

IN THE MATTER OF

The Resource Management Act 1991

AND

IN THE MATTER OF

An application by Addiction Foods NZ Limited to discharge contaminants to air from pet food production at a site in Te Puke.

BETWEEN

ADDICTION FOODS NZ LIMITED

Applicant

AND

BAY OF PLENTY REGIONAL COUNCIL

Consent Authority

REPORT AND DECISION OF HEARING COMMISSIONER

John Iseli

November 2022

Heard on 2nd August 2022 at Baypark Events Centre, Tauranga

Representations and Appearances

Applicant:

Ms Megan Exton, Counsel

Mr Jerel Kwek, Director, Addiction Foods

Mr James Natzka, Quality Assurance Manager, Addiction Foods (evidence tabled)

Mr Alan Tocker, Addiction Foods (answering questions in the absence of Mr Natzka)

Mr Charles Kirkby, Air Quality Consultant

Submitters:

Ministry of Education – submission tabled

Section 42A Reporting Officers:

Ms Danielle Petricivich, Resource Advisor

Mr Dylan Vernal, Air Quality Consultant

Decision Summary

Consent to discharge contaminants to air is approved for a term of 20 years, subject to conditions. These conditions are comprehensive and require regular odour monitoring and emission testing to confirm the ongoing effectiveness of the mitigation measures now in place at the Addiction Foods site.

BACKGROUND AND PROCEDURAL MATTERS

1. This is the report and decision of Hearing Commissioner John Iseli. I have been appointed by the Bay of Plenty Regional Council (**BOPRC**) to hear and decide the application by Addiction Foods NZ Limited (**Addiction Foods** or ‘the applicant’) pursuant to the Resource Management Act 1991 (**RMA** or ‘the Act’) for a resource consent to discharge contaminants to air from pet food production at an existing plant at 240 Jellicoe Street, Te Puke.

2. Manufacture of dry pet food at the site has occurred since 2007. Production has typically occurred between the hours of 4 pm until 8 am in the recent past, but now occurs up to 24 hours a day to meet demand. The pet food is primarily made from meat and fish meals combined with other ingredients to form a paste which is then cooked as it moves through an extruder, cut into kibbles and then dried. The kibbles are then cooled and sprayed with a flavour enhancer before being packaged for distribution. The cooking, extrusion and drying processes are key sources of odour generated during manufacturing.
3. Addiction Foods applied for resource consent under both the Regional Air Plan (**RAP**) and Plan Change 13 (**PC13**) to the Regional Natural Resources Plan (**RNRP**). PC13 was notified in 2018 and now most of the provisions of PC13 (including those relevant to this application) are beyond appeal and must be treated as operative. Prior to PC13 being notified, the applicant operated as a permitted activity under Rule 17 (General Activities) of the RAP, subject to a “no offensive or objectionable odour beyond the property boundary” condition. PC13 introduced the requirement for resource consent for this specific activity (pet food manufacture by the application of heat).
4. The s42A Officers’ Report at pages 2-5 details the compliance and complaints history for the activity. That information was not disputed and I adopt it here. By way of summary, it is noted that an abatement notice and two subsequent infringement notices relating to odour from the site were issued in 2016. In March 2019, six infringement notices and a final warning for breach of the abatement notice were issued. At the time of the hearing 405 complaints had been lodged in relation to odour from the site, although not all were confirmed as being caused by discharges from Addiction Foods. Complaints primarily originated from the residential areas in close proximity to the south and southwest of the site. No odour complaints have been received by BOPRC since mid-March 2022.
5. Addiction Foods has trialled various odour mitigation methods in recent years, ultimately installing a wet chemical scrubber to treat extracted odorous air and discharge via a 33.4m high emission stack. The upgrades to the odour control system have now been completed and consent is sought for the discharge based on these controls.
6. The applicant has requested that consent be granted for a duration of 20 years, reduced from a term of 25 years sought in the application documents.

7. Prior to the hearing, a report was produced on behalf of the BOPRC pursuant to section 42A by Ms Danielle Petricevich, Senior Consents Planner. This 's42A Report' included a technical review of the application by Mr Dylan Vernal, Air Quality Consultant with Tonkin and Taylor Ltd (**T&T**).
8. The hearing to decide the application occurred in Tauranga on 2nd August 2021. The hearing was adjourned and I issued a minute requesting that further information be provided, including: odour emission testing results, a final Odour Management Plan (**OMP**), updated recommended consent conditions, and investigation of alternative technology for regularly monitoring the odour emissions from the scrubber sampling ports. That information has been provided and circulated to the parties, and comments on the amended conditions have been received from the Council officers. A final minute was issued seeking clarification regarding the emission testing results and stack emission velocity. A response has been received from the applicant and a written reply with final proposed consent conditions was provided. The hearing was closed on 25th October 2022.
9. I visited the Addiction Foods site on the afternoon of 2nd August 2022, during a break in the hearing. I also walked around the site and visited the neighbouring residential and commercial areas.

