

**BEFORE THE COMMISSION  
APPOINTED BY THE OTAGO REGIONAL COUNCIL**

**UNDER** the Resource Management Act 1991 (RMA)

**IN THE MATTER** Of an application by Dunedin City Council for resource consent being processed with reference RM20.280

**BY** **BIG STONE FORESTS LIMITED, ŌTOKIA CREEK AND MARSH HABITAT TRUST, SOUTH COAST NEIGHBOURHOOD SOC INC, BRIGHTON SURF LIFESAVING CLUB INC, DAVID GRANT**

**(‘The Submitter Group’)**

---

**OPENING SUBMISSIONS OF COUNSEL FOR THE SUBMITTER GROUP**

**DATED 17 MAY 2022**

---



**GALLOWAY COOK ALLAN LAWYERS**

B Irving

bridget.irving@gallowaycookallan.co.nz

rebecca.crawford@gallowaycookallan.co.nz

P O Box 143

Dunedin 9054

Ph: (03) 477 7312

Fax: (03) 477 5564

## **OPENING SUBMISSIONS OF COUNSEL FOR THE SUBMITTER GROUP**

### **May it please the Commissioners:**

1. The Submitter Group comprises the following parties that filed submissions in relation to the Smooth Hill Landfill suite of consents.
  - (a) Big Stone Forests Limited – the company owned by Sarah and Alex Ramsay who live at Big Stone Road opposite the application site.
  - (b) Ōtokia Creek and Marsh Habitat Trust – This Trust was formed in 2020 with the purpose of protecting and improving the values of the Ōtokia Creek Catchment and wider Brighton Area.
  - (c) South Coast Neighbourhood Society – This Society was formed in 2021 to promote the protection of the Brighton Environment and wider South Coast Community. With respect to Smooth Hill it seeks to provide a united voice for the wider Brighton Communities' opposition to the proposal.
  - (d) Brighton Surf Life Saving Club – established in 1937 the surf life saving club utilises and relies on the coastal environment of Brighton and provides vital education, patrol and social cohesion opportunities to the community.
  - (e) David Grant – Principal of Big Rock Primary School which heavily utilises the Ōtokia Creek and Brighton Beach as part of its educational programme. Mr Grant is also familiar with concerns expressed about the proposal by the wider school community.
2. Together these submitters represent a wide spectrum of the Brighton and South Coast community, united by their opposition to the Smooth Hill Landfill. The key concerns of the group can be summarised as follows:
  - (a) The application has not accurately understood the value and significance of the environment that will be affected by the application. In particular:

- (i) The ecological values of Ōtokia Creek and marsh.
  - (ii) The recreational values of Ōtokia Creek, Brighton Beach and the Big Stone Forest/ McLaren Gully Area.
  - (iii) The cultural significance of Ōtokia Creek.
- (b) The application has downplayed the risks posed by the activity, in particular:
- (i) The risks posed by disposal of hazardous substances (in particular persistent organic pollutants);
  - (ii) liner failure and escape of contaminants to the environment;
  - (iii) landfill fires for surrounding residents and in compromising the integrity liner:
- (c) That the conditions proposed are inadequate and uncertain in that they:
- (i) Do not establish the environmental controls that will apply to the landfill;
  - (ii) Do not avoid adverse effects occurring beyond the boundary of the site.
  - (iii) Do not ensure that costs of remediation work can be met.
  - (iv) Do not secure adequate environmental compensation or offsetting.
  - (v) Place too much weight on baseline monitoring and targets yet to be set;
  - (vi) Do not reflect the controls assumed in the assessment of environment effects.

- (d) The proposed Smooth Hill site is not a good site for a landfill and the site selection process has not been updated in light of improved understanding of landfill risks, best practice and a changed surrounding environment since 1992.
3. It is the position of the submitter group that the application must be declined. If it is not there are significant changes and improvements required to the proposal. In particular increased robustness in the conditions to
- (a) ensure that they reflect the key performance criteria and limitations set out in the AEE and
  - (b) that 'minor effects' claimed by the AEE are actually secured by way of standards in the conditions.
  - (c) Impose a clear and robust 'act first, ask questions later' response mechanism where unexpected monitoring results arise.
4. These submissions will traverse the following key issues:
- (a) Relevance of designation to existing environment
  - (b) Precautionary approach;
  - (c) Relevance of alternatives.
  - (d) Adaptive Management
  - (e) Need for a Bond
  - (f) Waste Acceptance Criteria
  - (g) Noise

