcement orders were made. It has successfully implemented the IOMP, installed an ozone scrubber system and undertaken multiple rounds of odour testing.
41. Zivi engaged Golder Associates (NZ) Limited to assess the Site's odour discharges and controls. Golder recommended converting the existing ozone system, such that instead of treating drier exhaust air, ozone is fed to a scrubber that treats the combined flow from the site's gas fired product driers. This was completed in two stages:
- (a) Stage 1: Connecting gas fired dryers' 2 and 4 to the scrubber;
 - (b) Stage 2: Connecting gas fired dryers 1 and 3 to the scrubber.

42. The ozone scrubbers were designed, installed and calibrated by Mr Haselhoff and have been working well to reduce odour emissions to a sufficiently low intensity and character, as recorded in Mr Cudmore's evidence.¹⁸
43. As part of the IOMP, continued testing has been undertaken by trained Ziwi staff and WSP Golder, as described in the evidence of Tom Coughlan and Roger Cudmore.¹⁹ Sampling and testing was also independently undertaken following the installation of the ozone scrubber.
44. WSP sampled and tested the emissions from the ozone scrubber to assess for odour discharge, as set out in the WSP reports.²⁰ The mitigation measures undertaken by Ziwi have successfully reduced the odour emanating from the site to be "weak", "very weak" or "no odour", as described in the most recent testing report from WSP, with testing undertaken on 27 January 2022.²¹ The latest WSP report also concluded that the "oily" character of the odour was not noticeable in the outlet in two thirds of the samples taken.²²
45. Further testing was undertaken in early March and included quantitative data, as sought by the addendum to the Officer's Report.²³ The quantitative odour discharge rate, as measured in March 2022, is consistent with that assumed within the Application and associated odour impact assessment.²⁴ All of the WSP reports indicate that the ozone scrubber and IOMP are working effectively.²⁵
46. The proof of the success of the works is that there has also been a significant decrease in complaints about the odour emitted from Ziwi. As stated by Mr Coughlan, no complaints have been verified as offensive or objectionable by either

¹⁸ Statement of Evidence of Roger Cudmore, dated 7 March 2022, at [87].

¹⁹ Statement of Evidence of Tom Coughlan, dated 7 March 2022, at [15].

²⁰ WSP report's, provided to Commissioners and Submitters on 24 February 2022

²¹ WSP report on Stage 2, provided to Commissioners and Submitters on 24 February 2022.

²² WSP report on Stage 2, provided to Commissioners and Submitters on 24 February 2022.

²³ Addendum to the Officer's Report, dated 28 February 2022.

²⁴ Supplementary Statement of Evidence of Roger Cudmore, dated 18 March 2022, at [10].

²⁵ Supplementary Statement of Evidence of Roger Cudmore, dated 18 March 2022, at [13].

Council Officers or trained Ziwi staff since the IOMP has been fully adopted.²⁶

47. The significant reduction in complaints and continued testing by Ziwi and WSP provide strong evidence that the ozone scrubber system is working effectively and that Ziwi has successfully mitigated the odour discharge to the extent required by the IOMP.

CONCLUSION

48. In conclusion, Ziwi says that:
- (a) it has complied with the enforcement orders and gone above and beyond with the mitigation measures implemented on Site;
 - (b) there is a historically low level of odour complaints about the Site, including a 3 month period where no complaints were received; and
 - (c) the mitigation measures implemented on Site, and improvements to the scrubber system have substantially reduced the odour and 'fatty' character of the odour.
49. Each of the above points, coupled with the eminent move to the Hawke's Bay in the second half of 2022, prove Ziwi's commitment to reducing odour from the site, and that the effects of the resource consent applied for are no more than minor.
50. Ziwi respectfully requests that the consent be granted, as recommended by the Council.

DATE: 23 March 2022



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²⁶ Statement of Evidence of Tom Coughlan, dated 7 March 2022, at [21].