NOTIFICATION AND SUBMISSIONS

10. The application was publicly notified, with submissions closing on 18th March 2021. Direct notification occurred to owners/occupiers of properties within 500m of the discharge, local iwi and hapu. Submissions were received prior to completion of the odour mitigation now in place at the site.
11. Thirty submissions were received within the specified time period in the RMA. Twenty two submissions were in opposition, two submissions were in support of the application, one submission adopted a neutral position and five submitters did not specify their stance on the application.
12. The s42A Report, Section 6, summarised the matters raised in submissions. The summary of the issues raised was not disputed. Ms Petricevich has detailed these matters as follows.

- The submissions in support note the economic benefits to the local community, that they don't consider the smell to be offensive or strong and that the applicant has always been pro-active and worked to ensure they are managing their contaminants to negate adverse impacts. These submissions sought to have the application approved.

- The issues and outcomes sought in the submissions in opposition are generally:
 - The odour is affecting them at their residential dwellings, including their enjoyment of the outdoors and having to close up windows and doors in the evening particularly over the summer.
 - The smell seems to have gotten worse over time.
 - The odour impacts the community's quality of life and wellbeing.
 - The odour is offensive and needs immediate attention.
 - The modelling may not represent the actual outcome.
 - Concerns with increased hours of production to 24 hours.
 - To decline the application.

- Mitigation measures and conditions suggested/sought by submitters are generally:
 - Move away from the residential area into a rural area, many submitters suggest out to Rangiora.
 - Cook/discharge times should be limited. Some of the suggested times are night -time, 10 pm – 6 am, 8 pm until 7 am, 4 pm – 8 am, 8 pm – 4 am, and not on the weekends.
 - Continuous monitoring.
 - No odour beyond the boundary.
 - Upgrades required e.g., installation of a scrubber, specialised filters.
 - On site meteorological station and recording of conditions.
 - Regulate when and how contaminants can be released, including no discharge when wind direction would increase potential negative impacts on residents (northerlies or north-easterlies).
 - Odour management plan.
 - Cease production upon verified complaint.
 - Record all complaints, circumstances etc.
 - Issues register and proactive reporting to BOPRC.
 - Frequent reporting and reviews of the consent; and
 - Short term consent duration e.g. 3 years.

THE HEARING

Applicant's Case

13. **Ms Megan Exton**, solicitor, presented opening legal submissions for the applicant. She stated that the odour control methods applied by Addiction Foods have been effective, noting that there have been no odour complaints since March 2022. She submitted that the proposal meets the relevant statutory requirements, including by being consistent with the objectives and policies of the planning instruments.
14. Ms Exton submitted that the activity has substantial positive economic effects that should be taken into account. Addiction Foods employs 85 staff members at the site. She pointed to the evidence of Mr Kirkby who considers the odour control system with chemical wet scrubber now in place to be the best practicable option (**BPO**) for this discharge. She noted that there is insufficient space available for installation of a biofilter at the Jellicoe Street site.
15. With regard to the term of any consent granted, Ms Exton stated that the applicant would accept a duration of 20 years if consent is granted. She submitted that Addiction Foods has made a significant investment into odour control at the site (approximately \$1.25 million). Certainty is required to support the ongoing investment in the activity. She also noted that a review condition is proposed that would allow for any adverse odour effects to be addressed, should they arise during the term of consent.
16. **Mr Jerel Kwek**, Director, presented a summary of his evidence. He stated that Addiction Foods has been operating at the site since 2007 and is the largest kibble pet food production plant in New Zealand. He detailed the odour mitigation measures trialed at the site since 2015, including:
 - Use of spray deodorisers;
 - Installation of an extraction and ducting system for odorous process air;
 - Ozone generation and injection;
 - Ultraviolet light treatment;
 - A pilot wet scrubber; and
 - Optimised extraction to a full chemical wet scrubber.

