

**BEFORE THE INDEPENDENT COMMISSIONER
HEARING PANEL**

UNDER the Resource Management Act 1991 (RMA)

IN THE MATTER an application by Dunedin City Council for various permits for the purpose of the construction and operation of a landfill at Smooth Hill, Dunedin (RM20.280).

**MEMORANDUM OF COUNSEL ON BEHALF OF OTAGO REGIONAL
COUNCIL**
31 May 2022

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MAY IT PLEASE THE PANEL:**Introduction**

- 1 This memorandum is filed for the purpose of updating the Hearing Panel of changes to some of the provisions of Chapter 7 of the Regional Plan: Waste for Otago (**Waste Plan**) as a result of the decision of the Environment Court dated 30 May 2022.¹
- 2 Plan Change 1 to the Waste Plan (**PC1**), which proposed changes to Chapter 7, was referred to the Environment Court on 8 April 2020 under s142(2)(b) of the Resource Management Act 1991 (**RMA**) to give a decision on the provisions and matters raised in submissions.
- 3 The Environment Court's decision on provisions and matters raised in submissions on PC1 is to amend some of the PC1 Chapter 7 provisions as notified. The Environment Court's decision is attached to this memorandum as **Attachment 1**. The provisions to be amended are at Annexure 1 to the Environment Court's decision.
- 4 Some of the provisions to be amended are relevant to the application before the Hearing Panel by Dunedin City Council for various permits for the purpose of the construction and operation of a landfill at Smooth Hill (RM20.280). These include:
 - (a) Amendments to Policy 7.4.11;
 - (b) A new Policy 7.4.11A; and
 - (c) Amendments to Assessment Matters 7.6.1.2 (for applications under Rule 7.6.1 of the Waste Plan).
- 5 Policy 7.4.11A is a new policy which has been included in Chapter 7 which provides direction on how discharges at and from new landfills within 13km of airports defined as Nationally Significant Infrastructure are to be assessed in order to prevent the landfill increasing the existing risk of bird strike.

¹ *Re Otago Regional Council* [2022] NZEnvC 91.

- 6 The provisions of Chapter 7 are not yet operative. Counsel will update the Hearing Panel further once the provisions are made operative by the Council.

Dated this 31st day of May 2022



.....
M A Mehlhopt
Counsel for Otago Regional Council

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH**
**I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI**

Decision No. [2022] NZEnvC 91

IN THE MATTER

of the Resource Management Act 1991

AND

of a notice of motion under section 149T(2) to decide proposed Plan Change 1 to the Regional Plan: Waste for Otago (referred to the Environment Court by the Minister for the Environment under s142(2)(b) of the Act)

BETWEEN

OTAGO REGIONAL COUNCIL

(ENV-2020-CHC-128)

Applicant

Court: Environment Judge P A Steven
Environment Commissioner J A Hodges

Hearing: In Chambers on the papers

Last case event: 29 April 2022

Date of Decision: 30 May 2022

Date of Issue: 30 May 2022

**DECISION OF THE ENVIRONMENT COURT
PC1 – LANDFILLS**

- A: Amend Plan Change 1 as set out in ‘Annexure 1: Plan Change 1 (Landfills) Provisions’ attached to and forming part of this decision.
- B: The court makes decisions on submissions on Chapter 7 of Plan Change 1 as set out in ‘Annexure 2: Plan Change 1 (Landfills) decisions on



submissions'.

REASONS

Introduction

[1] The Regional Plan: Waste for Otago ('the Waste Plan') was made operative in 1997 and has not been amended or reviewed under s79 of the Resource Management Act 1991 ('the Act') since that time. It is now out of date with current expectations for environmental management. The entirety of the Waste Plan is intended to be reviewed alongside the operative Regional Plan: Water for Otago in the preparation of a new Land and Water Regional Plan ('Land and Water Regional Plan').

[2] Plan Change 1 ('PC1') addresses two pressing issues with the existing Waste Plan provisions to improve environmental outcomes in the interim. This decision deals with the topic of landfills.¹

[3] The Minister for the Environment directed that PC1 be referred to the Environment Court under s142(2)(b) of the Act to give a decision on the provisions and matters raised in submissions.

[4] Along with the Regional Council, nine of the twelve persons who gave notice of their intention to become a party to the PC1 proceedings under s274 of the Act relating to Chapter 7 participated in mediation and signed the mediation agreement resolving all submission points.² Two s274 parties did not attend the

¹ See *Re Otago Regional Council* [2021] NZEnvC 185 and *Re Otago Regional Council* [2022] NZEnvC 26 for the court's decisions on the Chapter 6 provisions of PC1.

² Big Stone Forests Ltd, Director-General of Conservation Tumuaki Ahurei; Dunedin City Council, Dunedin International Airport Ltd, Federated Farmers New Zealand – Otago and North Otago provinces, Ngāi Tahu ki Murihiku (Te Ao Marama), Royal Forest and Bird Society of New Zealand Inc, Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga (Kāi Tahu ki Otago), John Cocks.

mediation, but advised that they would abide the outcome of the mediation.³ The remaining s274 party, Te Rūnanga o Ngāi Tahu, advised it would not be attending the mediation, but did not specifically advise it would abide the outcome of mediation.⁴ Parties participated in court-assisted mediation on the provisions of Chapter 7 of PC1 on 29 November 2021.

[5] A joint memorandum dated 11 February 2022 was signed by eight of the nine s274 parties who attended mediation and signed the mediation agreement. The joint memorandum was filed with the court and sent to all other s274 parties who have an interest in Chapter 7 of PC1. That memorandum contains an explanation of the mediation agreement, the Environment Court's obligations in relation to call-in, and seeks a decision of the court. Appendix 1 to the memorandum helpfully sets out the general legal requirements under the Act applicable to Chapter 7 of PC1.

