

## ORC NOTIFICATION RECOMMENDATION REPORT

ID Ref: 1818654  
File No: RM22.543  
Application No: 2009.381.V3.R  
Prepared for: Staff Consents Panel  
Prepared by: Dwayne Daly, Senior Consents Planner  
Date: 20 July 2023

**Subject: Notification recommendation for the review of conditions of resource consents held by Wallace Group Limited Partnership, being 2009.381.V2 under Section 128 of the Resource Management Act 1991**

### 1. Purpose

To report and make recommendations under sections 95A-G of the Resource Management Act 1991 (the Act) on the notification decision for the above application.

### 2. Background Information

**Consent Holder:** Wallace Group Limited Partnership (WGLP)

**Applicant's Agent:** N/A

**Site address or location:** 37 Boundary Road, Burnside, Dunedin

**Legal description(s) of the site:** Lots 1 and 2 DP 21212 and Pt Sec 61 Blk VI Dunedin and East Taieri SD and Lots 2 and 3 DP 436310 and Pt Sec 44 Blk IV Dunedin and East Taieri SD.

**Map reference(s) (NZTM 2000):** E1401907 N4914474

**Consent under review:** Discharge Permit 2009.381.V2

**Purpose of consent:** To discharge contaminants (including odour) from the Consented Land to air for the purposes of WGLP operating its animal rendering plant (for a term expiring on 1 August 2035), subject to conditions.

#### 2.1 Key issues/risks

At this stage there are no principal issues in contention that need to be raised.

#### 2.2 Summary

I recommend the application is processed on a non-notified basis. This is because:

- Adverse effects on the environment or any person or persons will be reduced by the proposed changes to conditions to the extent that adverse effects would be less than minor if there is compliance with the proposed conditions; and
- There are no special circumstances that warrant public or limited notification.

### **3. Description of Proposed Amendment / Variation**

#### **3.1 Background to the Review**

Wallace Group Limited Partnership (WGPL) operates a meat rendering plant (the plant) at 37 Boundary Road, Burnside, Dunedin (the site). The plant operates under Discharge Permit 2009.381.V2 (the discharge permit), which authorises the discharge of odorous compounds from the plant into the air, subject to conditions (for a term expiring on 1 August 2035). The plant was formally owned by Keep It Clean Ltd and the site is still referred to as the Keep It Clean (KIC) site.

Raw animal materials are transported to the plant by truck and received at the plant through a loading bay. After the trucks have unloaded the raw animal material, the loading bay door is closed. Any odours from raw material are extracted through a biofilter within the plant. The raw animal material is then loaded into a cooker, and all odours and vapours are ducted out of the building into a heat exchanger, which cools the vapours down before they go to a humidifier.

Plant enclosure and a foul air extraction system is fundamental to preventing odour discharges. The enclosure system includes ducting, which takes odour from all stages of the rendering process to a biofilter. The biofilter treats the collected odorous gases from the rendering operation. Active biological agents in the biofilter media remove odours by allowing absorption into the filter media, where biological activity consumes the odorous compounds and converts them into non-odorous and low odour intensity compounds.

External air is drawn into the plant through louvres placed around the building. An electric fan draws the external air into the plant, and negative air pressure (if maintained) ensures that all fugitive odours are captured and conveyed to the biofilter for treatment, prior to release to the environment.

The rendering process is susceptible to the production of odour. There are two primary causes of objectionable odour beyond the site:

- A failure of the plant enclosure and / or the foul air extraction systems causing the discharge of fugitive gases.
- Raw material or waste products deteriorating outside the plant either due to poor site hygiene or receipt of a volume of raw material beyond the capacity of the plant.

Consequently, as a requirement of the conditions of the discharge permit, the consent holder is required to implement measures to prevent odour discharges.

#### **3.2 Compliance with Current Consent**

Since approval of the discharge permit, numerous odour related issues have been identified by the Otago Regional Council's (the Council) Compliance Team through routine monitoring and upon investigation of odour complaints from the public. As a result, the Council has undertaken enforcement action on several occasions, including infringement notices, abatement notices and prosecution.

The most recent Abatement Notice (Council reference A1208303) was issued by the Council to WGLP on 15 February 2019 following investigation of odour complaints received in January 2019. The abatement notice required WGLP to cease the discharge of contaminants (specifically odour) which are dangerous, noxious, offensive or objectionable beyond the boundary of the site. Compliance was required by 1 March 2019 and at all times thereafter.

Subsequently, the Council received complaints on 27 January 2021 about offensive odours coming from site. On 27 January 2021, the Council's enforcement officers attended the site to investigate the complaints and determined that the odour was from the site. The Council brought charges against WGLP. The charges alleged that on 27 January 2021 WGLP discharged odorous compounds to air from the site in breach of both a condition of discharge permit 2009.381.V2 and abatement notice A1208303.

Specifically, the charges were as follows:

- *That, on 27 January 2021, at 37 Boundary Road, Burnside, Dunedin, WGLP discharged contaminants (odorous compounds) from industrial or trade premises (animal rendering plant) into air when the discharge was not expressly allowed by a National Environmental Standard or other regulations, a rule in a Regional Plan as well as a rule in a proposed Regional Plan for the same region, or a resource consent, as in particular it contravened condition 20 of discharge permit 2009.381.V2;*
- *That, on 27 January 2021, at 37 Boundary Road, Burnside, Dunedin, WGLP contravened the abatement notice dated 15 February 2019 having reference number A1208303 by failing to cease, at all times thereafter, the discharge of contaminants (namely odour) which are dangerous, noxious, offensive or objectionable beyond the boundary of the consented property (CRN ending 342).*

WGLP pleaded guilty to both charges on 5 September 2022. At sentencing (25 October 2022), Judge Dwyer summarized the nature of the odour from the plant on 27 January 2021 as follows:

*“On that day odour complaints were received by the Council over a period of five hours plus. Although odours would have been transient at any one location as the odour plume moved around, I find the effect on recipients was considerably more than just moderate as contended by WGLP.”*

*“This was odour with a very high level of offensiveness. The odour assessment contained in the summary, in its commentary on offensiveness records that odours of this character and hedonic tone are highly offensive by (to) most members of the public. I find that this was a highly offensive odour experienced as far as 3.75 km away from the plant by residential, industrial and motorway users.”*

The causes of the offending were identified as follows:

1. *The site receiving more raw material than permitted, and 38% of it being carted from Canterbury; and*
2. *Accumulated raw material decomposing and putrefying (rather than being rejected from delivery or taken to landfill); and*
3. *The loading bay doors being left open; and*
4. *The plant not fully operating under negative air pressure, and the foul air extraction system not fully capturing the fugitive odours and conveying them to the biofilter.*
5. *General site uncleanness and poor or no cleaning of the site (in particular the exterior surfaces) was observed, which may have contributed to the*

*odour, and was contrary to the cleaning requirements of the Management Plan.*

At sentencing, Judge Dwyer noted that WGLP had misunderstood what the conditions of the discharge permit required and that it was appropriate for the discharge permit's conditions to be reviewed. Judge Dwyer ordered pursuant to s 339(5)(b) of the Act:

*“that the Otago Regional Council serves notice under s 128(2) RMA of its intention to review the conditions of the resource consent (discharge permit) held by WGLP. I consider that this will enable the Council to put the permit and its conditions into more a more appropriate order”.*

Consequently, pursuant to Section 128(1)(a) of the RMA, on 5 December 2022 the Consent Authority served notice on WGLP of its intent to review those conditions relating to management and monitoring of odour discharges from the plant. Specifically, Council sought to review Conditions 4, 9, 14, 15, 16, 17, 18, 20, 21 and 22 of the discharge permit.

Additionally, in accordance with Section 129(1)(d) Council proposed consent conditions. These amended and new conditions sought to better address the discharge of odour and monitoring of odour discharge from the plant. The conditions related to the following matters:

- An independent suitably qualified and experienced person (SQEP) audit to review the plant facilities and its procedures; and
- Improved site hygiene, including receipt and storage of raw material; and
- Creation and implementation of an Air Quality Management Plan; and
- Maintenance and operation of the negative air pressure system and air extraction system; and
- Biofilter performance; and
- Contingency measures; and
- Odour surveys and odour scouting; and
- Monitoring, compliance reporting and complaints management

In subsequent correspondence with the consent holder dated 9 December 2022, Council indicated, it could provide an extension of timeframes under Section 37 of the Act to allow the consent holder to review the conditions and provide comments, including suggested changes.

Due to the technical complexity of the conditions and in the interests of allowing the consent holder sufficient time to review and respond to the proposed conditions, the timeframe for the application was extended pursuant to Section 37A(4)(b)(i) of the Act till 13 July 2023.

A site visit was undertaken on 28 February 2023 attended by the Council's processing officer, Dwayne Daly, Senior Planner, Council's consulting technical specialist, Donovan Van Kekam of NZ Air and a representative of the consent holder, Manfredo Hintze. Conditions were discussed further during the site visit. On 26 March, the consent holder provided written feedback to Council on the conditions with suggested changes. Subsequently, two meetings were held at Council's offices

on the 26<sup>th</sup> and 28<sup>th</sup> of April 2023 in which the conditions were discussed and refined with the consent holder.

Following this, the applicant sought the opportunity to seek advice on the conditions from their own consultant. In an email dated 16 May 2023, the consent holder indicated that they hoped to have their consultant provide a report before the end of July. In an email dated 22 June 2023, the consent holder provided further feedback on the proposed conditions and confirmed that its consultant would be undertaking a site visit on the 4<sup>th</sup> and / or 5<sup>th</sup> of July 2023. Subsequently, another meeting was held between the Council's processing officer, Dwayne Daly, Council's consulting technical specialist, Donovan Van Kekam, and the representative of the consent holder, Manfredo Hintze. In the meeting agreement was reached with the consent holder on the wording of the proposed conditions.

#### **4. Proposed Conditions**

Conditions 4, 9, 14, 15, 16, 17, 18, 20, 21 and 22 of the discharge permit (Appendix 1) relate to odour and are the subject of the review. Note: Conditions 1 – 3 were deleted by way of a previous variation.

The Consenting Authority has proposed new conditions, being Conditions 1, 2A – 2D, 4A – 4AD (Appendix 2)

The proposed new conditions are summarised below:

- A general condition defining the scope of the resource consent (Condition 1)
- Conditions setting out the requirements for a SQEP audit (Conditions 2A-2D)
- Conditions relating to receipt and management of raw material (Conditions 4A – 4G)
- Conditions relating to an Air Quality Management Plan (4H)
- Conditions relating to a Negative Air Pressure System (4I – 4J)
- Conditions relating to blood storage (4K)
- Conditions relating to a Building Air Extraction System and building tightness (4L – 4M)
- Conditions relating to biofilter requirements (4N – 4O)
- Conditions relating to contingency measures (4P – 4Q)
- Conditions relating to odour surveys and odour scouting (4R – 4T)
- Conditions relating to odour complaints (4U – 4V)
- Conditions relating to a weather station (4W)
- Conditions relating to an annual report (4X)

The Consent Authority also proposes that existing Condition 4 be varied to incorporate the new conditions summarised above, existing Conditions 9, 14 – 18 and 22 be deleted, and existing Condition 23 be varied to reference the new conditions (Appendix 2).

The proposed conditions are on the basis of recommendations contained within a report prepared by NZ Air Ltd (Appendix 3) Note: The report from NZ Air has misnumbered the conditions.

#### **4.1 Description of the Environment**

The site is located at 37 Boundary Road, Burnside, Dunedin. The site is located in an area of mixed-use development with rural-production, light-industrial, commercial and residential activities occurring within the vicinity of the site (Figure 1).



Figure 1: The site and surrounding environment

The site contains a number of buildings, outdoor storage, and large areas dedicated to vehicle access and parking associated with the activity. There are no other activities or unrelated buildings on the site. The site also contains scattered areas of vegetation (Figure 2.)