17. Mr Kwek calculated the total cost of these various odour control measures to be \$1.25 million. He stated that several alternative sites had been investigated by land agents between 2019 and 2021, but none were found to be suitable for the operation. He estimated the cost to relocate the plant as approximately \$40 million.
18. Mr Kwek stated that good housekeeping measures are key to minimising fugitive odour from the plant. He noted that extraction ducts are regularly monitored and a manometer is used to assess building air extraction daily, to ensure negative pressure is maintained. Mr Kwek stated that daily odour monitoring is undertaken by Mr Tocker and the shift supervisors, with six people trained to undertake this work.
19. In response to my second minute, the supplementary evidence of Mr Kwek discussed the outcome of investigation of the Scentroid odour monitor as an alternative to “sniff testing” at the wet scrubber ports. He concluded that the existing monitoring method at the scrubber is more efficient and effective.
20. **Mr James Natzka**, Quality Assurance and Environmental, Health and Safety Manager, provided a written summary of his evidence. Mr Natzka was unable to attend the hearing due to illness, but Mr Alan Tocker from his team attended to answer any questions.
21. Mr Natzka explained that the process begins with the raw materials that are transported into the facility through exterior roller doors, which are kept closed except when required to be opened. The transferring of raw materials is restricted to a specific time to help prevent fugitive odours from escaping the building. Mr Natzka stated that the odorous air generated during the manufacturing process is captured at source through a network of ducting and fed into the chemical wet scrubber via the air handling unit. The odorous air is then treated while passing through the two towers of the chemical scrubber before being discharged to air via the 33m high stack.
22. He noted that the Environmental, Health and Safety Coordinator (currently Mr Tocker) is responsible for the internal site odour monitoring that is undertaken at least daily and includes checking the scrubber exhaust and site boundaries. If noticeable odour is detected at the boundary an internal investigation is triggered. Mr Natzka also discussed complaint response procedures.

23. Mr Natzka explained that the chemical wet scrubber has two odour sampling ports: Tower 1, which draws pre-treatment air and Tower 2 at the base of the stack (after treatment). These are currently monitored at least once per day and the odour is assessed against the commonly used 0-6 scale for odour intensity.
24. He stated that the functionality of the chemical wet scrubber requires the pH and the Oxidation Reduction Potential (**ORP**) to be closely monitored. The chemical dosing controlling pH and the ORP for Tower 1 and Tower 2 are automated and checking the pH and ORP form part of the daily odour monitoring activities carried out at the site. An independent chemical engineer (Douglas Ashby of Langby Ltd) was engaged in June 2021 to review the performance of the chemical wet scrubber, because frequent odour complaints were still being received at that time. Mr Natzka confirmed that in response to his findings, the operation of the chemical wet scrubber was completely revised. The sulphuric acid liquor in Tower 1 was replaced by sodium hydroxide (pH greater than 9.5), and in Tower 2 was switched to hypochlorite only, without additional sodium hydroxide, with the ORP set to 300-400mV. At the same time, the optimal air extraction from the processing units was reduced to 30,000 m³/hr, to reduce 'carry over' of liquor from Tower 1 to Tower 2.
25. Mr Natzka's evidence noted that ORP in the wet scrubber has been subsequently increased to improve performance. Odour discharge testing was carried out by K2 Environmental in July 2022 and returned an average result of 6800 OU/m³. He noted that the sampling was completed while a lamb/salmon product was being manufactured.
26. **Mr Alan Tocker**, Environmental Health and Safety Coordinator, attended the hearing to answer questions in the absence of Mr Natzka. He stated that he had been involved in the odour monitoring at the site. He explained the procedures for odour monitoring around the boundary of the site and checking doors to minimise fugitive emissions. Mr Tocker elaborated on the procedure used in response to odour complaints, involving checking around the site boundary first followed by odour monitoring at six locations in the neighbouring area.
27. **Mr Charles Kirkby**, Air Quality Consultant, presented a summary of his evidence. He noted that the site is located in an industrial area of Te Puke, with the closest residential areas within 100m of the boundary. While acknowledging that there have been ongoing concerns

expressed regarding discharges of odour from the site, he considered that the emissions control and management systems that are now in place appear to be effective in mitigating adverse effects on the environment. Mr Kirkby pointed out that there have been no complaints regarding odour since March 2022 – the longest period without complaints since 2017 – and Addiction Foods’ own boundary monitoring rarely detects odour at a strength sufficient to cause adverse effects beyond the site boundary.