[6] Mr Cocks attended mediation but did not sign the joint memorandum. He raised issues with the mediated agreement. The Regional Council argued that Mr Cocks' submission was outside the scope of PC1. The court considered submissions on this matter, and determined Mr Cocks' submission is not "on" or "about" PC1, and struck it out.⁵

[7] On 8 December 2021 the court convened a telephone conference to discuss the landfills (Chapter 7) topic (as well as matters relating to PC8). The court indicated that it would issue a decision on the papers, in the event no issues arose from the evidence filed.

[8] An affidavit of Dolina Lily Lee, a senior analyst freshwater at Otago Regional Council, in support of the provisions agreed at mediation to Chapter 7

³ Otago Fish and Game Council and the Central South Island Fish and Game Council; Matthew Sole.

⁴ Te Rūnanga o Ngāi Tahu advised in writing that it would not attend mediation. It later advised that it is comfortable with the proposed changes to Chapter 7.

⁵ *Re Otago Regional Council* [2022] NZEnvC 69.

of PC1, was prepared in her capacity as an expert. In that affidavit Ms Lee acknowledges that she has read, understands and complies with the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note dated 1 December 2014.

[9] Ms Lee's affidavit addresses the background to Chapter 7 of PC1, an explanation of the changes introduced by PC1, a summary of the submissions received, and the amendments agreed through mediation and supporting reasons. She also considers the outcomes to be achieved under Chapter 7 and the relationship of Chapter 7 with other planning instruments, including those introduced since the notification of PC1. In her Annexure 2 Ms Lee provides the changes to Chapter 7 provisions in the notified plan change (in red text) and further amendments agreed at mediation (in green text) along with footnotes indicating the scope for those. In Annexure 4 Ms Lee undertakes a s32AA analysis comparing Chapter 7 as notified in PC1, and Chapter 7 as agreed at mediation. In Annexure 5 Ms Lee considers and makes recommended decisions on the relief sought in all the submissions with reasons, including on submissions from submitters who were not s274 parties, on Chapter 7 provisions in the notified plan change.

The law

[10] A plan change must be prepared in accordance with the Regional Council's functions under s30 and the provisions of Part 2 of the Act. Chapter 7 must give effect to the New Zealand Coastal Policy Statement, any applicable national policy statements, including of particular relevance, the National Policy Statement for Freshwater Management 2020 ('NPS-FM 2020') (to the extent that there is scope to do so) and any regional policy statement.

[11] There are two relevant regional policy statements: the partly operative Regional Policy Statement (all provisions made operative on 15 March 2021 except provisions relating to the Port Otago High Court decision) and the proposed

Otago Regional Policy Statement notified in June 2021. The court is to have regard to the proposed policy statement.⁶

[12] Chapter 7 must also not be inconsistent with either of the two water conservation orders in Otago, or any other regional plan for the region. The court is also to have regard to the consistency with any proposed or operative regional policy statements and plans of the adjacent regional councils – Southland Regional Council, Canterbury Regional Council and West Coast Regional Council.

[13] There is also a requirement to have regard to other matters including any relevant management plans under other Acts,⁷ and to take into account⁸ any relevant planning document recognised by an iwi authority.⁹

[14] The proposed policies and rules must be examined in accordance with s32 of the Act as to whether they are the most appropriate way to achieve the objectives by identifying other reasonably practicable options for achieving the objective and assessing their efficiency and effectiveness. That requires identifying benefits and costs and assessing the risk of acting or not acting if there is insufficient information. In the context of Chapter 7 of PC1, an amending proposal, the examination must relate to the provisions and objectives of Chapter 7 and the objectives of the Waste Plan to the extent that those objectives are relevant to the objectives of the plan change and would remain if PC1 were to take effect.¹⁰

⁶ “Have regard to” requires the decision-maker to give genuine attention and thought to the matter. *Unison Networks Ltd v Hastings District Council* [2011] NZRMA 394 (HC) at [70].

⁷ Section 66(2)(c) of the Act. The Otago Sports Fish and Game Management Plan 2015-2025 was had regard to.

⁸ “Take into account” requires that the decision-maker must address the matter and record it has been addressed in the decision; but the weight of the matter is for the decision-makers’ judgment in light of the evidence. *Unison Networks Ltd v Hastings District Council* [2011] NZRMA 394 (HC) at [70].

⁹ The following iwi management plans are relevant to Chapter 7 – Kāi Tahu ki Otago Natural Resources Management Plan 2005; Te Tangi a Tauira: Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008; and Waitaki Iwi Management Plan 2019.

¹⁰ Section 32(3) of the Act.

The Plan Change

[15] The Section 32 Evaluation Report accompanying the notified plan change describes the current issues or the problem the plan change is dealing with as follows:¹¹

Landfills are disposal sites for a variety of waste materials that are a necessary and valuable resource for society. However, they can result in adverse effects on the environment which can be significant if not managed appropriately. Potential adverse environmental effects include (Ministry for the Environment, 2000):

- discharge of leachate and subsequent contamination of groundwater or surface water (particularly for landfills sited in or close to sensitive water bodies or coastal environments) and impairment of their life-supporting capacity or use;
- discharge of potentially explosive or flammable landfill gas which may have a noxious odour and may damage soil health and vegetation;
- subsidence or instability of surrounding land;
- odour, noise and dust discharges to air;
- litter;
- nuisance effects from birds, flies and vermin; and
- effects on amenity generally (particularly visual amenity).