#### **RELEVANCE OF THE DESIGNATION**

5. The fact that this site has been designated for a Landfill is almost of zero relevance to the consideration of these applications. The designation only exempts the Council from its obligations under section

9. They must still satisfy their obligations with respect to section 13, 14 and 15.

## RELEVANCE OF ALTERNATIVES

6. With respect to the legal position in relation to the relevance of alternatives I rely on the detailed submissions of my Colleague Mr Page for Dunedin International Airport at [22]-[26]. The key points of those submissions are:
- (a) The applicant is obliged to start afresh with its alternative site analysis in relation to the current applications.<sup>1</sup> The nature of the environment around the Smooth Hill site looks very different compared to 1992, in particular the establishment of a greater density of rural residential activity. The values that the local community hold for the area and the environment to be affected have evolved too. This is apparent from the evidence filed by Submitters.
  - (b) Because this is an application to discharge contaminants Schedule 4 requires an assessment of alternatives, including alternative receiving environments.<sup>2</sup> This effectively means somewhere other than Smooth Hill. Reference back to the application demonstrates that no other sites were considered. Even when asked for further information on this (twice) the Council's response was not to carry out an assessment, but simply to point to the previously conducted Waste Futures work stream. The response states:  
  
*"No other potential landfill sites in Dunedin, including those identified in 1992 were included in the long list as the Council had already had a designated future landfill option at Smooth Hill".<sup>3</sup>*
  - (c) If an activity is likely to result in any significant adverse effects on the environment a description of possible alternatives, locations

---

<sup>1</sup> This is also supported by the PC1 provisions.

<sup>2</sup> RMA Schedule 4 cl 6(1)(d).

<sup>3</sup> Smooth Hill Landfill section 92 response

or methods must be included. The evidence of Mr Rumsby and Mr Ife brings into sharp relief the potential adverse effects of the proposed landfill. Based on the applicant's own assumptions about leachate leakage there is the potential for bioaccumulation of contaminants within eels and freshwater species that exceeds food standards. This potential issue arises in an environment where people are known to gather kai. Further to this, it is unclear from the application whether the Green Island Waste treatment plant can remove these persistent contaminants in which case they may be directly discharged into the coastal marine area potentially affecting a wider array of species. At least on the face value of the Green Island discharge permits, they are not monitoring for persistent organic pollutants discussed by Mr Rumsby.

7. It is submitted that the evidence for the submitters demonstrates potentially significant adverse effects arising from the proposed landfill. In particular contamination of the receiving environment with persistent organic pollutants that will bioaccumulate in freshwater species and render them unsafe to eat.
8. If this were to eventuate it would amount to an effect on Maori cultural values as the species affected are Mahika Kai species.
9. Dr Lloyd also expresses concern about the cumulative effects of changing hydrological patterns on the marsh wetland. It is his evidence that the reduced inflows will exacerbate natural variability in flows and tip the balance in favour of exotic species resulting in reduced wetland extent and species diversity overtime. Given the significant levels of protection now afforded to wetlands in the National Policy Statement for Freshwater Management<sup>4</sup> this is considered a potentially significant effect.
10. What is apparent from Mr Ife's evidence is that this site would not have passed muster if modern understanding and site selection criteria were

---

<sup>4</sup> National Policy Statement for Freshwater Management 2020 at Policy 6.

applied today. It simply presents too many potential challenges and risks, including:

- (a) Proximity of good quality groundwater.
  - (b) Proximity of sensitive and important receiving environments (wetlands, freshwater and the coastal environment).
  - (c) Marginal ground conditions for constructing the liner.
  - (d) Seismic issues.
11. Whilst none of these things are necessarily insurmountable as discussed by Mr Ife, it will result in a site that is particularly vulnerable to the almost inevitable instances of human error, breakdowns in systems etc all of which place the environment at greater risk. Effectively, it is a site where the Council are having to force it. This just creates unnecessary potential for failure for which the environment and local community will pay the cost.