28. Mr Kirkby stated that he largely agreed with the conclusions of the S42A report. He provided a set of revised suggested consent conditions, with several amendments to the conditions recommended by Ms Petricevich. He considered that, given the lack of odour complaints since March 2022 and the further odour monitoring that has occurred, there is now sufficient certainty that odour emissions are adequately controlled.
29. Mr Kirkby discussed the results of the odour emissions testing undertaken since installation of the scrubber. He considered that there is insufficient information from one test to set an emission limit as a condition of consent. Rather than a strict odour emission limit, he proposed that a trigger level for further investigation would be more appropriate. He considered that greater weight should be given to community feedback rather than odour emission testing.
30. With regard to potential cumulative effects, Mr Kirkby stated that odour is also discharged from Sunday Pets, located approximately 130m northwest of the Addiction Foods site. He explained that Sunday Pets treats the discharge via a small biofilter, noting that some odour can be detected at the boundary of that site at times. Mr Kirkby stated that cumulative effects arising from the Sunday Pets and Addiction Foods discharges would potentially occur during north-westerly or south-easterly winds. He added that relatively few odour complaints had been received from the Conifer Place area, to the southeast of the site.
31. Ms Kirkby provided an updated OMP for the site. The OMP has been subsequently further revised following discussions with Mr Vernal and a final version has been submitted. The plan includes wet scrubber maintenance and monitoring procedures, requirements for regular odour monitoring and complaint response procedures.
32. The supplementary evidence submitted by Mr Kirkby and Mr Natzka, in response to my second minute, detailed the results of further emission testing undertaken when “fishy”

product was being manufactured. Mr Natzka noted that the mean odour emission rate of approximately 15,000OU/s is in line with expectations (based on previous testing), but there was some variability between tests. He stated that the ORP in Tower 2 of the wet scrubber was subsequently further increased to 600-650mV to optimise odour control.

33. Mr Kirkby's supplementary evidence pointed out that the highest measured odour emission rate during the recent testing programme was 20,021OU/s, lower than the 22,222OU/s emission rate used for the dispersion modelling that indicated off-site concentrations below the relevant air quality criteria to prevent odour nuisance. However, he accepted that the measured efflux velocity from the stack of 9.6m/s was approximately half the velocity assumed in the dispersion modelling. He noted that this could potentially result in higher nearfield concentrations due to building downwash effects but was unlikely to result in significantly greater concentrations than predicted at residential areas.

Submissions

34. No submitters attended the hearing in person. Ms Petricevich has provided a useful summary of submissions. I have also read all the submissions lodged in relation to this application and taken the views expressed into consideration.
35. **The Ministry of Education** tabled a letter at the hearing in support of their submission on the application. The Ministry's submission outlined odour concerns and indicated that Te Puke Primary School has experienced objectionable odour issues which may be attributable to the air discharge from Addiction Foods. The submission requested that conditions be imposed on any consent granted to monitor the effectiveness of the proposed site upgrades and ensure air discharge compliance at the site.
36. The Ministry detailed suggested draft consent conditions. The letter confirmed that if the conditions recommended in the s42A Report are adopted, the Ministry's concerns would be adequately resolved.

Section 42A Report

37. **Ms Danielle Petricevich**, Resource Advisor, prepared the s42A report on behalf of BOPRC that was circulated to the parties prior to the hearing. Her report included a technical review prepared by **Mr Dylan Vernal**, Air Quality Consultant with T&T. The report recommended that the application be granted for a term of 15 years, subject to a suite of conditions.
38. Ms Petricevich confirmed that no odour complaints relating to the discharge had been received by BOPRC since 16th March 2022. She noted that ozone treatment and a shorter emission stack (23m) were in place during the application notification period (when submissions were made), resulting in less effective odour control than the current mitigation.
39. At the time of writing her report, Ms Petricevich considered that there was limited evidence of a reduction in odour effects as a result of the improved mitigation now in place. She therefore recommended a 15-year consent term. She stated that there is some remaining uncertainty, but that is reduced by the conditions proposed.
40. Mr Vernal provided comment in relation to his technical review of the AEE. He concluded that there is a good level of agreement between the parties. He confirmed that the mitigation now in place is expected to be able to control the odour discharge to an acceptable level.
41. With regard to the odour dispersion modelling, Mr Vernal noted that the CALPUFF modelling undertaken by AECOM in support of the application predicted peak odour ground level concentrations (**GLCs**) of 0.5 OU/m³ (1-hour average, 99.5th percentile). This value is within the relevant guideline of 1 OU/m³ (1-hour average, 99.5th percentile) for nearby sensitive residential areas where unstable meteorological conditions can result in worst-case predictions. However, Mr Vernal stated that further odour emission testing is required to confirm the assumed odour emission rate. He further considered that the overestimation of efflux velocity in the dispersion model adds a degree of uncertainty.
42. In terms of the applicant's request for consent conditions allowing for further trialling of different scrubber liquors (such as sulphuric acid in Tower 1), Mr Vernal and Ms Petricevich

considered that any such trials should occur prior to a decision being made. In the event that a trial is allowed, they considered that conditions should specify a clear trigger before limited trialling could commence. Ms Petricevich noted that a change in scrubber liquors had not been assessed by a technical review and there is uncertainty regarding the potential effects. She considered that trials of this nature should be addressed by applying for a change to conditions of consent at that time.

