

Our Reference: J16611

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Dear Brittany

**Waste Management NZ Limited – Fairfield Closed Landfill Application (RM24.098)**  
**Response to the section 91 Deferral Pending Application for Additional Resource Consents**

**Overview – Application Status**

Waste Management NZ Limited (**Waste Management**<sup>1</sup>) lodged a resource consent application, seeking four resource consents for discharge and take activities at the Fairfield Closed Landfill (**the site or the landfill**) that will continue during the landfill's aftercare period, with Otago Regional Council (**ORC**) on 28 February 2024<sup>2</sup>.

Upon lodgement, the application was placed on hold, at Waste Management's request, until the Cultural Impact Assessment (**CIA**) was finalised and provided to ORC. The CIA was provided on 4 November 2024, and a document outlining the 'proposed response approach' to the CIA was provided to ORC on 31 January 2025.

In the intervening period, a site visit with ORC personnel and the air quality specialist took place (on 2 May 2024). Waste Management also understands that technical reviewers have been assessing the application.

**Purpose of this Letter – section 91 Letter from ORC**

On 4 February 2025, Waste Management received a letter from ORC advising that they considered that two additional resource consents may be needed. Accordingly, the letter advised that ORC have 'deferred' the further processing of the application, in accordance with section 91 of the Resource Management Act 1991 (**RMA**), until an application for the additional resource consents is lodged with ORC. While ORC's letter identified that additional resource consents 'may' be needed, the letter also states that Waste Management may apply to the Environment Court, in accordance with section 91(3) of the RMA, if Waste Management disagrees with ORC's stance. This letter is Waste Management's response to the section 91 letter from ORC.

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<sup>1</sup> Waste Management is now known as 'WM New Zealand'.

<sup>2</sup> As the application was lodged six months prior to the expiry of the site's existing resource consents (Consents 95008 and 93540 to 93542), Waste Management

ORC considers that a land use consent is required for a 'defence against water', as the application identifies that Waste Management intend to increase the height of the landfill's perimeter access road, which runs around the landfill where it adjoins the Kaikorai Stream and Kaikorai Lagoon Swamp (which are a natural inland wetland), "to provide additional protection against rainfall". In addition, the letter outlines that ORC considers that installation of a 'defence against water' also triggers the need to seek a water permit for the diversion of surface water, including flood flows.

While Waste Management does not agree that the above additional resource consents are required, for the reasons outlined below, rather than applying to the Environment Court for a determination, Waste Management has decided to proceed with seeking the two additional resource consents identified to ensure that the further processing of application RM24.098 can continue.

Accordingly, an updated application form seeking the additional resource consents is provided in **Attachment A** to this letter, while an overview of the information required under the RMA is provided below.

### **Overview of Potential Mitigation Measure – Effects from Climate Change**

In assessing the actual and potential effects associated with the landfill's discharge and take activities, for which resource consents are required during the landfill's aftercare period, Waste Management's resource consent application assessed the 'Effects from Natural Hazard Risks' (**Section 6.5** of the application document). This assessment was underpinned by the 'Natural Hazard & Climate Assessment' prepared by Pattle Delamore Partners Limited and contained in **Appendix 6** of the application document. The natural hazard and climate change risks assessed included: temperature, dry periods and strong winds; rainfall; river flow changes; sea level rise / encroachment; storm surges, king tides and waves; and, seismic considerations (tsunami).

A recommendation of the Natural Hazard & Climate Assessment, in response to the assessed risks to the closed landfill is to increase the height, and provide armouring, of the perimeter access road. The recommended mitigation measure is in response to all the risks assessed, except for the temperature, dry periods and strong winds. This potential mitigation measure is what the ORC consider triggers the need to seek resource consents on the basis that the mitigation measure constitutes a 'defence against water' (as discussed further below). The reason for this proposed mitigation measure, in the context of the ongoing management of the closed landfill during the aftercare period, is to provide for the minimisation of the potential for the leachate management system to become inundated with water, and to also protect the landfill toe and thus landfill stability.

In relation to the recommendation of the Natural Hazard & Climate Assessment, the landfill resource consent application outlines that there may be alternative solutions available that will achieve the same outcome as the proposal to increase the height of the perimeter road (and associated armouring)<sup>3</sup>. For this reason, the following consent conditions<sup>4</sup>, to be attached to the water permit (to take groundwater containing leachate and other groundwater), were proposed by Waste Management within the resource consent application:

#### ***Mitigation – Effects from Climate Change***

20. *Within two years of the grant of this resource consent, the Consent Holder must complete an assessment and/or modelling, and a design, for proposed mitigation works. The purpose of these mitigation works is to minimise the inundation of the leachate management system and to protect the landfill toe and landfill stability from the adverse climate change effects associated with the increased occurrence of high estuary levels and/or wave generated erosion.*

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<sup>3</sup> As stated in Section 6.5.2 of the application.

<sup>4</sup> As provided in Appendix 8 of the application.

**Advice Note:** At the time this resource consent was processed, an identified solution for the mitigation works is to increase the level of the site's perimeter access road and put in place associated protection/armouring works. An alternative solution/s, that achieves the purpose of this condition, may be identified as part of the assessment and/or modelling required by this condition. For this reason, a specific solution has not been identified within this condition.