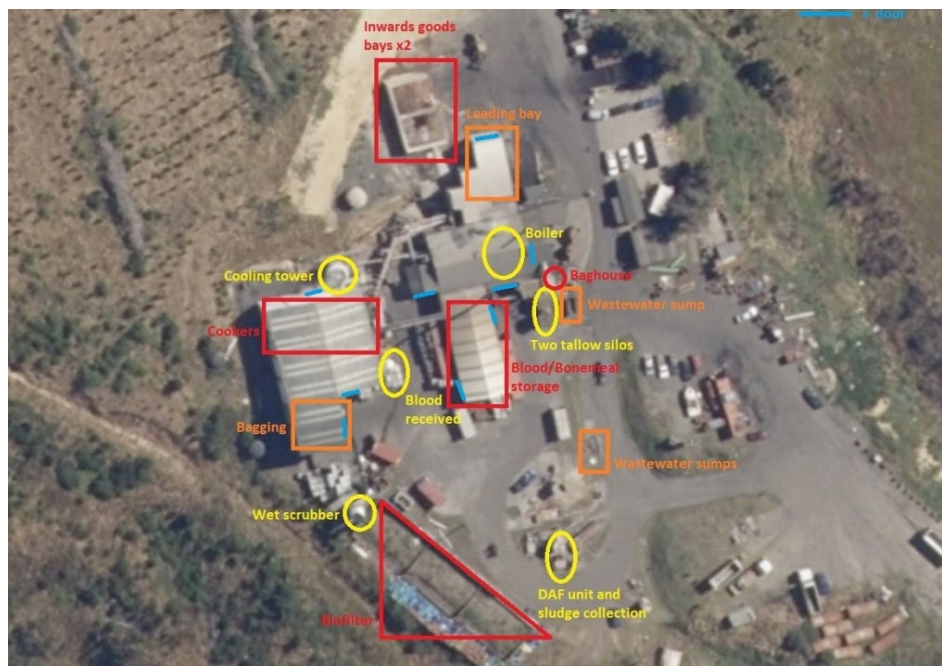


Figure 2. Buildings on the site

#### 4.1.1 Site Visit

A site visit was undertaken on 28 February 2023 attended by the Council's processing officer, Dwayne Daly, Senior Planner, Council's consulting technical specialist, Donovan van Kekam of NZ Air and a representative of the consent holder, Manfredo Hintze.

## 5. Status of the Application

At sentencing, Judge Dwyer ordered pursuant to s 339(5)(b) of the Act;

*“that the Otago Regional Council serves notice under s 128(2) RMA of its intention to review the conditions of the resource consent (discharge permit) held by WGLP. I consider that this will enable the Council to put the permit and its conditions into more a more appropriate order”.*

The applicant was served notice of the review under S128(2) of the Act in accordance with Section 129(1) of the Act on 6 December 2022 (Appendix 4). In accordance with Section 129(1)(d) Council proposed consent conditions (Appendix 2). These included amended and new conditions to address issues with the activity as it relates to the discharges of odour.

Section 130(3) RMA states that sections 95 to 95G RMA apply to a review under S128, as if -

- (a) *The notice of review of consent conditions were an application for a resource consent for a discretionary activity; and*
- (b) *The references to a resource consent and to the activity were references only to the review of the conditions and to the effects of the change of conditions respectively.*

Therefore, for the purposes of the notification decision, the review is treated as if it is an application for consent to a **discretionary activity**.

## 6. Assessment of Adverse Environmental Effects

Pursuant to Section 130(3)(b), the effects of the change of conditions are considered assessed below:

### Odour and Amenity Effects

Donovan Van Kekam of NZ Air has provided an assessment in support of the proposed new conditions. Mr Van Kekam states:

*“The KIC site has reasonable separation distances between its odour emission points and the nearest off-site sensitive receptors (mostly beyond 500 m from the site). Therefore, with full enclosure of all odour producing activities, good point source and building air extraction, followed by effective odour scrubbing/treatment plant (biofilter), the site should be able to contain and control odour discharges from the site operations. Should no raw material or waste products be exposed to ambient air and the buildings/processes which contain raw/processed material be maintained under negative pressure then there shouldn't be any fugitive emissions of offensive odour from the site. Then as long as the odour treatment plant is designed and operated to be able to effectively treat the odour extracted off the processes and buildings then there should be minimal residual odour discharged post the treatment plant. Under these operating conditions the KIC plant can operate without resulting in offensive or objectionable odour beyond the site boundary.”*

Conditions relating to the management of material and the treatment of odour are:

- SQEP audit (Conditions 2A-2D)
- Receipt and management of raw material (Conditions 4A – 4G)
- Air Quality Management Plan (Condition 4H)
- Negative Air Pressure System (Conditions 4I – 4J)
- Blood storage (Condition 4K)

- Building Air Extraction System and building tightness (4L – 4M)
- Conditions relating to contingency measures (4P – 4Q)

Having considered the proposed conditions and the advice from NZ Air, I am satisfied that the proposed conditions would effectively contain and treat odorous compounds by providing for full enclosure of all odour producing activities, good point source and building air extraction, and effective odour scrubbing by way of a biofilter, subject to ongoing compliance with the conditions.

Mr Van Kekam notes that contingency measures are appropriate and necessary to address any potential equipment failures or staff errors. On this matter, Mr Van Kekam states:

*“The consent conditions stipulate a number of these contingency measures (including stop work conditions) and require further detail of additional contingency to be provided in the AQMP. There is also prescriptive proactive monitoring and recording of key parameters across the site operations such that a fault can be identified fast and rectified swiftly (or contingency measures implemented quickly). Under these operating conditions should offensive odour be discharged from the site it will not be discharged for long.”*

Conditions relating to contingency measures and monitoring are:

- Conditions relating to odour surveys and odour scouting (4R – 4T)
- Conditions relating to odour complaints (4U – 4V)
- Conditions relating to a weather station (4W)
- Conditions relating to an annual report (4X)

Having considered the proposed conditions and the advice from NZ Air, I am satisfied that the proposed contingency measure would provide an effective response to the escape of odour from the plant. Even if fugitive odours were to escape the site boundary in the event of equipment failure or staff error, any odour would be readily addressed by the Consent Holder and would be transitory in nature.

Mr Van Kekam concludes that the potential for adverse odour effects beyond the site boundary would be low, subject to compliance with the proposed conditions. Consequently, I am satisfied that any potential adverse effects of odour beyond the site boundary associated with the operation of the facility in accordance with the proposed conditions would be negligible. Also, the potential for non-compliance due to mechanical failure or staff error is considered low and the potential adverse effects of odour associated with such an event would be less than minor, subject to implementation of contingency measures by the consent holder.

Overall, the adverse effects of odour are considered to be less than minor if the proposed conditions are adopted and complied with.