...

The current approach is not considered to be effective in achieving the objectives of the Waste Plan.

[16] As notified, PC1 proposed introducing a new policy and amendments to information requirements and assessment matters in relation to resource consent applications under an existing rule, to improve the operation and management of landfills. Some other minor consequential amendments were also proposed by

¹¹ Section 32 Evaluation Report 9 April 2020 at [4.4.2.3].

PC1.¹²

[17] New Policy 7.4.11 reads:

- 7.4.11 To minimise the adverse effects of discharges from new and operating landfills by requiring that:
- (a) the siting, design, construction, operation and management of new and operating landfills is in accordance with the Waste Minimisation Institute New Zealand's Technical Guidelines for Disposal to Land (August 2018) and
 - (b) a site-specific management plan is prepared and implemented in accordance with the Waste Minimisation Institute New Zealand's Technical Guidelines for Disposal to Land (August 2018) that includes (but is not limited to):
 - (i) methods for leachate management, collection, treatment and disposal;
 - (ii) methods for stormwater capture and control from both off-site and on-site sources; and
 - (iii) methods to minimise contamination of the receiving environment; and
 - (iv) controls to manage hazardous waste and avoid any discharge of hazardous wastes or the leaching of contaminants from hazardous wastes.

[18] Amendments were also proposed to 7.6.1.1 Information Requirements and 7.6.1.2 Assessment Matters to reflect the change to requiring management plans being prepared in accordance with the Waste Management Institute's New Zealand Technical Guidelines for Disposal to Land August 2018 ('WasteMINZ Guidelines').¹³ Appendix 2 was amended to remove the reference to landfills as new Policy 7.4.11 meant that it no longer applied to landfills and now only applied

¹² Lee, affidavit sworn 11 February 2022 at [32].

¹³ Lee, affidavit sworn 11 February 2022 at [35].

to offal pits.¹⁴

[19] Consequential amendments were proposed to:¹⁵

- (a) Issues 7.2.2 and 7.2.3, and Objectives 7.3.1 and 7.3.2 to update the cross referencing to include the new policy; and
- (b) Method 7.5.7, and 7.6.6.1 Information Requirements and 7.6.7.1 Information Requirements to reflect the change to Appendix 2.

Amendments agreed at mediation and supporting reasons

[20] At mediation, amendments were agreed to Policy 7.4.11 and 7.6.12 Assessment Matters along with some minor consequential amendments to other provisions. A new policy was also proposed.¹⁶

[21] As amended at mediation, Policy 7.4.11 reads:

Policy 7.4.11

To avoid significant adverse effects of discharges and otherwise minimise the adverse effects of discharges from new and operating landfills on the environment outside a landfill footprint (as indicated in Figure 5-1 of the Waste Management Institute New Zealand's Technical Guidelines for Disposal to Land August 2018), by requiring that:

- (a) the siting, design, construction, operation and management of new and operating landfills, and operating and closed landfills to the extent that the Guidelines are applicable, is in accordance with the Waste Minimisation Management Institute New Zealand's *Technical Guidelines for Disposal to Land* (August 2018); and
- (b) a site-specific management plan is prepared and implemented in accordance with the Waste Minimisation Management Institute New Zealand's *Technical Guidelines for Disposal to Land* (August 2018) that includes (but is not limited

¹⁴ Lee, affidavit sworn 11 February 2022 at [36].

¹⁵ Lee, affidavit sworn 11 February 2022 at [37].

¹⁶ Lee, affidavit sworn 11 February 2022 at [47].

to):

- (i) methods for leachate management, collection, treatment and disposal;
- (ii) methods for stormwater capture and control from both off-site and on-site sources; and
- (iii) methods to minimise contamination of the receiving environment; and
- (iv) controls to manage hazardous waste and avoid any discharge of hazardous wastes or the leaching of contaminants from hazardous wastes.

[22] New Policy 7.4.11A reads:

Policy 7.4.11A

The discharges at and from new and operating landfills within 13km of airports defined as Nationally Significant Infrastructure are to be assessed with regard to:

- (a) siting;
 - (b) classes of landfills;
 - (c) preparation and implementation of management plans;
- in order to prevent the landfill increasing the existing risk of bird strike.

Advice note:¹⁷

For the purpose of Policy 7.4.11A, the reference to “airports defined as Nationally Significant Infrastructure” includes any airport (but not its ancillary commercial activities) used for regular air transport services by aeroplanes capable of carrying more than 30 passengers.

[23] Ms Lee explained that the potential for negative effects of landfills on airports was discussed at mediation and as a result a new policy was agreed which provides guidance on assessing discharges from new and operating landfills within

¹⁷ Consequential amendment to clarify the reference to “airports defined as Nationally Significant Infrastructure”.

13km of airports defined as Nationally Significant Infrastructure in order to prevent the landfill increasing any existing risk of bird strike.¹⁸ Additionally, it was agreed to include an advice note to clarify the reference to “airports defined as Nationally Significant Infrastructure”.¹⁹

[24] Changes were agreed to 7.6.1.2 Assessment Matters in order to meet concerns raised in submissions about the potential of negative effects of discharges to air from landfills on amenity values of surrounding residential properties, by including them as a matter to be considered as part of the environment when assessing the characteristics of the receiving environment, and providing that mitigation measures, safeguards, and contingency plans are to be undertaken to reduce actual and potential adverse environmental effects including on residential activities.²⁰

[25] Ms Lee also prepared an analysis under s32AA of the Act for the version of PC1’s Chapter 7 agreed at mediation against Chapter 7 as notified.²¹

The evidence

[26] Ms Lee addressed those planning instruments that were not directly addressed in the s32 report in relation to the plan change with the mediated amendments.²² That included, in her opinion, that none of the changes proposed to Chapter 7 are inconsistent with the Waitaki Iwi Management Plan 2019,²³ or inconsistent with the Water Conservation (Mataura River) Order 1997²⁴ or inconsistent with the regional plans of the adjacent regional councils of

¹⁸ Lee, affidavit sworn 11 February 2022 at [51].