21. The outcomes, in terms of the identified design, required by Condition 20 must be provided to the Consent Authority within three months of completion of the required assessment. The Consent Holder, in providing the Consent Authority with the assessment carried out, must identify the timeframes for completing the construction of the design identified by the assessment.

**Advice Note:** Additional resource consents for the construction works (i.e., soil disturbance and/or earthworks) may be required to authorise the proposed works. If this is the case, the resource consents will need to be in place prior to construction works commencing.

In addition, in response to the recommendations of the CIA, the following amendment to the proposed Aftercare Management Plan (AMP) consent conditions is proposed<sup>5</sup>:

*The AMP must be based on the AMP submitted as part of the application and must apply to all aspects of the closed landfill as authorised by Consents [to insert] to [to insert].*

*The purpose of the AMP is to ensure that procedures are in place that will ensure that the closed landfill, during the aftercare period, is appropriately managed so that adverse effects on the environment arising from the activities authorised by Consents [to insert] to [to insert] are avoided, remedied or mitigated. The AMP must contain procedures that, as a minimum, address:*

...

- fa) Implementation of a strategy that requires regular reviews, at least every 5-years, of the risks to the site arising from climate change, and where risks are identified, the procedures to be implemented by the Consent Holder for addressing the risks.*

- fb) ...*

Therefore, the application lodged with ORC provides for, by way of the above proposed consent conditions, an outcome focused approach to mitigating potential climate change effects on the landfill. Given this proposed approach, it is feasible that the recommendation of the Natural Hazard & Climate Assessment to increase the height of the perimeter access road (including armouring) may not be the option implemented.

## **Additional Resource Consents for Potential 'Effects from Climate Change Mitigation Measure'**

### **Introduction**

The following section of this letter assesses the rules that apply to the 'defence against water' land use consent and the supposed associated diversion of water resource consent. An assessment of the effects on the environment of these activities, relevant objectives and policies, relevant RMA considerations and proposed conditions are also provided below. An updated application form, seeking these two additional resource consents, is also provided in **Attachment A** of this letter.

While seeking the two additional resource consents that ORC have advised are required in relation to the closed landfill's aftercare activities, Waste Management considers that the resource consents are not required, on 'reasonable grounds' (as per section 91(1) of the RMA), for the following reasons:

- **Defence against Water.** As outlined above, the potential increase of the height of the perimeter access road (including armouring) may not be the option implemented to address the potential

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<sup>5</sup> This amended proposed consent condition was provided to ORC on 31 January 2025 (as part of the 'CIA Response' document).

effects of climate change on the landfill. The proposed consent conditions (as provided above) provide for a sequence of events, and thus a pathway, for more fully evaluating the best option for addressing the potential effects of climate change, while ensuring that any mitigation measure to be implemented is focused on the outcome required. It is acknowledged that future resource consents may be required for the implementation of the identified solution (design), but this would be reflected in the timeframes identified in the assessment to be provided to ORC under proposed Condition 21. The benefit to this approach is that this evaluation exercise will have been completed, and further details of the nature of changes to the perimeter access road (if this option is identified as the best options) will be available, which can then be included in a more thorough resource consent application for all of the resource consents required for the proposal.

- **Diversion of Water.** Waste Management disagrees that the potential increase of the height of the perimeter access road (i.e., the 'defence of water') results in a diversion of water, including flood water. The purpose of this potential mitigation measure, if implemented, is to minimise the potential for water from within the Kaikorai Stream channel and Kaikorai Lagoon Swamp overtopping into the landfill. 'Diversion' or 'to divert' is not defined in section 2 of the RMA. However, 'divert' is defined in the Regional Plan: Water for Otago (**Water Plan**) as '*in relation to the diversion of water, the process of redirecting the flow of water from its existing course to another*'. It is considered that no element of the proposed 'defence against water' constitutes the active diversion of water, particularly as the intent of the mitigation measure is to ensure that water remains within its existing channel / bed. However, rather than continuing to debate this matter, and in the interest of expediency, it is requested through this letter that a water permit to divert water (as outlined below), as the result of the potential establishment of a 'defence against water', also forms part of the resource consents being sought by Waste Management for the closed landfill aftercare period.

### ***Defence Against Water – Rule Assessment***

The Water Plan defines a 'defence against water' as follows:

*Any dam, weir, bank, carriageway, groyne, or reservoir, and any structure or appliance of any kind which has or may have the effect of stopping, diverting, controlling, restricting, or otherwise regulating the flow or spread or subsidence, in or out of a water body, of water including flood waters, which is specifically established for the purpose of flood hazard mitigation.*

It is acknowledged that increasing the height of the perimeter access road, if implemented, is effectively a bank or structure that has the effect of stopping water from entering the landfill and associated structures. While this proposal is potentially, in part, for the purpose of flood hazard mitigation, the mitigation measure also addresses a broader range of potential natural hazard risks exacerbated by climate change. For this reason, it is agreed that this activity could be considered a 'defence against water'.