43. In accordance with my directions the air quality experts, Messrs Kirkby and Vernal, met on 16th August 2022 and have discussed the technical aspects of the suggested conditions of consent. There is now a large degree of agreement between the applicant and officers and amended sets of conditions have been submitted for my consideration.

Applicant’s Right of Reply

44. Ms Exton provided a written reply with amendments to the applicant’s proffered conditions, based on discussions held between the air quality experts. She addressed some specific outstanding points of difference on conditions between Ms Petricevich and the applicant.
45. Ms Exton confirmed the applicant’s view, and that of Mr Kirkby, that a strict odour emission limit is not appropriate for compliance purposes. She submitted that Addiction Foods should focus on matters that directly impact odour emissions – such as the scrubber ORP and the ventilation system. She stated that, perhaps tellingly, there have been no odour complaints since the ducting was repaired and the ORP in Tower 2 was increased in March 2022. She further noted that no submitters attended the hearing. She considered that focussing on these matters is more efficient and effective at managing odour emissions than inserting a (somewhat arbitrary) numerical compliance limit into consent conditions.
46. Ms Exton further submitted that it is not appropriate to impose a compliance limit based on the results of two rounds of testing, especially when the results of that testing have shown high variability. While using those results to inform a trigger for further investigations is appropriate, using them to choose a compliance limit is not. She considered that it is neither fair nor reasonable for Addiction Foods to be held in breach of the RMA if it cannot meet such a limit, particularly in circumstances where it appears that odour emissions are no longer an issue.

47. She considered that now the additional emissions testing results have been returned (and show lower emission rates than modelled), the six-monthly review period suggested in the officers' recommended conditions is not warranted. Ms Exton submitted that allowing reviews to take place every six months is too onerous on consent holders unless there are unique circumstances present which justify a short period (such as for short-term consents). She considered that it would be unusual for a review period of less than annually to be required in circumstances where there are no ongoing complaints and robust consent conditions are in place.
48. Ms Exton pointed out that the current odour control system is not new. Rather, it has been refined following a period of extensive trials and observations. For example, Addiction Foods carried out a pilot study, engaged a ducting expert, and fine-tuned the operational parameters of the chemical wet scrubber through engaging an independent chemical engineer and consulting with the supplier. She noted that management procedures have also been significantly improved over the last couple of years. She concluded that taking all of this into account, the consent authority can have confidence that the odour control system is working, and a short review period is not required.

ASSESSMENT

49. In assessing the application, I have considered the application documentation and AEE, the s42A Report and technical review, all submissions received and the information provided after the hearing adjournment in accordance with my directions. I have summarised this evidence above.

Status of the Application

50. The starting point for my assessment of the application is to determine the status of the proposed activity.
51. Ms Petricevich concluded that the proposal is classified as a discretionary activity under the RAP and the PC13. The applicant accepted her analysis. I determine that the application is to be considered as a discretionary activity.

Statutory Considerations

52. In terms of my responsibilities for giving consideration to the application, I am required to have regard to the matters listed in sections 104, 104B and 105 of the Act.
53. In terms of section 104(1), and subject to Part 2 of the Act, which contains the Act's purpose and principles, I must have regard to-
- (a) *Any actual and potential effects on the environment of allowing the activity;*
 - (ab) *Any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity;*
 - (b) *Any relevant provisions of a national environmental standard, other regulations, a national policy statement, a New Zealand coastal policy statement, a regional policy statement or a proposed regional policy statement, a plan or proposed plan; and*
 - (c) *Any other matters the consent authority considers relevant and reasonably necessary to determine the application.*
54. Section 104(2) states that when forming an opinion for the purposes of section 104(1)(a), I may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect. This is referred to as consideration of the 'permitted baseline'.
55. In terms of section 104B for a discretionary activity, I may grant or refuse the application, and if granted I may impose conditions under section 108.
56. In terms of section 105, when considering section 15 (discharge) matters, I must, in addition to 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 reason for the proposed choice; and*
 - (c) *Any possible alternative methods of discharge, including discharge to any other receiving environment.*
57. I consider each of these sections of the RMA in reaching my decision on the application.

Permitted baseline

58. I do not consider there are any permitted activities that are relevant to my consideration of the application. The permitted baseline was not discussed by Ms Petricevich or invoked by the applicant. I consider that the odours caused by the pet food manufacturing plant will not be similar in character, nature or scale to typical odours associated with activities permitted by the relevant plans.

Section 104(1)(a) Actual and potential effects on the environment

59. The following actual and potential effects on the environment have been identified and assessed:
- (a) Effects of the discharge of odour, including effects on amenity values;
 - (b) Effects on cultural values; and
 - (c) Positive effects of the proposal.
60. I record that I have considered all these actual and potential effects in relation to the proposal.
61. Based on the evidence and information presented, including submissions, my assessment focusses on adverse odour effects of the discharge from the pet food manufacturing plant. My assessment of odour effects below includes impacts on amenity values.