¹⁹ Lee, affidavit sworn 11 February 2022 at [53].

²⁰ Lee, affidavit sworn 11 February 2022 at [55].

²¹ Annexure 4 – s32AA evaluation for Chapter 7.

²² Lee, affidavit sworn 11 February 2022 at [63]-[98].

²³ Lee, affidavit sworn 11 February 2022 at [66].

²⁴ Lee, affidavit sworn 11 February 2022 at [68].

Canterbury, Southland and West Coast.²⁵

[27] Of particular note is the NPS-FM 2020 that came into force on 3 September 2020 and the proposed Otago Regional Policy Statement notified in June 2021, both dating from after the notification of PC1. We note that the NPS-FM 2020 has as its fundamental concept, Te Mana o te Wai.²⁶

[28] Following on from NPS-FM 2020, the proposed Otago Regional Policy Statement 2021 is a significant change from the partly operative Regional Policy Statement 2019 in its structure and content.²⁷ Ms Lee gave evidence that Chapter 7 does not give full effect to either superior document and is not required to do so at this time.²⁸

[29] Ms Lee explains that none of the provisions of Chapter 7 have been amended since they became operative in 1997 and they are no longer considered to represent a best practice approach to managing landfills.²⁹ Additionally, they provide little guidance to decision-makers on resource consent applications.³⁰

[30] Ms Lee gave evidence that PC1 sets out to strengthen Otago's regional planning framework in the interim period while a new Land and Water Regional Plan is developed, by targeting specific activities known to be contributing to water quality issues in parts of Otago.³¹ This new planning framework is required to be notified by December 2023.³² In particular, the intent of the amendments to Chapter 7 is to improve the policy direction in the Waste Plan so that it reflects current best industry practice for establishing and managing certain classes of

²⁵ Lee, affidavit sworn 11 February 2022 at [75].

²⁶ See *Re Otago Regional Council* [2021] NZEnvC 164.

²⁷ Lee, affidavit sworn 11 February 2022 at [92].

²⁸ Lee, affidavit sworn 11 February 2022 at [84] and [98].

²⁹ Lee, affidavit sworn 11 February 2022 at [11].

³⁰ Lee, affidavit sworn 11 February 2022 at [28].

³¹ Lee, affidavit sworn 11 February 2022 at [10].

³² Lee, affidavit sworn 11 February 2022 at [13].

landfills.³³

[31] PC1 intends to manage the adverse environmental effects arising from the discharge of contaminants at and from landfills, and eliminate illegal, uncontrolled, unmanaged, poorly managed and poorly located landfill sites.

[32] Ms Lee says that the avoidance of significant adverse effects will reduce the impacts of discharges from landfills and will be more effective at achieving the outcomes of the Waste Plan and better give effect to pt2 of the Act, the NPS-FM, and both regional policy statements. The specific management of discharges from landfills within 13km of airports will also give better effect to the regional policy statements, by protecting nationally significant infrastructure.³⁴

[33] The Council acknowledges that the full review of the Waste Plan is likely to result in other regulatory changes in terms of the management of landfills, including for cleanfill and greenwaste landfills.³⁵

Consideration

[34] We concur with the evidence of Ms Lee.

[35] We accept that, although necessary, landfills can result in adverse effects on the environment if appropriate management practices are not in place and that the current permissive approach of the Waste Plan is no longer in line with current industry best practice and is not effectively achieving the objectives of the Waste Plan. Providing improved direction will assist in managing adverse effects from landfill activities.³⁶

³³ Lee, affidavit sworn 11 February 2022 at [10].

³⁴ Lee, affidavit sworn 11 February 2022 at [57].

³⁵ Lee, affidavit sworn 11 February 2022 at [13].

³⁶ Lee, affidavit sworn 11 February 2022 at [31].

[36] We also accept Ms Lee’s opinion that the amendments to Chapter 7 of PC1 continue to achieve the purpose of the RMA and other higher order documents by improving the management of an activity that can result in significant adverse effects on the environment and in particular the degradation in water quality in Otago.³⁷ The changes to Chapter 7 proposed following mediation strengthen the objectives of PC1 by clarifying and strengthening the management of discharges from landfills.³⁸

[37] We accept Ms Lee’s opinion that provisions agreed at mediation are the most appropriate way to achieve PC1’s objective of improving environmental outcomes until the review of the Waste Plan is completed and that plan has been integrated into the new Land and Water Regional Plan.³⁹

[38] In making our decision we also accept that the plan change provisions are a step in the right direction under both the NPS-FM 2020 and the proposed Regional Policy Statement.⁴⁰

Outcome

[39] Pursuant to s149U(6) and cl10(1) to (3) of Schedule 1 of the Resource Management Act 1991, the court’s decision on Plan Change 1 is to amend it as set out in ‘Annexure 1: Plan Change 1 (Landfills) Provisions’ attached to and forming part of this decision. The court makes the decisions on submissions on Chapter 7

³⁷ Lee, affidavit sworn 11 February 2022 at [99].