Section 14.3 of the Water Plan contains rules for 'defence against water' activities. Rule 14.3.1.1 of the Water Plan permits the alteration or reconstruction of any 'defence against water', other than on the bed of any lake or river, provided there is no change to the scale, nature or function of the 'defence against water'. This rule does not apply to the potential 'defence against water' as any increase in the height of the perimeter access road is a change of scale. Therefore, as the permitted activity rule does not apply, a **land use consent** to extend (increase) the height of the perimeter access road, and to add armouring, is required in accordance with **Rule 14.3.1.1 (discretionary activity)**. Accordingly, this consent trigger has now been included in the updated application form attached as **Attachment A** to this letter.

### ***Diversion of Surface Water – Rule and Regulation Assessment***

Rules relevant to the diversion of surface water, arising as the result of a 'defence against water', are contained in Section 12.3 of the Water Plan. In addition, as assessed in the Section 4.5 of Waste

Management's resource consent application, as water in the Kaikorai Stream and Kaikorai Lagoon Swamp (a natural inland wetland) will also be supposedly 'diverted', the regulations of the National Environmental Standards for Freshwater (**NES-F**) are also relevant. The rules / regulations that apply to Waste Management's activities at the closed landfill are as follows:

- **Water Plan rules** (Section 12.3). The proposed diversion is not prohibited by Rules 12.3.1.1 to 12.3.1.4 (i.e., these rules apply to other waterbodies). Permitted activity Rule 12.3.2.1 does not apply as the upstream catchment is greater than 50ha (Condition (a)) and the new 'diversion' associated with the extension of the 'defence against water' is occurring in a Regionally Significant Wetland (Condition (f)). Permitted activity Rules 12.3.2.2 and 12.3.2.3 and restricted discretionary activity Rule 12.3.3.1 are not relevant. Therefore, as the 'defence against water' adjoins a Regionally Significant Wetland (the Kaikorai Lagoon Swamp, including the Kaikorai Stream where it adjoins the landfill's eastern boundary), and given that the diversion is not a prohibited activity and is not provided for by the permitted activity rules or Rule 12.3.3.1, a **water permit** to divert surface water is required in accordance with **Rule 12.3.1A.1 (non-complying activity)**.
- **NES-F regulations.** Regulations 45B and 54 of the NES-F are potentially relevant to the diversion of water within the Kaikorai Lagoon Swamp (including the Kaikorai Stream where it adjoins the landfill). Regulation 45B provides for a range of activities, where they are near or within a natural inland wetland, and where the activities are associated with landfills (including closed landfills). Regulation 45B(4) provides for the diversion of water (along with other activities) within a wetland or within a 100m setback from a wetland, as a discretionary activity, where the diversion is for the purpose of operating a landfill (Condition (a)) and there is a hydrological connection between the diversion and the wetland (Condition (b)) and the diversion will change or is likely to change the water level range or hydrological function of the wetland (Condition (c)). The purpose of the potential 'defence against water' (and thus associated diversion) is to provide for the retention of potential future increased water flows and / or levels in the Kaikorai Lagoon Swamp from impacting or encroaching into the closed landfill, thus Condition (a) of Regulation 45B(4) is complied with. It could also be considered that there is a hydrological connection between the 'diversion' and wetland (i.e., water being retained in the wetland rather than lost) (thus Condition (b) is complied with). Taking this further, the retention of water within the wetland could also be considered to result in a change in water level range and hydrological function, thus Condition (c) is complied with. On this basis, it is considered that **Regulation 45B(4) (discretionary activity)** applies to the supposed diversion of water within the Kaikorai Lagoon Swamp arising from the potential establishment of the 'defence against water', and therefore this regulation also triggers the need to seek a **water permit** for this aspect of the proposal.

### ***Assessment of Effects on the Environment***

The potential effects associated with the 'defence against water' include effects on natural hazard risks, including flood carrying capacity of waterbodies<sup>6</sup>. The potential effects arising from the associated diversion include effects on downstream users, and whether the diversion will cause flooding or other problems.

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<sup>6</sup> Potential adverse effects on other flood protection structures is not a consideration in this location, as it is understood that there are no such structures in and around the wetland / estuary.

As assessed below in the assessment of relevant objectives and policies, it is considered that there are no to minimal adverse effects associated with the potential 'defence against water', and the associated diversion of water, as:

- Important context for this assessment is that the potential 'defence against water' will only be implemented if, as outlined in the proposed 'Mitigation – Effects from Climate Change' consent condition (as provided above), the results of the modelling / assessment required by these conditions recommends that it is the best practicable approach to mitigating future climate change (and natural hazards) risks on the landfill. It is feasible that another solution may be identified as the best option. Irrespective, if the 'defence against water' option is implemented, the purpose of the proposal is to address the potential climate change and natural hazard risks on the landfill during the aftercare period, specifically the effective operation of the closed landfill's leachate management system and to ensure that the structural integrity of the landfill is retained.
- Increasing the height of, and armouring, the existing perimeter access road around the closed landfill does not result in any additional loss, or occupation, of the channel or bed of the Kaikorai Stream or Kaikorai Lagoon Swamp. Thus, there is no decrease in the area of these waterbodies, and thus there is no loss in the habitat.
- The 'diversion' of water associated with the potential establishment of the 'defence against water' will not result in any loss of water from the Kaikorai Stream or Kaikorai Lagoon Swamp. Rather, it will ensure that water is retained within these surface waterbodies, rather than encroaching or entering the closed landfill.
- The intent of the proposed 'defence against water' is to provide for site-specific protection against natural hazard and climate change risks, and therefore given that the proposal does not entail an increase in the footprint of the landfill, but aims to ensure that high water levels and flows are retained within the stream and wetland, it is anticipated that there will be no increase to flooding risk in the broader area. This will be subject to confirmation by way of the modelling / assessment required by the process outlined in the 'Mitigation – Effects of Climate Change' conditions (as provided above).
- Although there are no downstream water takes, as the diversion of water does not result in any loss of water, there would be no adverse effects on such users if they existed.