Odour Effects

62. The odour effects caused by the existing discharge from Addiction Foods have been analysed in detail in the application and the s42A report. The large number of complaints from residents located within 400m of the site reflect the substantial period of time required for effective odour control to be achieved. The submissions lodged on the application confirmed that odour effects were ongoing in March 2021. The odour control system has been improved since that time, as described in the expert evidence.
63. Mr Kwek has described the various odour mitigation measures trialled at the site over a period of several years. He estimates the total cost of these works to be approximately

\$1.25 million. Fine tuning of the chemical wet scrubber has occurred in recent months, including increasing the ORP in Tower 2.

64. The air extractions system, wet scrubber and discharge via the 33m tall emission stack now appear to be effective in preventing odour nuisance in the neighbouring Te Puke area. That effectiveness is indicated by the lack of odour complaints recorded by BOPRC since mid-March 2022. Recent emission testing, commissioned in accordance with my directions, reported odour emission rates in line with expectations. I also note that the regular odour scout monitoring undertaken by the applicant supports the conclusion from complaints data that odour is now being adequately controlled at the site.
65. The dispersion modelling of the odour discharge further supports the conclusion that discharge via the chemical scrubber is capable of achieving off-site odour concentrations that are acceptable. The recent emission testing reported odour emission rates within the value assumed for the modelling, although it is noted that the tested rates are variable. The dispersion modelling predicted peak odour concentrations in the neighbouring residential area that are approximately half of the applicable guideline of 1 OU/m³ (1-hour average, 99.5th percentile) recommended by the Ministry for the Environment’s Good Practice Guide for Assessing and Managing Odour.
66. The air flow rate through the scrubber and consequently the emission velocity from the stack is approximately 50 percent of the value assumed in the dispersion modelling. I accept the evidence of Mr Kirkby that, given the height of the emission stack, this change is not expected to result in a significant increase to the odour concentrations at residential areas predicted by the modelling. I also accept the advice of Mr Vernal and Mr Kirkby that greater weight should be applied to the odour complaints record and odour scout monitoring, rather than the dispersion modelling results.
67. A comprehensive updated OMP, including input from Mr Kirkby, has now been provided by the applicant. The plan details the methods of implementing the proposed consent conditions. The OMP describes the odour sources and controls, maintenance, regular odour monitoring procedures, complaints handling, contingency measures and staff training. The OMP is to be updated at least every three years and is to be certified by the Council in accordance with proposed conditions. I consider that the OMP now provided is generally appropriate for this activity. Operation of the plant would be in accordance with this interim

OMP until the Council has certified the OMP in accordance with the proposed consent conditions.

68. I accept the evidence of Mr Kirkby that the odour control measures now applied at the Addiction Foods site are consistent with the BPO. Based on the evidence, fine tuning of the chemical wet scrubber and increase of the ORP in Tower 2, along with site management practices to minimise fugitive odour emissions, appear to have substantially reduced adverse odour effects.
69. In the s42A report Ms Petricevich expressed a degree of concern that the effectiveness of the current mitigation will not be fully understood until another full summer season has passed, due to the prevalence on north to north-east winds during summer that have been correlated with odour complaints. While those concerns are noted, more than seven months have now passed since the last relevant odour complaint to BOPRC and the emissions testing and odour scout monitoring support the view that odour is now adequately controlled. Taking into account the comprehensive set of consent conditions I intend to impose, I find that the Addiction Foods plant can be operated so that the discharge does not cause offensive or objectionable odour effects at neighbouring properties.
70. The suggested conditions of consent are now largely agreed between the parties, with a few relatively minor exceptions. I address the key outstanding matters in dispute between the applicant and the officers below and provide reasoning for my determination on specific conditions.
71. A key matter of difference between the applicant and officers concerns potential allowance for trialling of alternative chemical solutions in the wet scrubber, should that be deemed necessary during the term of any consent granted. The applicant proposed that conditions should allow such a trial for a period of 6 weeks, if emission testing results exceeded the suggested trigger value of 45,500 OU/s or if there was an increase in odour complaints. The concern expressed by the officers was that odour control may not be effective during the trial period, potentially resulting in adverse odour effects that are not anticipated by the assessment.
72. I share the concern of Ms Petricevich that the effects of odour emissions during such a trial period have not been properly assessed and effects are uncertain. Ms Exton submitted that

the use of sulphuric acid in Tower 1, for example, was not without precedent. However, I note that this was not proven effective and the scrubber solutions were ultimately changed to the current method. I determine that any such trials, should they be necessary in the future, should be subject to application for a variation in consent conditions and be properly assessed through that process. In any case, the evidence is that the current method of emission control and scrubber settings are now providing adequate odour mitigation. Given the substantial time and expense in reaching this position, allowance for further trialling with unknown results within the terms of consent would not be reasonable.