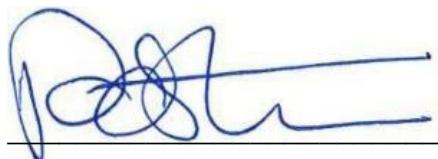
³⁸ Lee, affidavit sworn 11 February 2022 at [103].

³⁹ Lee, affidavit sworn 11 February 2022 at [16].

⁴⁰ Lee, affidavit sworn 11 February 2022 at [84] and [98].

of PC1 as set out in ‘Annexure 2: Plan Change 1 (Landfills) decisions on submissions’.

For the court

A handwritten signature in blue ink, appearing to read "P A Steven".

P A Steven
Environment Judge

Annexure 1: Plan Change 1 (Landfills) Provisions

Red text shows changes to the planning provisions proposed in the notified version of proposed Plan Change 1 (underline shows new wording and strikethrough showing deleted wording).

Green text indicates further changes agreed to by the parties at mediation (underline shows new wording and strike-through showing deleted wording).

Scope for the changes made is indicated by the footnotes.

Issue 7.2.2 There are inappropriately sited landfills in Otago.

Explanation

Landfills, have been located in inappropriate places, such as close to water bodies, above groundwater supplies, adjacent to incompatible activities or in areas where there is a considerable adverse effect on the amenities of the area. Discharges from landfills are potential sources of contamination. In many cases there is a lack of knowledge of what has been placed into these landfills and as a consequence there may be a need to monitor some sites.

~~The siting of landfills is a land use issue that territorial authorities are required to consider, and this will be undertaken through district plans.~~

Objectives 7.3.1, 7.3.2

Policies 7.4.3, 7.4.7, 7.4.11, 7.4.11A

Issue 7.2.3 Some landfills in Otago are not managed to appropriate standards.

Explanation

Management of Otago's landfills must ensure the avoidance, remedy and mitigation of adverse environmental effects that could occur from unwise management. These include discharges to land, water and air. While this Plan seeks to manage all discharges arising from landfills, the complex nature of discharges to air, and the need for a consistent approach across activities, means that detailed standards relating to such discharges will be subject to the provisions of the Regional Plan: Air for Otago.

In part some of the inappropriate management practices undertaken at existing landfills arise because there is insufficient awareness and implementation of landfill management guidelines. Improved landfill management procedures have been developed, for example by the Ministry for the Environment, to minimise the adverse environmental effects of landfills. If the adverse environmental effects are to be avoided, remedied or mitigated then the adoption and use of appropriate management practices as set out in guidelines will be required. Particular attention needs to focus on hazardous wastes, such as medical wastes, and methods used to pre-treat them, and either store them or dispose of them. In some instances, however, landfill managers are not familiar with appropriate methods of landfill management.

Objectives 7.3.1, 7.3.2

Policies 7.4.3, 7.4.4, 7.4.6, 7.4.7, 7.4.11, 7.4.11A

Objective 7.3.1 To avoid, remedy or mitigate the adverse environmental effects arising from the discharge of contaminants at and from landfills.

Explanation

Adverse environmental effects may occur through toxic leachate or gases which originate from landfills. Such leachate can move into surface or groundwater supplies as well as onto adjacent land or into the air, rendering these resources unsuitable for other uses, or unsafe. The adverse environmental effects of landfills can be avoided by adopting methods for disposal other than landfills. The adverse effects can be remedied or mitigated by siting landfills appropriately, and implementing sound management practices. Some material such as offal is inappropriate to dispose of into landfills other than offal pits, and alternative means are required to deal with this issue.

Policies 7.4.1 - 7.4.1011A

Methods 7.5.1 - 7.5.16

Rules 7.6.1 - 7.6.11

Objective 7.3.2 To eliminate illegal, uncontrolled, unmanaged, poorly managed and poorly located landfill sites.

Explanation

The illegal dumping of waste is an offence against the Resource Management Act. As with uncontrolled and unmanaged landfills, illegal dumping can give rise to adverse effects, such as discharges and visual unsightliness. Sites that are poorly located or poorly managed can also give rise to adverse effects. Where action cannot be taken to improve the operation of such landfills in the future, it is appropriate to seek their closure and the construction of more environmentally acceptable facilities.

Policies 7.4.2, 7.4.3, 7.4.6 - 7.4.9, 7.4.11, 7.4.11A

Methods 7.5.1 - 7.5.3, 7.5.10, 7.5.11, 7.5.14, 7.5.16

Rules 7.6.1 - 7.6.11

Policy 7.4.11

To avoid significant adverse effects of discharges and otherwise minimise the adverse effects of discharges from new and operating landfills on the environment outside a landfill footprint (as indicated in Figure 5-1 of the Waste Management Institute New Zealand's Technical Guidelines for Disposal to Land August 2018), by requiring that:

- (a) **the siting, design, construction, operation and management of new and operating landfills, and operating and closed landfills to the extent that the Guidelines are applicable, is in accordance with the Waste Minimisation Management Institute New Zealand's Technical Guidelines for Disposal to Land (August 2018); and**
- (b) **a site-specific management plan is prepared and implemented in accordance with the Waste Minimisation Management Institute New**

Zealand's Technical Guidelines for Disposal to Land (August 2018)
that includes (but is not limited to):

- (i) methods for leachate management, collection, treatment and disposal;
- (ii) methods for stormwater capture and control from both off-site and on-site sources; and
- (iii) methods to minimise contamination of the receiving environment; and
- (iv) controls to manage hazardous waste and avoid any discharge of hazardous wastes or the leaching of contaminants from hazardous wastes.