#### **THE RELEVANCE OF PRECAUTIONARY APPROACH**

12. It is submitted that this is an application where the precautionary approach needs to be applied. There are a number of reasons for this.
13. The evidence of Mr Rumsby, Mr Ife and Dr Lloyd confirms that there is a real potential for adverse effects to accrue within the coastal environment and freshwater ecosystems<sup>5</sup>.
14. Therefore the application engages the New Zealand Coastal Policy Statement. Policy 3 of the policy statement says:

*Policy 3 – Precautionary Approach – (1) Adopt a precautionary approach toward proposed activities whose effects on the coastal environment are uncertain, unknown, or little understood, but potentially significantly adverse.*

---

<sup>5</sup> Evidence of Andrew Rumsby at [34] and Evidence of David Ife at [82]-[87] and [96]-[97].

15. The evidence of Dr Lloyd indicates that there is the potential for significant effects on wetland values (including loss of wetland extent) that have not been appropriately assessed and he does not have confidence in the proposed mitigation or offsetting measures proposed.
16. The National Policy Statement for Freshwater Management 2020 does not include an objective or policy incorporating the precautionary approach. However, it is incorporated into the document via clause 1.6 – Best information. This provision requires decision makers to use the best information available at the time, but where the information is uncertain it must be interpreted in a way that will best give effect to the National Policy Statement.
17. It is submitted that this means that where there is uncertainty, you must take an approach that prioritises first, the health and wellbeing of water bodies and freshwater ecosystems, second, the health needs of people and third the ability of the community to provide for their wellbeing.
18. Given the concerns expressed by the experts for the Submitters I submit that this direction requires you to be conservative when assessing the potential adverse effects of this proposal. If Mr Rumsby and Mr Ife are correct about the risk of leachate contamination the only way to prioritise the health and wellbeing of waterbodies<sup>6</sup>, freshwater ecosystems and health needs of people is to decline this consent.
19. Further, the experts are effectively agreed that the liner will fail, whether it is in something like 40 years (Mr Rumsby) or 400 years (Mr Coombe). Mr Rumsby's evidence is based on studies of 'real life' landfills, where as Mr Coombe relies on liners tested in a controlled lab environment. In my submission the best available information has to be the information from actual operating landfills, because that is what is proposed. Therefore, your assessment needs to be on the basis that contaminants will escape at rates higher than modelled from an intact liner performing at its best. Currently, because of the loose waste

---

<sup>6</sup> It is noted that 'waterbodies' is an all encompassing term meaning "*fresh water or geothermal water in a river, lake, stream, pond, wetland or aquifer or any part thereof not contained within the coastal marine area*".



acceptance criteria currently proposed by the Applicant those contaminants will include hazardous, toxic and bio-accumulative substances. Once that genie is out of the bottle, there is no stuffing it back in.<sup>7</sup>

20. In light of Dr Lloyd's evidence, the only way to achieve the same with respect to the identified inland wetlands and give effect to Policy 6 is to decline consent.
21. Further to this both the Partially Operative Regional Policy Statement 2019 (PORPS 2019) and Proposed Otago Regional Policy Statement (pORPS 2021) incorporate policy regarding the precautionary approach.
- (a) Policy 5.4.3 of the PORPS 2019 states - *Apply a precautionary approach to activities where adverse effects may be uncertain, not able to be determined, or poorly understood but are potentially significant or irreversible.*
  - (b) Policy IM-P15 of the pORPS 2021 states - *Adopt a precautionary approach towards proposed activities whose effects are uncertain, unknown or little understood, but could be significantly adverse, particularly where the areas and values within Otago have not been identified in plans as required by this RPS.*
  - (c) There are also further references to it in provisions relating to natural hazards<sup>8</sup>, climate change<sup>9</sup>, the coastal environment<sup>10</sup>, freshwater and land<sup>11</sup>, and indigenous biodiversity<sup>12</sup>.
22. What is apparent from these provisions is that the precautionary approach is now firmly entrenched within the Otago planning regime. Particularly, with respect to the management of activities that affect the

---

<sup>7</sup> Brief of Evidence of Andrew Rumsby at [44].

<sup>8</sup> HAZ-NH-P5,

<sup>9</sup> HAZ-NH-M2

<sup>10</sup> CE-M3 and M4

<sup>11</sup> LF-WAI-P3

<sup>12</sup> ECO-P3

coastal environment, land and freshwater and indigenous biodiversity which are the natural resources engaged by this proposal.