## **7. Notification and Written Approvals**

### **7.1 Section 95A Public Notification**

**Step 1: Is public notification mandatory as per questions (a) – (c) below?**

- (a) Has the consent holder requested that the review be publicly notified? **No**
- (b) Is public notification required by Section 95C? **No**

Has further information been requested and not provided within the deadline set by Council? **No**



Has the consent holder refused to provide further information? **No**

Has the Council notified the applicant that it wants to commission a report, but the consent holder does not respond before the deadline to Council's request?  
**No**

Has the consent holder refused to agree to the Council commissioning a report?  
**No**

- (c) Has the application been made jointly with an application to exchange recreation reserve land under section 15AA of the Reserves Act 1977? **Not applicable**

**Step 2: Is public notification precluded as per questions (a) – (b) below?**

- (a) Is public notification precluded by a rule in the plan or a NES? **No**
- (b) Is the application for one or more of the following activities but no other activities:
- (i) A controlled activity? **Not applicable**
  - (ii) [Repealed]
  - (iii) A restricted discretionary, discretionary or non-complying activity but only if the activity is a boundary activity? **Not applicable**
  - (iii) [Repealed]

**Step 3: Does the review meet either of the criteria in (a) or (b) below?**

- (a) Does the review relate to a resource consent for one or more activities, and any of those activities is subject to a rule or national environmental standard that requires public notification? **No**
- (b) Will the review have or be likely to have adverse effects on the environment that are more than minor in accordance with Section 95D? **No**

As discussed in Section 6 of this report, the adverse odour effects which are inadequately managed by the existing conditions of consent, will be avoided or will be less than minor if the consent holder complies with the proposed conditions. Based on that assessment, I consider that there will not be more than minor adverse effects on the environment (discounting the site and adjacent sites).

**Step 4: Do special circumstances exist in relation to the application that warrant the application being publicly notified? No**

Section 95A(9) of the Act states that a consent authority must publicly notify an application for resource consent if it considers that 'special circumstances' exist, notwithstanding that the previous steps do not require or preclude public notification.

Special circumstances are not defined in the Act. However, case law has identified special circumstances as those that are unusual or exceptional, but they may be less than extraordinary or unique. A special circumstance would be one which makes notification desirable despite the general provisions excluding the need for notification. The consent authority should be satisfied that public notification may elicit additional information on the aspects of a proposal. However, special circumstances are more than:

- where a council has had an indication that people want to make submissions.
- the fact that some persons have concerns about a proposal.

In this case, special circumstances are not considered to exist for the following reasons:

- There have been on-going compliance issues over the duration of the consent relating to odour that have resulted in numerous complaints from members of the public. Complaints in-part contributed to the prosecution of the consent holder and ultimately to the review under S128. For that reason, there may be a community expectation of consultation about changes to conditions relating to odour.
- However, the Courts have stated that a degree of public interest in a proposal does not in itself make a proposal unusual or exceptional. To warrant notification, the application must be outside the common run of things, being exceptional, abnormal or unusual (but less than extraordinary or unique).
- In this case, the causes of the objectionable odour were identified through the court proceedings and resulted primarily from inadequate storage of raw material and inadequacy of the foul air extraction system.
- Solutions to these matters rely upon industry best-practice and technical expertise. Both Council and the consent holder have taken advice from suitably qualified and experienced technical experts in development of the proposed conditions. The conditions reflect industry best-practice and the technical expertise of industry professionals. Consequently, the proposed conditions are not outside the common run of things, exceptional, abnormal or unusual.
- The technical advice from NZ Air is that the proposed conditions, if complied with, will mean that any adverse effects from odour discharges from the plant are adequately addressed and any adverse effects would be less than minor.
- Consequently, special circumstances do not apply to the review.

## **7.2 Section 95B Limited Notification**

### **Step 1**

**Section 95B(2)** Are there any affected groups or persons identified under Section 95B(2):

- (a) Protected customary rights groups? **No**
- (b) Customary marine title groups? **No**

**Section 95B(3)(a)** Is the activity on or adjacent to, or may it affect, land that is the subject of a statutory acknowledgement made in accordance with an Act specified in Schedule 11? **No**

**Section 95B(3)(b)** Is a person to whom a statutory acknowledgement is made an affected person under Section 95E? **No**

### **Step 2**

**Is Limited Notification precluded under Section 95B(6)?**

- (a) Does the review relate to a resource consent for one or more activities, and each activity is subject to a rule or national environmental standard that preclude limited notification? **No**
- (b) (i) Is the activity a Controlled Activity that requires consent under the District Plan (other than a subdivision of land)? **No**
- (ii) Is it a prescribed activity under Section 360G(1)(a)(ii)? **No**

### Step 3

**Having regard to Section 95E of the Resource Management Act, identify persons who would be adversely affected by effects that are minor or more than minor, but not less than minor and give reasons why affected parties were identified.**

The following parties were not considered to be affected parties as adverse effects of odour inadequately addressed by existing conditions, are considered to be adequately avoided, remedied or mitigated by the revised conditions.

<b>Party</b>	<b>Why they are not affected</b>
Aukaha on behalf of Mana Whenua	There are no specific sites of cultural significance to Kāi Tahu in the vicinity of the activity. That aside, the proposed conditions would reduce the adverse effects of the activity to the extent that objectionable odour is not detectable beyond the boundary of the site, subject to compliance. This would ensure that any potential adverse effects on the life supporting capacity and mauri of air is reduced to a level that is less than minor.
Adjoining or Adjacent Neighbours	The proposed conditions would reduce the adverse effects of the activity such that objectionable odour would not be detectable beyond the boundary of the site, subject to compliance, and therefore would have a less than minor effect on adjoining or adjacent landowners and occupants.
Submitters on 2009.381	The application for the original resource consent 2009.381 was publicly notified on 7 November 2009. The submissions period closed on 4 November 2009. No submissions were received.

**Have all persons identified as affected under Step 3 provided their written approvals? N/A**

### Step 4 Further notification in special circumstances

Do special circumstances exist that warrant notification to any other persons not already determined to be eligible for limited notification under this section (excluding persons assessed under Section 95E as not being affected persons)? **No**

Section 95B(10) of the Act states that a consent authority must publicly notify an application for resource consent if it considers that 'special circumstances' exist, notwithstanding that the previous steps do not require or preclude public notification.

Special circumstances are not defined in the Act. However, case law has identified special circumstances as those that are unusual or exceptional, but they may be less than extraordinary or unique. A special circumstance would be one which makes notification desirable despite the general provisions excluding the need for notification. The consent authority should be satisfied that public notification may elicit additional information on the aspects of a proposal. However, special circumstances are more than:

- where a council has had an indication that people want to make submissions.
- the fact that some persons have concerns about a proposal.