Policy 7.4.11A

The discharges at and from new and operating landfills within 13km of airports defined as Nationally Significant Infrastructure are to be assessed with regard to:

- (a) siting;
 - (b) classes of landfills;
 - (c) preparation and implementation of management plans;
- in order to prevent the landfill increasing the existing risk of bird strike.

Advice note:

For the purpose of Policy 7.4.11A, the reference to “airports defined as Nationally Significant Infrastructure” includes any airport (but not its ancillary commercial activities) used for regular air transport services by aeroplanes capable of carrying more than 30 passengers.

Method 7.5.7

Require ~~landfill development and~~ management plans for all landfills (excluding cleanfill landfills, offal pits on production land, farm landfills and greenwaste landfills) and for offal pits on industrial or trade premises, excluding factory farms, describing the methods to be taken to avoid, remedy or mitigate any adverse environmental effects;

7.6.1.1 Information requirements

In addition to the information required by Section 88 of the Resource Management Act, the following information is required to be submitted with an application for resource consent under this rule:

- (a) If the landfill is to close by 1 October 1997 a landfill closure plan in the form prescribed by Appendix 3; or
- (b) Otherwise ~~a landfill development and management plan in the form prescribed in Appendix 2, a site-specific management plan prepared in accordance with the Waste Minimisation Management Institute New Zealand's Technical Guidelines for Disposal to Land (August 2018).~~

7.6.1.2 Assessment matters

In considering any application under this rule, in addition to the matters listed in Section 104 of the Resource Management Act, the Otago Regional Council will have regard to, but not be restricted by, the following matters:

- (a) Odour control;
- (b) Potential contamination of soil or water;
- (c) Means to monitor the above;
- (d) The extent to which the landfill proposal reflects the industry standard for landfills, as represented in the ~~Waste Management Institute New Zealand's Technical Guidelines for Disposal to Land (August 2018)~~~~Ministry for the Environment Landfill Guidelines 1994, or their update or other industry standards which are current at the time of application for a resource consent;~~
- (e) The location of the landfill relative to any water body, areas prone to erosion, inundation or subsidence, and areas of cultural, conservation or historic significance;
- (f) The characteristics, composition and volume of substances being discharged and of any likely by-products occurring from the degradation of these substances;
- (g) The characteristics of the receiving environment including the current and likely future uses of that environment including residential activities;
- (h) The mitigation measures, safeguards, and contingency plans to be undertaken to prevent or reduce the actual and potential adverse environmental effects including on residential activities;
- (i) Provisions for the handling of any noxious waste, including medical waste, and the degree of pre treatment that will be required prior to accepting such wastes; and

- (j) The landfill-~~development and~~ management plan or landfill closure plan prepared for the site.

7.6.6.1 Information Requirements

In addition to the information required by Section 88 of the Resource Management Act, the following information is required to be submitted with an application for resource consent under this rule:

- (a) If the offal pit is to close by 1 October 1997 a landfill closure plan in the form prescribed by Appendix 3;
- (b) Otherwise a ~~landfill development and~~ management plan in the form prescribed in Appendix 2.

7.6.7.1 Information Requirements

For industrial and trade premises, excluding factory farms, in addition to the information required by section 88 of the Resource Management Act, the following information is required to be submitted with an application for a resource consent under this rule:

- (a) If the offal pit is to close by 1 October 1997 a landfill closure plan in the form prescribed by Appendix 3;
- (b) Otherwise a ~~landfill development and~~ management plan in the form prescribed in Appendix 2.

Appendix 2: Matters to be included in ~~Landfill Development and Management Plan~~

- 1 General description of the ~~landfill~~ site, including topography, natural water sources, and geotechnical investigations.
- 2 Works to be undertaken to establish the ~~offal pit~~~~landfill~~.
- 3 Description of the waste collection, treatment, and disposal system.
- 4 Projected life of the ~~offal pit~~~~landfill~~.
- 5 Reinstatement and possible end use of the site.
- 6 Closure and after-care including ongoing monitoring of leachate discharges and management of surface runoff, stormwater control, and site remediation.
- 7 Assessment of environmental effects including assessment of alternatives to the disposal of waste at the ~~offal pit~~~~landfill~~.
- 8 Any implications of site management and operation of ~~offal pit~~~~landfill~~ for Iwi.
- 9 For hazardous wastes, a description of wastes which are acceptable and unacceptable, and wastes which can only be accepted under special (specified) conditions.
- 10 For hazardous wastes, an outline of a manifest system identifying types and quantities received including the source, and where within the ~~site~~~~landfill~~ any hazardous wastes are to be placed.

- 11 Identification of discharges and environmental effects and the safeguards in place to avoid or reduce the environmental effects.
- 12 Sensitivity of the receiving environment.
- 13 A description of how litter, vermin and birds will be controlled.
- 14 Water control including stormwater and leachate.
- 15 Description of procedures for monitoring (including detection of leakage of contaminants in contravention of resource consent) and controlling adverse effects of spillages and leachate on groundwater and any water body, as well as monitoring and control of odours.
- 16 Outline proposals for audit and reporting to the Otago Regional Council regarding environmental compliance.
- 17 Identification of corporate environmental performance standards, national or industry group codes of practice, or other recognised environmental safety standards with which the operation of the facility will comply, and a description of the means for auditing compliance.
- 18 Identification of management responsibilities for compliance with resource consents and environmental regulatory requirements.
- 19 Outline of emergency response procedures and contingency plans including:
 - * Power failure;
 - * Fire; and
 - * Emergency contacts.
- 20 Outline of contingency plans to restore or remedy any potential adverse environmental effects caused by the operation of the offal pit~~and~~landfill, including effects that may arise after waste disposal operations have ceased and details of proposed environmental trigger/action levels for implementation of the preferred contingency options.