### ***Assessment of Relevant Objectives and Policies***

Section 8 of Waste Management's February 2024 resource consent application contains an assessment of activities associated with the landfill's ongoing aftercare activities, including the management of natural hazard and climate change risks (as assessed in the Natural Hazard & Climate Assessment contained in Appendix 6 of the application), against relevant objectives and policies of the National Policy Statement for Freshwater Management 2020 (**NPS-FM**), the New Zealand Coastal Policy Statement 2010, the Proposed Otago Regional Policy Statement 2021 (**PORPS 2021**), the Otago Regional Policy Statement 2019 (**ORPS 2019**), the Regional Plan: Waste for Otago, the Water Plan, the Regional Plan: Coast for Otago and the Regional Plan: Air for Otago. As the potential 'defence against water' is a recommendation of the Natural Hazard & Climate Assessment, and given the proposed conditions (as discussed above) provide an outcome focused approach to mitigating potential climate change effects on the landfill, it is considered that the existing policy framework assessment also applies to the two additional resource consents now being sought. Therefore, it is not necessary to repeat this assessment.

For the above reason, the following policy framework assessment focusses solely on the potential 'defence against water' and the associated diversion (retention) of water with Kaikorai Stream and the Kaikorai



Lagoon Swamp. The relevant additional objectives and policies, relevant to this aspect of the proposal, are as follows:

- **NPS-FM. Policy 6**, which is assessed in Section 8.2 of the application, seeks to ensure that there is no further loss of the extent of natural wetlands and that the values of the wetland are protected, and restoration is promoted. The potential ‘defence against water’, and the associated supposed diversion of water, does not result in the loss of the extent of the Kaikorai Lagoon Swamp, nor does it result in loss of water from the wetland. Rather, the retention of water within the wetland is provided for. On this basis, this aspect of the proposal is consistent with the relevant policy framework of the NPS-FM.
- **PORPS 2021<sup>7</sup>**. Relevant objectives and policies are as follows:
  - In support of **IM-O4** (Climate Change), relevant policies aim to: recognise and provide for the effects of climate change (**IM-P8**); and, identify and implement climate change mitigation measures to minimise the effects of climate change on the existing environment and the wider environment (**IM-P10(1)**). It is noted that these provisions of the PORPS 2021 are still subject to appeal. The potential ‘defence against water’, if implemented, is a potential mitigation measure solely intended to address and minimise the effects of climate change on the landfill, and thus in turn the wider environment.
  - **LF-FW-O1A**, which sets the overall vision for the region’s waterbodies, amongst a range of visions, aims to ensure that the form, function and character of water bodies reflects, to the extent that ‘is reasonably practicable’, natural characteristics and behaviours (Clause (4)). **LF-FW-O9** (Wetlands) in seeking to protect wetlands and restore them where they are degraded, requires that there is no net decrease in ecosystem types and habitats (Clause (2)). These two objectives are not subject to appeal and can be deemed operative. The potential ‘defence against water’, if implemented, will not result in any decrease in the area of the wetland, nor available habitat, and thus will not adversely affect the existing character and behaviour of the wetland.
  - **HAZ-NH-P4(4)** aims to ensure that where an area is subject to natural hazards, natural hazard risks are to be reduced by way of a number of measures including encouraging design that provides for the reduction of the risk (Clause (4)(a)). This policy is still subject to appeal. The purpose of the proposed ‘defence against water’, if implemented, is to reduce the potential natural hazard, and climate change, risks to the effective operation of the landfill’s leachate management system and the stability of the landfill.

On the above basis, the potential ‘defence against water’, and associated diversion of water, is consistent with the relevant objectives and policies of the PORPS 2021.

- **ORPS 2019**. Relevant objectives and policies are as follows:
  - **Objective 3.1** seeks to ensure that the values of ecosystems and natural resources are recognised and maintained, or enhanced where degraded. Policies in support of this objective aim to: safeguard the life-supporting capacity of freshwater, and manage freshwater, including by avoiding, remedying or mitigating the adverse effects of natural hazards (**Policy 3.1.1(f)**); and, contribute to the resilience and enhancement of

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<sup>7</sup> The PORPS 2021 objectives and policies are from the appeals version of the regional policy statement dated 8 January 2025. A number of the provisions of the PORPS 2021 can be deemed to be operative as they are now beyond appeal.

the natural environment, including, where applicable, by mitigating natural hazards (**Policy 3.1.13(d)**). The purpose of the proposed 'defence against water', if implemented, is to reduce the potential natural hazard, and climate change, risks to the closed landfill.