### **MITIGATION OF EFFECTS – Odour**

23. It is inherent in the obligation to avoid, remedy and mitigate effects that effects need to be internalised if at all possible. This is particularly relevant to considerations regarding escape of contaminants and odour.

24. With respect to Odour the proposed conditions require<sup>13</sup>:

*“There must be no noxious, dangerous offensive or objectionable odour or dust to the extent that it causes an adverse effect beyond the boundary of the site.”*

25. It is submitted that this condition seeks to significantly dilute the obligations of the Applicant with respect to odour mitigation. It is effectively allowing the discharge of offensive and objectionable odour, and requiring an evaluation in each circumstance of whether it has given rise to adverse effects. This creates a high degree of uncertainty for surrounding residents and people who utilise the area.

26. They may be forced to experience offensive and objectionable odour beyond the boundary of the landfill site – for example when Sarah and Alex Ramsay enter their property on their way home from work, or cycle past the landfill site at the start of their weekend family bike ride and then be required to establish that it has had an adverse effect on them.

27. The standards applicable to like activities in the Otago Regional Plan: Air is this:

***16.3.7.1 Discharges from the storage, transfer, treatment and disposal of liquidborne municipal, industrial or trade waste - permitted activity***

*The discharge of contaminants into air from the storage, transfer, treatment or disposal (including land application of treated effluent and sludge, but excluding the burning of sludge and associated solids) of*

---

<sup>13</sup> Evidence of Maurice Dale at Draft Consent Conditions at 48

*liquid-borne municipal, industrial or trade waste, where the influent liquid waste does not exceed a BOD5 of 850 kg per day;*

*is a permitted activity, providing:*

*(a) Ponds constructed after 1 January 2002 are located at least 150 metres from the closest part of the boundary of the property; and*

*(b) Land application does not occur within:*

*(i) 150 metres from any residential dwelling on a neighbouring property or from a building used for employment purposes on a neighbouring property; and*

*(ii) 20 metres from a formed public road; and*

*(iii) 150 metres from any public amenity area or place of public assembly, excluding formed public roads, and*

*(c) **Any discharge** of odour, particulate matter, droplets or gases is not noxious, dangerous, offensive or objectionable at or beyond the boundary of the property.*

28. What will be apparent is that the standard requires simply that the odour is not noxious, offensive, or objectionable beyond the boundary. There is no additional requirement to prove that to be an adverse effect.<sup>14</sup>
29. Further to this matters such as frequency and duration are already inherent in the assessment of whether odour is offensive and objectionable (FIDOL Factors).
30. This approach in the conditions is unacceptable and does not align with best practice which is to ensure that activities do not result in offensive or objectionable odour beyond the boundary. This threshold is much clearer. It is also consistent with the Ministry for the Environment Guide to Landfill Consent Conditions.<sup>15</sup>
31. It is also noted that there is no specific odour monitoring proposed. It is Counsel's experience that it is now common for hydrogen sulphide monitors to be utilised to help monitor and control odour emissions.

<sup>14</sup> Noting that 7.2.3 of the Regional Plan Waste appears to suggest that Landfill's will be subject to the more detailed standards in the Regional Plan Air, although Clause 16.2.2 states that the rules in the Air Plan do not apply to Landfills.

<sup>15</sup> Ministry for the Environment Guide to Landfill Consent Conditions at pg 38.

Hydrogen Sulphide is the 'rotten egg' smell often associated with landfills and is a component of Landfill Gas.

32. Monitoring for it is a useful tool both in terms of identifying when odour might be about to become an issue, but also picking up potential landfill gas escape through the landfill cap. It is submitted that this should be considered by the Applicant. An example of such an approach is available from the AB Lime permits.<sup>16</sup>
33. It is important that these conditions are robust as Mr Stacey's evidence is potentially based on some incorrect assumptions about waste streams. In particular, the disposal of putrescible waste. It is Counsel's understanding from the submissions of Mr Garbett that the Applicant intends to sort municipal waste collected within Dunedin City. Waste contaminated with putrescibles collected from this source will be disposed of at Smooth Hill.
34. Further to that Mr Garbett notes at paragraph 6 of his opening submissions that commercial waste operators will dispose of material at Smooth Hill. There is no suggestion that those waste operators who may collect municipal solid waste from other areas (for example Waitaki or Clutha) would be required to have sorted the waste. Nor do we know what kerbside collection system might be in use in those areas. The conditions do not provide clarity about how this 'out of district' waste is to be dealt with. It is submitted that based on the conditions as they are currently drafted a reduction in the putrescible content of municipal solid waste cannot be relied upon as it will only apply to waste collected in Dunedin.
35. To address this inconsistency the following options are available:
  - (a) Municipal solid waste may only be received from Councils utilising the same 4 bin + one system adopted by the Dunedin City Council; and

