

Under The Resource Management Act 1991 (**RMA**)

In the matter of an application by **Dunedin City Council** to develop a Resource Recovery Park at Green Island, Dunedin.

Otago Regional Council reference RM24.143

Dunedin City Council

Applicant

Legal Submissions on behalf of Dunedin City Council

Date: 15 November 2024

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Introduction

- 1 This application by Dunedin City Council is applying to the Otago Regional Council for the necessary resource consents to construct and operate the "Resource Recovery Park Precinct" (**RRPP**) located at the Green Island Landfill in Dunedin.
- 2 This project is a key component to enable the City Council to receive and process kerbside and commercial recycling and waste. The facilities are necessary to receive, sort and process recycling to divert a large proportion of material from needing to be disposed of at the landfill. By way of overview:
 - (a) The materials recovery facility (MRF) is to receive and process paper, cardboard, plastics, glass, steel and aluminium cans for consolidation and distribution to markets.
 - (b) Glass is to be received, sorted, stored and then recycled from the glass bunkers.
 - (c) Green waste is to be received, sorted and shredded in the organics receivable building (ORB). This building has already been consented, constructed and is operating. Currently green waste is taken for further processing to Timaru. Once processed in the ORB, the intention for green waste is to be moved to the maturation bunkers for storage for 21 days, then to windrows to then be removed from the site as compost. This further processing takes place at the organics processing facility (OPF).
 - (d) Residual waste will be disposed of at Green Island landfill while it remains operational. The bulk waste transfer station (BWTS) will be constructed prior to Green Island landfill ceasing which will then enable residual waste to be sorted, compacted and it is intended to be removed to Smooth Hill landfill once that landfill is operational. This will have an associated construction and demolition waste sorting pad (C&D) to receive and sort construction and demolition waste.
- 3 These facilities are a significant investment in modern sorting facilities for the City to deliver on its circular economy waste minimisation strategy.
- 4 Ms McDonald in the section 42A report has identified the relevant resource consents sought.

- 5 It is noted that the land use component managed by Dunedin City Council under the District Plan addresses the bulk, height, location and visual appearance of the buildings and other siteworks. These aspects of the RRPP have been approved by an outline plan of works granted in accordance with the existing designation in the District Plan. It is also noted that the designation contains noise restrictions applying to the construction and ongoing operation of the RRPP.
- 6 The scope of the Regional Council consents needed and the relevant matters for assessment have been identified by Ms McDonald in the section 42A report. This is agreed with by Mr Dale for the Applicant in his evidence.
- 7 These legal submissions therefore comment on matters that are raised in the evidence or in the section 42A report. Overall the section 42A report is broadly supported by the Applicant and Ms McDonald is thanked for her work on it.

Section 104D Gateway Test

- 8 A legal issue raised by the section 42A report and the evidence of Mr Dale is the assessment of relevant adverse effects on the environment for the purposes of the section 104D gateway test.
- 9 Being bundled as a non-complying activity this engages section 104D RMA.
- 10 The gateway provides that the merits of the application can be assessed for a non-complying activity only if you are satisfied that either:
 - (a) adverse effects of the activity on the environment will be minor; or
 - (b) the application will not be contrary to the objectives and policies of the relevant plans.
- 11 Ms McDonald and the Applicant's Planner Mr Dale take a different view on the first limb about whether the adverse effects on the environment will be minor. This difference essentially turns on the level of potential odour effects on the environment as assessed by Mr Curtis and Ms Freeman.
- 12 Ms McDonald discusses this on page 21 of the section 42A report (paragraph 6.1.2.6). There she concludes that:

Overall, the assessment in Section 6.5 of the s95 Report that there could be at least minor adverse (cumulative) odour effects on specific sensitive receptors, less than minor odour effects on the wider environment and other persons, and less than minor (negligible) dust effects remains unchanged.

- 13 Mr Dale has considered this in his planning evidence. Mr Dale summarises the respective views of Mr Curtis and Ms Freeman in paragraph 50 of his evidence in particular.
- 14 It is submitted this is an issue you as Commissioner should make a finding on for the purposes of the first limb of the gateway test.
- 15 On behalf of the Applicant it is submitted that the following is apparent from the evidence:
- (a) Ms Freeman has the view there is a low likelihood of odours being characterised as offensive or objectionable offsite.
 - (b) Ms Freeman considers if any odours are detected at sensitive receptors they are likely to be weak, infrequent and of short duration (paragraph 23 of Ms Freeman's evidence).
 - (c) Having considered this Mr Curtis advises in his evidence based on his experience that:
 - (i) With the mitigation proposed and the distance between potential receptors and the RRPP activities there is a low potential for there to be off site odour nuisance (para 47); and
 - (ii) it is extremely unusual for facilities of the type proposed for the RRPP to result in off-site odour effects (para 84).
- 16 The legal test for what is a minor effect for the purposes of section 104D is set out by the High Court in *Canyon Vineyard Ltd v Central Otago District Council*¹. This decision referenced previous cases, including the Environment Court decision in *Saddle Views Estate Ltd v Dunedin City Council*², which aligned with the High Court decision of *Elderslie Park Ltd v Timaru District Council*³. In the case of *Elderslie Park Ltd v Timaru District Council*, Williamson J stated:⁴

“The word ‘minor’ is not defined in the Resource Management Act. It means lesser or comparatively small in size or importance. Ultimately an

¹ *Canyon Vineyard Ltd v Central Otago District Council*, [2022] NZHC 2458 at [137].