- **Objective 4.1**, and **Policy 4.1.6**, seeks to minimise the risks that natural hazards pose to Otago's communities. **Policy 4.1.10**, in support of this objective aims to give a preference to risk management approaches that reduce the need for hard protection structures, or similar engineering interventions, and only provide for such interventions, subject to a range of requirements, including where adverse effects are adequately managed, and the mitigation measure is viable in the long term. The purpose of the potential 'defence against water', if implemented, is to minimise the risk from natural hazards on the closed landfill. While a hard structure, it is not a new structure (i.e., the proposal entails increasing the height of the existing perimeter access road). In addition, Waste Management proposes that the potential 'defence against water' will only be implemented if it is considered to be the best practicable approach to mitigate the natural hazard (and climate change) risks on the landfill.
- **Objective 4.2** seeks to ensure that Otago's communities are prepared for and able to adapt to the effects of climate change. The purpose of the potential 'defence against water', if implemented, or any other solution or option identified to achieve the same outcome, is to address the potential effects of climate change on the effective operation of the landfill during the aftercare period.

The 'defence against water', and associated diversion of water, is also consistent with the relevant objectives and policies of the ORPS 2019.

- **Water Plan.** Relevant objectives and policies are as follows:
  - **Objective 6.3.1** seeks to retain sufficient flows in rivers to maintain the river's life-supporting capacity and natural character. **Policy 6.3.6** in support of this objective aims to minimise downstream adverse effects from managed flows. The intended outcome of the potential 'defence against water', if implemented, would be to ensure that water is retained within the Kaikorai Stream and Kaikorai Lagoon Swamp, rather than encroaching or entering the closed landfill. As the intent of the proposal is to retain water within the river channel and bed of the wetland, it is considered that 'sufficient flows' will be retained and thus downstream effects of managed flows will be minimised (and, in effect, will not occur).
  - **Policy 8.5.5** aims to ensure that the establishment of defences against water has regard to the effectiveness of, the need for, the effects of the proposed works. The potential 'defence against water' will only be implemented if, as outlined in the proposed 'Mitigation – Effects from Climate Change' consent condition (as provided above), the results of the assessment required by these conditions recommends that it is needed and that it is the best practicable approach to mitigate the natural hazard risks on the landfill. In addition, it is considered that there are minimal, if any adverse effects associated with the proposal, given that the potential 'structure' will be established on the existing perimeter access road, and it will work by ensuring that water is retained within the waterbodies (rather than flowing into the landfill).
  - **Objective 10.3.1** seeks to ensure that wetlands, and their values, are maintained or enhanced, while **Objective 10.4.2** seeks to recognise and sustain the values and uses of Regionally Significant Wetlands. Relevant policies in support of these objectives aim to: avoid adverse effects on Regionally Significant Wetlands from activities, but allow the



mitigation of adverse effects when an activity is lawfully established and has the purpose of maintaining or enhancing such a wetland (**Policy 10.4.2**); and, avoid the loss of natural inland wetlands (**Policy 10.4.8**). The potential 'defence against water', and associated diversion of water, does not result in any loss of wetland area or water. Rather, the proposal aims to ensure that water is retained in the wetland rather than encroaching on or entering the closed landfill. On this basis, it is considered that there will be no adverse effect on the Kaikorai Lagoon Swamp, a Regionally Significant Wetland, arising from the potential 'defence against water'.

Therefore, based on the above assessment, the proposed 'defence against water', and any associated diversion of water, is consistent with the relevant policy framework of the Water Plan.

### ***Statutory Considerations***

The statutory framework relevant to Waste Management's application has been assessed in Section 5 of Waste Management's resource consent application, with that assessment considering the closed landfill's aftercare activities as a whole (including a range of management and mitigation measures accommodated within the proposed consent conditions (Appendix 8 of the application)). For this reason, it is considered that it is not necessary to update the assessment in Section 5 of the application, except in relation to section 104D of the RMA (as discussed below).

The diversion of water consent trigger, under the Water Plan, is a non-complying activity, as is the overall activity status of Waste Management's resource consent application. Therefore in accordance with section 104D of the RMA, the ORC may only grant resource consents for non-complying activities if it is satisfied that the effects of the activity are minor (section 104D(1)(a)), or that the activity is not contrary to the objective and policies of the relevant plan (or proposed plan) (section 104D(1)(b)). Section 5.4 of Waste Management's resource consent application assesses the discharge and take activities associated with the closed landfill's aftercare activities, and concludes that there are no barriers to granting the resource consents sought as these activities pass both tests of section 104D of the RMA. That assessment recognised the potential management and mitigation measures identified on the application, including the recommendations of the 'Natural Hazard & Climate Assessment' (Appendix 6 of the application). In relation to the additional resource consents now being sought in response to ORC's section 91 letter, and based on the assessment contained above in relation to the effects on the environment and consistency with the policy framework, it is also considered that these aspects of the closed landfill's aftercare activities also pass both tests of section 104D of the RMA. On this basis, there is no barrier to granting the resource consents being sought by Waste Management arising from section 104D of the RMA.

In relation to the two additional resource consents being sought by this application, the potential 'defence against water', and any associated diversion of water, provide for the sustainable management of the area's natural resources as sought by the relevant planning documents and therefore is in accordance with the purpose and principles of Part 2 of the RMA.