In this case, special circumstances are not considered to exist as:

- There have been on-going compliance issues over the duration of the consent relating to odour that have resulted in numerous complaints from members of the public. Complaints in-part contributed to the prosecution of the consent holder and ultimately to the review under S128. For that reason, there may be a community expectation of consultation about changes to conditions relating to odour.
- However, the Courts have stated that a degree of public interest in a proposal does not in itself make a proposal unusual or exceptional. To warrant notification, the application must be outside the common run of things, being exceptional, abnormal or unusual (but less than extraordinary or unique).
- In this case, the causes of the objectionable odour were identified through the court proceedings and resulted primarily from inadequate storage of raw material and inadequacy of the foul air extraction system.
- Solutions to these matters rely upon industry best-practice and technical expertise. Both Council and the consent holder have taken advice from suitably qualified and experienced technical experts in development of the proposed conditions. The conditions therefore reflect industry best-practice and the technical expertise of industry professionals. Consequently, the proposed conditions are not outside the common run of things, exceptional, abnormal or unusual.
- The technical advice from NZ Air is that the proposed conditions, if complied with, will mean that any adverse effects from odour discharges from the plant are adequately addressed and any adverse effects would be less than minor.
- Consequently, special circumstances do not apply to the review.

**If Notification or limited notification is required, then has the applicant paid the additional notification fee? Not applicable**

## **7. NOTIFICATION RECOMMENDATION:**

In accordance with the notification steps set out above, it is recommended that the review proceed on a non-notified basis.



Dwayne Daly

Senior Consents Planner  
20 July 2023

## Decision on notification

**Sections 95A to 95G of the Resource Management Act 1991**

**Date:** 17 August 2023

**Application No:** RM 2009.381.V3

**Subject:** *Decision on notification of review of consent conditions under delegated authority*

### Decision under Delegated Authority

The Otago Regional Council decides that this review of conditions is to be processed on a **non-notified** basis in accordance with sections 95A to 95G of the Resource Management Act 1991.

The above decision adopts the recommendations and reasons outlined in the Notification Report prepared by Dwayne Daley on 20 July 2023 in relation to this application.

This decision is made under delegated authority by:



Allan Cubitt  
**Independent Decision Maker for Otago Regional Council**

**17 August 2023**

## ORC SECTION 42A REPORT

### 1. Summary of Recommendation

I recommend that the new conditions discussed at the end of this report be included in the consents.

Please note that this report contains the recommendations of the Consent Officer and represents the opinion of the writer. It is not a decision.

There are no principal issues in contention with the application because it was processed on a non-notified basis, without a hearing. The key risks/issues with the application were discussed in section 2 of the Notification Report.

### 2. Section 131 and 132 Evaluation

#### Section 131 Matters to be considered in review

*(1) When reviewing the conditions of a resource consent, the consent authority—*

*(a) shall have regard to the matters in section 104 and to whether the activity allowed by the consent will continue to be viable after the change; and*

*(aa) in the case of a review under section 128(2), must have regard to any reasons that the court provided for making the order requiring the review; and*

*(b) may have regard to the manner in which the consent has been used.*

*(2) Before changing the conditions of a discharge permit or a coastal permit to do something that would otherwise contravene section 15 (relating to the discharge of contaminants) or 15B to include a condition requiring the holder to adopt the best practicable option to remove or reduce any adverse effect on the environment, the consent authority shall be satisfied, in the particular circumstances and having regard to—*

*(a) the nature of the discharge and the receiving environment; and*

*(b) the financial implications for the applicant of including that condition; and*

*(c) other alternatives, including a condition requiring the observance of minimum standards of quality of the receiving environment—*

*that including that condition is the most efficient and effective means of removing or reducing that adverse effect.*

#### 132 Decisions on review of consent conditions

*(1) A consent authority may change the conditions of a resource consent (other than any condition as to the duration of the consent) on a review under [section 128](#) if, and only if, 1 or more of the circumstances specified in that section applies.*

*(2) Sections 106 to 116 (which relate to conditions, decisions, and notification) and sections 120 and 121 (which relate to appeals) apply, with all necessary modifications, to a review under section 128 as if—*

- (a) the review were an application for a resource consent; and*
- (b) the consent holder were an applicant for a resource consent.*

*(4) A consent authority may also cancel a resource consent if—*

- (a) it reviews the consent under section 128(2); and*
- (b) there are significant adverse effects on the environment resulting from the exercise of the consent.*

The Court directed the Consent Authority to review the conditions of 2009.381.V2 by way of an order under section 339(5)(b). The review was subsequently initiated by Council under section 128(2).

The nature of the discharge and surrounding environment, and the manner in which the consent has been used are described in Sections 3 and 4 of the Notification Report. The matters in section 104 are discussed in Section 3 of this report.

The conditions have been devised in accordance with industry best-practice based on the advice of Council's specialist Donovan van Kekam of NZ Air. The Applicant has been involved in discussions with Council over the proposed conditions. In the course of those discussions, the Applicant has taken the opportunity to take independent specialist advice on the practicality and cost of the proposed conditions and had the opportunity to make changes to the proposed conditions. Consequently, alternatives have been considered and the proposed conditions are considered to be the most suitable based on best-practice, costs associated with implementing the conditions are considered financially reasonable and the activity would remain viable. The finalised conditions agreed to by both Council and the Applicant are therefore considered to be the most efficient and effective means of removing or reducing adverse odour effects.

### **3. Section 104 Evaluation**

Section 104 of the Act sets out the matters to be considered when reviewing conditions of consent. These matters are subject to Part 2, the purpose and principles, which are set out in Sections 5 to 8 of the Act.

The consent authority must also consider whether the activity allowed by the consent will be viable after the proposed change of conditions.

The consent authority may have regard to the manner in which the consents have been used.

#### **3.1 Section 104(1)**

The matters of Section 104 to be considered are:

- (a) the actual and potential effects on the environment of allowing the activity;*
- (ab) any measure proposed or agreed to by the Consent Holder 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, the Regional Policy Statement (RPS), RPW; and*
- (c) any other matter the Council considers relevant and reasonably necessary to determine the application.*



### **3.2 S104(1)(a) – Actual and potential effects on the environment of allowing the activity**

The actual and potential adverse environmental effects of the proposed activity were considered earlier in the Notification Report.