---

<sup>16</sup> Refer Conditions 14 AB Lime Discharge to Air Permit attached to the Evidence of Ciaran Keogh on behalf of Dunedin International Airport.

- (b) All Municipal Solid Waste (noting that not all residents will utilise the Council system) must be processed through the Bulk Waste Transfer Station in accordance with the Attachment 3 residual putrescible waste separation methodology; Or
  - (c) Impose a condition that prevents the disposal of municipal solid waste other than that which is collected in Dunedin and has been processed through the Bulk Waste Transfer Station.
36. It is submitted that option (c) would be the most appropriate in light of the concerns expressed by mana whenua about out of district waste transfer. It would be consistent with the reasons given in the section 92 response for disregarding a waste to energy facility because it would rely on large volumes of out of district waste being imported which was considered to be culturally inappropriate.
37. This approach would also ensure that waste volumes received at the landfill are consistent with the assumptions relied upon in the application and evidence.
38. It is further submitted that it would be appropriate to impose conditions relating to
- (a) Prohibit the receipt of Highly Odorous Wastes at Smooth Hill (Mr Dale's condition 43).
  - (b) a limit on the amount of waste that can be disposed of annually. This will also help ensure that effects are in line with what has been assessed in the AEE, including the likes of leachate generation rates, odour, noise, traffic etc.
  - (c) A control on the size of the tip face – throughout the application assessments relied on an active tipping face of 300m<sup>2</sup>.<sup>17</sup> The tipping face is one of the main risk areas for odour generation,

---

<sup>17</sup> See Appendix 3: Landfill Concept Design Report – *daily cover*  
 Appendix 10 – Air Quality Report at 9.4.7  
 Appendix 12 – Landscape and Visual Assessment Report – Daily Cover  
 Assessment of Environment Effects 5.13 Landfill operation.  
 In all cases the active tipping face is said to be limited to 300m<sup>2</sup> or around 300m<sup>2</sup>.

litter, fire risk etc. Appendix 10: Air Quality Report at 9.4.7 stated:

*“The Odour dispersion model included emissions for the following sources:*

- *Active tipping face – limited to 300m<sup>2</sup> in order to maintain effects waste to cover ratio (which is consistent with the proposed maximum size of the working face)*
- *Daily Cover – Limited to three months worth of tipping faces – 27,000m<sup>2</sup>.*

39. This differs significantly from some of the recent evidence which refers to an active tipping face of up to 1000m<sup>2</sup> (over a 3 fold increase). It is not clear that the various assessments have been re-done to reflect this significant change in the application, particularly with respect to the odour dispersion modelling.

#### **ADAPTIVE MANAGEMENT**

40. The conditions proposed to address the likes of water quality, landfill gas escape, odour etc all have the flavour of adaptive management to them. Although it is submitted that they remain deficient in many key respects.

41. Happily, I can once again rely on the submissions of my colleague Mr Page in setting out the legal position with respect to adaptive management.<sup>18</sup>

42. It is submitted that several key matters remain unresolved by this application, have not been investigated or remain to be confirmed after consent is granted. This means the Commission cannot be confident that the AEE adequately identifies the potential effects and whether response mechanisms are sufficient. Those issues are:

---

<sup>18</sup> Opening Submissions of Counsel for Dunedin International Airport at [45]-[50]