### ***Proposed Conditions***

A general outline of the nature of proposed conditions that may be attached to the two additional resource consents now also being sought by Waste Management is provided below:

- **Land use consent** ('defence against water'):
  - Non-lapsing period of 10 years, given that the need to mitigate the natural hazard and climate change risk may not need to be implemented in the short-term.
  - If this consent is to be given effect to, the design of the 'defence against water', including a description of the construction methodology and timeframes, is to be provided to the ORC, for certification, prior to any construction works commencing.

- The construction of the 'defence against water' is to be carried out in accordance with an Environmental Construction Management Plan (**ECMP**) certified by ORC.
  - After the construction of the 'defence against water' is completed, the structure must be maintained in a manner that ensures that the maintenance of its structural integrity.
  - Inspections to confirm that the structural integrity of the 'defence against water' is being maintained must be undertaken, with records of the inspections kept. Inspections are to occur at the same time as inspections of the structural integrity of the landfill (as outlined in proposed Condition 3 of the discharge permit to discharge landfill leachate).
  - Where inspections identify issues with the structural integrity of the structures, the issue is to be registered as an incident in the complaints and incident register, and investigated with remediation or mitigation actions implemented in a timely manner.
  - The management of the 'defence against water' must be carried out in accordance with appropriate procedures contained in the closed landfill's Aftercare Management Plan (**AMP**) (refer to the proposed AMP conditions contained in Appendix 8 of the application).
  - A complaints and incident register must be maintained in relation to all activities at the closed landfill site, including the 'defence against water' (refer to the proposed register condition contained in Appendix 8 of the application).
  - Annual reporting condition (refer to the proposed annual report condition contained in Appendix 8 of the application).
  - Review condition (refer to the proposed review condition contained in Appendix 8 of the application).
- **Water permit** (diversion of water) – The only condition that it is considered should be attached to this consent, is that the diversion of water is associated with the 'defence against water' authorised by Consent [number to be inserted].

Although it is anticipated that ORC has standard conditions that may be applied to these two additional resource consents, if it is of assistance to ORC, Planz Consultants Limited (**Planz**), on behalf of Waste Management, can develop the proposed consent conditions more fully. Planz would develop the proposed conditions in a manner similar to, and consistent with, the proposed conditions contained in Appendix 8 of Waste Management's resource consent application.

### Summary

This letter constitutes Waste Management's response to ORC's section 91 deferral letter. While Waste Management does not agree that there are 'reasonable grounds' for requiring the two additional resource consents associated with the potential 'defence against water', to provide for the further processing of the closed landfill's resource consent application, Waste Management has agreed to seek the two additional resource consents. Accordingly, this letter, and attached updated application form (**Attachment A**), seeks a land use consent and water permit for activities associated with the potential mitigation measure.

Additional information, in accordance with the requirements of Schedule 4 of the RMA, has also been provided within this letter in support of the two additional resource consents being sought.

Waste Management trusts, given the provision of the information traversed within this letter, that the further processing of the application can now proceed.

If you have any queries in relation to this letter, or Waste Management's application as a whole, please feel free to contact the undersigned.

Yours sincerely  
**PLANZ CONSULTANTS LTD**



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**Consultant Planner (Partner)**

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**Attachments:** Attachment A – Updated Resource Consent Application Form

**cc:** Greg Nel, Regional Manager Otago & Southland, WM New Zealand  
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Richard Hyndman, Senior Project Manager – Engineering, Research & Development, WM New Zealand (via email – [rhyndman@wm.nz](mailto:rhyndman@wm.nz) )

Attachment A – Updated Resource Consent Application Form

**IMPORTANT NOTE:**

This updated application form replaces the application form contained in the resource consent application document dated February 2024 and lodged with ORC on 28 February 2024.

This updated form seeks two additional resource consents, a land use consent and water permit, to authorise the potential 'defence against water'. These resource consents may be required if the mitigation option of increasing the level of the site's perimeter access road, plus associated protection and armouring of the road, is implemented in the future to address the potential risks to the land fill arising from climate change effects.

Waste Management do not agree that these two resource consents need to be sought now (for the reasons outlined in the letter to ORC dated 10 March 2025). However, in response to ORC's section 91 letter (dated 4 February 2025) and to ensure that the further processing of application RM24.098 continues, Waste Management has decided to proceed with seeking these two additional resource consents.

In relation to this updated application form:

- All updates to the original application form (as contained within the February 2024 application document lodged with ORC) are shown in tracked changes mode (~~striketrough~~ text for deletions and underlined text for additions) along with grey shading.
- All references to the AEE, or application, retained in the application form, refer to the February 2024 application document.

## **UPDATED APPLICATION FOR RESOURCE CONSENT**

### **SECTION 88 OF THE RESOURCE MANAGEMENT ACT 1991**

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To: the Otago Regional Council

1. We, **Waste Management NZ Limited<sup>8</sup> (Waste Management)** (318 East Tamaki Road, East Tamaki, Auckland 2013) is seeking all necessary resource consents for the aftercare period of the Fairfield closed landfill. The specific requirements for the resource consents are:
  - (a) A discharge permit to discharge landfill gas, and associated odour, to air from the Fairfield closed landfill, in accordance with Rule 7.6.1.3 (discretionary activity) of the Regional Plan: Waste for Otago (Waste Plan)<sup>9</sup>.
  - (b) A discharge permit to discharge landfill leachate to groundwater, by seepage, through the 21 hectare base of the Fairfield closed landfill which is bounded by the leachate interception drain:

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<sup>8</sup> Consent 95008, as contained in **Appendix 1**, refers to the consent holder as 'Waste Management Limited', previously known as 'Transpacific Industries Group New Zealand Limited'. Waste Management NZ Limited is the entity that was formerly known as Transpacific Industries Group New Zealand Limited, not Waste Management Limited, and is therefore considered to be the consent holder of this resource consent. It is acknowledged that Consents 93540 to 93542 correctly refer to Waste Management NZ Limited as the consent holder.