The odour discharged from the plant has the potential to have a very high level of offensiveness. The odour has a character and hedonic tone that would be highly offensive to most members of the public.

The main reasons for the odour were determined to be a failure of the plant enclosure and / or the foul air extraction systems causing the discharge of fugitive gases, and raw material or waste products deteriorating outside the plant.

As discussed in the Notification Report, compliance with the proposed conditions would reduce the level of effect such that any potential adverse effects of odour beyond the site boundary associated with the operation of the facility would be negligible. In the event of plant failure, the proposed contingency measures would ensure that any adverse effects would be temporary and less than minor.

It is considered that the proposed conditions will have the positive effect of reducing odour beyond the boundary of the site while improving amenity and air quality, while providing for the continuation of a commercial activity providing a useful community function.

### **3.3 S104(1)(ab)**

The Consent Holder has not proposed or agreed to any measures to offset or compensate for adverse effects that will or may result from allowing the activity.

### **3.4 S104(1)(b) Relevant Planning Documents**

#### **3.4.1 Resource Management (National Environmental Standards for Air Quality) Regulations 2004**

The current review of conditions relates to the management of odour. Odour is not addressed by the Resource Management (National Environmental Standards for Air Quality) Regulations 2004 (NESAQ). Therefore, no further consideration of the NESAQ is warranted with respect to the current review.

#### **3.4.2 Regional Policy Statements**

##### **Partially Operative Regional Policy Statement**

The Consent Authority notified a proposed Regional Policy Statement on 23 May 2015 which was made partially operative on the 14th of January 2019. Provisions still the subject of court proceedings and not made operative are not applicable to the review. Therefore, full weight and consideration can be given to the PO-RPS.

***Objective 1.1 Otago's resources are used sustainably to promote economic, social, and cultural wellbeing for its people and communities***

##### ***Policy 1.1.1 Economic wellbeing***

*Provide for the economic wellbeing of Otago's people and communities by enabling the resilient and sustainable use and development of natural and physical resources*

##### ***Policy 1.1.2 Social and cultural wellbeing and health and safety***

*Provide for the social and cultural wellbeing and health and safety of Otago's people and communities when undertaking the subdivision, use, development and protection of natural and physical resources by all of the following:*

- a) Recognising and providing for Kāi Tahu values;*
- b) Taking into account the values of other cultures;*
- c) Taking into account the diverse needs of Otago's people and communities;*
- d) Avoiding significant adverse effects of activities on human health;*
- e) Promoting community resilience and the need to secure resources for the reasonable needs for human wellbeing;*
- f) Promoting good quality and accessible infrastructure and public services.*

**Objective 1.2 Recognise and provide for the integrated management of natural and physical resources to support the wellbeing of people and communities in Otago**

**Policy 1.2.1 Integrated resource management**

*Achieve integrated management of Otago's natural and physical resources, by all of the following:*

- a) Coordinating the management of interconnected natural and physical resources;*
- b) Taking into account the impacts of management of one natural or physical resource on the values of another, or on the environment;*
- c) Recognising that the value and function of a natural or physical resource may extend beyond the immediate, or directly adjacent, area of interest;*
- d) Ensuring that resource management approaches across administrative boundaries are consistent and complementary;*
- e) Ensuring that effects of activities on the whole of a natural or physical resource are considered when that resource is managed as subunits.*
- f) Managing adverse effects of activities to give effect to the objectives and policies of the Regional Policy Statement.*
- g) Promoting healthy ecosystems and ecosystem services;*
- h) Promoting methods that reduce or negate the risk of exceeding sustainable resource limits.*

**Objective 2.1 The principles of Te Tiriti o Waitangi are taken into account in resource management processes and decisions**

**Policy 2.1.2 Treaty principles**

*Ensure that local authorities exercise their functions and powers, by:*

- a) Recognising Kāi Tahu's status as a Treaty partner; and*
- b) Involving Kāi Tahu in resource management processes implementation;*

c) *Taking into account Kāi Tahu values in resource management decision-making processes and implementation;*

d) *Recognising and providing for the relationship of Kāi Tahu's culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taoka;*

e) *Ensuring Kāi Tahu have the ability to:*

*i. Identify their relationship with their ancestral lands, water, sites, wāhi tapu, and other taoka;*

*ii. Determine how best to express that relationship;*

f) *Having particular regard to the exercise of kaitiakitaka;*

g) *Ensuring that district and regional plans:*

*i. Give effect to the Ngāi Tahu Claims Settlement Act 1998;*

*ii. Recognise and provide for statutory acknowledgement areas in Schedule 2;*

*iii. Provide for other areas in Otago that are recognised as significant to Kāi Tahu;*

h) *Taking into account iwi management plans.*

**Objective 3.1 The values (including intrinsic values) of ecosystems and natural resources are recognised and maintained, or enhanced where degraded**

**Policy 3.1.6 Air quality**

*Manage air quality to achieve the following:*

a) *Maintain good ambient air quality that supports human health, or enhance air quality where it has been degraded;*

b) *Maintain or enhance amenity values.*

**Objective 5.4 Adverse effects of using and enjoying Otago's natural and physical resources are minimised**

**Policy 5.4.1 Offensive or objectionable discharges**

*Manage offensive or objectionable discharges to land, water and air by:*

a) *Avoiding significant adverse effects of those discharges;*

b) *Avoiding significant adverse effects of discharges of human or animal waste directly, or in close proximity, to water or mahika kai sites;*

c) *Avoiding, remedying or mitigating other adverse effects of those discharges*

**Policy 5.4.2 Adaptive management approach**

*Apply an adaptive management approach, to avoid, remedy or mitigate actual and potential adverse effects that might arise and that can be remedied before they become irreversible, by both:*

- a) *Setting appropriate indicators for effective monitoring of those adverse effects; and*
- b) *Setting thresholds to trigger remedial action before the effects result in irreversible damage.*

### Assessment

The proposed conditions include audits and management plans to provide for ongoing adaptive management, provide for improved management of offensive or objectionable odour, provide for enhanced amenity and ambient air quality, and provide for the social and cultural wellbeing and health and safety of Otago's people and communities, including Iwi. Consequently, the proposed conditions are consistent with the PO-RPS.