73. The second key matter of difference is the odour unit emission limit (if any) that should apply and whether this should be specified as an emission limit or as a trigger value. Based on the two rounds of odour emission testing now undertaken, Mr Kirkby proposed a trigger value of 45,500 OU/s. He considered that this rate appropriately takes into account the variability in tested odour emission rates based on the data now available. The proposed value is approximately double the emission rate used for dispersion modelling, potentially resulting in peak off-site odour concentrations in the order of 1 OU/m³ (1-hour average, 99.5th percentile), equivalent to the indicative guideline value.
74. I accept the evidence of Mr Kirkby that 45,500 OU/s is an appropriate trigger value to be applied to the proposed annual emission testing results. I also consider that the trigger value approach is appropriate in the circumstances of this case, with actions required in the event that an exceedance occurs. I note that odour monitoring by trained personnel is also proposed at the scrubber ports and at the site boundary daily, and off-site on a weekly basis. This monitoring will also inform the assessment of ongoing effectiveness of odour control at the site.
75. Regarding the proposed meteorological station, I accept the applicant's proposed condition that would allow the station to be established on the building roof, subject to meeting minimum specifications and approval of siting by a suitably qualified air quality practitioner with review by BOPRC prior to installation. I consider that this approach will enable the gathering of meteorological data of sufficient quality for monitoring and compliance purposes.
76. In respect of the odour monitoring procedures proposed, I find that the applicant's suggested amendments to the conditions are generally appropriate. In terms of odour monitoring and training of staff being undertaken by a Certified Air Quality Practitioner, I

determine that allowance should also be made for suitably qualified and experienced persons in Air Quality, as defined in the advice note. This recognises that that not all suitably qualified and experienced practitioners will be certified.

77. The parties ultimately agreed that annual odour emission testing at the scrubber is appropriate. I agree and consider that such testing is necessary to ensure that the scrubber is maintained in effective operating conditions on an ongoing basis and I have added an appropriate test method to the condition and required that the laboratory undertaking the analysis be IANZ accredited. I have further determined that a clause should be added to the proposed review condition that would allow BOPRC to review in the event of two consecutive emission tests (taken in accordance with conditions) recording an odour emission rate exceeding the 45,500 OU/s trigger value.
78. With regard to the review condition, Ms Petricevich recommended allowance for review of conditions 6-monthly whereas Ms Exton submitted that allowance for review on an annual basis would be more appropriate in this case. Bearing in mind that a substantial period of time has now passed since the hearing without odour complaints attributable to Addiction Foods, I determine that the ability to review on an annual basis is sufficient. I agree with Ms Exton that there can now be a degree of confidence that the odour control system is working effectively.
79. In respect of proposed condition 6.3, I agree with the applicant's recommendation that recording of odour strength off-site of 4 ("strong" as defined in the OMP) or more should trigger investigation. I consider this to be a more appropriate odour strength threshold for investigation and additional emission testing than 3 ("distinct: noticeable in the air but still faint). However, I accept the officers' recommendation that this should apply at all locations beyond the site boundary, not just residential areas.
80. I note that some submissions sought to restrict operating times, as occurred in the past to limit odour impacts. Bearing in mind the degree of odour control now achieved and the comprehensive set of conditions I intend to impose, I find that restriction of operating hours is no longer necessary.
81. Regarding time frames for certification of the OMP, I agree with Ms Petricevich that it is not appropriate to impose time frames on BOPRC for certification. A comprehensive interim OMP has now been provided (and will be attached to conditions) and it is proposed that the

plant would be operated according to this OMP until an updated plan is certified. Therefore, the time period for council certification of updated OMPs is not expected to significantly hinder the consent holder. Ms Petricevich correctly notes that updates to the plan may require a technical review, potentially involving an independent air quality specialist, and thus the OMP review may require some time to complete.

82. The conditions of consent have involved a substantial amount of input and refinement by the parties during the process. Based on the amendments I have discussed, I am satisfied that the conditions I intend to impose are comprehensive and allow appropriate scope to address any issues that may arise during the term of consent. Overall, I conclude that, subject to compliance with these conditions, any adverse effects of odour caused by discharge from the Addiction Foods site are expected to be minor.