<sup>9</sup> The Waste Plan rules, rather than the rules of the Regional Plan: Air for Otago (as stated in Section 16.2.2 of the Regional Plan: Air for Otago), apply to the discharges to air from the closed landfill.

- a. in accordance with Rule 7.6.1.1 (discretionary activity) of the Waste Plan; and
  - b. in accordance with Regulation 45B(5) (discretionary activity) the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F) where the discharge occurs within 100m of the Kaikorai Lagoon Swamp<sup>10</sup>.
- (c) A water permit to take groundwater containing leachate and other groundwater, for the purpose of controlling landfill leachate and to maintain groundwater within the area bounded by the Fairfield closed landfill's leachate interception drain:
  - a. in accordance with Rule 10A.3.2.1 (non-complying activity) and Rule 12.2.4.1(i) (discretionary activity) of the Regional Plan: Water for Otago (Water Plan); and
  - b. in accordance with Regulation 45B(4) (discretionary activity) of the NES-F for the groundwater that is taken within 100m of the Kaikorai Lagoon Swamp.
- (d) A discharge permit to discharge stormwater runoff diverted from the Fairfield closed landfill into the Kaikorai Stream and Kaikorai Lagoon Swamp, after treatment through the North and Weighbridge stormwater retention ponds:
  - a. in accordance with Rule 7.6.1.2 (discretionary activity) of the Waste Plan; and
  - b. in accordance with Regulation 45B(5) (discretionary activity) of the NES-F as the discharge is into the Kaikorai Lagoon Swamp.
- (e) A land use consent for a defence against water associated with the extension (increase) of the height of the landfill perimeter access road, and the addition of armouring, in accordance with Rule 14.3.1.1 (discretionary activity) of the Water Plan.
- (f) A water permit for the diversion of water, within the bed of the Kaikorai Stream and Kaikorai Lagoon Swamp, as a result of the establishment of a defence against water:
  - a. in accordance with Rule 12.3.1A.1 (non-complying activity) of the Water Plan; and
  - b. in accordance with Regulation 45B(4) (discretionary activity) of the NES-F as the defence against water should ensure that water is retained within the Kaikorai Lagoon Swamp.

A consent term of 30 years is sought for all of the above resource consents. This time period reflects the expected aftercare time period for the closed landfill and the fact that the activities for which consent are being sought are interlinked (i.e., the water permit to take groundwater is the directly connected to the need to manage the discharge of landfill leachate to groundwater, by seepage, through the base of the landfill).

Finally, the reason the above consent term is also being sought for the groundwater take, which is to be allocated as a surface water take in accordance with Policy 6.4.1A(b) of the Water Plan, is discussed in Sections 4.3 and 8.7 (Table 3 – refer to Policy 10A.2.3) of this application.

The overall activity status of the application is non-complying.

2. The activity to which the application relates (the activity) is as follows:

Tartan Industries Limited, a subsidiary of Waste Management, own the site associated with the Fairfield closed landfill, with Waste Management managing activities within the closed landfill. While the landfill is closed, and therefore no longer receiving waste material for disposal (waste disposal ceased in 2017), a number of activities, currently authorised by regional resource consents

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<sup>10</sup> The 'Kaikorai Lagoon Swamp' is a 'Regionally Significant Wetland' as identified in Schedule F of the Water Plan (Map F57).



granted by the Otago Regional Council (ORC), will continue during the landfill's aftercare period as the material in the landfill continues to slowly decompose. These activities are as follows:

- The discharge of landfill gas, and associated odour, to air. The landfill gas, from part of the site, is currently flared (i.e., collected and combusted with a flame). This discharge is currently authorised by Consent 95008 as contained in Appendix 1 of this application.
- The discharge of landfill leachate to groundwater by seepage. This discharge is currently authorised by Consent 93540 as contained in Appendix 1 of this application.
- The taking of underground water containing leachate and other groundwater. This take is currently authorised by Consent 93541 as contained in Appendix 1 of this application. The leachate and groundwater, taken in accordance with this water permit, is discharged into Dunedin's wastewater network in accordance with a trade waste consent.
- The discharge of treated stormwater into the Kaikorai Stream and Kaikorai Lagoon Swamp. This discharge is currently authorised by Consent 93542 as contained in Appendix 1 of this application. Stormwater from the site's North Pond is discharged into the Kaikorai Stream, while the overflow discharge from the Weighbridge Pond is discharged into the Kaikorai Lagoon Swamp.

Consents 95008 and 93540 to 93542 expire on 1 September 2024. Waste Management are seeking to 'renew' these resource consents as the discharge and take activities currently authorised by these resource consents will continue during the closed landfill's aftercare period. That is, leachate and gas will continue to be generated as the waste in the landfill decomposes, although over time the levels of leachate and gas will reduce, and ultimately cease (i.e., when the organic material in the landfill has decomposed).