### **Proposed Regional Policy Statement**

On 26 June 2021 Council notified the proposed Otago Regional Policy Statement (pRPS). The pRPS gives effect to the NPS-FW 2020 and includes freshwater visions, FMU's and rohe. On 30 September 2022 Council notified the freshwater instrument components of the pRPS that was originally notified in June 2021. As the pRPS has been notified, it has been included and assessed below. However, as the provisions of the pRPS are subject to submissions and, as no decisions have been made on those submissions, little weight can be given to the pRPS.

#### ***MW–O1 – Principles of Te Tiriti o Waitangi***

*The principles of Te Tiriti o Waitangi are given effect in resource management processes and decisions, utilising a partnership approach between councils and Papatipu Rūnaka to ensure that what is valued by mana whenua is actively protected in the region.*

#### ***MW–P1 – Treaty obligations***

*Promote awareness and understanding of the obligations of local authorities in regard to the principles of Te Tiriti o Waitangi, tikaka Māori and kaupapa Māori.*

*MW–P2 – Treaty principles Local authorities exercise their functions and powers in accordance with Treaty principles, by:*

- (1) recognising the status of Kāi Tahu and facilitating Kāi Tahu involvement in decision-making as a Treaty partner,*
- (2) including Kāi Tahu in resource management processes and implementation to the extent desired by mana whenua,*
- (3) recognising and providing for Kāi Tahu values and resource management issues, as identified by mana whenua, in resource management decision-making processes and plan implementation,*
- (4) recognising and providing for the relationship of Kāi Tahu culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taoka by ensuring that Kāi Tahu have the ability to identify these relationships and determine how best to express them,*
- (5) ensuring that regional and district plans recognise and provide for Kāi Tahu relationships with Statutory Acknowledgement Areas, tōpuni, nohoaka and customary fisheries identified in the NTCSA 1998, including by actively protecting the mauri of these areas,*

- (6) *having particular regard to the ability of Kāi Tahu to exercise kaitiakitaka,*
- (7) *actively pursuing opportunities for:*
  - (a) *delegation or transfer of functions to Kāi Tahu, and*
  - (b) *partnership or joint management arrangements, and*
- (8) *taking into account iwi management plans when making resource management decisions.*

### **MW-P3 – Supporting Kāi Tahu well-being**

*The natural environment is managed to support Kāi Tahu well-being by:*

- (1) *protecting customary uses, Kāi Tahu values and relationships of Kāi Tahu to resources and areas of significance, and restoring these uses and values where they have been degraded by human activities,*
- (2) *safeguarding the mauri and life-supporting capacity of natural resources, and*
- (3) *working with Kāi Tahu to incorporate mātauraka in resource management.*

### **IM-O1 – Long term vision**

*The management of natural and physical resources in Otago, by and for the people of Otago, including Kāi Tahu, and as expressed in all resource management plans and decision making, achieves healthy, resilient, and safeguarded natural systems, and the ecosystem services they offer, and supports the well-being of present and future generations, mō tātou, ā, mō kā uri ā muri ake nei.*

### **IM-O2 – Ki uta ki tai**

*Natural and physical resource management and decision making in Otago embraces ki uta ki tai, recognising that the environment is an interconnected system, which depends on its connections to flourish, and must be considered as an interdependent whole.*

### **IM-O3 – Environmentally sustainable impact**

*Otago's communities carry out their activities in a way that preserves environmental integrity, form, function, and resilience, so that the life-supporting capacities of air, water, soil, ecosystems, and indigenous biodiversity endure for future generations.*

### **IM-P1 – Integrated approach**

*The objectives and policies in this RPS form an integrated package, in which:*

- (1) *all activities are carried out within the environmental constraints of this RPS,*
- (2) *all provisions relevant to an issue or decision must be considered,*
- (3) *if multiple provisions are relevant, they must be considered together and applied according to the terms in which they are expressed, and*
- (4) *notwithstanding the above, all provisions must be interpreted and applied to achieve the integrated management objectives IM-O1 to IM-O4.*

### **IM-P2 – Decision priorities**

*Unless expressly stated otherwise, all decision making under this RPS shall:*

- (1) firstly, secure the long-term life-supporting capacity and mauri of the natural environment,*
- (2) secondly, promote the health needs of people, and*
- (3) thirdly, safeguard the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.*

### ***IM–P13 – Managing cumulative effects***

*Otago’s environmental integrity, form, function, and resilience, and opportunities for future generations, are protected by recognising and specifically managing the cumulative effects of activities on natural and physical resources in plans and explicitly accounting for these effects in other resource management decisions.*

### ***AIR–O1 – Ambient air quality***

*Ambient air quality provides for the health and well-being of the people of Otago, amenity and mana whenua values, and the life-supporting capacity of ecosystems.*

### ***AIR–O2 – Discharges to air***

*Human health, amenity and mana whenua values and the life-supporting capacity of ecosystems are protected from the adverse effects of discharges to air.*

### ***AIR–P1 – Maintain good ambient air quality***

*Good ambient air quality is maintained across Otago by:*

- (1) ensuring discharges to air comply with ambient air quality limits where those limits have been set, and*
- (2) where limits have not been set, only allowing discharges to air if the adverse effects on ambient air quality are no more than minor.*

### ***AIR–P3 – Providing for discharges to air***

*Allow discharges to air provided they do not adversely affect human health, amenity and mana whenua values and the life supporting capacity of ecosystems*

### ***AIR–P4 – Avoiding certain discharges***

*Avoid discharges to air that cause offensive, objectionable, noxious or dangerous effects.*

### ***AIR–P5 – Managing certain discharges***

*Manage the effects of discharges to air beyond the boundary of the property of origin from activities that include but are not limited to:*

- (1) outdoor burning of organic material,*
- (2) agrichemical and fertiliser spraying,*
- (3) farming activities,*
- (4) activities that produce dust, and*

*(5) industrial and trade activities.*

### Assessment

The proposed conditions ensure that human health, amenity and mana whenua values and the life-supporting capacity of ecosystems are protected from the adverse effects of offensive or objectionable discharges to air while providing for a discharge to air with less than minor adverse effects. The proposed conditions would therefore achieve healthy, resilient, and safeguarded natural systems, and the ecosystem services they offer, preserve environmental integrity, form, function, and resilience, so that the life-supporting capacities of air endure. The proposed conditions would also therefore firstly secure the long-term life-supporting capacity and mauri of the natural environment while secondarily safeguarding the ability of people and communities to provide for their social, economic, and cultural well-being. Consequently, the proposed conditions are consistent with the pRPS.