Appendices:

- Aerial photograph or drawing showing the site layout
- Staged management plans
- Final landform plan



Annexure 2: Plan Change 1 (Landfills) decisions on submissions¹

Provision	Submitter ID	Submission Point ID	Further Submitter ID	Submitter Name	Support/ Oppose	Decision Requested	Court decision
Issue 7.2.2	10019	10019.03		Dunedin City Council	Support	Amend by updating to reflect current challenges (waste minimisation reforms, waste levy regime, Historic practices, Illegal dumping, Classification differences, farm landfills and offal pits, green waste landfills causing more than minor environmental effects, and cleanfill operations which accept non-inert wastes).	Reject
			FS106	<i>Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga (Kāi Tahu ki Otago)</i>	Support in part		Reject
Issue 7.2.2	10031	10031.07		Director-General of Conservation Tumuaki Ahurei	Support	Retain Issue 7.2.2 as notified.	Accept in part
	10025	10025.08		Royal Forest and Bird Protection Society of New Zealand Inc	Support		
			FS103	<i>Otago Fish & Game Council and Central South Island Fish & Game Council</i>	Support		Accept in part
Issue 7.2.3	10019	10019.04		Dunedin City Council	Support	Amend Issue 7.2.3 by updating to reflect current challenges (waste minimisation reforms, waste levy regime, Historic practices, Illegal dumping, Classification differences, farm landfills and offal pits, green waste landfills causing more than minor environmental effects, and cleanfill operations which accept non-inert wastes).	Reject
			FS106	<i>Kāi Tahu ki Otago</i>	Support in part		Reject
Objectives 7.3.1 and 7.3.2	10009	10009.03		Southern District Health Board	Support	Retain Objectives 7.3.1 and 7.3.2 as notified.	Accept in part
Objectives 7.3.1 and 7.3.2	10031	10031.08 and 10031.09		Director-General of Conservation Tumuaki Ahurei	Support	Retain Objectives 7.3.1 and 7.3.2 as notified.	Accept in part
			FS103	<i>Otago Fish & Game Council and Central South Island Fish & Game Council</i>	Support		Accept in part
Policy 7.4.11	10025	10025.09		Royal Forest and Bird Protection Society of New Zealand Inc	Support in part	Amend Policy 7.4.11 as follows: <u>To avoid significant adverse effects and minimise the adverse effects of discharges from new and operating landfills by requiring that:</u> ...	Accept in part
			FS101	<i>Dunedin City Council</i>	Oppose		Reject in part
			FS103	<i>Otago Fish and Game and Central South Island Fish and Game</i>	Support		Accept in part
Policy 7.4.11	10015	10015.02		Dunedin International Airport Limited	Support	Amend Policy 7.4.11 by adding new clause (b)(v) as follows: <u>(v) Methods to ensure compatibility with surrounding land uses.</u>	Reject
			FS101	<i>Dunedin City Council</i>	Oppose		Accept
			FS102	<i>Federated Farmers New Zealand</i>	Support		Reject
Policy 7.4.11	10016	10016.03		Big Stone Forests Limited	Oppose	Amend Policy 7.4.11 by adding clause (v) and (vi) as follows:	Reject

¹ Based on Ms Lee's affidavit sworn 11 February 2022, Annexure 5.

Provision	Submitter ID	Submission Point ID	Further Submitter ID	Submitter Name	Support/ Oppose	Decision Requested	Court decision
						(iv) controls to manage hazardous waste and avoid any discharge of hazardous wastes or the leaching of contaminants from hazardous wastes; and (v) Methods to protect local amenity values; and (vi) Methods to avoid adverse effects on surrounding land uses.	
			FS101	Dunedin City Council	Oppose		Accept
Policy 7.4.11	10016	10016.02		Big Stone Forests Limited	Oppose	Add new Policy 7.4.11A as follows: <u>7.4.11A Manage the effect of discharges from new landfills by:</u> <u>(a) ensuring site selection avoids the establishment of new landfills in proximity to existing land uses that are sensitive to the effects of the landfill; then</u> <u>(b) designing, constructing, operating and managing new landfills in accordance with the Waste Minimisation Institute New Zealand's Technical Guidelines for Disposal to Land (August 2018).</u>	Reject
			FS101	Dunedin City Council	Oppose		Accept
Policy 7.4.11	10015	10015.01		Dunedin International Airport Limited	Support	Amend by adding new Policy 7.4.11A as follows: <u>7.4.11A Avoid the effects of landfills on airports.</u>	Accept in part
			FS101	Dunedin City Council.	Oppose		Reject in part
			FS102	Federated Farmers New Zealand	Oppose		Reject in part
Policy 7.4.11	10019	10019.05		Dunedin City Council	Support	Amend Policy 7.4.11(a) by exempting existing consented landfills.	Accept in part
Policy 7.4.11	10019	10019.02		Dunedin City Council	Support	Add new policy 7.4.12 as follows: <u>7.4.12 To provide for the Smooth Hill landfill, as designated in the Dunedin 2GP, as regionally significant infrastructure.</u>	Reject in part
			FS106	Kāi Tahu ki Otago	Oppose		Accept
Policy 7.4.11	10009	10009.04		Southern District Health Board	Support	Retain Policy 7.4.11 as notified	Reject
Policy 7.4.11	10031	10031		Director-General of Conservation Tumuaki Ahurei	Support	Retain Policy 7.4.11 as notified.	Reject
	10018	10018.05		Kāi Tahu ki Otago	Support		
	10021	10021.05		Te Rūnanga o Ngāi Tahu	Support		
	10023	10023.05		Ngāi Tahu Ki Murihiku	Support		
			FS103	Otago Fish & Game Council and Central South Island Fish & Game Council	Support		Reject
			FS104	Southern District Health Board	Support		Reject
Method 7.5.7	10009	10009.05		Southern District Health Board	Support	Retain Method 7.5.7 as notified.	Accept
	10027	10027.07		Federated Farmers of New Zealand – Otago and North Otago provinces	Support		
Method 7.5.7	10025	10025.10		Royal Forest and Bird Protection Society of New Zealand Inc	Support	Retain Method 7.5.7 as notified.	Accept
	10031	10031.10		Director-General of Conservation Tumuaki Ahurei	Support		
			FS103	Otago Fish & Game Council and Central South Island Fish & Game Council	Support		Accept