- (a) Lack of adequate baseline data – what is the nature of the environment that needs to be protected?
- (b) Lack of compliance standards – particularly in relation to water quality matters which means we do not know what end state is to be achieved by the proposal to ensure that trigger levels and response mechanisms are adequate. In relation to water level none of the conditions require protection of existing wetland extent.
- (c) Lack of robustness in the waste acceptance criteria which mean there is uncertainty as to the nature of contaminants that may be discharged to the landfill and therefore what contaminants may be in the leachate? If we don't know what we are dealing with, how do we know how to respond?
- (d) Lack of robust monitoring for ground and surface water quality in particular (condition 36 and Attachment 1):
  - (i) The monitoring is too infrequent.
  - (ii) The basic monitoring suite is too limited. It does not include highly mobile compounds including VOC's, SVOC's (which includes the likes of BPA, a contaminant found in plastics), PFAS, PFOA or that would allow for early detection of potential landfill liner issues. These compounds could well appear in water samples prior to the heavy metals in the Basic Suite because they are so mobile. As a result, they are excellent 'canary in the coal mine' substances.
  - (iii) It is not clear which VOC's and SVOC's are being monitored for and whether that is appropriate. Different labs have different suites of these compounds.
  - (iv) It would only be necessary to record a breach of the PFAS trigger limit, when the monitoring suite includes up to 28 different compounds any of which would indicate a potential liner issue.

- (v) The suite does not include Total Organic Fluorine which is a signal compound for other emerging contaminants and pharmaceuticals that could be in the waste stream.
  - (vi) It is not possible to comment on whether the response actions in Attachment 1 are appropriate because we do not know what the trigger levels are – i.e. how serious the problem already is when something needs to be done about it.
- (e) Lack of assessment of the effects of mitigation methods to be deployed. In particular, if the groundwater needs to be pumped to avoid leachate contaminated groundwater entering surface water, what effects will this have on the extent of the wetland, flows in Otokia Creek and therefore the values of this waterbody?
  - (f) Lack of assessment of risks – such as a human health risk assessment as discussed by Mr Rumsby.
  - (g) Are the consequences of failure reversible? If persistent, toxic and bio-accumulative substances are discharged, can they be removed?
  - (h) Uncertainty related to the lifespan of the liner – if the liner is to fail within 40 years as discussed by Mr Rumsby, will that give rise to different effects, relative to a failure at 400 years?
43. The proposed conditions do not set clear standards for what needs to be achieved. Therefore, the Commissioners do not have a basis to be confident that any particular outcome will be delivered. You are being asked to “suck it and see”. That is not an appropriate use of adaptive management<sup>19</sup>, which is exactly what the Supreme Court said was not the purpose of adaptive management.

---

<sup>19</sup> *Newcastle & Hunter Valley Speleological Society Inc v Upper Hunter Shire Council* [2010] NSWLEC 48 at paragraph [121], referred to with approval by the Supreme Court in *Sustain Our Sounds Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 40 at [95]-[141].



## NEED FOR A BOND

44. There is no discussion or suggestion of the need for a bond condition. This appears to be a significant oversight and is out of step with best practice.
45. Section 108(2)(b) of the RMA enables imposition of a bond so long as the bond is in accordance with section 108A of the Act. That section sets out a non-exhaustive list of situations, in which there are long term effects to be managed where a bond may be appropriate to provide for:
- (a) Alternation or removal of structures
  - (b) Remedial, restoration, or maintenance work or
  - (c) Ongoing monitoring of long-term effects.
46. Long-term effects include any effects which will continue past the expiry of the consent. The purpose of a bond is to ensure that the costs associated with managing these effects is not abandoned by the consent holder after the operational benefits of the activity have ceased.
47. A Class 1 landfill will continue to generate the likes of LFG and leachate for many years post closure and will still present an environmental risk for many more years. The closure phase can last for 40 years<sup>20</sup> and will require management of leachate + stormwater systems, landfill gas flares, monitoring of final cover, surface and ground water, and may require ongoing remedial and restoration work.
48. The 2006 Environment Court decision, *Transwaste Canterbury Ltd v Hurunui District Council*<sup>21</sup> considered the purpose of the bond condition for Kate Valley Landfill. In that case the applicant sought declarations about the calculation of quantum for the bond. The Court set out the purpose of a bond in the landfill context:

---

<sup>20</sup> Ministry for the Environment. *A Guide for the Management of Closed and Closing Landfills in New Zealand*. May 2001. Tables 6.1 and 6.2

<sup>21</sup> ENC Christchurch C52/06, 4 May 2006

*“This is a bond provision to provide an assurance in the event that certain matters are not attended to by the consent holder. It is a further level of redundancy (or assurance) in a complex project involving multiple layers of redundancy.”*