Effects on Cultural Values

83. The s42A report notes that, although the applicant undertook limited consultation with tangata whenua, the application was publicly notified and directly served to iwi and hapū groups. No submissions have been received from any iwi or hapū groups.
84. Ms Petricevich stated that key aspects of the iwi and hapū management plans are that mauri of the air is valued and enhanced and that effects of discharges in proximity to sensitive areas such as marae are managed by involving tangata whenua.
85. Ms Petricevich advised that, given her conclusions regarding effects on air quality, there is unlikely to be a significant effect on the values of tangata whenua. I accept her advice and have reached the same conclusion.

Positive Effects

86. Ms Exton has pointed out that Addiction Foods employs 85 staff and the activity has substantial positive economic effects that should be taken into account. Ms Petricevich agreed that the direct employment of workers is a positive effect associated with this activity.

87. I recognise that there are significant economic benefits associated with ongoing operation of the petfood manufacturing facility. I accept that granting consent to continue to discharge from the plant would provide for economic wellbeing and that the proposal is consistent with the efficient use of resources. I have taken these positive effects into account in evaluating the proposal under section 104(1) of the Act.

Section 104(1)(b) National Environmental Standards

88. The National Environmental Standards for Air Quality (**NESAQ**) include regulations applicable to the processing of resource consents. I accept that the limitations specified in the NESAQ and are unlikely to be breached by the discharge and find that the NESAQ does not prevent granting of consent in this case.

Section 104(1)(b) Relevant objectives and policies

89. Ms Petricevich has assessed the application against the relevant objectives and policies of the regional planning instruments, specifically the Regional Policy Statement (**RPS**) and PC13. She noted that the policies of the RAP are no longer relevant as the provisions of PC13 are treated as operative, now being beyond appeal.
90. Ms Petricevich concluded that, based on the odour control measures now in place, the proposal is generally consistent with the objectives and policies of the RPS and PC13. The parties did not dispute her conclusions regarding the relevant planning instruments.
91. I accept Ms Petricevich's advice and conclude that, based on the conditions I intend to impose, the proposal is generally consistent with the relevant objectives and policies of the RPS, PC13 and iwi management plans.

Section 105

92. The applicant and Ms Petricevich have appropriately addressed section 105 matters. I record that I have had regard to the nature of the discharge and sensitivity of the receiving environment, the applicant's reasons for the proposed choice, and possible alternative methods of discharge in reaching my decision.

93. Mr Kwek stated that several alternative sites had been investigated by land agents between 2019 and 2021, but none were found to be suitable for the operation. He estimated the cost to relocate the plant as approximately \$40 million.
94. I accept the evidence that treatment of odour from the Addiction Foods plant in by extraction to the chemical scrubber and discharge via a 33m high stack is consistent with the current BPO. I consider that the existing plant is appropriately located in an industrial zone and accept that there are sound reasons, including the substantial investment in existing infrastructure, for choosing to continue operating at the Jellicoe Street site. I am satisfied on the evidence that the method of discharge and treatment is now appropriate in this case.

Part 2 of the Act

95. I agree with Ms Exton and Ms Petricevich that there is no specific reason to revert back to consideration of Part 2 matters in this case, as relevant considerations are encapsulated in the competently prepared regional planning documents. Nevertheless, I record my findings that granting the application would be in accord with Part 2 and would achieve the purpose of the RMA and the principles of sustainable management of natural and physical resources, as defined in Section 5.

Duration of Consent

96. Ms Exton stated that the applicant would accept a duration of 20 years if consent is granted. She submitted that Addiction Foods has made a significant investment into odour control at the site (approximately \$1.25 million) and stated that certainty is required to support the ongoing investment in the activity. She also noted that a review condition is proposed that would allow for any adverse odour effects to be addressed, should they arise during the term of consent.
97. At the time of writing the s42A report, Ms Petricevich considered that there was limited evidence of a reduction in odour effects as a result of the improved mitigation now in place. She therefore recommended a 15-year consent term. She stated that there is some remaining uncertainty, but that is reduced by the conditions proposed.

98. I am conscious that a substantial period of time has now passed since the hearing without odour complaints attributable to Addiction Foods. I consider that there can now be a degree of confidence that the odour control system is working effectively. Bearing in mind the comprehensive conditions I intend to impose, including regular monitoring and allowance for annual review if adverse effects arise, I determine that a term of 20 years is appropriate.

Decision

99. **For the above reasons, it is the decision of the Bay of Plenty Regional Council, pursuant to sections 104, 104B and 105, and subject to Part 2 of the Resource Management Act 1991, to approve the application by Addiction Foods NZ Limited for Discharge Permit RM19-0556 to discharge contaminants into air, for a duration of 20 years and subject to the conditions attached.**

Dated this 10th day of November 2022.

A handwritten signature in black ink, appearing to read "John Iseli". The signature is written in a cursive style with a large initial 'J'.

John Iseli
Hearing Commissioner