There is also potential mitigation measures associated with the closed landfill's aftercare period that may need additional resource consents before the mitigation measures can be implemented (i.e., the potential option of increasing the height of the landfill's perimeter access road, and associated armouring, as a effects from climate change mitigation measure). Where considered necessary by the ORC, these resource consents have also been sought.

The activity for which resource consents are being sought by this application are more fully described in the attached AEE which forms part of this application.

3. The site at which the proposed activity is to occur is as follows:

Address:	Fairfield, adjacent to the Kaikorai Stream and Kaikorai Lagoon Swamp, approximately 1km off Old Brighton Road, Fairfield, Dunedin. The access into the landfill is at 125/127 Old Brighton Road.
Legal Description:	Tartan Industries Limited, which is a subsidiary of Waste Management, landholding consists of the following land parcels - Lot 2 DP566541 (RT 1021375 (prior to subdivision in March 2023, part of Part Lot C DP1685 (RT OT13B/390)), Part Lot B DP685 (RT OT8D/1045) and Part Section 41 Block VIII Dunedin & East Taieri Survey District and DP7227 (RT OT352/110). Copies of the Records of Title are provided in Appendix 9.
Area:	Tartan Industries Limited's, which is a subsidiary of Waste Management, total land holding is 65.6ha. The area covered by the Fairfield closed landfill is 21ha.

The location of the Fairfield closed landfill is identified in Figures 1 and 2 contained in the attached AEE which forms part of this application and in the figures and plans contained in the Aftercare Management Plan contained in Appendix 2 of this application.

4. The full name and address of each owner and occupier (other than the applicant) of the site to which the application relates are as follows:

**Tartan Industries Limited, a subsidiary of Waste Management, is the owner of that land associated with the closed landfill site. Waste Management manage, and thus occupy, the closed landfill.**

5. There are no other activities that are part of the proposal to which this application relates.
6. No additional resource consents are needed for the proposal to which this application relates.

**The Resource Management (National Environmental Standards for Greenhouse Gas Emissions from Industrial Process Heat) Regulations 2023 came into effect on 27 July 2023. However, while landfill gas is a greenhouse gas, these regulations do not apply to the discharge of landfill gas to air, including the products of combustion from the flaring of the landfill gas, from the site, as these regulations only apply to industrial activities generating thermal energy as part of its processing operations.**

7. We attach an assessment of the proposed activity's effect on the environment that—
  - (a) includes the information required by clause 6 of Schedule 4 of the Resource Management Act 1991; and
  - (b) addresses the matters specified in clause 7 of Schedule 4 of the Resource Management Act 1991; and
  - (c) includes such detail as corresponds with the scale and significance of the effects that the activity may have on the environment.
8. We attach an assessment of the proposed activity against the matters set out in Part 2 of the Resource Management Act 1991.
9. We attach an assessment of the proposed activity against any relevant provisions of a document referred to in section 104(1)(b) of the Resource Management Act 1991, including the information required by clause 2(2) of Schedule 4 of that Act.

10. The value of the investment of the existing consent holder is:

**As this application has been lodged six months prior to the expiry of Consents 95008 and 93540 to 93542 (Appendix 1), section 124 of the Resource Management Act 1991 (RMA) applies. As an application affected by section 124, section 104(2A) of the RMA requires the consent authority to have regard to the value of investment of the existing consent holder. In accordance with these provisions of the RMA, an overview of the value of Waste Management's investment at the site is outlined in Section 5.3 of the attached AEE.**

11. We attach the following further information required to be included in this application by the district plan, the regional plan, the Resource Management Act 1991, or any regulations made under that Act:

**The statutory planning documents, ~~assessed in the attached AEE and~~ relevant to this application, are the National Policy Statement for Freshwater Management 2020, the New Zealand Coastal Policy Statement 2010, the Resource Management (National Environmental Standards for Air Quality) Regulations 2004, the Resource Management (National Environmental Standards for Freshwater) Regulations 2020, the Proposed Otago Regional Policy Statement 2021, the Partially Operative Otago Regional Policy Statement 2019, the Regional Plan: Waste for Otago, the Regional Plan: Water for Otago and the Regional Plan: Coast for Otago.**

**The above statutory planning documents are assessed in the resource consent application dated February 2024 and lodged with ORC, and where relevant to the potential 'effects from climate**

change mitigation measure' these documents have been discussed in the letter to ORC dated 10 March 2025.

The deposit of \$2,450 (incl. GST) (non-notified and limited notified multiple application which consists of \$2,300 plus \$150 compliance administration fee) has been paid by Waste Management, on 19 February 2024, using the ORC's Datacom secure credit card payment page (payment references are OTH240232488 / RCT240205300). This deposit also covers the two additional resource consents now being sought to authorise the potential 'effects from climate change mitigation measure'.



Carmen Taylor (Consultant Planner (Partner))  
**PlanZ Consultants Limited**  
 On behalf of **Waste Management NZ Limited**

Address for Service (Electronic and Postal):	Address for Billing:*
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\* Planz Consultants Limited accepts no liability for any Council costs or charges. Invoices for all such work are to be sent to the Applicant's address above for billing.