49. This reflects the reality that bonds or financial assurances are typical for Class 1 landfills, which are inherently complex projects. In New Zealand bond quantum ranges from \$10-20 million with the country's largest landfill at Hampton Downs having a bond in the region of \$20 million.
50. The Kate Valley condition considered in *Transwaste* is a variable condition which depends on an assessment of costs associated with managing risks associated with:
- (a) Excessive hydration of the landfill liner;
  - (b) Excessive leachate seepage through liner;
  - (c) Escape of leachate and/or failure of leachate collection system;
  - (d) Surface or ground water contamination within or beyond the landfill boundary;
  - (e) Illegal dumping of hazardous and/or inappropriate waste;
  - (f) Instability of landfill batters;
  - (g) Underground migration of landfill gas;
  - (h) Significant and ongoing odour problems;
  - (i) Failure of gas extraction system;
  - (j) Landfill fires;
  - (k) Erosion of landfill cap;
  - (l) Slipping/mass failure of the landfill mass;
  - (m) Gross pollution of the adjoining ocean environment, and
  - (n) Failure to establish and or maintain vegetation cover on cap,

51. Many of those risks are also live in relation to this application based on the evidence filed on behalf of the Submitter Group.
52. The appeal of a variable bond is that over time it ensures adequate, but reasonable funds are set aside to address the current cost of remedial action. It also reduces the risks that the bond amount will be eroded over time by inflation and ultimately prove to be inadequate when called upon.
53. It is assumed that no bond has been promoted because the applicant is the Council and there has been an assumption that 'the council is good for it'.
54. It is submitted that the fact the DCC is the applicant is completely irrelevant. The risks associated with the activity are blind to who the consent holder is. A bond is about managing the risks associated with the activity being consented, not financial capability of the applicant. We cannot predict what might happen in the future. It is entirely possible that once the consents are in hand that the Council will transfer them to a 3<sup>rd</sup> party operator.<sup>22</sup>
55. Kate Valley is operated by Transwaste Canterbury Limited a company owned by the 5 district councils<sup>23</sup> within Canterbury and Waste Management NZ Ltd. This confirms that involvement of a local authority does not remove the importance or utility of a bond.
56. Without a bond, the consent holder, or any successor, could abandon the landfill leaving the Regional Council to absorb cost of significant ongoing management or responding to resource consent breaches. Such a situation is likely to lead to delays in responding to any issues which arise while the various organisations prevaricate whilst the determine who will foot the bill. Given what is at stake this is an unacceptable approach from the Submitter Group's point of view.

---

<sup>22</sup> It is accepted that a third party cannot exercise a designation.

<sup>23</sup> Christchurch City, Waimakariri, Selwyn, Ashburton and Hurunui.

**WASTE ACCEPTANCE CRITERIA**

57. The conditions regarding the waste acceptance criteria are at best, opaque.
58. Mr Rumsby extensively discusses the failure of the proposed conditions to meet best practice standards in his evidence and I rely on that evidence. I also make the following observations with respect to the proposed conditions:
- (a) Condition 93 refers to the MfE Hazardous Waste Guide (The Guide), but it is not apparent what part of the document is relied upon.
  - (b) Condition 95 is an incomplete articulation of the list of prohibited items within the Guide raising the question about whether Smooth Hill is intended to receive the other wastes that are listed as prohibited in the Guide.
  - (c) The conditions maintain a carve out for small quantities of hazardous substances reasonably expected to be contained in the municipal waste stream. Given the proposed new waste collections system and the intention to extensively sort waste, it is submitted that this is not necessary. The likes of rogue lithium ion batteries should be able to be removed. Further, as noted by Mr Rumsby there are also significant resource recovery advantages to this.

**OTHER CONDITIONS**

59. Both Mr Rumsby and Mr Ife raise further matters that need to be addressed in conditions. I do not traverse the reasons further as it is set out in the evidence, but do wish to highlight that the submitters consider that if consent is to be granted there needs to be:
- (a) An amendment to the liner standard as set out by Mr Ife to improve its performance and reduce the risk of contaminant escape.

- (b) Control on the Oxygen concentration in landfill gas to assist in managing the risk of fire. This is important both due to the potential risk of fire to surrounding residents, but also to reduce the potential for the liner to be damaged undermining its performance and leading to discharge of contaminants.

Dated 17 May 2022



Bridget Irving

Counsel for The Submitter Group