Provision	Submitter ID	Submission Point ID	Further Submitter ID	Submitter Name	Support/ Oppose	Decision Requested	Court decision
			FS104	Southern District Health Board	<i>Support</i>		Accept
Rule 7.6.1	10016	10016.05		Big Stone Forests Limited	Oppose	Amend by adding new rule 7.6.1.x as follows <u>Any new landfill within 2km of any residential dwelling is a noncomplying activity.</u>	Reject
Rule 7.6.1	10015	10015.04		Dunedin International Airport Limited:	Support	Amend by adding new rule 7.6.1.x as follows <u>Any new landfill within 13km of an airport will be a Non-Complying activity.</u>	Reject
			FS101	Dunedin City Council	<i>Oppose</i>		Accept
7.6.1.1 Information Requirements	10029	10029.01		Lynne Stewart	Support	Retain section 7.6.1.1 Information Requirements as notified.	Accept in part
	10009	10009.06		Southern District Health Board	Support		
	10010	10010.01		Matthew Sole	Support		
7.6.1.1 Information Requirements	10025	10025.11		Royal Forest and Bird Protection Society of New Zealand Inc	Support	Retain section 7.6.1.1 Information Requirements as notified.	Accept in part
	10031	10031.11		Director-General of Conservation Tumuaki Ahurei	Support		
	10018	10018.06		Kāi Tahu ki Otago	Support		
	10021	10021.06		Te Rūnanga o Ngāi Tahu	Support		
	10023	10023.06		Ngāi Tahu Ki Murihiku	Support		
			FS103	Otago Fish & Game Council and Central South Island Fish & Game Council	<i>Support</i>		Accept in part
			FS104	Southern District Health Board	<i>Support</i>		Accept in part
7.6.1.2 Assessment Matters	10015	10015.03		Dunedin International Airport Limited	Support	Amend section 7.6.1.2 Assessment Matters by adding new clause (k) as follows: ... <u>k) The landfill is appropriately located to avoid adverse effects on airports;</u>	Reject
			FS101	Dunedin City Council	<i>Oppose</i>		Accept
7.6.1.2 Assessment Matters	10016	10016.04		Big Stone Forests Limited	Oppose	Amend section 7.6.1.2 Assessment Matters by adding clauses (k) and (l) as follows: <u>(k) Whether a proposed landfill is appropriately located to avoid establishment near existing land uses that are sensitive to the effects of the landfill;</u> <u>(l) Local amenity values.</u>	Accept in part
			FS101	Dunedin City Council	<i>Oppose</i>		Reject in part
7.6.1.2 Assessment Matters	10029	10029.01		Lynne Stewart	Support	Retain Section 7.6.1.2 Assessment Matters as notified.	Reject
	10009	10009.06		Southern District Health Board	Support		
	10010	10010.01		Matthew Sole	Support		
7.6.1.2 Assessment Matters	10025	10025.11		Royal Forest and Bird Protection Society of New Zealand Inc	Support	Retain Section 7.6.1.2 Assessment Matters as notified.	Reject
	10031	10031.11		Director-General of Conservation	Support		

Provision	Submitter ID	Submission Point ID	Further Submitter ID	Submitter Name	Support/ Oppose	Decision Requested	Court decision
	10018	10018.07		Tumuaki Ahurei Kāi Tahu ki Otago	Support		
	10021	10021.07		Te Rūnanga o Ngāi Tahu	Support		
	10023	10023.07		Ngāi Tahu Kī Murihiku	Support		
			FS103	Otago Fish & Game Council and Central South Island Fish & Game Council	Support		Reject
			FS104	Southern District Health Board	Support		Reject
Appendix 2	10025	10025.13		Royal Forest and Bird Protection Society of New Zealand Inc	Support	Retain Appendix 2 as notified.	Accept
	10031	10031.13		Director-General of Conservation Tumuaki Ahurei	Support		
			FS103	Otago Fish & Game Council and Central South Island Fish & Game Council	Support		Accept
Rule 7.6.10	10019	10019.06		Dunedin City Council	Support	Delete Rule 7.6.10 Green waste landfills (permitted activity).	Reject
Rule 7.6.11	10019	10019.07		Dunedin City Council	Support	Delete Rule 7.6.11 Green waste landfills (discretionary activity).	Reject
Whole Plan Change	10019	10019.08		Dunedin City Council	Support	Amend to support wider waste management issues in line with the Waste Minimisation Act 2008 and other industry best practice, in particular permitted landfilling rules for cleanfills; offal pits and farm landfills.	Reject
			FS106	Kāi Tahu ki Otago	Support in part		Reject
Whole Plan Change	10016	10016.01		Big Stone Forests Limited	Oppose	Oppose Plan Change 1.	Reject