#### **3.4.3 Regional Plan: Air**

*6.1.2 To avoid adverse localised effects of contaminant discharges into air on:*

- (a) Human health;*
- (b) Cultural, heritage and amenity values;*
- (c) Ecosystems and the plants and animals within them; and*
- (d) The life-supporting capacity of air.*

*8.2.3 In the consideration of any application to discharge contaminants into air, Council will have:*

- (a) Particular regard to avoiding adverse effects including cumulative effects on:
  - (i) Values of significance to Kai Tahu;*
  - (ii) The health and functioning of ecosystems, plants and animals;*
  - (iii) Cultural, heritage and amenity values;*
  - (iv) Human health; and*
  - (v) Ambient air quality of any airshed; and**
- (b) Regard to any existing discharge from the site, into air, and its effects.*

8.2.8 To avoid discharges to air being noxious, dangerous, offensive or objectionable on the surrounding local environment.

11.1.1 To avoid or mitigate any adverse effects on human health or amenity values resulting from the discharge of offensive or objectionable odour through the use of:

(a) Good management practices (including the use of codes of practice) and process technology that has an inherently low odour potential to ensure the amount of odorous contaminants generated by a process or activity is minimised;

(b) Appropriate control technologies to reduce the emission of odorous contaminants;

(c) Site planning mechanisms and other land use management techniques to reduce the potential for adverse off-site effects; and

(d) Tools and techniques that provide an objective assessment of odour, such as olfactometry, odour dose response assessments and community surveys.

#### Assessment

The proposed conditions would avoid adverse localised effects, including cumulative effects, of offensive or objectionable odour on human health and amenity way of good management practices, appropriate control technologies, land use management techniques and odour assessments. The proposed conditions are therefore consistent with the objectives and policies of the Regional Plan: Air.

#### **a. Section 104(1)(c) Any other matters**

##### **The Kai Tahu ki Otago Natural Resource Management Plan 2005**

The Kai Tahu ki Otago Natural Resource Management Plan 2005 (NRMP) is also a relevant matter for consideration. This is because the NRMP expresses the attitudes and values of Te Rūnanga o Ōtākou. The following objectives of are of most relevance to this application:

i. Kāi Tahu ki Otago sites of significance are free from odour, visual and other pollutants.

iii. The life supporting capacity and mauri of air is maintained for future generations.

There are no sites of significance adversely affected by the current activity as there are no such sites in the vicinity. The proposed conditions would reduce the adverse effects of an existing activity to the extent that they are less than minor beyond the boundary of the site. This would ensure the mauri of air is maintained for future generations.

There are no other matters of concern that the Council considers relevant to this application.

#### **4. Part 2 of the Act**

Under Section 104(1) of the RMA, a consent authority must consider resource consent applications "subject to Part 2" of the RMA, specifically, sections 5, 6, 7 and 8.



The Court of Appeal has stated how to approach “subject to Part 2” in section 104(1). In *R J Davidson* the Court of Appeal found that (in summary):<sup>1</sup>

- Decision makers must consider Part 2 when making decisions on resource consent applications. The extent to which Part 2 of the RMA should be relied on to depends on the nature and content of the planning documents being considered.
- Where the relevant planning documents have been prepared having regard to Part 2 of the RMA, and with a coherent set of policies designed to achieve clear environmental outcomes, consideration of Part 2 is not ultimately required. In this situation, the policies of these planning documents should be implemented by the consent authority. The consideration of Part 2 "would not add anything to the evaluative exercise" as "genuine consideration and application of relevant plan considerations may leave little room for Part 2 to influence the outcome". However, the consideration of Part 2 is not prevented, but Part 2 cannot be used to subvert a clearly relevant restriction or directive policy in a planning document.
- Where it is unclear from the planning documents whether consent should be granted (and on what terms) or refused, and the consent authority has to exercise a judgment, Part 2 should be considered.
- If it appears that the relevant planning documents have not been prepared in a manner that reflects the provisions of Part 2, the consent authority is required to consider Part 2.

### **Section 5 Purpose**

The proposed conditions provide for the on-going use of a resource that provides for the social, economic and cultural well-being while remedying and mitigating adverse effects on air quality and amenity values.

### **Section 6 Matters of National Importance**

There are no Matters of National Importance relevant to this review.

### **Section 7 Other Matters**

The proposal has appropriate regard to:

- the efficient use and development of natural and physical resources
- the maintenance and enhancement of amenity values
- maintenance and enhancement of the quality of the environment
- any finite characteristics of natural and physical resources

### **Section 8 Treaty of Waitangi**

There are no specific sites of cultural significance to Kāi Tahu adversely affected by the current activity as there are no such sites in the vicinity of the activity. However, the proposed conditions would reduce the adverse effects of the activity to the extent that they are less than minor beyond the boundary of the site. This would ensure the mauri of air is maintained for future generations.

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<sup>1</sup> *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316.

Overall, the proposed conditions are considered to be consistent with Part 2 of the Act.

## **5. Recommendation**

That the Council grants the review of 2009.381.V2 as shown on the attached amended consent.

### **5.1 Reasons for the Recommendation**

- (a) The proposed conditions are expected to reduce adverse effects
- (b) The proposed conditions are consistent with the relevant statutory requirements.
- (c) The proposed conditions are consistent with the relevant planning documents and Part 2 of the Act.



Dwayne Daly  
Senior Consents Officer  
20 July 2023

## DECISION ON REVIEW OF

### *Section 113 of the Resource Management Act 1991*

**Date:** 17 August 2023

**Application No:** RM22.543

**Subject:** *Decision on non-notified review under delegated authority*

#### **1. Notification**

The review was approved to be processed non-notified and under delegated authority on **17 August 2023**.

#### **2) Decision and Reasons for Decision**

I have considered the information provided, reasons and recommendation in the above report. No principal issues were in contention as this was a non-notified consent that did not require a hearing.

I agree with the reasons and recommendations provided by Dwayne Daly, Senior Consents Planner in the above report and adopt them as the reasons for decision under Section 132. This decision, report and any accompanying letter are the written decision under Section 113(4).

#### **3) Decision under delegated authority**

Resource consent 2009.381.V3 is amended by the Otago Regional Council under delegated authority by:



Allan Cubitt  
**Independent Decision Maker for Otago Regional Council**

**17 August 2023**