

16 June 2008

Horizons Regional Council
Private Bag 11025
Manawatu Mail Centre
Palmerston North 4442

Attention Robyn Harrison
Facsimile 06 952 2929

Dear Robyn

**Hearing of Submissions and Further Submissions on the "Overall Plan" in relation to the Proposed Horizons Regional Council One Plan
HG Ref 1020-122510-01**

Thank you for your letter dated 22 May 2008, advising PIANZ, Tegel Foods Ltd, Turks Poultry and Mainland Poultry Group that a Hearing on the "Overall Plan" for the Proposed Horizons Regional Council One Plan is scheduled for 1 July 2008. Rather than attend the hearing in person, it would be appreciated if this letter could be tabled for the consideration of the Hearings Committee.

The submission made by several of the District Councils (Taranaki District Council 172/60, Rangitikei District Council 346/60, Wanganui District Council 291/16, Horowhenua District Council 280/63, Manawatu District Council 340/82 and Ruapehu District Council 151/129) between pages 35 and 37 of the Planning Evidence and Recommendations Report, related to the removal of inappropriate conditions/ standards and terms for permitted activities in Part two of the Proposed Plan. PIANZ and others (526/9-14) made further submissions supporting this, stating that:

"The provisions for regional standards for ambient air quality are considered to be arbitrary, subjective and immeasurable. As a result they are unworkable in a practical sense and do not achieve the purpose of the Resource Management Act 1991. We support the removal or redrafting of all conditions that contain elements of subjectivity, uncertainty, ambiguity or discretion".

The Officer's Report recommends to accept in part the submissions lodged by the Territorial Authorities and further submissions by PIANZ, Tegel Foods, Turks Poultry and Mainland Poultry Group. The report states:

"Submissions of the TA's state that they consider many of the 'conditions/standards/terms' for permitted activities are 'uncertain or ambiguous in their interpretation and / or application. Under s.76(2) and s68(2) of the RMA, rules have the force and effect of a regulation. As such they must conform with

common law principles and conventions regarding validity, including avoiding reservation of discretion, uncertainty or unreasonableness. Rules that contain words or phrases of uncertain or ambiguous meaning run the risk of being voided as ultra vires on the grounds of uncertainty. The submission of the TA's and others are unclear as to which 'conditions/standard/terms' they consider to not meet the necessary tests. However I recommend that if any elements of uncertainty in the rules are found when the hearing panel is considering the rules under other topic hearings, the uncertain parts should be removed and/ or replaced."

It is accepted that a list of each 'condition/standard/term' considered to be unworkable was not provided within the further submission. However, our areas of concern were alluded to within our reasoning for supporting the TA submissions. We consider the following 'conditions/standards/terms' require further consideration from the Proposed One Plan:

- Rule 13-2(e)** *"The discharge shall not result in any objectionable odour or fertiliser drift to the extent that causes an adverse effect beyond the property boundary"*
- Rule 13-3 (e)** *"The discharge shall not result in any objectionable odour, dust or spray drift beyond the property boundary"*
- Rule 13-5 (g)** *"There shall be no objectionable odour, dust, waste or spray drift to the extent that causes an adverse effect beyond the property boundary"*
- Rule 13-6(f)** *"There shall be no objectionable odour, dust, waste or spray drift to the extent that causes an adverse effect beyond the property boundary"*
- Rule 14-5(b)** *"The discharge shall not result in any offensive or objectionable odour, dust, smoke or water vapour to the extent that cause an adverse effect beyond the boundary of the subject property or on public land"*
- Rule 14-5-(c)** *"The discharge shall not result in any noxious or dangerous levels of gases or particulates to the extent that causes an adverse effect beyond the boundary of the subject property or on public land"*

It is accepted that these 'conditions/standards/terms' can each be dealt with individually or collectively during the relevant hearing topics if the Hearings Panel deems it necessary.

Both PIANZ and others concur with the recommendation of the Officer's Report to remove any elements of uncertainty in the rules of the Proposed One Plan.

We seek the following decision from the Hearings Panel:
Removal of the above 'conditions/standards/terms' due to their linkage to Table 8.3 (Regional Standards for Ambient Air Quality) which in itself is considered unworkable due to the subjective nature of its units.

If you have any queries regarding this matter please do not hesitate to contact the undersigned on (09) 917 5000.

Yours faithfully
Harrison Grierson Consultants Limited



Gemma Moleta
Planner
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