² *Saddle Views Estate Ltd v Dunedin City Council* [2014] NZEnvC 243, [2015] NZRMA 1.

³ *Elderslie Park Ltd v Timaru District Council* [1995] NZRMA 433 (HC)

⁴ *Elderslie Park Ltd v Timaru District Council* [1995] NZRMA 433 (HC) at [74].

assessment of what is minor must involve conclusions as to facts and the degree of effect. There can be no absolute yardstick or measure.”

- 17 Relevantly the High Court in *Canyon Vineyard Ltd v Central Otago District Council* also stated when assesses effects:

[184] The proper test is whether the adverse effects, as proposed to be remedied and/or mitigated, are more than minor taken as a whole. The inquiry is not limited to fractured assessments from singular viewpoints. It is therefore sufficient for the EC to take into account the evidence from various viewpoints as a whole in making its determination.⁵

- 18 While it is for the planners to characterise whether these effects are less than minor, minor or more than minor, it is submitted that at most such potential effects will either not arise (as Mr Curtis considers) or if any do they will at most be weak, infrequent and of short duration (as Ms Freeman considers). It is submitted that the evidence of Ms Freeman, Mr Curtis and Mr Dale is an adequate evidential basis to conclude that potential adverse effects of odour are likely when taken as a whole to be minor and not more than minor (being comparatively small effects in size or importance). If this is the case, the first gateway test is passed.
- 19 While relevant to the application, this first limb is somewhat academic because both Mr Dale and Ms McDonald agree that the second limit of the gateway test is passed by the application not being contrary to relevant objectives and policies of the relevant regional plans. It is therefore agreed that the gateway test is passed and the merits can be considered. The issue is though whether both limbs can be passed when the potential odour effects are classified.
- 20 Despite this, a finding on the magnitude of potential odour effects is important because it does inform Ms McDonald’s assessment of the consistency with some of the objectives and policies, and this is relevant to the merits of the proposal.
- 21 Overall, it is submitted both gateway tests can be passed and the application can be assessed on its merits under section 104 RMA.

Commercial meat and fish

- 22 Ms McDonald questions whether commercial loads of meat or fish will be received and processed in the composting facility. This is not the case and

⁵ *Canyon Vineyard Ltd v Central Otago District Council* at paragraph [184].

large commercial loads of meat or fish will not be processed in the composting facilities. Mr Curtis addresses this in paragraph 63 of his brief of evidence.

- 23 This is also addressed in draft condition 5 in the Discharge to Air permit. The composting facility is to process food waste and green waste for processing and recycling. The acceptance criteria are set out by Mr Curtis and can include food waste, such as bones, but this does not extend to commercial loads of meat and fish waste. Such commercial loads would be treated as special waste and will be disposed of at the landfill.

Contact details for operator

- 24 Ms McDonald at page 21 seeks to ensure there will be contact details for the operator.
- 25 During construction of the RRPP this is addressed in condition 12 of the General Conditions. This requires a construction environmental management plan. Condition 12(a)(vii) requires the plan to identify the contact detail of those onsite and managing the construction and earthworks activities.
- 26 For on-going operations of the RRPP condition 28 of the General Conditions requires a complaint management, investigation and reporting system to be followed (both during construction and operation). The complaints condition does not expressly require publication of the contact details for a site operator, but this is obviously needed to be available to the public and can usefully be added to this condition. Mr Dale will do so in his recommended set of conditions.

Potential pests

- 27 On page 23 Ms McDonald identifies the conditions managing pests and queries whether there is anything else that can be offered. Mr Dolan identifies the monitoring and control of pests such as rodents that will be undertaken on the wider landfill site as well as in relation to the RRPP. It is submitted that commercial contractors are the best means of controlling rodents. This is in conjunction with the building design controls that Mr Dolan identifies.
- 28 Pest management is also addressed comprehensively in general condition 25 that requires the preparation of a pest management plan. The condition specifies what the plan is to address in terms of practices and procedures to eradicate pests, monitoring, responsibilities and review. That plan is to be circulated to adjoining residential neighbours and then to the ORC for

certification. The condition requires quarterly reporting to adjoining residential neighbours on the monitoring of pests. This provides high levels of transparency and information. Condition 27 requires on-going compliance with the certified plan.

- 29 It is submitted this comprehensively manages the risk of pests being attracted to the site and becoming a problem for neighbours.

Term

- 30 Ms McDonald recommends a 10 year term for construction of the facilities and a 35 year term for the consents relating to its operation.
- 31 This is considered appropriate and is supported by the Applicant.

Conditions

- 32 Mr Dale has been working with the relevant experts and assessed the recommendations of Ms McDonald in relation to recommended conditions. Mr Dale has produced a revised set of conditions which are attached to his evidence. These will be kept under review during the course of the hearing, but the Applicant is content to align its position to these and therefore supports the conditions recommended by Mr Dale as being appropriate. The Applicant is prepared to offer those conditions as part of its application.

Conclusion

- 33 The RRPP is a key component in the infrastructure required to deliver on the waste minimisation strategy for Dunedin City. These facilities provide a necessary modern facility to receive, sort and recycle the City's recycling and waste. These facilities will enable efficient and effective handling of recycling, and composting of organic waste. Residual waste still needs to be disposed of to landfill and the colocation of the RRPP facilities on the Green Island site is efficient both in terms of cost, planning and adverse effects on the environment. It is submitted the necessary consents should be granted on behalf of the Otago Regional Council so that this facility can be constructed and be commissioned soon as practicable.

Dated this 15th day of November 2024



Michael Garbett / Rebecca Kindiak
Counsel for the Applicant